Commodity Markets Council - Europe

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Re: Neena Gill's draft report on low carbon and positive carbon impact benchmarks

Dear Member of the ECON Committee,

I am writing to you on behalf of the Commodity Markets Council Europe (CMCE) regarding the Commission proposal on low-carbon and positive carbon impact benchmarks.

CMCE is an association that represents agriculture, energy, metals and other commodity market participants, price reporting agencies, and trading venues established and/or operating in the EU, the European Economic Area (EEA), Switzerland and neighbouring countries. CMCE Members include administrators, contributors and users of commodity benchmarks, as well as many firms who trade in pricing windows (or otherwise participate in price assessment processes) without contributing to a benchmark.

CMCE Members acknowledge the importance of moving towards a more sustainable and circular economy and support the Commission's broad aim of encouraging more sustainable investments. However, CMCE Members are concerned about the potentially disruptive impact of some of the amendments put forward by the ECON Committee Rapporteur in her draft report. We also wish to raise a conceptual problem with the application of the concept of low carbon and positive carbon impact benchmarks to commodity price assessments or indeed to any benchmarks that reflect market activity.

Commodity price assessments seek to accurately reflect market activity through the collection and analysis of data that is considered indicative of market value. The concept of low carbon and positive carbon impact benchmarks does not translate in a meaningful way in this context, as it is not possible to conceive of how the carbon footprint of companies or assets could play a role in the criteria for including or excluding input into the price assessment process.

Amendments 13 and 17 suggest that by 2022 all benchmarks published by administrators should be positive carbon impact benchmarks, and benchmark providers should reflect in their benchmarks a methodology proposed by the Commission to measure the social and governance impact of investments and financial products. As noted above, these requirements cannot be applied to commodity price assessments in an appropriate and meaningful way. Should these proposed amendments nevertheless be applied to commodity benchmarks in some way or form, this would present a number of problems.

Firstly, if administrators were mandated to only take into account market data from firms whose carbon emissions savings exceed their carbon footprint, this would imply separating commodity benchmarks from the underlying physical market and would lead to those benchmarks being unrepresentative. This would be in conflict with the requirement under the Benchmarks regulation for price reporting agencies to produce benchmarks which are representative of the underlying markets. Secondly, it would amount to an interference in the methodologies of price reporting agencies which would stifle innovation and competition as room for differences in methodologies would be restricted. Most importantly, it could lead to serious disruption in the commodity markets where commodity price assessments are widely used by market participants to price physical energy contracts and derivative contracts.

CMCE Members are also concerned about the potential impact of amendment 18 which suggests that the Commission should be empowered to adopt a delegated act to regulate the fees charged by benchmark providers to their clients to ensure that these fees are "based on actual costs". Regulating the fees of benchmark administrators in such a way could undermine the viability of the operations of benchmark providers and would therefore put at risk the ability of commodity price reporting agencies to continue to operate and provide price assessments.

We note that this issue has been extensively considered during the BMR Level 1 negotiations where it was decided that rules on benchmark fees should only apply to critical benchmarks. The provision of commodity benchmarks by price reporting agencies is characterised by good competition between benchmark administrators, which provides effective checks on market pricing. CMCE Members therefore believe that further regulation of the fees of benchmark administrators as proposed is neither necessary nor justifiable.

Given the potentially disruptive impact of amendments 13, 17 and 18 on commodity benchmarks and the broader commodity markets, as explained above, CMCE Members respectfully call on Members of the ECON Committee to work towards a more constructive Parliament position that does not support these amendments.

We remain at your disposal to provide further information and answer any questions you may have.

Yours sincerely,

Samina Anwar,

CMC Europe Chair