Market Monitoring Unit Inquiry Procedure Manual

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Contents

1. Introduction

The purpose of this manual is to set out the procedures that will generally be followed by the Market Monitoring Unit (MMU) during market inquiries. It is intended to provide guidance to both the MMU and to market participants as to how market inquiries will be conducted, although flexibility will exist to deal with the circumstances of any particular case. It does not provide a comprehensive description of the detailed procedures and timings which will be followed in every case. The MMU will therefore seek to adhere to this manual but it does not in itself impose requirements on, or purport to fetter the discretion of, the MMU.

The Regulatory Authorities (RAs) may decide, with or without liaison with the MMU, to use any of the RAs' relevant powers such as the issuance of interim directions/directions and/or enforcement orders, both without recourse to the inquiry process laid out in this manual and when inquiries are underway. This could arise, for example, from cases of market abuse or a substantial short-term risk of market failure that must be addressed expeditiously. The RAs use of their powers is not limited to these examples.

This manual is concerned with matters which may be investigated by either or both of the RAs, depending on the circumstances, and therefore (unless the context otherwise requires) references in this manual to an individual RA should be understood as references to both RAs. The organisational and legal framework within which the MMU carries out its functions is set out below.

These guidelines are not a substitute for any regulation or law and should not be taken as legal advice. This manual may be reviewed and amended from time to time.

1.1 SEM Committee

The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (2007 No. 913 (N.I. 7)) (SEM Order) and the Electricity Regulation Act 1999 (Electricity Act) respectively provide for the creation of the SEM Committee.

The principal objective of the SEM Committee is to protect the interest of consumers of electricity in Northern Ireland and Ireland supplied by authorised persons, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale or purchase of electricity through the SEM.

The central decision-making rule which governs the exercise of regulatory functions by the SEM Committee shall be that:

i. Any decision as to the exercise of a relevant function of the Commission (the Commission for the Regulation of Utilities - CRU) in relation to a SEM matter shall be taken on behalf of the Commission by the SEM Committee, and,
ii. Similarly, any decision as to the exercise of a relevant function of the Authority (the Northern Ireland Authority for Utility Regulation —the Utility Regulator (UR)) in relation to a SEM matter shall be taken on behalf of the Authority by the SEM Committee.

A matter is a SEM matter if the SEM Committee determines that the exercise of a relevant function of the Authority or the Commission as the case may be, in relation to that matter, materially affects, or is likely materially to affect, the SEM.

Given that decisions as to the exercise of certain functions described in this manual may be taken by the SEM Committee on behalf of either or both of the RAs, references in this manual to the RAs (or to either of them) should be read as including references to them (or it, as the case may be) acting through the SEM Committee.

1.2 Market Monitoring Unit

The MMU forms part of the market power mitigation strategy developed by the RAs and typically reviews market behaviours on an ex-post basis. This includes investigating the exercise of market power; monitoring compliance with legislative requirements such as the Regulation on Wholesale Energy Market Integrity and

Transparency (REMIT)[1] in cooperation with the Agency for the Cooperation of Energy Regulators (ACER); ensuring compliance with licence conditions, particularly those relating to cost-reflective bidding; assessing compliance with competition law and other applicable market rules; and reviewing the overall performance of the market.

The activities of the MMU are overseen jointly by the RAs, via a group of senior members of staff drawn from each RA (referred to as the Senior Staff Group (SSG)) to whom the SEMC have delegated various decision-making powers.

1.3 Regulation on Wholesale Energy Market Integrity and Transparency (REMIT)

REMIT is Regulation (EU) no. 1227/2011 (as amended by Regulation 1106/2024) on wholesale energy market integrity and transparency. REMIT establishes a legal framework for reporting data on wholesale energy market transactions to ensure transparency and market integrity. It prohibits market manipulation and obliges market participants to report wholesale energy transactions and publish insider information.

REMIT places legal obligations on National Regulatory Authorities (NRAs), including the UR and CRU, to cooperate with ACER in monitoring the wholesale electricity market, including sharing of information and investigations of potential market abuse.

A Memorandum of Understanding (MOU) between the NRAs and ACER has been established which sets out the responsibilities and obligations of each of the parties to the MOU. The purpose of the MOU is to define the scope and practical terms of the cooperation, with the aim of promoting effective, efficient and coordinated monitoring. Separate and independent MOUs exist between ACER and CRU, and between ACER and UR. Various articles of REMIT set out the responsibilities of the NRAs. In this context the MMU will monitor REMIT compliance, with the NRAs retaining responsibility for enforcement.

[1] Regulation (EU) No 1227/2011 (as amended by Regulation 1106/2024)

2. MMU Inquiry Process

2.1 Introduction

The MMU Inquiry Process is designed to:

- Provide an opportunity for the MMU to consider and clarify queries or issues in relation to market participant behaviour and for market participants to provide information and explanations to the MMU.
- Allow the MMU to assess whether there is evidence that a market participant may have acted in potential breach of its licence, or any other regulatory or legislative requirement, including REMIT, and submit information to the SSG if deemed necessary.
- Allow the MMU to identify whether an issue of concern should be investigated by another body (e.g. the regulatory or competition authority in either jurisdiction) or any other relevant authority. If it is deemed that the issue should be investigated by another body, the MMU will pass on the relevant information to that body.

The MMU routinely monitors market activity and makes routine requests for information from market participants. Through this monitoring function, it may discover an issue which gives rise to concern and/or requires further clarification or information.

Alternatively, an issue of concern, or an issue requiring further clarification or information may be brought to the attention of the MMU by a third party, for example, another market participant, SEMO or SEMOpx.

In all of its undertakings, the MMU will follow the principles of targeted and proportionate intervention that is consistent and transparent. The MMU will seek to be efficient, employing a rigorous and evidence-based approach that provides fair outcomes. Monitoring by the MMU and any subsequent inquiries are expected to act as an incentive to market participants to comply with their obligations.

The MMU is mindful of the potential for information received to be confidential and will maintain confidentiality as appropriate. Where information is particularly sensitive, and confidentiality is claimed, this should be stated, alongside an accompanying explanation of the grounds on which confidentiality is claimed.

2.2 Overview of Inquiry Process

The MMU will endeavour to follow the process below in relation to inquiries, but in some circumstances, it may be appropriate for the MMU to conduct an inquiry in a different way to that set out below.

A market participant may offer at any stage of an inquiry to provide undertakings as to its future behaviour. The MMU will consider such offers as part of the inquiry process.

1. The MMU receives information from a range of sources including routine monitoring activities, MMU information requests, market participant self-reporting, or referrals from other market participants or interested parties or from whistleblowing submissions. The MMU will review relevant information and may seek further information.

2. The MMU may decide to close an inquiry where, in its view, the information it has received does not merit further investigation, for example because of the relative seriousness of the matters raised and/or resources required to continue with the inquiry.

3. Where the MMU considers that the information reviewed does require further analysis, the MMU will consider whether the matter is best examined further by the MMU or by another body.

4. If there are grounds for the MMU to conduct further analysis, the MMU will contact the market participant(s) concerned setting out:

    i. The issue of concern (noting however that the identity of any third-party complainant will not be shared).
    ii. The particular information the MMU requires, noting that the market participant may submit any information deemed relevant for consideration.

iii. The timescale within which the MMU requires that information.

iv. The name and contact details of the person responsible for leading the inquiry within the MMU.

5. The MMU will consider all relevant information received and may ask for further information, clarifications or explanations as required from any market participant or person.

6. Where the MMU considers that information held by other persons may be of use, it may contact those persons and request the information, only naming the market participant subject to inquiry where necessary.

7. Having considered the relevant information available, the MMU will consider whether there is evidence that the market participant may have been, or is continuing to be, in potential breach of its obligations.

8. If the MMU considers that the information available does not require further inquiry, it may close the inquiry. It should be noted however that an inquiry may be re-opened if deemed necessary by the MMU.

9. If the MMU considers that there is sufficient evidence to suggest that the market participant may have been, or continues to be, in potential breach of its obligations, and any such potential breach is not deemed trivial, the MMU will issue a report to the SSG containing the findings of the inquiry to date and details of any undertakings agreed by the market participant.

10. Following review of the MMU's report, and any additional information as required, the SSG may decide to take one or more of the following actions, or may decide to take an alternative action or approach:

- Request that the MMU consider the matter further, conducting additional inquiries or analysis as necessary, for SSG consideration at a later stage.
- Pass the inquiry to the relevant RA(s) and/or SEMC for further consideration.
- Direct the MMU to close the inquiry.

- Direct the MMU to proceed to seek recovery of monies.

11. When closing an inquiry, the MMU may, with the permission of the SSG, publish general guidance arising from relevant inquiries, where that is for the benefit of the market as a whole.

The SSG may reconsider a closed inquiry if new or relevant information comes to light.

2.3 Market Participants Subject to Numerous Inquiries

A market participant may be the subject of numerous inquiries, relating to the same market entity or a number of different market entities, such as different generation stations. Notwithstanding that market participants may offer or agree to amend their behaviour to ensure compliance with their obligations, the volume of inquiries carried out may become a concern. The MMU may therefore seek approval from the SSG to launch a broader inquiry into that market participant's behaviour in light of such repeated inquiries.

Such broader inquiries may: re-examine any of the participant's prior and current behaviours; extend to additional markets; cover additional units or entities linked to the participant; and may consider any previous inquiries relating to that participant's behaviour, including those that were not considered serious enough to warrant further inquiry at the time.