

## **Condition 12. Independence of the Market Operation Activity**

### General Duty

1. The Licensee shall:
  - (a) unless it has already done so prior to this Condition coming into force, establish; and
  - (b) at all times thereafter maintain,

the full managerial and operational independence of the Market Operation Activity from any Associated Business.

### Specific Duties

2. For the purpose of facilitating its compliance with paragraph 1, the Licensee shall ensure that:
  - (a) the Market Operation Activity is provided with the premises, systems, equipment, facilities, property, personnel, data and management resources that are necessary for its efficient and effective managerial and operational independence;
  - (b) it does not hold or acquire shares in a holding company of the Licensee or in any electricity undertaking engaged in the generation or supply of electricity on the Island of Ireland;
  - (c) decisions relating to the operation of the Single Electricity Market Trading and Settlement System are taken by those persons who are employed by, and are engaged in the operation and management of, the Market Operation Activity in accordance with the Market Operator Agreement;
  - (d) any Associated Business does not use or have access to:
    - (i) premises or parts of premises (other than general meeting room areas) occupied by persons engaged in the management or operation of the Market Operation Activity;
    - (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Market Operation Activity also have access;
    - (iii) equipment, facilities or property employed for the management or operation of the Market Operation Activity;
    - (iv) the services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the Market Operation Activity;

and

- (e) it can and does, in so far as is legally possible:
  - (i) ensure that any director of the Licensee is not at the same time also a director of a company which carries on an Associated Business engaged in the generation, [distribution] or supply of electricity; and
  - (ii) prevent any person who has ceased to be engaged in the management or operation of the Market Operation Activity from being engaged in the activities of any Associated Business that is engaged in the generation, [distribution] or supply of electricity until the expiry of an appropriate time from the date on which he ceased to be engaged by the Market Operation Activity.

### Compliance Plan

3. The Licensee shall, no later than 3 months after the date of the grant of the Licence, prepare and submit to the Authority for its approval a compliance plan setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with this Condition.
4. The Licensee shall use all reasonable endeavours to comply with its approved compliance plan (the "**Plan**") and shall from time to time publish the up to date Plan on its website.
5. The Authority may:
  - (a) within 30 days of the Licensee submitting an initial or revised Plan; and
  - (b) following any review of the Plan that the Authority may conduct from time to time, notify the Licensee that, in its opinion, the Plan is not, or is no longer, sufficient for the purposes of the Licensee's compliance with this Condition, and require such revisions to be made to the Plan as are in the Authority's opinion necessary or expedient in order for it to be sufficient for the purposes of ensuring the Licensee's compliance or continued compliance with this Condition.
6. Where the Licensee receives a notification in accordance with paragraph 5, it shall within 30 days revise the Plan in such manner and to such extent as will reflect the Authority's requirements.
7. The Licensee shall at least once every year during which this Condition is in force review the Plan so as to ensure:
  - (a) its continued compliance with its obligations under this Condition; and

- (b) that the information set out in the Plan continues to be accurate in all material respects.
- 8. Where the Licensee revises the Plan, either in accordance with paragraph 6 or following a review conducted by it in accordance with paragraph 7, it shall submit the revised Plan to the Authority for its approval.
- 9. The Licensee shall ensure that persons engaged in the management and operation of the Market Operation Activity:
  - (a) are made aware of the practices, procedures, systems and rules of conduct set out in the Plan;
  - (b) have the necessary information and facilities to comply with their respective obligations as provided for in the Plan; and
  - (c) are aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Plan.

#### Compliance Manager

- 10. The Licensee shall, following consultation with the Authority, appoint a senior member of its personnel engaged in the management and operation of the Market Operation Activity as a manager (the “**Compliance Manager**”) for the purpose of facilitating compliance with its obligations under this Condition and with the Plan.
- 11. The Licensee shall ensure that the Compliance Manager has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him.
- 12. The duties and tasks assigned to the Compliance Manager shall include:
  - (a) providing relevant advice and information to the Licensee for the purpose of ensuring its compliance with this Condition and with the Plan;
  - (b) monitoring the effectiveness of and the Licensee’s compliance with the Plan;
  - (c) investigating any complaint or representation received by the Licensee from any person in respect of any matter arising under or by virtue of this Condition or in relation to the Plan;
  - (d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable, including where necessary revising the Plan to reflect such recommendation and advice; and

- (e) reporting, at such frequency as is determined in writing by the Authority, to the directors of the Licensee on his activities during the period covered by the report, the investigations he has conducted and on progress towards implementation of the Plan.
13. The Licensee shall, at such frequency as is determined in writing by the Authority, submit a report to the Authority:
- (a) detailing the activities of the Compliance Manager during the period covered by the report;
  - (b) providing a progress update on the Licensee's implementation of the Plan;
  - (c) setting out the details of any investigations conducted by the Compliance Manager, including:
    - (i) the number, type and source of the complaint or representation on which such investigations were based;
    - (ii) the outcome of such investigations; and
    - (iii) any remedial action taken by the Licensee following such investigations.

#### Definitions

14. In this Condition, unless the context otherwise requires:

**“Associated Business”** means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than the ultimate holding company, the Market Operation Activity, the Transmission System Operator Business, the Transmission Owner Business and the [the Distribution Licensee].

**“ultimate holding company”** means a holding company of the Licensee which is not itself a subsidiary of another company, and which is not itself engaged in the generation, [distribution] or supply of electricity.

### **Condition 12A: Ownership of the Market Operation Activity**

- 1 This Condition shall apply after the point at which the Licensee first ceases, following the date of the Grant, to have any affiliate or related undertaking who is authorised by a licence granted under Article 10(1)(a) or 10(1)(c) of the Order.
  
- 2 Where this Condition applies, the Licensee shall procure that neither the Licensee, nor any affiliate or related undertaking of the Licensee, undertakes an activity which requires authorisation by virtue of Articles 8(1) (a) or (c) of the Order or Section 6(1) (a) or (d) of the Electricity Act 1989, or an activity which is licensable under Section 14(1)(a), (b), (c), or (d) of the Republic of Ireland Electricity Act.