

Single Electricity Market Committee

**Extension to the Criteria for Approval of
Intermediary Applications
under the Trading and Settlement Code**

Decision Paper

SEM-11-014

30th March 2011

1. Introduction

The SEM Committee published a consultation paper on 26th January 2011, “Extension to the Criteria for the Approval of Intermediary Applications under the Trading and Settlement Code” (SEM-11-004) to propose broadening the criteria for appointing Intermediaries.

The criteria for approval of Intermediary applications under the Code have been stable for the past three years, as detailed in Section 2 below and the RAs believe the arrangements have been successful. However, an extension to the criteria was proposed to allow certain Price Maker Generator Units appoint an Intermediary to act on behalf of these units (see Section 3 below). The extension was proposed as representations had been made to the SEM Committee from a potential new entrant who could not access a support-scheme they have been allocated due to the configuration of the SEM.

Eight sets of comments were received to the consultation paper, which are published along with this decision. Section 4 of this paper details the SEM Committee’s response to these comments. Finally, Section 5 provides the SEM Committee’s final decision on the matter.

2. Criteria for Approval of Intermediary Applications

An Intermediary arrangement can be explained as permitting the owner of a generator to appoint an Intermediary to fulfil all of its obligations under the Trading and Settlement Code ('the Code' or 'TSC'). The role of Intermediaries is to act for licensees in relation to specific generator units under the Code, taking on, for example, their rights and responsibilities including bidding, settlement and provision of credit cover. In these circumstances, the unit owner has no direct obligations under the Code relating to that generator. It should be noted, however, that if an Intermediary breaches the Code, the Regulatory Authorities (RAs) can take licence enforcement action against the generator who appointed the Intermediary (for failing to procure that the Intermediary has met its obligations under the Code).

The SEM Trading and Settlement Code specifies in paragraph 2.104 that an Intermediary may register any Generator Unit provided that the RAs have consented to the registration of the relevant Generator Units by the Intermediary. Note that the Code does not specify what criteria should be used by the RAs in consenting to the registration of the relevant Generator Units by an Intermediary and therefore, the RAs determine (through published SEM Committee decision papers) the criteria to be applied when deciding on whether an Intermediary can be appointed. The SEM Committee can therefore, at its discretion, change the criteria.

The legal basis for Intermediaries is set out in the Generation Licence and the Trading and Settlement Code. In particular, in accordance with Condition 14 of the Licence and paragraph 2.104 of the TSC, the RAs must have given prior consent to the registration of the relevant Generator Units by an Intermediary. The RAs determined the criteria for appointing Intermediaries through the following decision papers (please see the paper itself for reasoning behind these criteria):

Criteria for Approval of Intermediary Applications pre Go-Live

SEM/07/029¹ – published on 28th February 2007 – “Criteria for Approval of Intermediary Applications under the Trading and Settlement Code”

At a high-level, the above paper allows the appointment of an Intermediary for PSO-backed contracts where the contract was entered into before the date of this decision – the

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<http://www.allislandproject.org/en/trading-settlement-code-decision.aspx?article=8f6591e2-1ac5-44ea-a998-a7e70da3cb8d&mode=author>

appointment of an Intermediary shall cease on termination or expiry of the contract. The specific criteria are as follows:

I. Where the Contract was entered into on or before 27 February 2007 (the date of the decision)

It shall be possible under the Code to appoint an Intermediary in relation to any generator unit in respect of contracts entered into on or before 27th February 2007.

II. Such arrangements (under I. above) shall be limited to 12 months from Market Go-Live (PSO contracts are to be exempted from this condition)

The RAs considered a period of 12 months to be ample time for participants to adapt their contractual set-up to comply with the SEM. Where a party's participation in a bilateral agreement was under a PSO contract², the use of an Intermediary will be permitted for the duration of the contract.

III. Limited to the duration of the current contracts

The appointment of an Intermediary under the Code by a PSO generator shall cease on termination or expiry of the underlying contract.

Existing Criterion for Approval of Intermediary Applications (criterion applying since Go-Live)

SEM/07/11³ – published on 10th December 2007 – “Revisions to the Criteria for Approval of Intermediary Applications under the Trading and Settlement Code”

Following a consultation⁴ (SEM/07/508) on the matter, this decision allowed for Intermediaries to be appointed where no historical contract existed and in respect of a Generator Unit that is registered as a Price Taker Generator Unit. Therefore, without the extension of the criteria proposed in the most recent consultation document (SEM/11/004), Intermediaries could only be appointed for Price Taker Generator Units, the restriction being for market power reasons. The specific criterion is as follows:

IV. An Intermediary may be appointed where a Generator Unit has registered as a Price Taker Generator Unit in accordance with the TSC and where said Generator Unit

² For the purposes of this paper, a PSO Contract is contract provided for in relevant legislation in Ireland or Northern Ireland, payments under which are underwritten by a Public Service Obligation Levy.

³ http://www.allislandproject.org/en/TS_Decision_Documents.aspx?article=255cc04f-562f-46e3-9924-d9a457875d88

⁴ http://www.allislandproject.org/en/TS_Current_Consultations.aspx?article=14771152-4ac5-44ee-b55f-645a93812b7c&mode=author

is contracted to a Supplier Unit that is a Party to the TSC. For the avoidance of doubt the Intermediary will cease to be appointed when either or both of the following occur:

- a) on termination or expiry of the underlying contract; or
- b) on the Generator Unit ceasing to be registered as a Price Taker Generator Unit or Autonomous Generator Unit under the TSC.

Exemption to the Criteria for Approval of Intermediary Applications

Note that a further decision paper⁵ on Intermediaries was published which allowed for a time-bound exemption for ESB to appoint an Intermediary to act on behalf of the units being sold as part of the CER-ESB Asset Strategy Agreement– this was required to effect the transfer of assets to Endesa.

⁵ SEM/08/170 – published on 3rd November 2008 – “Special Exemption from the Criteria for the Approval of Intermediary Applications”
http://www.allislandproject.org/en/TS_Decision_Documents.aspx?article=b2036777-c400-473b-bdc4-adabeea07252

3. Proposed Extension to the Criteria for Approval of Intermediary Applications

As noted in previous papers on Intermediaries, permitting all participants in the SEM to make use of Intermediary arrangements without restriction would have several significant drawbacks, as follows:

- The existence of Intermediary arrangements has the potential to create additional concentrations of market power e.g. if unchecked, provision for Intermediaries could, at the extreme, allow one person to bid in all available generation into the market;
- In this respect market monitoring in the SEM could be made more difficult if Intermediaries were to be permitted across the board;
- It is more complex to ensure that generation licensing obligations such as compliance with the Code, obligations to comply with the Grid Code, restrictions on bidding behaviour, compliance with other codes and contracts etc. can be applied in relation to Intermediary generator units.

In the context of the above, the SEM Committee do not believe it is appropriate to permit all participants in the SEM to make use of the Intermediary arrangements without restriction. Therefore, in its consultation paper the SEM Committee proposed allowing a limited extension to the current criteria for appointing Intermediaries. Such an extension of the Intermediary mechanism to an enduring facility for specific Price Maker Generator Units, as outlined below, may serve to further ensure that the SEM market rules foster an environment that is fully conducive to the achievement of national and EU renewable targets. The following criterion was proposed in the SEM Committee's consultation paper:

V. An Intermediary may be appointed where a Generator Unit has registered as a Price Maker Generator Unit in accordance with the TSC and where said Generator Unit is contracted to a Supplier Unit that is a Party to the TSC and the following criteria are satisfied:

- a) The generator has been allocated a support-scheme where to access the payments, the requirements of the scheme are such that an Intermediary must be appointed to receive the support-scheme payments and that no alternative means of receiving the support-scheme payments in the SEM exists (this only applies to REFIT at present); and,
- b) The generator's Maximum Export Capacity is less than 50MW;

- c) Subject to applicable licence conditions, the Intermediary appointed will only act on behalf of any other generator in the SEM with which it has a related undertaking or affiliate, with the meanings as set out in the relevant jurisdictional Generation Licences.

Criterion (a) was proposed to ensure at a minimum that the SEM is not configured in a manner that actively frustrates the delivery of these national and EU renewable targets which fulfils the SEM Committee's duty⁶ to have regard to "the need, where appropriate, to promote the use of energy from renewable energy sources". This condition also serves to clarify that an Intermediary can only be appointed to act on behalf of a Price Maker Generator Unit if there is no other way that the support-scheme payment can be received in the SEM⁷.

Criterion (c) was proposed to mitigate any potential for a participant to exert market power. This also meets the principle objective of the SEM of promoting effective competition⁸. Essentially, the intention of this criterion is that a Supplier Unit only acts on behalf of Generator Units to which it is connected to by virtue of company ownership, structure or shareholding.

⁶ This duty is set out in Section 9BC (5) b of the Electricity Regulation Act 1999 in Ireland and in Northern Ireland, article 9 (5) (b) the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007

⁷ For example, under this proposed criteria, a Generator Unit that has priority dispatch (and therefore can register in the SEM as a Price Taker Generator Unit) cannot appoint an Intermediary to act on behalf of the Unit if it is registered as a Price Maker Generator Unit.

⁸ This duty is set out in Section 9BC (1) of the Electricity Regulation Act 1999 in Ireland and in Northern Ireland, article 9 (1) (c) the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007

4. Consultation Responses

Comments to the consultation were received from the following and are published alongside this decision paper:

- Indaver;
- Bord na Móna;
- Dublin Waste to Energy Limited;
- The Consumer Council;
- arc21;
- IWEA;
- Airtricity; and,
- Viridian.

General Comments

All eight respondents broadly agreed with the proposal to extend the criteria for appointing an Intermediary to act on behalf of certain Price Maker Generator Units. Most respondents commented on the specific criterion proposed and on other aspects of the proposal, as discussed below. A SEM Committee response on each of the comments is provided.

Specific Comments on Criterion (a) The generator has been allocated a support-scheme where to access the payments, the requirements of the scheme are such that an Intermediary must be appointed to receive the support-scheme payments and that no alternative means of receiving the support-scheme payments in the SEM exists:

There was general support for this criterion. One respondent noted that the effect of this criterion is to limit the extension to a very small pool of generators as firstly, the availability of REFIT support is itself limited to a stated volume and generation and secondly, the vast majority of generators availing of REFIT support qualify to register as Price Taker Generator Units in any event and so will not satisfy the test. The SEM Committee agrees with this assessment.

One respondent felt that this criterion over-complicates the process and should be removed. The SEM Committee does not agree and believes that this is the key criterion which needs to be met to allow an additional classification of unit to avail of the Intermediary arrangements.

Another respondent considered that further details should be provided on why the extension is limited to units that have no other way of registering in the market. The limited extension to the Intermediary criteria was proposed as a result of a pressing issue of a potential new entrant regarding its entry into the market. It was proposed to facilitate a unit's entry into the market as no mechanism could be found by which it could register in the market and receive payments for the support scheme it has been allocated. The consultation was not intended to be a broader review of Intermediary arrangements.

Specific Comments on Criterion (b) The generator's Maximum Export Capacity is less than 50MW

Most participants made specific comments about this criterion and the 50MW limit proposed. One respondent agreed with the 50MW, however a number of respondents felt that a 50MW limit was unnecessarily and that it should be removed or the MW limit increase so that larger projects could be included. Various respondents suggested raising the limit to at least 60MW, at least 80MW or at least 140MW or removing the restriction completely to accommodate planned projects. Respondents noted the details of potential future waste-to-energy units of differing sizes and other hybrid units, which are likely to have the same difficulties in accessing payments.

One respondent noted that this MW restriction is counterintuitive in light of the SEM Committee's stated intention of not frustrating the achievement of RES targets. In addition, this respondent noted that assuming the 50MW threshold is intended to limit the scale of generators who participate in the SEM via an Intermediary, given the requirement to (1) be eligible for a support-scheme where an Intermediary is required to be appointed (currently only applied to REFIT) and (2) not satisfy other intermediary criterion (such as being able to register as a Price Taker Generator Unit by having priority dispatch), these factors will already significantly limit the number of MW that qualify for this new criteria to allow an Intermediary to be appointed.

The SEM Committee has considered these comments and believe there is merit in reviewing this 50MW limit, particularly considering the respondents comment regarding the current projects being planned that are also likely to require such a facility to access a support-scheme. Therefore, the SEM Committee have decided to modify this limit to 100MW in its final decision. The SEM Committee will continue to keep this limit under review.

Specific Comments on Criterion (c) Subject to applicable licence conditions, the Intermediary appointed will only act on behalf of any other generator in the SEM with which it has a related undertaking or affiliate, with the meanings as set out in the relevant jurisdictional Generation Licences.

Most respondents did not have specific objections to this criterion, however one respondent stated that this criterion should not be necessary, if the first two criteria are met.

Two respondents described criterion (c) as being too “restrictive”. One of these respondents felt that this criterion, in limiting the number of suppliers with whom new entrant generators can contract bilaterally, may (inadvertently) be unfair and even anti-competitive. This respondent noted that such a restriction was not considered necessary in relation to other Intermediary criteria. In addition, this respondent believes this criterion is not necessary to prevent any risk of market concentration or market power, as the ability of an Intermediary is limited by obligations imposed on it by the Supply Licence to comply with the relevant generation licence conditions in submitting Commercial Offer Data on behalf of a generator. This respondent also noted that in preventing a new entrant from entering into an offtake arrangement with such suppliers, the effect of this criterion is to require generators wishing to appoint an Intermediary to implement “*a supplier lite model*”. This respondent felt that this requirement would create a barrier to entry and imposes an undue administrative and regulatory burden on new entrants that are not faced by competing generators who are permitted to avail of the more straightforward price taking exemption.

The SEM Committee response is as follows. Firstly, such a restriction is not necessary for other Intermediary criteria, for example where an Intermediary is appointed to act on behalf of Price Taker Generator Units, as these Generator Units are not in a situation to directly influence market price and therefore have more of a ‘passive’ role in relation to the market (as they do not submit bids into the market). However as the proposed extension relates to Price Maker Generator Units, who must bid into the market, market power issues are therefore of greater consideration. An Intermediary must have a Supply Licence, which as noted by the respondent, binds it to the Generation Licence and Commercial Offer Data requirements. By this criterion, the SEM Committee have sought to reduce any possible dominance issues which could result from this extension.

Other Comments

One respondent felt that there is a need for an overall framework for policy changes and that the impact of individual changes must be recognised in the context of the overall policy framework and roadmap. A similar comment was made by another respondent who noted

that the proposed decision was an example of rules exemptions being created to cater for the specific requirements of individual entities and should not be encouraged. They further noted that as SEM evolves and attracts more entrants with diverse technologies and organisational structures, it becomes increasingly more pertinent to have a targeted workstream to address issues covering registration, maintenance, transfers, re-ratings and exit of units. This respondent therefore recommended that the SEM Committee set up an expert group (steered by the RAs and moderated by SEMO) on SEM Registrations to consider such issues.

The SEM Committee agree that it is best that issues are considered holistically and this approach is taken by the SEM Committee through its various workstreams, such as Dispatch and Scheduling. The SEM Committee also note that anyone is free to raise a Modification to the Trading and Settlement Code or to the Grid Code to address any issues which they feel exist and these panels can delegate this work to be completed as part of Working Groups if deemed appropriate. In addition, if issues cannot be addressed in these fora, participants are free to make representations to the RAs at any time.

Another respondent reasoned that this extension may not be needed, depending on the particulars of the case which the respondent does not have sight of – for example it is suggested that this new entrant should “*employ the ‘Supplier-lite model’*” by registering a Supplier Unit in addition to its Generator Unit, and via this mechanism gain access to its allocated scheme payments. The RAs wish to confirm that no other mechanism existed within the current rules by which the potential new entrant could register and therefore a change to the rules is required. On the particular solution suggested, a Supplier Unit cannot be appointed to act as Intermediary on behalf of a Price Maker Generator Unit as Intermediaries can only be appointed (as the current rules stand) to act on behalf of Price Taker Generator Units and hence some sort of extension to the criteria is required.

One respondent wished for clarification on whether this extension would apply to Variable Price Maker Generator Units as they noted that this change would be required to enable large wind farms to become price makers if they choose to do so. The RAs wish to clarify that this extension would apply to all Price Maker Generator Units (Variable and Predictable). However, as noted in the consultation paper, Units which have priority dispatch and therefore can register as Price Taker Generator Units (such as wind farms) do not fulfil criterion (a) as this condition is only satisfied if no alternative means of receiving the support-scheme payments in the SEM exists and therefore these Units cannot appoint an Intermediary if they register as a Price Maker Generator Unit.

One respondent noted that extending the criteria for the approval of Intermediary applications could bring benefits for consumers through promoting competition in the SEM; however the respondent noted that the extension of the criteria must be safeguarded to mitigate the exertion of market power by other existing participants. The SEM Committee agrees with this remark and believe that the extension proposed facilitates new entrants into the market, which has benefits in terms of competition, while still mitigating market power issues.

A number of respondents acknowledged the link between the consultation paper on Intermediaries and the Dispatch and Scheduling workstream, due for decision shortly i.e. should it be decided as part of the Dispatch and Scheduling work that certain plant are entitled to priority dispatch, then this extension on Intermediaries may not be required. Many of these respondents reiterated comments previously made to the 'Principles of Dispatch' proposed position paper (SEM-10-060). The SEM Committee are not addressing these comments as part of this decision paper as they are being considered as part of a separate workstream on Dispatch and Scheduling. The SEM Committee are cognisant of the interaction between both pieces of work and therefore may revise policy regarding Intermediary criteria following a decision on Dispatch and Scheduling or in the context of relevant jurisdictional legislation.

5. Final Decision

Given the comments received, the SEM Committee's final decision on the matter is as follows:

V. An Intermediary may be appointed where a Generator Unit has registered as a Price Maker Generator Unit in accordance with the TSC and where said Generator Unit is contracted to a Supplier Unit that is a Party to the TSC and the following criteria are satisfied:

- a) The generator has been allocated a support-scheme where to access the payments, the requirements of the scheme are such that an Intermediary must be appointed to receive the support-scheme payments and that no alternative means of receiving the support-scheme payments in the SEM exists;
- b) The generator's Maximum Export Capacity is less than 100MW; and,
- c) Subject to applicable licence conditions, the Intermediary appointed will only act on behalf of a generator in the SEM with which it has a related undertaking or affiliate, with the meanings as set out in the relevant jurisdictional Generation Licences.

This differs from the criteria proposed in the consultation paper as criterion (b) regarding the 50MW limit has been modified to 100MW and the wording criterion (c) has been modified slightly for increased clarity by replacing the words "*any other generator*" with "*a generator*".

This extension is in addition to the Intermediary arrangements currently in place.

The SEM Committee will continue to keep the Intermediary arrangements under review. In particular, if there is a change in ability to access the payments for some reason (due to a SEM Committee decision on dispatch and scheduling and/or relevant legislation in either jurisdiction, for example), this policy may be reviewed.