



Single Electricity Market

Market Monitoring Unit (MMU)

Inquiry Procedure Manual

SEM-21-020

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1 INTRODUCTION

The purpose of this manual is to set out the procedures that are generally to be followed by the Market Monitoring Unit (MMU) during market inquiries. It is intended to provide guidance to both the MMU and market participants as to the conduct of such inquiries, although flexibility will exist to deal with specific circumstances arising in any particular case. The Regulatory Authorities 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 Regulatory Authorities (RAs). It does not provide a comprehensive description of the detailed procedures and timings which will be followed in every case.

The Regulatory Authorities may decide, with or without liaison with the MMU, to use any of the Regulatory Authorities' relevant powers such as the issuance of interim directions without recourse to the inquiry process laid out in this paper. This could arise from cases of market abuse or a substantial short-term risk of market failure that must be addressed expeditiously. The manual does not therefore provide a comprehensive description of the procedure to be followed in every case.

This manual is concerned with matters which may be investigated by either or both of the Regulatory Authorities, depending on the circumstances, and therefore (unless the context otherwise requires) references in this manual to an individual Regulatory Authority should be understood as references to both Regulatory Authorities and vice versa.

This manual may be reviewed from time to time so that the Regulatory Authorities may keep procedures relevant and up to date.

2 ORGANISATIONAL AND LEGAL FRAMEWORK OF THE MMU

The MMU is a joint regulatory unit that is the main monitoring function of the two Regulatory Authorities. The Unit's role is to monitor the performance of the wholesale market, including compliance with the relevant bidding rules and other rules of the market, and where necessary investigate potential abuse of the market and the exercise of market power.

This function of the MMU is carried out alongside that of the Agency for the Cooperation of Energy Regulators (ACER) and is provided for by Regulation (EU) No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency (REMIT).

The purpose of monitoring trading activity in wholesale energy products carried out by the MMU is to:

1. Detect and prevent trading based on inside information, market manipulation and market abuse.
2. Enhance transparency of the SEM and improve market integrity and functioning.

3. Assist identification of barriers to efficiency e.g. low liquidity, and possible improvements to competition in the market.

The organisational and legal framework within which the MMU carries out its functions is set out below.

3.1 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) 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 of the functions described in this manual may be taken by the SEM Committee on behalf of either or both of the Regulatory Authorities, references in this manual to the Regulatory Authorities (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.

3.3 Market Monitoring Unit

The MMU forms part of the market power mitigation strategy developed by the RAs and reviews behaviour in the market on an ex-post basis. This includes investigating the exercise of market power; monitoring the compliance of market participants with legislative requirements, including the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT), ensuring compliance with market participants' licence requirements, compliance with competition law and other market rules and reviewing the performance of the market. This role includes monitoring,

review and conduct of inquiries in the capacity market and markets for system services. As part of the market power mitigation strategy, the MMU monitors compliance with licence conditions on cost reflective bidding.

The activities of the MMU are overseen jointly by the Regulatory Authorities, via a group of senior members of staff drawn from each Regulatory Authority (referred to in this manual as the Senior Staff Group or SSG) to whom the Regulatory Authorities have delegated various decision-making authorities.

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

On 8 December 2011, the EU adopted new stringent rules on wholesale energy trading. Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT) introduced a sector-specific framework for the monitoring of wholesale energy markets, with the objective of detecting and deterring market manipulation and insider trading. Implementing Regulation (EU) No 1348/2014 was introduced on 17 December 2014.

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 investigation of potential market abuse.

A Memorandum of Understanding (MoU) between NRAs and ACER has been drawn up 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 under Articles 7 and 16 of REMIT between the Agency and NRAs, or national authorities and bodies in the meaning of Article 7(2) of REMIT, 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 RAs. In this context the MMU is responsible for discharging responsibilities of the NRAs under REMIT overseen by the Senior Staff Group.

3 OVERVIEW OF MMU INQUIRY PROCESS

The principal purpose of an inquiry by the MMU is to collect evidence upon which the relevant Regulatory Authority can make a balanced and appropriate decision, as to whether there has been non-compliance with a regulatory requirement.

The MMU continually monitors and reviews the behaviour of market participants in the SEM, gathering information and making queries under the authority of the RAs as set out in section 3 above. Through this monitoring it may discover an issue requiring further information, or an issue giving rise to concern with regard to the behaviour of a market participant. Alternatively, an issue of concern with regard to the behaviour of a market participant may be brought to the attention of the MMU by a third party, such as another market participant, SEMO or SEMOpx, etc.

In the event that MMU monitoring brings an issue to light or notices an issue of concern, or a third party brings an issue of concern to the MMU's attention, the MMU will review the issue to determine whether it is initially a matter simply requiring the gathering of information and issuing of queries to market participants or is a matter requiring adoption of the inquiry process. The procedures generally to be followed in this inquiry process are set out below.

In carrying out a monitoring function the RAs aim to ensure detection of any potential market abuse by monitoring key areas including, but not limited to: compliance with bidding rules and licence compliance; evidence of potential holding of capacity (both physical and financial); aggregated market data including prices and volumes and market concentration metrics; and evidence of potential market manipulation within and between markets.

A complaint from a market participant, or a person raising an issue of concern, or other third party, would usually need to include evidence, examples and justification as to why the party making the complaint considers that there is an issue of concern, or that there may have been non-compliance with a licence condition, any legislative provision, competition law or REMIT.

The objective of the MMU in its monitoring of the market is to collect, collate and analyse all relevant information relating to any suspected breach of licence, instance of market abuse etc. Its role is one of collecting the facts upon which any further decision may be taken. The MMU does not therefore issue binding directions, but where necessary will present evidence to the relevant Regulatory Authority. The Regulatory Authority may then issue a binding direction based on this evidence.

When undertaking its monitoring function, collection of evidence and inquiries the MMU will follow the principles of targeted and proportionate intervention that is consistent and transparent. The MMU will seek to be efficient and will be accountable through employing a rigorous and evidence-based approach that will provide fair outcomes. Monitoring by the MMU and any subsequent inquiry are expected to act as an incentive to market participants to comply with their obligations.

At all times the confidential character of information submitted will be maintained as appropriate with publication only in so far as it is required to summarise and explain the finding of a breach and the evidence supporting a decision or to comply with legal requirements on disclosure, e.g. in fulfilment of the requirements of Freedom of Information. The Regulatory Authorities are mindful of the potential for all information they receive to be considered confidential. However, where

information is particularly sensitive, the Licensee should make this clear within any response they provide to the Regulatory Authorities.

While the procedures in this document describe the methodology that the RAs, acting through the MMU, will intend to use when investigating a possible breach of Licence or other legal requirements, it remains the case that the MMU requests that it be made aware in advance of any changes a market participant intends to make to its bid formulation.

4.1 Overview of Inquiry process

The high-level approach to inquiries is set out below.

The inquiry process is designed to do three things:

- Provide an opportunity for the MMU to consider and clarify issues in relation to market participant bidding behaviour.
- Allow the MMU to identify whether an issue of concern should be investigated by another body (e.g. the competition authority in either jurisdiction) or any other relevant authority. If the issue should be investigated by another body, the MMU will pass on the relevant information.
- Allow the MMU to clarify whether there is evidence that a market participant may have acted in breach of its licence or other legislative requirement, including REMIT, and submit the information if it deems necessary to the Senior Staff Group, facilitating a decision as to how it should proceed.

Inquiries will normally arise from routine monitoring and information gathering by the MMU and may be initiated by the MMU with a telephone call or an e-mail to a market participant, but may in certain circumstances (for example, when a greater level of detail is required) extend to a written request. They may be initiated where the MMU considers that an inquiry should be carried out in response to an issue of concern arising from its own market monitoring, on receipt of a complaint from a third party or a request by ACER under Article 16(4) of REMIT.

An inquiry will typically involve a query on Commercial Offer Data, Technical Offer Data and availability etc. and will be a request for additional information and explanation. In the circumstances of routine monitoring and information gathering where no issue of compliance has arisen there will be no further action taken by the MMU. It may however involve an item of low or medium level of concern with market behaviour that may require a request for more detailed information and requirements for explanation. It may also be prompted by items giving rise to a high level of concern, which may require highly specific and detailed information and explanation and may also involve an urgent need to proceed given a potentially significant impact on the market.

4.2 Inquiry procedure

The MMU will usually follow the process below in relation to an inquiry. In some circumstances it may be appropriate for the MMU to conduct an inquiry in a different way to that set out below and in such cases the MMU will develop an alternative process, which it shall communicate to the relevant market participant(s) and parties concerned.

1. The MMU will review information submitted/complaint and decide if it is complete. This submission can follow an MMU information request arising from routine monitoring of market activity and data or from unsolicited information. If it is not complete, the MMU will seek further information and explain what is required.
2. The MMU will consider if the issue may be of concern and is one that it would be appropriate for it to further examine. If it is not, but should be examined by another body, the MMU will pass the matter to the appropriate body. The market participant and person raising the issue/complainer will be contacted to explain the referral.
3. The MMU will consider whether there are any grounds to conduct further analysis in relation to the submitted information/complaint. If there are no grounds to conduct an inquiry (e.g. because it is frivolous or does not merit RA resources), the MMU will close the case.
4. If there are grounds to conduct further analysis, the MMU will decide to continue with the inquiry by following the steps set out below.
5. The MMU will commence the required examination by contacting the market participant(s) concerned setting out:
 - a) The issue for concern (although the identity of any person raising the issue/complainer will not be revealed);
 - b) A request that the market participant provide information in relation to its behaviour;
 - c) The particular information the MMU would like;
 - d) The timescale within which the MMU would like to receive that information;
 - e) The name and contact details of the person responsible for management of the inquiry within the MMU;
6. The market participant subject to the inquiry may submit any information it considers relevant to the MMU for its consideration. The MMU will consider all information received and may ask for further information, clarifications or explanations as required from any market participant or person.
7. Where the MMU considers that information held by other persons may be of use it will contact those persons and request the information, only naming the concerned market participant where necessary. The name of the party being investigated will not be revealed

to any other persons unless the information required could not be provided satisfactorily without the concerned party being named.

8. Where there are changes to the expected timescale, the MMU will update the relevant parties concerned.

Having considered all the relevant information, the MMU will determine whether it considers that there is evidence that the market participant may have breached (or be in continuing breach of) its obligations. A market participant may offer to provide particular undertakings as to its future behaviour and the MMU will consider this as part of its decision making in relation to next steps.

If the MMU considers that there is evidence, including the market participant's past conduct, that: there has been no (or is no continuing) breach, or that any such breach is trivial in the view of the MMU or the market participant's behaviour has been addressed satisfactorily by undertakings provided, it will close the inquiry. The Senior Staff Group and the person raising the issue of concern/complainer will be informed. It should be noted however that an inquiry may be opened again at a later date should any further relevant evidence come to light.

If the MMU considers that there is evidence that the market participant may be (or may have been) in breach, and any such breach is not deemed trivial, it will either:

- a) Request that the market participant amend its behaviour. This will not constitute a direction under legislation.
 - If the market participant agrees to amend its behaviour as required by the MMU, the SSG will be informed and the MMU will close the case. The person raising the issue/complainer will be informed that the market participant has agreed to amend its behaviour and that the case has been closed.
 - If the market participant does not agree to amend its behaviour, the MMU will issue a report to the SSG. This report will contain the MMU's findings and the SSG will determine whether it is necessary to pass the report to the relevant Regulatory Authority with a view to either issuing the market participant with a binding direction under legislation or otherwise for its further consideration and action.

The SSG will review the MMU's report and either:

 - Pass the case to the relevant RA(s) to grant the binding direction under legislation, issue any other instruction or make any other consideration. A binding direction will be made public and the case will be closed.
 - Decline to pass the case to the relevant RA(s). The case will be closed and the person raising the issue/complainer will be informed that the SSG did not consider it necessary to pass the issue to the relevant RA.
 - Request the MMU to consider the matter further.
- b) Issue a report to the SSG presenting its information and findings. The SSG will then determine whether it is necessary to pass the report to the relevant RA(s) with a view to either issuing the

market participant with a binding direction under legislation or otherwise for its further consideration and action.

The MMU will not itself take any decision as to whether a licensee has acted in compliance with its licence etc. and whether or not any particular power is to be exercised. Any references to the MMU, Senior Staff Group and the Regulatory Authorities should be understood in this context.

When closing a case, the MMU may, with the permission of the SSG, publish a short statement of its findings and may publish its findings for the benefit of the market as a whole. Published statements by the MMU shall normally be composed of the general facts of the case as determined by the inquiry and the decision of the RAs. Publication of information will generally only be necessary as required to summarise and explain the finding(s) of breach and the evidence supporting a decision, or otherwise to comply with legal requirements.

Market Participants Subject to Numerous Inquiries

The MMU is aware that under the guidelines set out above, a market participant may be the subject of numerous inquiries. (This could be inquiries relating to the same market entity or a number of different market entities, such as different generation stations.) Although these market participants may agree to amend their behaviour upon the request of the MMU, the volume of informal inquiries carried out may become a concern. The MMU may therefore feel it appropriate to ask the Senior Staff Group for permission to launch an inquiry into that participant's behaviour on foot of such repeated inquiries.

Such inquiries may re-examine any or all of the previous inquiries relating to that participant's behaviour including evidence gathered. It may also examine previous complaints received that were not considered serious enough at that time to warrant inquiry.

4 SUMMARY

The MMU will routinely monitor market activity and make routine requests for information from market participants that do not entail a specific inquiry, but which may give rise to the identification of a specific issue(s) that will prompt such an inquiry. The performance of an inquiry will normally be led and carried out by the MMU staff housed in the Utility Regulator but may also be assisted by market monitoring staff from the Commission for the Regulation of Utilities (CRU) or by these staff alone if it is considered that this is most appropriate in a particular case.