



## **Single Electricity Market**

### **Market Monitoring Unit (MMU)**

### **Inquiry Procedure Manual**

### **Decision Paper**

**SEM-21-020**

**25 March 2021**

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## EXECUTIVE SUMMARY

On the 27 November the SEM Committee published the MMU Inquiry Procedure Manual (SEM-20-084). The purpose of the Inquiry Procedure Manual is to inform market participants on the procedure that is to be generally followed by the MMU when conducting market queries and is intended to provide guidance to both the MMU and market participants as to the conduct of such inquiries. The manual does not however provide a comprehensive description of the detailed procedures and timings that will be followed in every case as the particulars of every case are unique and a one size fits all approach was not deemed to be appropriate.

Two responses to the consultation were received from industry. Questions raised by the respondents mainly focused around the following areas;

1. scope of MMU monitoring
2. procedures outlined in the manual
3. potential publication of MMU statements
4. the MMU and Market Operator monitoring functions

Questions raised by the respondents have resulted in the SEM Committee making some adjustments to the Inquiry Procedure Manual. Adjustments include clarifications as to the scope of MMU activities, confirming that these include the capacity market and markets for system services. Some clarification has also been provided around the identity of the party being investigated. The MMU will not reveal this to any other persons, unless the information required from them could not be provided satisfactorily without the concerned party being named. Additional text around potential publication of statements has also been added in response to questions around this area.

This decision paper sets out a summary of the questions raised by respondents along with a SEM Committee response. A revised final copy of the Inquiry Procedure Manual has also been published alongside this paper.

## INTRODUCTION TO DECISION PAPER

On 27 November the SEM Committee published the draft of the Market Monitoring Unit Inquiry Procedure Manual for consultation (SEM-20-084). The purpose of the manual is to set out the procedures that are generally to be followed by the Market Monitoring Unit (MMU) during market inquiries and is intended to provide guidance to both the MMU and market participants as to the conduct of such inquiries. The manual does not provide a comprehensive description of the detailed procedures and timings that will be followed in every case and does not in itself impose requirements on, or purport to fetter the discretion of, the Regulatory Authorities.

The SEM Committee invited responses to the draft manual and two were received – from Bord Gáis Energy and Energia. This SEM Committee decision paper sets out the issues raised by the respondents and the views of the SEM Committee in reply. The issues raised by respondents have resulted in a number of amendments to the draft issued for consultation.

## ISSUES RAISED AND SEM COMMITTEE RESPONSE

Bord Gáis Energy and Energia raised 12 issues/requests for clarification and these are set out by subject matter below.

### Consultation Process

Energia stated that it was their expectation that as comments were invited on the manual, draft revisions incorporating comments received would be made available for review before a finalised version of a procedure manual is produced.

SEM Committee response:

The RAs through the MMU has participated with market participants in developing the manual through consultation. The issues raised have been addressed and clarification provided where requested. In addition a number of amendments to the consultation draft have been made to reflect issues raised by the market participants responding. Given these steps it is not considered necessary to have further iterations of the consultation process.

### Scope of MMU monitoring

Energia stated that it is not explicitly clear if the MMU role in investigation applies to the energy market or whether it also includes other markets such as the capacity market and the market for system services (i.e. DS3).

SEM Committee response:

The role of the MMU includes monitoring, review and inquiries into the capacity market and markets for system services. Explicit reference to this role has been inserted into the manual.

## Procedures

BGE submission:

Bord Gáis Energy suggested that the manual should include the need for the MMU to clearly distinguish to market participants whether a communication is “routine” or “inquiry”. The market participant should understand from all MMU communications if the query is simply “routine”/a matter of gathering information as part of the MMU’s standard monitoring process or whether the communication falls into the “inquiry” category.

SEM Committee response:

The draft MMU manual stated that ‘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.’ Market participants should consider any request by the MMU for information to be a routine request unless this is otherwise stated. It may be the case, as the Manual states, that a routine request gives rise to identification of a specific issue, in which case this will be notified to the market participant.

BGE submission:

It would assist from a risk management perspective if market participants were also informed as to whether the communication is being instigated as part of a market-wide review or if it is an issue solely targeted at the entity.

SEM Committee response:

MMU monitoring will often raise information requests on, for example, the construction of commercial offer data, and these will routinely be targeted at particular market participants in relation to a particular time period. On these occasions the MMU communication should be considered to be targeted at the particular entity. Where the MMU carries out a market-wide review, this will be made clear in the information request. Where a number of market participants are requested to submit similar information at the same time this will normally also be indicated without identification of the other participants.

BGE submission:

BGE suggested that, to maximise the efficiency of the process, if the MMU has a specific issue or concern in mind from the outset that this is clearly outlined in the initial communication.

SEM Committee response:

To the extent reasonably possible, MMU information requests will be targeted and explicit and will not seek unnecessary information.

BGE submission:

BGE suggested that market participants with whom the MMU has outstanding queries should be kept up to date on the status of those queries as well as timelines being included within the manual. It was also suggested that it is not only the complainant which is informed if referral to a third party is made.

SEM Committee response:

An information request from the MMU to market participants may include a broad range of information that requires significant resources to compile and the MMU will continue to take this into account in setting deadlines for market participants to respond. For similar reasons it is not possible to set out definitive timescales for the completion of MMU reviews or stages in a query process. This is inevitably the case where a number of reviews or queries are being progressed at the same time.

A market participant will be informed when, in a query, referral is made to a third party or the query is closed. The MMU will also continue to provide an open door to market participants and will respond to queries as to progress of any review or query. It is not considered necessary to include such interaction in a procedure manual but provision for informing the market participant of a third party referral has been inserted into the manual.

BGE submission:

BGE suggested that it should be made clearer what type of circumstances are deemed to require that the name of a party being investigated be revealed to a third party that is assisting the MMU investigation (relating to section 4.2 of the Consultation sub-point 7). The suggested text is 'the name of the party being investigated will not be revealed to a third party helping the investigation unless the query could not be answered without naming the concerned party'.

SEM Committee response:

The SEM Committee agrees with the BGE statement that the confidentiality of a party should be protected insofar as possible. This would require that the name of the party not be revealed to any third party helping the investigation unless the query could not be answered satisfactorily without the concerned party being named. This would not restrict 3<sup>rd</sup> party disclosure of such identity to consultant support acquired by the MMU or legal opinion procured by the Regulatory Authorities. Provision for this has been inserted into the manual.

BGE submission:

BGE state that under section 4.2 it is stated that, where the MMU considers that there has been/is no continuing breach, or the breach is deemed trivial or satisfactorily addressed by undertakings provided, the MMU will close the inquiry. However, it then states that the SSG will be informed and may be asked to provide its views. It is unclear in this instance why the matter, if it is closed, is

provided to the SSG for their opinion after its closure. BGE requested clarity on whether the case would be referred to the SSG prior to closure for its view (before informing the market participant under question of a case closure) or relayed to the SSG after its closure by way of information.

SEM Committee response

The MMU may decide that there is evidence (taking account of the market participant's overall conduct) that there has been/is no continuing breach, or that any breach is deemed trivial or that the market participant's behaviour is satisfactorily addressed by undertakings provided. In those circumstances, the MMU will consider the case closed and the SSG will be informed of the MMU decision.

We have made some drafting changes to clarify the processes in section 4.2.

### Publication of MMU statements

BGE submission:

BGE suggested that before the MMU decides to publish any short statement of findings from an inquiry, the entity against which the complaint and investigation was made should have sight of the report and a window to make any comments thereon before it is published.

SEM Committee response:

Published statements by the MMU, acting on behalf of the Regulatory Authorities, shall be composed of the facts of the case as determined by the inquiry and the decision of the RAs. As set out in section 4.2 sub-point 6 of the manual, the market participant subject to the market query may submit any information it considers relevant to the MMU for its consideration during the process. The MMU will consider all information received and may ask for further information, clarifications or explanations as required from any market participant or person. Published statements may be made following the inquiry process, without prejudice to the power of the Regulatory Authorities to avail themselves of flexibility to deal with specific circumstances arising in any particular case, as set out in the manual. The RAs may inform a market participant in advance of any public statement in relation to the case but this will not be for the purpose of eliciting comment on the statement by the market participant.

Energia submission:

Energia notes that the manual outlines that where an inquiry procedure has been undertaken by the MMU, upon its completion and when closing the case, it may, with permission from the SSG, publish a statement of its findings for the benefit of the market as a whole. Energia expresses concern that it is not clear how commercially sensitive information will be protected.

SEM Committee response:

Published statements by the MMU, acting on behalf of the Regulatory Authorities, shall be composed of a summary of the facts of the case as determined by the inquiry and the decision of the RAs. The manual states that 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 explain the finding of a breach and the evidence supporting a decision or to comply with legal requirements. It states that the Regulatory Authorities are mindful of the potential for all information they receive to be considered confidential. Additional wording to the manual has been inserted to clarify the character of published statements.

### Regular publication of issues arising

BGE submission:

BGE suggests that the wider industry may benefit from annual or half-yearly updates from the MMU on investigations into matters and their outcomes, the benefits of which might include self-assurance of their compliance with market requirements. It is suggested that this could be included in the manual.

SEM Committee response:

The MMU may publish a short statement of findings arising from finished cases that will inform market participants of the nature of the issues arising, and which will be of benefit to the market as a whole. It is not considered necessary for regular publication summarising these findings, or advisable to publish updates on work still in progress until the issues arising have been fully examined and the matter decided upon.

Regarding the concept of self-compliance, licensees are required to submit each year to their Regulatory Authority a certificate, signed by at least one director on behalf of the board of directors, to confirm that it has acted independently in relation to all submissions of Commercial Offer Data that have been made under the Single Electricity Market Trading and Settlement Code, and that no such submissions have been co-ordinated with any other submissions.

### MMU and Market Operator monitoring

Energia submission:

Energia notes that the market operator also has an MMU function and that it is not clear how the MMU and market operator monitoring units are related and interact.

SEM Committee response:

The role of the MMU is to ensure compliance with legislative and regulatory requirements as summarised in the manual. The Market Operator is responsible for the integrity of its market operation and will monitor the market to ensure that this is the case and that the rules of the market are adhered to. While there is obvious overlap in their respective duties the two monitoring functions can be distinguished in their roles. The MMU and MO meet on a regular basis to share and



discuss information on market activity but their respective roles means that certain matters will fall mainly to one or the other for review, inquiry and resolution.

## CONCLUSION

Following publication of this paper the MMU will endeavour to use the Inquiry Procedure Manual when carrying out all Market Queries.