



*Promoting choice and value for
all gas and electricity customers*

To all wholesale energy market
participants and other interested
parties

Phone: 020 7901 7000
Email: REMIT@ofgem.gov.uk

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Dear Colleague,

Regulation on wholesale energy market integrity and transparency (REMIT)

REMIT came into force on 28 December 2011. The Regulation introduces, for the first time, a consistent EU-wide framework:

- Defining market abuse, in the form of actual or attempted market manipulation and insider trading, in wholesale energy markets
- Introducing the explicit prohibition of market abuse in wholesale energy markets
- Establishing a new framework for the monitoring of wholesale energy markets to detect and deter market abuse
- Providing for the enforcement of the prohibitions and the sanctioning of breaches of market abuse rules at national level.

The main objective of REMIT is to promote confidence that prices on wholesale electricity and gas markets are set in an efficient manner and that individuals or companies cannot make profits from market abuse. By increasing transparency in the wholesale market, REMIT should foster open and fair competition for the benefit of final energy consumers.

This open letter is designed to help market participants and other stakeholders understand what REMIT is about and how it affects them. It is also an opportunity for all stakeholders to let us know about a range of issues related to the implementation and application of REMIT in Great Britain.

REMIT implementation

As an EU Regulation, the provisions of REMIT are directly applicable in Great Britain. Nevertheless, there are certain steps that are necessary to complete its implementation.

Article 13 of REMIT requires Member States to ensure their National Regulatory Authority (NRA) has the necessary investigatory and enforcement powers in place to fulfil their functions under REMIT. The UK Government is in the process of granting these powers to

Ofgem – as the National Regulatory Authority for Great Britain. The intention is to grant these powers this spring. Once the regulations are laid in Parliament, we will consult formally on our REMIT penalty policy and enforcement procedures.

We expect the European Commission to adopt certain REMIT Implementing Acts later this year. These will provide specific details of the transaction data that market participants will be required to report to the Agency for the Cooperation of Energy Regulators (ACER). Registration of market participants, which is a precursor to being able to collect transaction data effectively, is due to start no later than three months after the Implementing Acts are adopted.

Article 16 of REMIT obliges ACER to publish non-binding guidance to NRAs on the application of the definitions set out in Article 2 of REMIT as appropriate. This guidance is designed to promote consistent application of REMIT across the EU. ACER has now published two editions of non-binding guidance – in December 2011 and September 2012. The documents can be found at:

http://www.acer.europa.eu/remit/Pages/ACER_guidance.aspx

Ofgem and other NRAs, in conjunction with ACER, are currently considering issues relating to the application of REMIT in practice. These areas include – but are not limited to – the registration of market participants and transparency around inside information, which are discussed below.

Registration

Article 9 of REMIT deals with the registration of market participants. It states that market participants who enter into wholesale energy market transactions need to register with the NRA of the Member State in which they were established or are resident. If a market participant is not established or resident in an EU Member State, they need to register in a Member State in which they are active. REMIT states that NRAs must have a system for registration in place no later than three months after the Implementing Acts are adopted.

ACER currently considers at least the following persons to be market participants under REMIT if entering into transactions, including orders to trade, in one or more wholesale energy products, irrespective of where and how they are traded: energy trading companies, producers of electricity or natural gas, shippers of natural gas, wholesale customers, final customers that have consumption capacity greater than 600GWh per year, transmission system operators, storage system operators, LNG system operators, investment firms.

Market participants must submit a registration form¹ to the NRA prior to entering into a transaction that is required to be reported to ACER. Transaction reporting will commence six months after the Implementing Acts are adopted, so market participants must submit the registration form by this time. Market participants should also ensure their registration information is kept up to date.

We are working with ACER to develop a “registration user manual”. Our expectation is that this will include guidance on how to use the registration system as well as an explanation of the fields that market participants will need to fill in. We expect the user manual to be available in good time before registration opens.

¹ACER decision 01/2012 outlines the information that will be required for registration. For more information see: http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Directors%20decision/ACER%20Decision%2001-2012.pdf

The following questions relate to the registration process.

1. Are there specific issues you would like the user manual to cover or other questions you have about registration?
2. ACER may make extracts of the participant register publically available, provided that commercially sensitive information is not disclosed. What registration data on market participants would you value being made public by ACER? What data would you be concerned about being made public in this way?

Transparency

Article 4 of REMIT requires market participants to publically disclose in an effective and timely manner inside information that they possess in respect of certain business or facilities. Inside information is defined as non-public information of a precise nature that would likely significantly affect the price of a wholesale energy market product.

ACER's second edition of REMIT guidance sets out what information it considers should be disclosed.² This includes information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.

ACER's guidance also clarifies what it considers "effective" disclosure entails. This suggests that inside information should be disseminated to as widely as possible. ACER considers that the use of "transparency platforms" is likely to be the most effective way to disclose in this regard.

ACER's guidance states that certain outages in the electricity market exceeding 100MW in the electricity market may constitute inside information.³ For the gas market, ACER's guidance states that since gas markets differ in size, structure and liquidity it is not possible to define one single European threshold that would be of practical value for participants. Instead, it considers that NRAs should work with market participants in order to define an indicative threshold for gas.

The following questions relate to transparency platforms and their use.

3. What do you see as the advantages and disadvantages of moving towards the use of transparency platforms, either at EU level, regional or national level?
4. Are there significant differences between the needs of electricity and gas market participants for a transparency platform? If so, what are these?
5. What are the characteristics of an effective transparency platform? Do you see any issues in using transparency platforms to meet your REMIT obligations?
6. Who are the main users in your organisation of inside information disclosed by other market participants? What information do you need published on such platforms by all participants?
7. What is an appropriate GB gas market threshold for inside information disclosure and why?

² See Section 6 of ACER's Guidance 2nd edition

³ See Section 4 of ACER's Guidance 2nd edition

Next Steps

We welcome responses to the questions in this open letter and any other issues you would like to raise on REMIT.

Please send your response and any comments you may have to REMIT@ofgem.gov.uk by **1 May 2013**. We particularly value early contributions where possible.

We will continue to work with stakeholders, including by raising awareness and providing updates to market participants on REMIT-related issues. We will take into account the responses to this letter in considering our application of REMIT in practice. We envisage publishing all responses as a default unless you indicate to us a preference for us to not do so. We will also provide a summary analysis of stakeholder contributions to this exercise on our website at:

<http://www.ofgem.gov.uk/Markets/WhlMkts/remit/Pages/index.aspx>

If you have any comments or questions on the content of this letter, please contact Leonie Bensted at REMIT@ofgem.gov.uk.

Yours sincerely,

Joanna Whittington

Partner, Ofgem