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Dear Joanna

REMIT – Registration and Transparency

Thank you for the opportunity provided by your open letter of 15 March 2013 to offer views on REMIT registration and transparency requirements. This response is submitted on behalf of ScottishPower.

We fully support the principles that underpin REMIT and firmly believe that it is a fundamental pre-requisite for it to be effective that it is built on a solid base of robust market information. This will provide the transparency and certainty required by regulators and market participants alike to have confidence that the market is operating effectively. To that extent the comprehensive and accurate compilation and maintenance of information on market participants is a critical starting point, without which the remainder of the monitoring and enforcement regime may well prove ineffectual.

REMIT has now been in force since December 2011 and to this point ACER's approach to implementation has been lacking in the level of coordination and consistency that we are more accustomed to at a national level. As we now approach this next stage of implementation, with the registration of market participants as a precursor to the recording of transactions, it is critical that the details are now right, that definitions are precise and that the proposed user manual and related guidance are available well ahead of registration commencing, so that industry can be fully prepared for what will be required.

On transparency and data reporting we support the use of centralised platforms at national level and the initiatives from both National Grid Gas as regards their inside information reporting platform, and Elexon's consultation proposal to use BMRS as the foundation for a GB electricity platform. However, it is critical that whatever arrangements are finally implemented deliver on the principle held in common by both regulators and the industry that duplicate reporting with other regulatory requirements, such as the Fundamental Data Transparency Regulation or EMIR, should be avoided or at least minimised.

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There also remains the issue of potential liabilities for non-compliance when using such common platforms in the event that such a platform may fail and until such times as those concerns are addressed parties may well opt to manage such risks themselves by taking the conservative approach of controlling such disclosures within their own organisation.

Much of the transaction data required under REMIT is confidential and as such it is essential that ACER and national regulators should ensure very high standards of data security. Within the guidance document we believe ACER should provide assurances to market participants that it will put in place comprehensive measures to restrict access and ensure data security.

In addition, rules on generation and transmission outage planning are currently being established in the EU Network Code on Operational Planning and Scheduling. It is important that consideration is given to REMIT requirements on inside information disclosure when this Code is negotiated and that market participants have full clarity about what is required.

We welcome Ofgem's engagement with industry on these issues and appreciate the opportunity for dialogue provided through the various meetings with industry associations and fora. We look forward to that being continued as we approach the next milestones in REMIT's implementation with the introduction of the appropriate enforcement powers, market participant registration and transaction reporting.

A supplementary annex is attached that provides our responses to the particular questions posed within the consultation document. If you would wish to discuss these or any other issue in further detail then please do not hesitate to contact me.

Yours sincerely

Gerry Hoggan
Commercial and Trading Arrangements Manager

REMIT – Registration and Transparency

Question 1 - Are there specific issues you would like the user manual to cover or other questions you have about registration?

- a) We would appreciate the manual being available as far in advance of the commencement of registration as possible and would encourage its early publication. Moreover, we would welcome any updated indication that can be provided of when the Implementing Acts are likely to be adopted as it is that that will trigger the registration requirements and beyond that to the introduction of transaction reporting.
- b) Whilst for our purposes we are reasonably comfortable with the definitions of “market participant”, “ultimate controller” and “ultimate beneficiary“, we can envisage circumstances where for some other complex multi-national companies that that may not be the case. As such some further clarification around these terms would be beneficial.
- c) Supplementary to (b) above it will be beneficial that the manual includes further guidance aimed at market participants particularly, in contrast to ACER’s current guidance which is directed to NRAs. Alternatively, Ofgem should consider the publication of an interpretative document outlining how the REMIT rules should be implemented in the UK.
- d) Currently facility operators may publish inside information on behalf of market participants, albeit that they themselves are not “market participants” in that they do not enter into transactions in wholesale energy markets. We have assumed that in these circumstances they would not be subject to these registration requirements but confirmation on that aspect would be valuable
- e) As initial completion and the subsequent updating of market participant registration details is critical to the entitlement to trade, we believe that it is vital that a clear, robust and prescriptive process timetable should be established that would allow for timely completion and be applicable to both market participants and NRAs, subject always to the market participant having provided all the information required in a timely manner. Some further specification of the necessary information or credentials that would be required to ensure that that process could be completed in a timely manner would also be beneficial.

Question 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?

- a) Clearly transparency should be a fundamental cornerstone, so we are of the view that the overarching principle should be that all information is held as a matter of public record except and to the extent that such information is commercially sensitive i.e. its disclosure would unreasonably prejudice a party’s commercial interests and so should remain confidential. It would be worthwhile if some clarification could be provided as to what ACER’s view would be on a test to determine what they may regard as “commercially sensitive”.
- b) We do not believe that there should be any need to publish any information that may directly or indirectly disclose any information relating to the corporate structures of the ultimate controller or beneficiary of a market participant’s trading activities, as this will serve no purpose in enhancing transparency of the actual trading activity being undertaken.

Question 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?

- a) We believe that the intent of REMIT can best be delivered via the use of more centralised reporting platforms at national level for the publication of inside information as this will improve efficiency and cost efficiency in data collection. Without such platforms, reporting will remain fragmented to the extent that it will significantly hinder overall transparency. At a national level we welcome the initiative from National Grid Gas to provide a common reporting platform for inside information disclosure and Elexon's consultation proposal to use BMRS as the foundation for a GB electricity platform.
- b) Having said that, whilst we can imagine that there may be some market participants who by the nature of their operations may favour reporting at regional or even EU level, we believe that this may be too unwieldy at this time, although perhaps some consideration could be given to such a platform as an aggregation of individual national platforms once the initial reporting arrangements have been established over a few years.
- c) However, the major concern with the extended use of any such common platforms remains around liabilities for non-compliance in the event of a failure by that platform to publish as required. Until such times as that is resolved market participants will most likely wish to retain some control of the risk that that would represent and simply continue disclosing via their own websites, which is unlikely to be the most efficient outcome. Perhaps some form of NRA endorsement or accreditation of such platforms would ease such concerns and could be used as a foundation for some element of relaxation or waiver of market participant liabilities where they have properly utilised such a common reporting platform.
- d) It remains important to minimise / avoid duplication of reporting with other market developments, such as those reporting requirements contained within EMIR and the EU Transparency Regulation.

Question 4 - Are there significant differences between the needs of electricity and gas market participants for a transparency platform? If so, what are these?

The technical aspects of a reporting platform should be the same irrespective of whether it is publishing electricity or gas information – indeed we seem to recall National Grid Gas saying that there was no reason why the platform that they have developed should be restricted to gas notifications only. However gas and electricity are inherently different in terms of physical characteristics such that the nature of relevant inside information to be reported may be different

Question 5 - What are the characteristics of an effective transparency platform? Do you see any issues in using transparency platforms to meet your REMIT obligations?

Such platforms must be reliable, robust and capable of publishing inside information in a timely and REMIT compliant manner, particularly allowing for the impacts that this may have on trading activity. The use of such platforms by market participants must also effectively deal with the issue of liability for non-disclosure – see answer to Q3 above – and limit the need for market participants to maintain back up provision in the event of platform failure.

Question 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?

Generically such inside information from other market participants would be used as part of our trading activity and by other commercial teams to understand current market dynamics and anticipated market developments.

As regards what information should be published we feel that the priority should be to develop a clearer understanding of the regulation's existing definition, as there are still considerable uncertainties around some of the constituent elements, such as inside information that would be of a precise nature and that could affect prices significantly. We believe that this would be more beneficial than simply creating an ever increasing list of examples, even if such a list may be of some use in illustrating those concepts. It would then be essential that that clearer understanding would be applied consistently across all markets and all regulations by the respective NRAs to ensure that consistency and a level playing field is created.

However within the existing guidance we welcome and value the principle that trading plans and strategies do not constitute inside information. We feel that this is an essential aspect of competition and that therefore this exclusion should be maintained and preserved.

Question 7 - What is an appropriate GB gas market threshold for inside information disclosure and why?

- a) We believe that national gas markets across the EU are less similar in nature to one another than corresponding electricity markets such that it is justifiable to leave the determination of such matters to the relevant NRAs.
- b) Within GB it has been suggested that the existing notification requirement as determined by DECC for the purposes of supply disruption, which is set at 10mcm/d, could be used. However, we are not convinced that this is an appropriate GB gas market threshold for inside information disclosure under REMIT as it represents a far greater level proportionately when compared to the corresponding electricity threshold. We believe that flows in the region of 1mcm/d could potentially have an impact on price dependent upon market conditions and so would suggest that the threshold should be set at that value.

However, allowing for the limited nature of how such thresholds may operate legally, with ACER's guidance stating that outages below threshold levels may still potentially be regarded as inside information, this does leave us with some reservations about their overall value.