



Making a positive difference  
for energy consumers

Gwneud gwahaniaeth gwirioneddol  
i ddefnyddwyr ynni

To all wholesale energy market  
participants and other interested  
parties

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Date: 11 July 2014

Dear Colleague,

### **Inside information disclosure under the Regulation on wholesale energy market integrity and transparency (REMIT)**

REMIT aims to promote confidence that wholesale electricity and gas markets are working properly, for the benefit of energy consumers. It is important that wholesale prices are set in an efficient manner and that individuals or companies cannot profit from market abuse. Transparency of information is an important part of a well functioning market. REMIT increases transparency in the wholesale energy market by requiring market participants to publish inside information in an effective and timely manner<sup>1</sup>.

We are publishing this letter to help clarify Ofgem's view of what constitutes effective and timely disclosure of inside information. The Agency for the Cooperation of Energy Regulators (ACER) was tasked with helping national regulators to interpret REMIT to ensure consistency across the EU. As part of this work, ACER published non-binding guidance<sup>2</sup> to EU regulators. This included guidance on how market participants should identify and disclose inside information. We support this guidance. We recommend that market participants take ACER's guidance and the contents of this letter into account when considering their approach to complying with Articles 3 and 4 of REMIT.

We have looked into the 'what, how and when' of GB market participants' inside information notifications. We consider that, in general, the handling, use and disclosure of inside information needs to improve. We have found large variations in the quality, consistency and timeliness of inside information publications. We note that it is up to market participants to seek their own legal advice on their internal processes and controls around inside information. However, this letter highlights some areas market participants may wish to consider further.

We will continue to review the treatment of inside information by market participants in the context of their REMIT obligations regarding disclosure of this information. We are also actively looking into possible breaches of REMIT on an ongoing basis.

### **Background**

The driver for our review was a concern that inside information publications by market participants are not as effective as they could be. This has come up in our own monitoring work and it has also been raised with us by market participants. We have been asked by

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<sup>1</sup> This requirement has been in place since December 2011.

<sup>2</sup> ACER, 31 October 2013, "Guidance on the application of REMIT". Available from:

[http://www.acer.europa.eu/remit/Documents/REMIT%20ACER%20Guidance%203rd%20Edition\\_FINAL.pdf](http://www.acer.europa.eu/remit/Documents/REMIT%20ACER%20Guidance%203rd%20Edition_FINAL.pdf)

market participants to give further guidance on what we view as effective and timely disclosure of inside information.

During our review, we looked at market participants' inside information disclosure websites. We also met with 23 market participants to gain an understanding of:

- how they determine what is inside information;
- how they handle inside information before its disclosure;
- why they disclose in the way that they do; and
- how they use or intend to use the exemption to the prohibition of insider trading and the provision for delaying disclosure.

### **What does REMIT require market participants to do in relation to inside information?**

REMIT prohibits persons who possess inside information in relation to a wholesale energy product from:

- using that information by acquiring or disposing of, or by trying to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, wholesale energy products to which that information relates;
- disclosing that information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties; and
- recommending or inducing another person, on the basis of inside information, to acquire or dispose of wholesale energy products to which that information relates.

REMIT also obliges market participants to disclose any inside information which they possess in respect of business or facilities which they or their parent or related undertaking owns, controls or has operational responsibility for in an **effective** and **timely** manner.

### **What is meant by effective and timely disclosure of information?**

REMIT does not define effective and timely disclosure; it is up to market participants to seek their own legal advice on what they view as appropriate in meeting their REMIT obligations. However, ACER's guidance provides greater clarity of effective and timely disclosure.

In terms of effective disclosure, ACER's guidance outlined the following requirements:

- Inside information shall be disclosed to the public on a non-discriminatory basis and free of charge;
- Inside information shall be made available via an RSS feed specific for the disclosure of inside information, allowing easy and fast access by the public;
- Inside information shall be kept available for the public for a period of at least 2 years;
- The information should be published in the official language(s) of the relevant Member State and in English or in English only;
- Minimal unavailability consistent with market expectations shall be ensured; and
- Effective administrative arrangements designed to prevent conflicts of interest with market participants shall be ensured (applicable only for platforms).

ACER's guidance also provides a list of information that each inside information notification should contain. These are repeated below.

- Caption: "*Publication according to Article 4(1) of REMIT – Urgent Market Message*"
- A subject heading that summarises the main content of the publication
- The time and date of the publication
- The time and date of the relevant incident
- If applicable, the name and location of the asset concerned
- If applicable, the market area concerned

- If applicable, the affected capacity of the asset concerned
- If applicable, the available capacity of the asset concerned
- If applicable, the fuel concerned
- If applicable, the estimated time at which the assets concerned will be partly/or wholly available again
- If applicable, the reasons for the unavailability of the asset concerned. If the reason(s) for the unavailability is/are not known, regular updates should be provided until the reason(s) is/are confirmed
- If applicable, a history of prior publications regarding the same event, e.g. if a prognosis is updated or an unplanned outage becomes a planned outage
- Any other information necessary for the reader to understand the relevant information.

To help market participants, we have drawn up an example template for a web page that shows how the above information could be presented (as set out in the Annex). We have completed the template with an illustrative example.

In relation to timely disclosure, ACER states that market participants should ensure inside information is published as soon as possible, but at the latest within one hour.

### **Main issues identified by our review**

Our review found significant variations in the quality, consistency and timeliness of inside information publications that are being put online by market participants. The key issues identified are outlined in this section.

#### *Effective disclosure*

There are inconsistencies in the way inside information is disclosed. While this may be expected to some degree given that market participants have developed their own disclosure websites, the way some items are reported (or not reported) may lead to information gaps and a lessening of market transparency. We list these below:

- There is significant variation in the type of capacity changes that market participants report; some include the 'normal' capacity, some state the change in capacity, some state the capacity during an event and some include a mixture of all three.
- There is a lack of start and, in particular, estimated end times and dates of an event. Sometimes there are dates but no times.
- Many websites do not include timestamps to show when information has been published or updated.
- Many market participants are not maintaining a public record of historical inside information notifications or updates to those notifications.

We consider the list of information that ACER includes in their guidance is an appropriate set of fields to ensure consistent and effective disclosure. We agree with ACER's expectation that inside information notifications should contain this information.

We would consider it helpful for market participants to keep records of inside information notifications publically available for a minimum of two years after publication. In addition to improving transparency, this will improve our ability to monitor the market. It will also lessen the burden on market participants as it will reduce the need for us to request information under our REMIT powers.

#### *Timely disclosure*

In reviewing a number of market participants' inside information publications that have timestamps, we found incidents where information was published a long time after a particular event – typically a change in capacity.

We echo ACER's guidance that inside information should be published as soon as possible, but at the latest within one hour. Market participants should be publically disclosing inside information as close to real time as possible. Inside information must be disclosed prior to trading as per Article 3 of REMIT unless the exemptions in Article 3(4) are used. We consider the untimely publication of inside information to be a serious issue and one that hinders transparency in wholesale markets. It also may increase the risk that insider trading occurs. Where we see this we are actively reviewing evidence and may consider formally intervening in an appropriate manner.

### *The use of OC2 data*

Some electricity market participants are relying on data published under Operating Code 2 (OC2) of the Grid Code<sup>3</sup> instead of specific REMIT publications. There are two broad approaches in this regard, with OC2 data used:

- as the sole source of outage information with no other information available; or
- as a primary source of outage information with interim 'updates' to the OC2 data on their own website.

Reliance on OC2 data would not be likely to comply with Article 4 of REMIT because it allows important details on outages or changes in generation to be omitted from notifications. For example, OC2 data does not cover outages or changes in generation that happen within day or day ahead. This means that any outage that happens between a given point in time and two days ahead of that point will not be reported. Also, for outages from 2 to 14 days ahead the OC2 data is only published once a day. For outages from 2 to 52 weeks ahead, the OC2 data is published once a week. This means that a market participant could hold inside information in relation to an outage for up to a week before it is publically disclosed.

### **What other aspects of inside information should market participants consider?**

#### *Inside information thresholds*

Under REMIT, there are no thresholds for the disclosure of inside information. Instead market participants' conduct will be assessed against the definition of insider information under REMIT Article 2(1).

While indicative thresholds are being used by some market participants in their internal compliance processes, we do not currently intend to publish any thresholds. It is therefore important that information that meets the criteria set out in Article 2(1) of REMIT be published, whatever the prevailing market conditions or threshold used.

#### *Use of exemptions*

There are a small number of exceptions to the prohibition on insider trading. Market participants' should take a view on when it is appropriate to use the exemption to the prohibition of inside information (Article 3(4)(b)). Any time that a market participant does decide to use this exemption, they must report the relevant information relating to the transactions to ACER and Ofgem.

Similarly, any market participant that delays disclosure of inside information to the market using the provision in Article 4(2) should inform Ofgem and ACER. This must include a justification for this action.

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<sup>3</sup> More information on this data can be found at <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/Grid-code/The-Grid-code/>

In both cases, market participants should use the following link to notify Ofgem and ACER: [http://www.acer.europa.eu/remit/MARKET\\_PARTICIPANTS/Reporting/Pages/Important-information-for-market-participants.aspx](http://www.acer.europa.eu/remit/MARKET_PARTICIPANTS/Reporting/Pages/Important-information-for-market-participants.aspx)

### *Handling inside information*

The main focus of this review was on the inside information notifications that market participants publish. However, in our discussions with market participants we also asked about the internal processes and controls that they had in place to govern their handling of inside information.

We recommend that market participants carefully consider if they have robust systems and processes in place to identify, handle and publically disclose any inside information that they possess. The level of detail may vary depending on the market participant. But market participants may wish to consider their system and processes in the following important areas:

- Inside information policies – policies and procedures should be established and reviewed as necessary. These should recognise the responsibility to control access to inside information and reduce risk of accidental or intentional misuse. Market participants should ensure that there is clear responsibility for overseeing inside information policies and procedures.
- Training – appropriate training should be in place to allow staff to understand the importance of keeping information confidential and about the correct procedures for the disclosure of inside information.
- IT controls – market participants should ensure that there are sufficient security and access rules around inside information stored on IT systems.
- Internal controls – reasonable steps should be taken to limit the number of people with access to inside information. Market participants may wish to consider developing "need to know" policies around inside information.
- External controls – market participants should also consider the circumstances in which they provide inside information to third parties and ensure those third parties are aware of the REMIT obligations.

### **Next steps**

We recognise that there are likely to be further development to the way that market participants are able to publish inside information notifications. Nevertheless, these obligations have been in place since 2011 and market participants should ensure that they are publishing inside information in an effective and timely manner.

Transparency is an important focus of our work. We will continue to monitor market participants' disclosures as part of our wholesale market monitoring. Where we identify, or are informed of, potential breaches of REMIT we will take further action. We are also undertaking more indepth work into the REMIT compliance systems and processes that market participants have in place.

If you would like to notify us of a potential breach of REMIT, please email [Market.Conduct@ofgem.gov.uk](mailto:Market.Conduct@ofgem.gov.uk). If you have any comments or questions on the content of this letter, please contact Alasdair Yuille at [REMIT@ofgem.gov.uk](mailto:REMIT@ofgem.gov.uk).

Yours sincerely,

Philippa Pickford  
Associate Partner, Markets

## Annex 1 – Example format for publication of inside information

### Publication according to Article 4(1) of REMIT – Urgent Market Messages

#### **Latest UMMs as at 14:50, 30/05/2014**

Event ID	Asset Name	Status	Publication Time	Event Start	Estimated End	Installed Capacity (MW)	Available capacity during event (MW)	Cause	Comments
2.2	T_BMU-1	Unplanned - Ongoing	29/05/14 09:10	28/05/14 12:00	03/10/14 16:00	500	0	Boiler issue	Estimated event end date changed from 01/10/2014 to 03/10/2014
3.1	T_BMU-2	Planned – Ongoing	10/05/14 10:32	23/07/14 12:00	05/08/14 12:00	500	250	Planned outage	N/A – New message
4.1	T_BMU-3	Planned – future	17/04/14 10:29	01/06/14 00:00	30/06/14 12:00	500	0	Planned outage	N/A – New message

Only the latest updates to on-going and future incidents should appear in the list of “latest UMMs”.

Closed incidents and previous updates of on-going or future incidents should appear in the list of “historical UMMs”.

The two can be linked by Event ID.

Status to clearly highlight if the incident is:

- Planned – Future
- Planned – Ongoing
- Planned – Superseded
- Planned – Completed
- Unplanned – Ongoing
- Unplanned – Superseded
- Unplanned – Completed

#### **Historical UMMs as at 14:50, 30/05/2014**

Event ID	Asset Name	Status	Publication Time	Event Start	Estimated End	Installed Capacity (MW)	Available capacity during event (MW)	Cause	Comments
2.1	T_BMU-1	Unplanned - superseded	28/05/14 12:08	28/05/14 12:00	01/10/14 12:00	500	0	Boiler issue	N/A – New message
1.3	T_BMU-2	Planned - Completed	29/04/14 08:13	20/04/14 21:00	29/04/14 08:00	500	500	Planned outage	Work completed – plant back to normal capacity
1.2	T_BMU-2	Planned - superseded	26/04/14 22:55	20/04/14 21:00	29/04/14 09:00	500	0	Planned outage	Estimated event end date changed from 27/04/2014 to 29/04/2014
1.1	T_BMU-2	Planned - superseded	10/04/14 09:30	20/04/14 21:00	27/04/14 09:00	500	0	Planned outage	N/A – New message