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Dear Anthony

Thank you for the opportunity to comment on the consultation on Ofgem's prosecution policy statement.

E.ON supports the presence of a regulator's prosecution policy. Having a published prosecution policy helps to increase trust in both the operation of Great Britain's electricity and gas markets and in the approach Ofgem will take in any prosecutions. It is in this support that we answer the four questions that were posed in the consultation.

**Q1: Do you agree with our proposed approach to the decision to prosecute criminal offences?**

We agree with the proposed approach having separate investigation and prosecution of alleged offences. Having the decision to prosecute made within the Enforcement Decision Panel, which will be entirely independently from the investigation, is welcome. We would however recommend that the prosecution decision is explicitly limited to members of the Enforcement Decision Panel who are both independent of the case team and suitably legally qualified.

**Q2: Do you agree that the additional factors set out for consideration in relation to REMIT market abuse offences are relevant and appropriate?**

The statement sets out three additional factors that Ofgem "may" take into account when deciding whether to start a criminal prosecution for market abuse rather than pursue a civil sanction such as a penalty through its civil powers, namely;

- a. the impact of the suspected market abuse on the orderliness of and confidence in wholesale energy markets;

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- b. whether there are grounds for believing that the suspected market abuse will continue or repeat, and if it appears that imposing a financial penalty will not deter further market abuse; and
- c. whether the person has a record of convictions for market abuse or has previously been subject to sanctions relating to market abuse.

However, in addition to saying that Ofgem “may” take these three factors into account, the policy statement states that the three factors are not an exhaustive list. Without an exhaustive list and clarity as why Ofgem would, or would not, take the three factors into consideration, we are not in a position to say if they are appropriate or not.

**Q3: Are there any additional factors you feel we should set out in this policy statement?**

We are not aware of any additional factors that should be set out in the policy statement, which Ofgem should take into account when deciding whether to start a criminal prosecution for market abuse, rather than pursue a civil sanction such as a penalty through its civil powers.

**Q4: Do you have any other comments on this policy statement?**

To support greater trust in implementation of the policy, there must be high levels of confidence in the competencies of those carrying out the enforcement functions. To help in this, we would recommend that the prosecution policy statement clearly sets out the minimum competency levels set for all those involved in investigation or prosecution, both of which are specialist topics.

If you wish to discuss any of the answers provided, please do not hesitate to contact us.

Ian Jackson

Regulatory Compliance Manager