



Marta Csirinyi
Wholesale Market Conduct
Energy Systems
Ofgem
9 Millbank
London SW1P 3GE

Uniper UK Limited
Compton House
2300 The Crescent
Birmingham Business Park
Birmingham B37 7YE
www.uniper.energy

Paul Jones
Head of UK Regulatory
Management
T 44 (0)7771-97 57 82
paul.jones@uniper.energy

Registered in
England and Wales
Company No 2796628

Registered Office:
Compton House
2300 The Crescent
Birmingham Business Park
Birmingham B37 7YE

Statutory consultation on the proposed licence condition to prohibit potential abuse of transmission constraints by generators in the balancing mechanism plus associated Ofgem guidance document

6 March, 2017

Dear Marta,

Thank you for opportunity to provide comments on the above documents. This response is made on behalf of Uniper UK Limited. Uniper is an experienced international energy company focused on power generation, energy trading, transportation, and storage, as well as a provider of specialist power engineering services. In the UK we own seven power stations comprising over 6GW of flexible installed capacity, as well as a fast churn gas storage site. As such Uniper is the fifth largest generator in GB and is making a major contribution to ensuring security of supply and providing a bridge to the energy market of the future.

We recognise that Ofgem has largely concluded its policy position on this matter and that this consultation is mainly focused on the specific drafting of the licence condition and associated guidance document. Nevertheless, we would wish to raise the following points:

- We support the objectives of TCLC.
- However, continuing TCLC is unnecessary as Article 5 of REMIT already provides protection under both circumstances originally covered by TCLC.
- TCLC is discriminatory in that it only applies to a subset of participants who provide balancing services (generation licensees) and only if the actions take place in the Balancing Mechanism.
- TCLC potentially “gold plates” current EU requirements by going beyond EU regulations.
- The guidance could be clearer about applying to generators physically affected by an export constraint.

Our issues are explained in more detail below.

REMIT Article 5 is a more appropriate safeguard

Whilst we fully support the aims of the TCLC, we believe that the licence condition is unnecessary as REMIT Article 5 provides more appropriate protection against market abuse. Article 5 is a wider reaching regulation on market abuse which also includes the



circumstances covered by the TCLC. We therefore welcome Ofgem's conclusion that the removal of the clause covering "Circumstance 1" under the TCLC, which seeks to prevent the creation or exacerbation of constraints, would meet better regulation principles as this is already covered by the provisions of Article 5.

However, we do not agree with Ofgem's conclusion that the TCLC is complementary to Article 5 in relation to "Circumstance 2", which seeks to prevent generators from achieving an excessive benefit from export constraints. Circumstance 2 seems to be completely caught by the "Price Positioning" element of Article 5 as described in 6.4.2 of ACER's guidance, specifically the description of "Abusive squeeze" contained in 6.4.2(b). The differences that do exist between Article 5 and TCLC relate to the circumstances to which TCLC applies and the measure of what abusive behaviour would be.

TCLC is far more specific than Article 5 in that it applies only to generation licensees in respect of actions in the Balancing Mechanism (BM). Article 5 applies to all participants and applies in a wider context than just the BM. Therefore, in this respect the TCLC is inferior to Article 5, by only covering a subset of circumstances.

TCLC has a different definition of abusive behaviour. Under REMIT it is described as "market manipulation" and is where someone "*secures or attempts to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned*". Under TCLC it is described as obtaining an "excessive benefit". This is determined in accordance with Ofgem's guidance and seems likely to result in a different test than under REMIT.

If the test is less onerous than under REMIT then of course the TCLC wouldn't add anything to the existing framework. If it is more onerous, then it would put in place arrangements which go over and above the requirements of European Law. In the context of European Network Codes and Guidelines, the Government has taken an approach of not "gold plating" EU requirements when they are transposed into UK Law. We would question whether it is appropriate to seek to gold plate EU requirements in this context.

The TCLC is discriminatory

An additional concern about the TCLC is that, as it only applies to generation licensee actions in the BM, it discriminates against these parties and ignores actions taken by other participants to address constraints. Clearly market abuse does not exist simply because the perpetrator holds a generation licence and is operating in the BM. More diverse and decentralised sources of balancing services are becoming more predominant and will continue to do so as the market develops. The arrangements provided under the TCLC will introduce a two tier system to deal with potential abuse of constraints, with one group of service providers being treated more favourably than the other.

Furthermore, it should be recognised that it is not just licensed generators who operate in the BM. Other participants can do so if they choose. The solution currently being developed to BSC modification proposal P344 to implement the GB elements of Project TERRE, is seeking to introduce an even wider representation of balancing services providers into the BM, such as aggregators of unlicensed generation and



demand users. Therefore, the TCLC would introduce a two tier system specifically within the BM too, and there is a risk that these arrangements will soon become outdated as they do not reflect the realities of how a large proportion of balancing services are provided in the market.

Clarity on the guidance

The guidance document is not fully clear on whether the TCLC would apply to all generators active during a period in which a transmission constraint occurs, or just those physically affected by the constraint. Our expectation is that it would be the latter, but it might be better if the wording of the guidance is updated to clarify this.

I hope the above comments prove helpful. Should you wish to discuss anything further, please contact me in the first instance on the above number.

Yours sincerely,

Paul Jones
Head of UK Regulatory Management
Uniper UK Limited