

Kenny Dane
Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED
kenny.dane@uregni.gov.uk

6th December 2013

RE: MMU Investigation Process Manual Further Consultation Paper, SEM-13-047

Dear Kenny,

Bord Gáis Energy (BG Energy) welcomes this opportunity to respond to the MMU Investigation Process Manual further consultation paper SEM-13-047 (**this Consultation**), which we understand is a follow up to the 2010 consultation on this matter, SEM-10-085 (**the 2010 Consultation**).

1. Role of the MMU

BG Energy strongly supports the role of the MMU in SEM and agrees that clarification of the informal and formal investigating and monitoring procedures of the MMU is appropriate. We believe the MMU is one of the key market power mitigation measures in the SEM and its role should continue under the new market design. It is also BG Energy's view that the MMU may have a function in the implementation of the provisions of the Regulation on Wholesale Energy Market Integrity and Transparency (**REMIT**) and we would welcome clarity from the MMU as to whether/ how it envisages the requirements of REMIT impacting on its current role in the SEM.

2. Initiation and Upgrading of Complaints

With regard to the initiation of investigations, it would be helpful if the MMU could clarify what they consider to be a well-documented, well-founded complaint? This would enable market participants to properly compile a submission that meets the MMU requirements enabling it to quickly assess a claim's validity. Furthermore, it is stated that when determining whether an informal investigation should be upgraded to a formal investigation, the MMU will consider whether the actions complained of could have/ have "a major impact upon the market"¹. Further clarity on what this means would be welcomed, for example, does it refer to a certain level of impact on prices, competition?

3. The Monthly MMU Traffic Light Report

The monthly MMU Traffic Light Report (**the monthly MMU Report**) is considered to be a very useful suggestion as it will inform the market of issues that are currently under review, their seriousness and in time will ultimately provide clarity for market participants on issues that have already been raised and resolved in the market. This will reduce the number of duplicate investigations by the MMU by bringing clarity as to what actions are/ are not permitted pursuant to the BCOP. The level of formality of the complaint and high level details thereof should be included in the monthly MMU Report, but it is BG Energy's position that the name of the offending unit under investigation should not be published until such time as the offending unit is determined guilty of a breach and this has been upheld on appeal (if any). This issue is further discussed below.

¹ Page 28, SEM-10-085 Consultation

4. Reports on the Outcome of Complaints and Enforcement Levels

The 2010 Consultation suggested that publication of a report “may” occur after an investigation. BG Energy believes that in the interests of transparency conclusive information on all investigations is necessary and a report should be published after all investigations that are entered into the monthly MMU Report. This would bring transparency in the application of the BCOP and should establish consistency in the market. It also permits all market participants to compete on a level playing field by ensuring information symmetry.

With regard to the three enforcement levels noted in the 2010 Consultation², BG Energy requests clarity around the practical outcomes of each enforcement level as follows:

Level:

- A. No breach is determined thus no actions are necessary and a short statement is published. BG Energy understands that such a statement will be made available to the whole market and the detail therein shall not differ from the detail provided to the complainant, is this view correct?
- B. SEMC requests that the party under investigation changes their behaviour. This appears to be a non-binding request issued by the SEMC when no conclusive determination of whether a breach has occurred or not has been made, and thus the party under investigation is not legally bound to change its behaviour – is this interpretation correct?
- C. SEMC issues a direction pursuant to the generator’s licence to secure compliance. Can BG Energy assume that this is the only instance in which a breach has conclusively been determined and the party is bound by its licence to comply with the SEMC’s direction?

All reports should contain the grounds for and details of the action complained of, including a detailed justification for how the action breaches the Trading and Settlement Code (**T&SC**)/ BCOP if at all; the reaction/ justification of the party under investigation; the change in behaviour/ measures requested of the party under investigation including their reaction or planned reaction to same; as well as any penalties imposed on the party under investigation. The party under investigation/ unit in question should not be identified in reports save where a conclusive determination of the party’s breach of the T&SC/ BCOP has been made and an appeal has either been declined by the party under investigation or the appeal has upheld the determination made. Unless a party is permitted to be identified in the aforementioned circumstances, the details given in the report should not enable other market participants to infer the identity nor the commercial bidding strategy of the party that was under investigation. Otherwise, there is a risk of reputational damage which will be difficult to rectify even if public acknowledgement of the mistake subsequently occurs. Parties under investigation should be permitted sight of the report before its publication.

The rules of commercial confidentiality and professional secrecy must be respected as appropriate. All market participants should receive the same report information regardless of whether they were the complainant or not. At no stage should a complainant be identified as this would deter complaints from being made.

5. Information to Parties Under Investigation and Penalties

In terms of the party that is being investigated, BG Energy considers that the party should at all times (rather than ‘wherever possible’), on request to the MMU, be informed of the grounds of the claim including whether it is an MMU-based or third party based claim. The date the claim was made, the period of time it relates to and the current status of their case should also be made available to parties under investigation at their reasonable request.

Finally, BG Energy requests clarity and certainty on the consequences of breaches faced by generators. What the MMU means, or intends, by “punitive measures” and the basis on which financial penalties can be applied in each jurisdiction as referred to in this Consultation should be made explicit.

² Pages 32-33, SEM-10-085 Consultation

6. Conclusion

In conclusion, BG Energy believes that the MMU's role in SEM is crucial and should continue in the new market design. Certainty is however required from the MMU as to how it envisages its role evolving in light of the REMIT obligations, if at all. Is REMIT for example the new driver for which the MMU will carry out its investigation and monitoring and is it the basis for which the MMU believes punitive measures and financial penalties may be applied, or are the REMIT provisions being taken into account at this time in this Consultation?

A monthly 'traffic light' report of existing complaints and summary detail thereof is a welcome suggestion. Reports on the conclusions of all investigations of complaints carried out by the MMU should occur and all market participants should receive the same level of detail. Market participant identities and bidding strategies should be rigorously protected unless the market participant has conclusively been found to be in breach of BCOP, having declined raising an appeal or having had the decision confirmed on appeal. Complainant names should not be released so as not to deter complaints being made and on reasonable request to the MMU, parties under investigation should be permitted details as to the ongoing status of their case.

I hope that you find the above comments and suggestions helpful and should you have any queries, please do not hesitate to contact me.

Yours sincerely,

Julie-Anne Hannon
Regulatory Affairs – Commercial
Bord Gáis Energy

{By email}