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RE: I-SEM Market Power Mitigation Discussion Paper, SEM-15-031 ('the Discussion Paper')

Dear James, Joe,

Bord Gáis Energy (BGE) welcomes the Discussion Paper and the opportunity to input at this early stage into the structure and framework of the Market Power work programme for I-SEM.

The importance of this work programme for the overall success of the I-SEM project cannot be over-estimated. Market power in the I-SEM will be considerably different to that in the SEM both in terms of the opportunities to exercise market power and the impact of market power on competition and pricing in the wholesale and retail markets. With that in mind, we urge the Regulatory Authorities (RAs) to consider wider measures to mitigate market power than those provided for currently in the SEM. These new measures should be more dynamic in terms of monitoring and incentivising the right behaviours. In BGE's view, this calls for greater resources and a broader scope for the regulatory market monitoring unit (MMU) and, absent structural change, more intrusive forms of regulation of the incumbent, given its significant influence across all existing and planned wholesale and retail electricity markets.

As a point of principle, which we would like to clarify at the outset, BGE's concerns about market power are not rooted in a desire to constrain the commercial opportunities of market participants, or specifically the incumbent. They are intended to prevent inefficient arrangements that; raise prices; distort competition; lead to inefficient wholesale market outcomes, and overall result in a defective retail market with less competition and choice for the customer. In BGE's view, if I-SEM does not deliver a liquid market with efficient prices and price signals for demand **and** supply, it cannot support the technological and competitive transitions that customers expect and that policy is currently demanding. Market power mitigation within the I-SEM must therefore deliver a level playing field for all parties so that competitive and innovative pressures are able to work in the interests of the customer. We believe the I-SEM market power work programme provides a great opportunity to build on the work started by the SEM and to establish a fully competitive wholesale market on which healthy retail market competition can be founded.

Whereby we understand that the Discussion Paper is necessarily broad at this early stage, BGE has concerns that there are certain nuances, interactions and details that are overlooked and that should be included and considered as part of the Market Power work programme. These concerns are expanded on in more detail in response to the specific consultation questions below, but in summary these concerns are as follows:

- The paper focuses largely on market power in the **physical spot market**. Under I-SEM there will be: a market for financial transmission rights, forward trading, spot trading, and markets for balancing, ancillary services, and capacity. Market power needs to be appropriately considered in each of these markets and not just the physical market.
- Consideration of **market power concepts** within section 2.2 of the Discussion Paper does not consider the ability of a party to manipulate price volatility as a means to supress competition and market entry/expansion. As discussed further below, increased volatility can give rise to added and prohibitive costs (e.g. collateral costs) for parties even in the absence of an increase in average prices and should be considered within the framework of market power concepts and impacts for I-SEM.
- In **measuring or identifying market power abuses**, the Discussion Paper does not adequately consider both the individual nature of each market or the interactions between the different

markets. There will be a number of different markets in the I-SEM (forward, day-ahead, intra-day, balancing, ancillary services and capacity) and a party may have the ability to exercise market power in one or many of these markets. A party may also be able to manipulate price/quantity in one market to the detriment of competition in another. For example, manipulation of spot market prices will impact liquidity in the forward market, and manipulation of the forward market will impact retail market competition. These features mean: (i) that assessments of market power which are overly generalised may fail to spot specific areas where there is a problem and (ii) that market power problems in one area can result in more widespread customer harm. Consequently, we believe a multi-faceted approach to market power measures should be applied in identifying instances of market power abuse (or potential abuse).

- Similarly, in designing **mitigation measures**, the work programme should also consider how a mitigation measure in one market may impact trade/prices in another market. For instance, designing a BCOP type mechanism for one market could impact liquidity and price in another market. Within that context, and in line with the SEM Committee's stated desire to develop a 'targeted' mitigation strategy, it should consider how potential remedies are linked or have impacts across markets.
- The paper does not consider divestment as a **remedy for market power**. Recognising that the SEM Committee cannot directly mandate divestment of assets, the assessment of mitigation measures should nevertheless consider and assess divestment alongside all other options and present its costs/benefits for consideration by the Joint Steering Group, who have a more direct role in this area. Failure to do so could mean eliminating the most cost-effective remedy from public debate prematurely and prevents an objective comparison of the different options available.
- The Discussion Paper does not adequately recognise the **physical constraints** on the Irish system and how these exacerbate problems of market power. For instance, the ancillary services market for reserve is largely location-specific, with a few players possessing considerable market power that would not be detected using the static measurement tools proposed. Specific and timely mitigation tools will be required to identify market power problems of this type. Similarly, limited Irish interconnection means that links to other markets will do little to help mitigate market power domestically.

1. Market Power Concepts (Q1 & Q2)

Q1. *Are the market power concepts and examples provided appropriate and sufficient for I-SEM?*

The concepts of withholding and price suppression outlined in section 2.2.1 are relevant for I-SEM and BGE is particularly concerned as to how these strategies could be applied in the balancing market considering that it is the only mandatory market and that there is limited flexible generation to provide liquidity in this balancing market.

There are other more nuanced concepts which we believe should also be considered within the market power work programme:

Volatility

In identifying forms of market power abuse, section 2.2 of the Discussion Paper does not consider abuses of market power related to increases in price volatility. Increases in price volatility can be used to distort competition even in the absence of an increase in the average price.

There are two variants of this abusive strategy:

- In the first, the abusive firm attempts to increase general volatility in the market, which both increases the collateral costs associated with being unhedged and increases the value of hedges. This strategy drives up the costs of competitors that do not or cannot hedge. Furthermore, where the abusive firm is a supplier of hedging products, this strategy increases the value of these products and imposes a barrier to competition in the retail market.

- In the second, the abusive firm increases volatility only when it believes its competitors are unhedged in an attempt to drive up competitor costs without influencing the average price level.

Forward market

BGE is concerned that market power in the forward market, and its implications for retail market competition, are not appropriately reflected within the Discussion Paper. We have three principled concerns in this regard:

- Suppliers' ability to remain unhedged, and the implied constraint on abuses in the forward market, is overstated in the Discussion Paper.
- Forward market liquidity is not guaranteed by spot market competition and requires separate, thorough consideration.
- A lack of forward market liquidity could be exploited to raise hedging costs and impose a barrier to entry in the retail market.

On the first of these, sections 2.2.3, 2.2.4 & 2.2.5 of the paper suggest that the exercise of market power in the forward market is constrained by the ability of participants to remain unhedged and by the ability of new entrants to compete in the forward market without any physical assets/positions to support their trades. As noted in our response to question 2 below, this significantly underestimates the risks and associated costs for suppliers competing with an unhedged position and the related price instability for customers. Given these factors, remaining unhedged will not be a viable option in many cases and will not act to limit the exercise of market power in the forward market.

The assertion made in section 2.2.4 that competition in the forward market is likely to be greater than competition in the spot market, since parties do not need to have physical assets to trade in the forward market, overlooks the interaction between the forward market and the spot market. Firstly, activity in the forwards market without a physical position to back it up represents pure proprietary speculation, an activity not core to a utility with a customer focused strategy, and would be more aligned to that of a bank. We are not aware of any bank seeking to enter the Irish market and evidence from the BETTA market shows that banks are actually exiting the commodities market.

Secondly, wider participation in the forward market is unlikely to take place if the reference price, determined in the spot market, is subject to manipulation through abuses of market power. As such, the absence of spot market manipulation will be necessary for wider participation in the forward market and, by extension, for forward market liquidity. This does not however mean that spot market competition will be sufficient to guarantee forward market liquidity, a point we return to in the response to question 4.

Dynamic market abuses

When considering the impact of market power abuses in section 2.2, the Discussion Paper's examples seem limited to withholding and do not consider the more dynamic abuses that vertically integrated firms can execute. For example, a vertically integrated firm could squeeze retail margins below their sustainable level, by pushing up wholesale prices or lowering retail prices, in order to force exit in the retail market. Although this strategy involves forgoing retail revenue in the short term, it may nevertheless be profit-maximising in the long term as other firms exit the market or choose not to enter. This is different from the static examples put forward in the Discussion Paper and a significant concern in the context of the current incumbent's potential ability to exercise such market power to the detriment of competition and customers.

Collateral requirements can also be used to drive up the cost of trading/entry in markets, particularly if the requirements are not the same for all parties. This is something that was recognised within the Liquidity Discussion Paper in the context of creating a trading platform, but should also be considered here as part of the market power work programme.

Q2. *Are the potential constraints on market power referred to above appropriate for I-SEM?*

Whereby the constraints suggested in the Discussion Paper are valid and should be assessed in the context of the I-SEM, BGE questions how effective competitive pressures and buyer power are in the all-island market. The Irish market is a heavily-constrained and very concentrated market. Although the SEM created a platform for new investment and new entry, delayed investment in the grid and grid support, shallow exit signals and the hesitance of the Irish government to review the integrated structure of the incumbent, have dampened the development of competition the wholesale market. As a result, the position of the incumbent, and its ownership of relatively old, large and strategically positioned assets has been preserved. In this context, other participants cannot impose a strong competitive constraint, particularly in the forward and balancing markets within I-SEM.

The suggestion, made in section 2.2.3 of the Discussion Paper, that market abuses are constrained in the forwards market by the ability of suppliers to step out of the market and remain unhedged overlooks the price risk that would face a supplier in this instance and ignores the fact that fuel hedges do not reflect other price impacting variables such as start costs. Indeed, as renewables become an increasingly large part of system and if the BCOP is removed, the current link between commodity prices and the electricity market is likely to weaken even further. This suggestion also overlooks the reality that suppliers do not hold open positions against downstream exposure – they hedge that exposure. This activity is what provides security for the utility in question and most importantly, price stability for the end customer. Failure to hedge will result in higher risks and higher costs, which will be reflected in higher prices to the customer or exits by suppliers.

Given that one party controls approximately 80% of the forward market and that the alternative to purchasing fuel hedges is to accept price risk, it cannot be assumed that buyers in the forwards market can constrain market power. We are currently attempting to cost the effect of forward market liquidity and would be happy to share our analysis with you on a commercially confidential basis.

BGE is concerned that the incumbent will have a similarly dominant position in the future balancing market since it holds the vast majority of peaking and ‘constrained-on’ plant on the system. Given that the balancing market will be a mandatory market, where all suppliers have balancing responsibility, and given concerns relating to liquidity in the intra-day market, buyers will be unable to constrain market power in this market also and therefore, appropriate mitigating measures will also be required.

In terms of other possible constraints on market power, the regulatory provisions that currently exist should also be re-examined and their effectiveness reviewed and/or enhanced. For example, the current ring-fencing of the incumbents’ generation and supply businesses should be critically assessed as part of the consultation to understand if it is being implemented effectively and having the desired effects in constraining market power. This work programme should therefore also consider the regulatory constraints that exist, whether they are effective now and whether they will be fit for purpose under the I-SEM. BGE is not suggesting that there is no need for regulatory restrictions such as ring-fencing, the suggestion is merely that in its review of those areas which constrain market power, the work programme should also consider the regulatory constraints that exist, whether they are effective and whether they are fit for purpose under the I-SEM.

2. Market Power in the I-SEM (Q3 & Q4)

Q3. Given the emerging I-SEM design, including closer integration to the European electricity markets and a number of energy trading timeframes, what is the appropriate geographic market and/or trading period definition for the measurement of market power and determination of a mitigation strategy in I-SEM?

Section 1.3.2 of the discussion paper notes that the market power mitigation work programme is intended to cover “the I-SEM physical and financial wholesale energy markets” and “be consistent with other I-SEM policy decisions, including I-SEM’s Energy Trading Arrangements, Capacity Remuneration Mechanism workstream, Financial Transmission Rights and policies to promote forward and spot market liquidity.” Ultimately, market power needs to be considered in all of these markets, not just the wholesale market. BGE asks therefore that the RAs confirm that market power assessments for the Capacity Remuneration

Mechanism (including secondary trading if relevant) and the system services markets will be carried out as part of their respective market design workstreams.

Any measurements of market power should be made specific to a well-defined market, and account for the sub-division of the wholesale market into the day-ahead, intra-day and balancing markets.

Finally, although the creation of I-SEM may allow for more frequent and liquid trading between I-SEM and BETTA, it will not result in increased physical interconnection between these markets. Interconnection capacity constraints imply that the relevant geographic market is still the island system/market. Also, given the discrete nature of the Irish system and the penetration of intermittent generation with its associated volatility, it is widely accepted that zonal price separation will be a regular feature of the European market. Therefore, contrary to what is suggested in section 2.3.4, harmonisation of the market rules for a continental European wide market will have a limited impact on competition and market power given the isolated nature of the our system.

Q4. Are the various other market design issues referred to above and their potential impacts on market power captured appropriately and fully?

Importance of forward market analysis

As outlined in answer to question 1 above, given the emphasis placed on the spot market in section 2.2 of the Discussion Paper, BGE is concerned that market power and liquidity in the forward market may not be given due consideration. As highlighted below, there is a real risk of forward market abuse even in the presence of a competitive spot market. As outlined previously, this will in turn curtail the ability of suppliers to: access liquid hedges; enter and/or expand in the market; offer price certainty to customers, and compete on an equal and long-term basis in the retail market. Consequently, BGE strongly urges the RAs to assess the forward market separately and in detail.

As noted above, tackling market power in the spot market will be necessary to ensure a competitive and liquid forward market. However, a competitive spot market will not guarantee a liquid forward market, as experience in the BETTA market demonstrates. It is therefore essential that forward market competition and liquidity are assessed thoroughly and in their own right as part of this work-stream and as input into the liquidity work-stream

Of particular concern is the ability of the incumbent to exploit future illiquidity in the forward market. Specifically, a lack of forward market liquidity leaves open the risk that the incumbent is able to:

- Drive up the price of hedging, and
- Foreclose access to hedging, thereby driving up the costs of its competitors and creating a barrier to entry and/or expansion in the retail market.

There is also a suggestion that the potential for market power is less in the forward market than in the physical market because the forward market is not restricted to owners of physical assets (section 2.2.5). As discussed further in answer to question 1 above, this has not been true heretofore in the SEM and we have no line of sight or expectation of any change in the foreseeable future. We would welcome insights from the RAs if they are aware of any additional parties without asset positions entering the market.

Need for a revised market monitoring unit

Within the context of the issues referred to in section 2.3, the impact of the market change on the role of a Market Monitoring Unit (MMU) and on their ability to effectively oversee and regulate the market is not considered. To the extent that close-to-real-time gate closure and multiple market clearing timeframes will result in a more dynamic and a more frequently traded market, the market power work programme should consider how the role of the MMU can adapt to accommodate this change.

Consideration of both the primary and secondary capacity markets

In considering the capacity market and specifically the role of reliability options (ROs) in mitigating market power, it is important that the secondary trading market is also explicitly considered. Parties with RO contracts may need to trade out of their underlying obligations during outages and maintenance works for example. It is likely that the incumbent, which has access to portfolio of generation assets, will be the largest player in this secondary market and may therefore be in a position to manipulate prices in either the reference or secondary trading markets[1]. This should also be considered as part of the market power work programme.

Localised market power

On the basis of the current high level design and the recent consultation on energy trading arrangements, localised market power will likely prevail, at least in the short to medium term and potentially on an enduring basis. This issue is of particular concern in the ancillary services and balancing markets.

BGE is encouraged by the recognition in the Discussion Paper of the existence and role of local market power in the ancillary services market. However, it should be recognised and noted that the constrained nature of the system, the legacy assets held by the incumbent and the nature of how the TSOs plan and manage the system all preserve and enhance local market power. The ancillary services market under DS3 could reinforce these local positions of dominance if early actions by the TSOs are permitted within the I-SEM market design. Regulated arrangements may therefore be required in this market until such time as the physical constraints are addressed.

It is less clear how localised market power will be identified and addressed in the balancing market. The market power work programme should therefore assess and, if necessary, address localised market power in both the balancing and system services markets. Within this assessment consideration should be given to how the hydro plants are used and scheduled within the market systems. These assets are essentially used for grid support and their unique status and location should be considered within that context such that the system and customer obtain the ultimate benefits of the legacy investment that was made by the State.

Demand side participation

The proposal that demand side participation in I-SEM could be a mechanism to reduce market power is not realistic at this point in time in our view. A large proportion of demand does not have the technological capability to know and react to more frequent and volatile prices and therefore is price inelastic. This may change in time with the advent of smart meters. However, until such time as the technology and related market framework is designed and implemented, it is premature to assume that demand side participation will exert any significant constraint on market power under the I-SEM market design.

Interconnection's role in constraining market power

In terms of the interconnectors, as mentioned in the answer to question 3 above, the I-SEM will not increase the level of interconnection between the I-SEM and BETTA markets. Although we recognise that it will increase the ability to trade dynamically between these markets, BGE does not think that the interconnectors' ability to mitigate market power will be materially enhanced under I-SEM, given the fundamental capacity constraints that exist and the nature and level of the trading that already takes place.

3. Measurement of Market Power (Q5 & Q6)

Q5. What is the appropriate approach to measuring market power when developing a mitigation strategy for I-SEM?

The metrics suggested for assessing the potential and scope for the abuse of market power will be useful in understanding where and under what conditions market power may be exerted provided they are precisely applied. However, a high-level HHI on the basis of capacity will not tell us anything about the potential for market power abuses in the forward or balancing markets. It is critical therefore that these measures are applied separately to each submarket and, if relevant, to the primary and secondary capacity markets. It may also be necessary to restrict the time period or geographic zone under consideration, for example by looking only at peak or certain mid-merit.

In addition, the market power work programme should consider:

[1] Secondary trading risk will ultimately impact the price of capacity as parties entering an auction will need to consider the risk of not being available during stress events when the reference price would be expected to rise above the strike price. This could in turn drive up the cost of capacity.

- What parameters could be used alongside these metrics to proactively anticipate abuses before they occur. In certain US markets, conditions are identified and defined under which a party is deemed to hold market power. Where these conditions arise in real time, a pre-agreed set of regulatory initiatives (e.g. default bids, or bid caps) override the market bids of the relevant party to prevent abuses arising.
- What metrics would best determine whether a market power abuse has occurred. The metrics outlined in the Discussion Paper would only give an indication of the scope for market abuse (becoming more reliable if their results are persistent). They are not a substitute for a more fulsome assessment of market power when trying to determine whether abuse has actually occurred. If a future market monitoring unit (or similar) were looking into abuses after the fact, a more comprehensive set of measures would be required, and these should be identified as part of this work programme.
- How actual patterns of bids, offers and sales might be indicative of abusive behaviour. In the context of the physical market, how and where parties are dispatched would provide an insight into the existence of market power whether it is locational or based on specific plant characteristics, such as peaking power or ramping etc. Within this context, the role of the TSO and the decisions taken by the TSO when issuing dispatch instructions must be considered and discussed.

Q6. Should the measure be determined at a snapshot in time or based on historical or potential future trends in market share (or both or all three)?

Given the existence of multiple trading periods, closer-to-real-time trading and the balancing responsibility provisions in I-SEM, the ability and incentive to exercise market power in the I-SEM will be markedly different to that of the SEM. Also, given the potential cost and risks of imbalances for suppliers, the actual impact of market power in the I-SEM will be greater than it is currently in the SEM. On that basis, and as outlined earlier, market monitoring in the I-SEM will need to be more dynamic and proactive across multiple timeframes and multiple markets. It should:

- provide forward projections of the potential for the exercise of market power under different scenarios/circumstances based on both historical and potential future trends;
- assess real-time opportunities and take preventative action;
- analyse actual abuses after the fact, and

In short, measurement of market power in the I-SEM will need to be multi-faceted in terms of the timeframes and assessments considered.

4. Market Power Measurement & Mitigation Measures (Q7, Q8, Q9 & Q10)

Q7. How effective has the SEM market power mitigation strategy and measures been?

Abuses based on volatility

Relative to the previous wholesale market design, the SEM has provided transparent pricing and a liquid spot market, which have in turn contributed to greater levels of competition. In so doing, the SEM market power mitigation strategy has been effective in ensuring that the spot market price is on average cost reflective. However, the related rules and provisions do not consider or alleviate abuses related to increases in price volatility.

As outlined in answer to question 1 above, increases in price volatility can be used to distort competition even in the absence of an increase in the average price. Specifically, volatility can increase the cost of hedging and/or the cost of collateral for parties trading in the market. To the extent that the abusive firm is integrated and naturally protected against this volatility – protection that might be realised at a Group level through integrated Group accounts – there is clearly an incentive and a value in pursuing such an abusive strategy.

Facilitating the evolution of a competitive market

Exit signals, and as a corollary entry signals, have been relatively benign in the SEM relative to other international markets. The incumbent therefore remains concentrated across asset types (Baseload, Mid Merit, Peaking and Hydro) with regulatory interventions being required to mitigate market power. Entry signals for new and more efficient generation have been eroded in the SEM and, as such, the position of the incumbent and its ability to exercise market power across the market has been preserved. BGE is concerned that certain of the proposals in the Energy Trading Arrangements, specifically those regarding TSO early actions and pricing in the balancing market, will reinforce these elements of the SEM to the detriment of technology/system advancement and competition. The I-SEM provides a timely opportunity to build on the foundations of the SEM and to support dynamic and efficient competition that will provide cost effective investment. The market power work-stream in our view is critical in realising this goal.

Q8. To what extent is the strategy and measures applicable to I-SEM?

On the basis that the core regulatory objective for the I-SEM project, outside of compliance with the Target Model, is to deliver "liquid and transparent electricity trading with a market that is accessible to participants of all technologies and sizes", the market power strategy, metrics and mitigation measures need to be **broader**, **more dynamic** and **more specific** to each of the markets and sub-markets under the I-SEM. They need to look at interactions between markets and identify market power not just within the context of the prescriptive market rules (e.g. is a bid justifiable under the bidding code of practice) but with reference to impacts and outcomes (e.g. has behaviour been targeted to negatively impact competition).

The TSO has to-date been excluded from considerations related to market power, however, given the level of local market power and the role of the TSO in contracting with and scheduling parties to address system constraints (including its own interconnector), the status and role of the TSO in identifying, contributing and mitigating market power must also be considered.

Q9. Are there other market power mitigation measures worth considering in the context of I-SEM?

BGE believes that divestment of some of the assets of the incumbent should be considered as a potential market power mitigation option. We echo the view expressed by the CER in its response to the Department of Communication, Energy and Natural Resource's Green Paper Consultation that: there is a significant market power issue due to the size of the ESB Group; this is detrimental to customers; it deters investment, and a structural remedy to ESB's market power would be optimal. Failure to consider this option at all could mean eliminating the most cost-effective remedy from public debate prematurely and prevents an objective comparison of the different options available.

We recognise that the RAs do not have the authority to directly dictate changes to the ownership structure of the ESB. However, the CER, as a member of the SEM Committee, does have a legislative obligation to "advise the Minister on the development of the electricity industry". The SEM Committee does therefore have a role in advising whether divestment is in the interests of electricity customers and justifiable as a means to facilitate liberalisation of the all island market. Divestment should therefore be considered and discussed with the Joint Steering Group, which has a more direct role in implementing any divestment initiative.

Other mitigation measures that should be considered in the context of I-SEM include:

- Mandatory Generator Operating Agreements: These define conditions under which a generator is deemed to have local market power. Under these conditions the generator must offer all available energy to the market. Energy is subject to a bid cap. This is generally used to address local market power issues (i.e. that arise because of constraints).
- Conduct Thresholds: Expected conduct thresholds are set for each generator in terms of the volumes, prices and bid parameters (i.e. ramping times, start-up, no-load) that should be bid in. Where the thresholds are breached, the market operator may substitute the violating input with a default input (in advance of prices being set) or else a financial penalty may be applied.

- Bidding rules: The BCOP has been successful in the SEM in providing transparency and relative predictability in market outcomes and prices. A similar approach could be considered for the balancing market where prices are determined ex-post.
- Trading thresholds: These are limits on the volume of power that an integrated entity can trade with itself.
- Mandatory market sales: These require a dominant firm to sell a share of supply through a specified market.
- Vertical ring-fencing: This should be more detailed than the current provisions and should look to require complete segregation of generation and supply businesses from an accounting and management perspective.[2]
- Market monitoring: The market power workstream should consider further how market power is monitored and regulated and, in particular, whether ex-ante detection of a generator becoming pivotal combined with suitable mitigation measures could prevent market power materialising. This ex-ante approach is used in the Californian and PJM markets and may be suitable for the I-SEM to create confidence in market prices and promote forward liquidity with a view to facilitating retail market competition.

As noted within section 3.3.3 of the Discussion Paper, regulatory intervention in the market should be 'targeted' such that it does not dampen market forces where there are no market power concerns. On that basis, BGE is of the view that any market power mitigation measure should only be applied in those cases and to those parties who are deemed to hold a position of dominance – they should not apply to the market as a whole. That is to say, market power mitigation measures, such as those described above, are used to create a level playing field by constraining the behavior of a dominant party, and in so doing enabling and supporting competition. To apply them equally to all parties, and not just the dominant party, would constrain the commercial dynamics of all parties and therefore the market as a whole. This is clearly not the intention of the market power work programme and BGE fully supports the principle of 'targeted' within this context.

Q10. What are the barriers to entry for non-asset backed traders in the SEM financial forwards market?

As outlined in answer to questions 1 and 4 above, the ability and willingness of non-asset backed traders to participate in the forward market will depend on the ability of other parties to manipulate the forward or reference market.

Market scale may be another factor. The market must be large enough to offset the fixed investment costs of involvement in order to attract non-asset backed traders. Given the size of the Irish market, we must consider that it may not be big enough to attract wide-scale entry by non-asset backed players.

5. Principles of Market Power Mitigation in the I-SEM (Q11 & Q12)

Q11. *Are the principles of market power mitigation outlined in this section appropriate?*

Under the stated transparency principle it is important that there is clarity and confidence both in the measures implemented to mitigate market power and in how market power is monitored and enforced on an ongoing basis.

In addition to the principles outlined in the consultation, BGE suggests that the following principles are also included:

- Pro-active/dynamic: Any market mitigation measure must recognise and work in parallel with the dynamic nature of the market. The current static and ex-post approach to market power identification and enforcement will not be appropriate for I-SEM.

[2] BGE does not believe that the current ring fencing provisions are sufficient to ensure that commercial decisions for the generation and supply businesses of ESB are separated and considered independently. The continued relationship between Synergen, Coolkeeragh and ESB's business customer segments reinforce this view.

- Supportive of liquidity: When reviewing and deciding on market power mitigation measures, how they impact and contribute to wider market liquidity should be considered. Recognising that there is a separate work programme on liquidity, market power measures that can facilitate and support this work programme should be given priority.
- Fair: This does not necessarily infer that all parties should be treated equally, and relates to the principle of 'targeted' as discussed in answer to question 9 above. Fairness relates to ensuring that the measures to mitigate market power reflect differences where differences exist and that any measure is proportionately applied to those that have the ability to exercise market power. For example, the current allocation of DC volumes in BGE's view is not fair or proportionate in that the dominant incumbent has access to the largest volume of DCs by virtue of its market share. This in turn gives the incumbent the greatest access to the most liquid form of hedge contracts available in the SEM and limiting availability to other suppliers in the market.
- Tailored: Assessments of market power mitigation and any associated remedies should be tailored to the problems and characteristics particular to the relevant submarket. This will help ensure such assessments are robust and help the industry think through the appropriate remedy design.

Q12. How should these or other principles be applied in I-SEM?

The principles together with those outlined in answer to question 11 above should be applied when analysing and benchmarking different mitigation measures against each other.

With reference to our belief that the market power mitigation strategy should be tailored to the specific I-SEM markets, potential remedies should be explicitly mapped to the affected markets. A remedy's impact will depend on its detailed design and, in particular, on the market or markets covered. Some types of remedy could be variously applied to several different markets. For example, the effects of a revised BCOP applying to dominant players will differ depending on the markets covered and the detailed provisions of the Code. It would be useful if future considerations of potential remedies are explicitly linked to the target market or markets, as this will:

- Help clarify the details of the market, which will be needed to perform a robust assessment of the remedy's likely impact;
- Help the industry think through the appropriate remedy design for that market; and,
- Help ensure that any package of remedies collectively covers all of market issues that arise across different markets.

Finally, BGE recognises the efforts that have been made through the SEM to identify and alleviate the potential for market power abuse in the all-island market. The benefit is evident in how competition has developed in both the wholesale and retail markets to-date. Notwithstanding that, in BGE's view the markets are still constrained from market entry and growth perspectives. BGE looks forward to engaging with the RAs over the course of the coming months to build on the progress of the SEM and through an efficient ISEM market design and market power mitigation provisions, work to deliver a truly competitive retail market.

I hope that you find the above comments and suggestions helpful to your considerations. Should you have any questions or wish to discuss any of the above in more detail please do not hesitate to contact me.

Yours sincerely,

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Alan Duggan
Bord Gáis Energy

{By email}