I-SEM Market Power Mitigation

Consultation Paper

SEM-15-094

Power NI Response

18 January 2016

Introduction

Power NI welcomes the opportunity to respond to the Regulatory Authorities (RAs) I-SEM Market Power Mitigation, Consultation Paper.

As the RAs are aware, Power NI is the largest electricity retailer in Northern Ireland. Power NI is part of the Viridian Group which has within in its portfolio, a retail position in Northern Ireland and the Republic of Ireland, as well as a significant thermal and renewable generation presence.

Power NI is however a separate business. Power NI's legal, managerial and operational separation is mandated via licence condition and it is within the context of being a supplier without vertical integration, that Power NI has approached this Consultation Paper on Market Power Mitigation.

General Comments

The issue of market power mitigation can be emotive. The existence of market power itself does not imply abuse however where market power is in existence mitigation measures must be put in place. This makes no judgement or makes no implication in relation to those with the power but rather gives confidence and assurance to those who do not.

Power NI would agree with many of the Discussion Paper Summary Comments the RAs describe in Section 2.6.1 of the Consultation Paper. Power NI would highlight concerns raised by respondents in relation to the Balancing Market, the temporal opportunities afforded by the ISEM design and in particular the need for a robust market power mitigation strategy for the Forward Market.

The Consultation Paper does correctly identify (in Section 4.3.6) that market power in the Forward Market will negatively impact the retail market and consumers. For suppliers, access to hedging products and forward prices are fundamentally important for setting tariff prices and competing for customers; hence a functioning Forward Market is a central pillar of sustainable retail competition.

Power NI however, does not believe the potential for market power abuse in the Forward Market is weaker than in other elements of the I-SEM, and that the arguments presented to the contrary are based on flawed assumptions.

Power NI notes with concern the RAs statement that "*forwards is not referenced as it is considered largely out of scope*"[1]. To not deal with market power in a holistic manner risks inconsistencies of approach or the issue not being adequately addressed in either workstream. Power NI fails to understand why the Forward Market is being excluded especially when the issues of market share, concentration, mark-ups, withholding volume and illiquidity are equally if not more prevalent in the Forwards Market. It is of concern that a strategy to deal with the exercise of market power in the Forward Market appears to be caught between two workstreams. Based upon the work done to date, the Market Power Workstream appears to be focussed upon the physical market and the Forwards

[1] Section 5.5.1

Workstream upon interconnector trading. This is a cause of concern for suppliers generally. While the RAs may have work planned in this area it is yet to be communicated to participants. Clarification in this area would be a welcome ISEM Project development.

In relation to the physical markets, Power NI believes it is important to strike the appropriate balance between ex-ante and ex-post metrics. A reliance on ex-post analysis and remedy, while providing a deterrent and punishment for market abuse, will not protect an exposed supplier who has suffered from the abuse. Ex-post metrics serve the useful purpose of providing analysis as to the effectiveness of market power mitigation measures. Reliance upon such metrics in isolation to highlight the need for action would come too late for suppliers. Further work is required to strike the correct balance between structural, conduct and performance metrics and measures.

Much of the focus is on mitigation measures in the Balancing market. From presentations and discussion at the public workshop it was suggested that a principled based option should also be considered in relation to Balancing Market. Power NI believes such an approach is consistent with the SEM (as the BCoP affords some latitude) and could enshrine the principle of SRMC. Power NI accepts that flexibility will need to be afforded to generators due *to t*he complex inter-dependencies of the ISEM design however participants should be required to justify identified bids to the MMU against a SRMC principle if required. The RAs should also be cognisant of the likely future coupling of Balancing Markets and ensure that measures put in place for ISEM can be reasonably enduring in nature.

In relation to ring fencing, the analysis presented clearly highlights that ESB is and will remain dominant in both generation and supply. Power NI believes it is this dominance and not ESB's former incumbent status that is the relevant metric. Both the generation and supply markets are fully open to competition, as a result the RAs should move away from considerations of former incumbent only measures and develop a framework which facilitates the assessment of dominance in a non-discriminatory way. For clarity, such a framework may lead to the RAs implementing market power mitigation measures such as ring fencing on organisations which are not former Irish market incumbents.

Power NI further considers that the Viridian Group companies are not dominant in either generation or supply and therefore no longer meet the criteria for ring fencing provisions to be in place.

Specific Questions

Power NI has sought to answer the specific questions posed by the RAs in the Consultation Paper. The Consultation Paper numbering has been retained for ease of reference.

2.7.1 Along with general comments, the RAs would welcome stakeholder views on the following questions:

- *Do you agree with the policy developments and trends identified (above) as potentially impacting on an I-SEM market power mitigation strategy?*

The RAs have within Section 2 of the Consultation Paper identified a number of developments and trends external to the ISEM development which may impact the market power mitigation strategy. The RAs identified renewable generation, interconnection, demand side management and REMIT as particularly relevant.

Power NI agrees that the levels of renewable generation, interconnection and demand side management will differ in ISEM in comparison to SEM. Clearly the electricity market is developing and growth is expected in these areas. It remains unclear however, to what extent these factors will influence or mitigate market power concerns. Power NI believes that the RAs strategy should not be dependent upon these factors materially influencing the potential for the abuse of market power but rather be sufficiently robust to deal with a changing landscape. Providing such regulatory flexibility should be the key requirement taken from any identified trends.

Power NI is equally concerned by the RAs repeated references to REMIT. While the development of a pan-European monitoring regime is welcome, the RAs should not place any reliance upon its implementation or effectiveness. Power NI is concerned that the REMIT implementation is behind schedule and is attempting to deal with a significant volume of data. Delays will likely intensify and any attempt to redress such a situation will likely increase tolerance bandings such that a market the size of ISEM will be rendered de-minimis. Additionally, REMIT is ex-post and therefore this type of mitigation is of little use to a supplier fatally affected by the abuse of market power. REMIT therefore should be viewed as a supplementary source of information only and not a primary mitigation tool.

- *Are there other factors not identified here which you consider relevant?*

Contextual issues surrounding the ISEM, participant characteristics and market design are all factors which influence market power mitigation measures. It is unclear as to why the RAs have sought to specifically describe renewable generation, interconnection, demand side management and REMIT.

Arguably factors such as ESB ownership, respective market share and ISEM design are significantly more important than the above factors in the context of market power mitigation. Power NI would agree with many of the Discussion Paper Summary Comments the RAs describe in Section 2.6.1 of the Consultation Paper. Power NI would highlight concerns raised by respondents in relation to the Balancing Market, the temporal opportunities afforded by the ISEM design and in particular the need for a robust market power mitigation strategy for the Forward Market.

It is of concern that a strategy to deal with the exercise of market power in the Forward Market appears to be caught between two workstreams. Based upon the work done to date, the Market Power Workstream appears to be focussed upon the physical market and the Forwards Workstream upon interconnector trading. This is a cause of concern for suppliers generally. While the RAs may have work planned in this area it is yet to be communicated to participants. Clarification in this area would be a welcome ISEM Project development.

3.6.1 Along with general comments, the RAs would welcome stakeholder views on the following questions:

- *Do you agree with the proposed appropriate markets/trading periods for assessing market power in I-SEM's energy and financial markets?*

The relevant markets as defined in Section 3.5 of the Consultation Paper are consistent with the High Level Design and therefore from a supply perspective are the appropriate areas of consideration for a market power mitigation strategy.

- *Do you agree with the proposed geographic scope of the proposed markets/trading periods?*

The RAs have proposed defining the largest geographic area in the same manner as the SEM i.e. all generators and load on the island and interconnector capacity. The RAs have also identified the smallest potential geographic area as a constrained area. This represents a wide area of consideration and Power NI welcomes the RAs considering market power across this spectrum.

4.8.1 Along with general comments, the RAs would welcome stakeholder views on the following questions:

- *Do you agree with the proposed definition of competitive behaviour and pricing in I-SEM?*

The Consultation Paper defines competitive offers in I-SEM as short run marginal cost (SRMC), hence prices above or below would indicate a possible exertion of market power. However, in a situation where there are economies of scale i.e. fixed costs that must be incurred to generate even one MWh of electricity, it is impossible to apply the rule that price should be equal to SRMC as in the long run, as it will prevent producers from recovering their fixed costs.

Box 4.1 in the Consultation Paper is an attempt to demonstrate the construction of a generator offer including start-up and no-load costs, which are elements of the fixed costs. Despite being a significantly simplified example, it is flawed and contingent on unexplained and unjustified assumptions. Any translation of fixed costs into a cost per unit requires an assumption on the future output profile of the generator in question, which will be subjective by nature. Also, this assumption may change over time, and it would be wrong to make judgements using ex-post data to validate ex-ante assumptions, for example at day-ahead when there is much uncertainty e.g. wind output.

In addition to start-up and no-load costs, which are acknowledged in the paper as fixed costs attributable to a particular generator, there could be a range of further costs potentially unique to an individual generator, some of which could feasibly be predicted and others which could not be foreseen, and hence would not be included in a narrow interpretation of SRMC.

For all these reasons, not only is it a precarious exercise to attempt to prescribe a formulaic view of SRMC, given the subjective nature of the assumptions required, it could also under-estimate the true marginal cost of generation, thereby discouraging efficient production and hence efficient competition, therefore, to prevent this scenario, any interpretation of SRMC must be sufficiently flexible.

- *Do you think that the suggested examples in which market power can be exercised in I-SEM captures the relevant issues?*

The examples given are instances where a participant may attempt to move the market price or aggravate a constraint to their benefit and adequately capture the likely potential abuses of market power.

- *Do you agree that the potential for market power abuse in I-SEM appears to be weaker in the forward financial market compared to the physical markets?*

The Consultation Paper rightly identifies (in Section 4.3.6) that market power in the Forward Market will negatively impact the retail market and consumers. For suppliers, access to hedging products and forward prices are fundamentally important for setting tariff prices and competing for customers; hence a functioning Forward Market is a central pillar of sustainable retail competition. For this reason, it is extremely concerning that the Forward Market will be essentially overlooked from a market power point of view, without a full analysis of either the current situation or likely future scenarios.

Power NI does not believe the potential for market power abuse in the Forward Market is weaker than in other elements of the I-SEM, and that the arguments presented to the contrary are based on flawed assumptions.

The Consultation Paper states that a supplier can either choose to remain un-hedged or use alternative forms of hedging e.g. fuels. While this is theoretically true, it does not take account of the fact that in practice, this is likely to favour certain participants e.g. asset backed players with supply and generation interests at a corporate level, or those with deeper pockets better able to cope with volatility and/or with a footprint already in the relevant fuel markets; i.e. the same players considered in the paper as having market power in the physical markets. Also, this would act as a clear barrier to entry to new suppliers, to the benefit of the aforementioned entities.

The Consultation Paper also notes that barriers to entry should be lower than in the physical markets and that asset-less traders could also offer CfDs. While this may be true in theoretical terms, experience in SEM would indicate this unlikely to happen, despite implicit traded premiums which should attract interest. Section 7 makes reference to the collateral requirements in the SEM CfD market, which are without doubt a barrier to entry in the Forward Market. When taken in conjunction with the practical difficulties in implementing the required master agreements, this could be considered to be an area in which market power can be exploited.

The analysis in the paper also correctly states that a supplier may be prepared to pay a premium, and there is a body of evidence (i.e. high bid offer spreads and poor liquidity) to suggest that the premium in SEM is significantly higher than might be expected in comparison with other forward markets. In spite of this, the premium still does not attract either competing players or the required volume into the market from those with the market share to be able to offer it, which could be interpreted as evidence of withholding, one of the behaviours identified as indicative of abuse of market power.

Taking withholding as an example, this is a particular instance where the reliance on the European financial regulations suggested in the paper (REMIT, EMIR, MiFiD) is insufficient to ensure market power abuses are prevented. While these regulations may raise concerns regarding market power abuse in any trading that does take place, they will not identify and assess whether the volumes not traded are indicative of anti-competitive behaviour.

In conclusion, forward market power will tend to harm independent and smaller players and hinder retail competition to the benefit of the same corporate entities that stand to gain from market power in the physical markets. Power NI does not accept that potential for market power abuse in the forward market is less than that of the physical markets. Given that it has been stated by the RAs, both at the public workshop and the following bilateral meeting, that concerns regarding the Forward Market would be picked up by the Forwards & Liquidity (F&L) workstream, it is imperative that the F&L workstream is given an explicit mandate to examine market power in the Forward Market, and to directly address with mitigation measures as required.

- *Do you agree with the implications for market power arising from interactions between the physical markets, CRM, FTRs and DS3 System Services as shown above?*

Similar to the forward markets, the paper specifically identifies the CRM, FTRs and DS3 as specific markets with potential for market power issues, as well as direct links to the underlying physical markets. In each of these instances, it is clear that there will be substantial interactions between all of the markets mentioned (and the forward market), which only reinforces how the RAs must be careful that 'targeted' measures in one market do not have unintended consequences in another related market.

5.6.1 Along with general comments, the RAs would welcome stakeholder views on the following questions:

- *Do you agree that these are the appropriate metrics to identify market power ex-ante and ex-post in I-SEM?*

The structure-conduct-performance (SCP) paradigm provides a helpful framework for analysing market power. Inherently structural considerations lend themselves towards empirical analysis. The RAs have identified and described a number of methodologies which provide various metrics for the measurement of concentration and dominance from a structural perspective. Power NI concurs with the RAs assertion that it is necessary to assess the 3 SCP indicators jointly. Perhaps naturally the Consultation Paper describes the Structural elements in greater detail that the Conduct or Performance metrics. Power NI believes the RAs must develop assessment criteria in these areas in parallel with the Structural indices.

It is also important to strike the appropriate balance between ex-ante and ex-post metrics. A reliance on ex-post analysis and remedy, while providing a deterrent and punishment for market abuse, will not protect an exposed supplier who has suffered from the abuse. Ex-post metrics serve the useful purpose of providing analysis as to the effectiveness of market power mitigation measures. Reliance upon such metrics in isolation to highlight the need for action would come too late for suppliers.

Power NI notes with concern the RAs statement that "*forwards is not referenced as it is considered largely out of scope*"[2]. To not deal with market power in a holistic manner risks inconsistencies of approach or the issue not being adequately addressed in either workstream. Power NI fails to understand why the Forward Market is being excluded especially when the issues of market share, concentration, mark-ups, withholding volume and illiquidity are equally if not more prevalent in the Forwards Market.

In terms of metrics for the identification of potential market power in the Balancing Market, Intra-Day Market and Day Ahead Market those identified in Section 5.5.1 appear appropriate.

- *Are there other metrics that you consider should be applied?*

For the reasons described above, Power NI believes the Market Power Workstream should recognise and include measures to deal with market power in the Forward Market. To that end, Power NI would welcome structural, conduct and performance metrics being applied to the Forwards Market as well as to the Balancing, Intra-Day and Day-Ahead Markets. Included within the "Mark-Up Indices" should be an analysis of the premiums applied to various types of CfD contracts offered by the same counter-party.

6.7.1 Along with general comments, the RAs would welcome stakeholder views on the following questions:

- *Do you agree with the approach taken by the RAs to modelling market power in I-SEM?*

The Consultation Paper sources its assumptions from the Generation Capacity Statement (GCS), which is a reasonable starting point and doubtless used by many participants in their own modelling. The paper also states that the purpose of the analysis is to find an upper bound to structural market power, and for this reason the high demand forecast from the GCS was used. While this would seem like a reasonable approach to determine an upper bound, the paper also explicitly acknowledges (Footnote 42) that this may not be considered a likely scenario. Given that this is the case, it will undoubtedly be seized upon as a weakness in the analysis by participants under the microscope.

The high demand scenario is certainly valuable in establishing the possible level of structural market power, however to give the analysis more depth, sensitivities around demand and growth of wind generation would have been useful to confirm that the issue is prevalent regardless of the evolution of demand. An approach such as that taken in National Grid's

[2] Section 5.5.1

Future Energy Scenarios study in GB, where deterministic scenarios are generated based on a matrix of economic/demand growth vs. renewables growth, would have at least confirmed the presence of structural market power across a range of scenarios, and ensured that this could not be used to question the validity of the conclusions reached.

In terms of the analysis presented, the dynamic of ESB's falling generation share but increasing structural market power is clear, however it would have been of interest to note if there are any seasonal/time of day patterns to the RSI. It may be the case that the level of wind generation is the key variable in determining the RSI level in a particular trading period, but from the point of view of ensuring that any measures are as targeted and efficient as possible, it would have been useful to note if there are points in time where structural market power is particularly focused.

Regarding the RSI measurements taken, the use of 1.2 as a threshold for structural market power in I-SEM seems reasonable given the size of the market and additional risks presented by intermittent generation, however given the European Commission's specific use of 1.1 as a threshold, the results at this boundary should also have been presented. This does not mean 1.1 is an RSI value that should be used in an I-SEM context, but it is likely to be another point argued by affected stakeholders and thus should have been presented.

Power NI agrees that modelling the IDM separately was unnecessary for the reasons given, however following on from our previous comments on the Forward Market, some attempt should have been made to capture the forward market dynamics, particularly if, as the paper asserts, that the potential for market power abuse will be weaker than in the physical markets. As discussed previously, it is imperative that the F&L workstream is given a clear mandate to carry out this analysis and take specific measures deemed appropriate.

In terms of the Balancing Market, the approach of treating it as a shift in demand versus the assumption at the day ahead period is reasonable, however there should have been some justification as to why 10% was a reasonable assumption (given the aim to find an upper bound to structural market power), based on historic demand and wind forecast uncertainty.

- *Do you agree with the conclusions for I-SEM market power that have been drawn from the modelling results?*

The modelling results present a clear dynamic of falling generation market share for ESB (and hence the HHI metric) but an increasing number of periods in which RSI falls below a critical threshold (regardless of which threshold is used), across all of the scenarios. The paper does not draw clear conclusions from this, apart from to say that this needs to be taken into account when developing a market power mitigation strategy. It is clear the potential for structural market power will increase given the analysis and the conclusion that ESB's market power is a concern for the future is correct.

Having identified that ESB will have structural market power across all of the scenarios presented; the paper acknowledges that other players are unlikely to have structural market power in future, and Power NI concur. However we do not agree that it is appropriate to draw on the analysis in section 6.4, i.e. certain plants are marginal in a number of periods in this particular deterministic forecast, to make the assertion that this gives other participants market power. This cannot be equivocated with the structural market power held by ESB, and any decision regarding mitigation measures should recognise that.

7.4.1 Along with general comments, the RAs would welcome stakeholder views on the following questions:

- *Do you agree with the SEM Committee's view on the effectiveness of each of the SEM market power mitigation measures?*

In our response to the Market Power Discussion Paper, Power NI stated:

> *"Power NI considers that where measures were employed in the SEM, they have generally been effective. However, there is a fundamental omission in the extent of market power mitigation measures: the forwards market.*
>
> *Whilst Directed Contracts were offered to the market as a result of market power mitigation measures, this was a beneficial side-effect of the market power mitigation measures in place in the spot market rather than a considered measure for the forwards market."*

Power NI retains this view. The BCoP as enforced by the MMU, has undoubtedly acted to prevent the abuse of market power in the spot market. DC's have had a dual effect of creating a limited amount of forward liquidity while impacting spot price offers from ESB (the only provider of DCs). Without the vertical ring-fencing of ESB it is likely that the liquidity levels within the Forward Market would be non-existent.

As a point of clarification it should be noted that Power NI is both vertically and horizontally ring fenced.

- *Are there any particular aspects of the SEM market power mitigation strategy that you think should be applied differently, especially in relation to I-SEM?*

When considering mitigation measures such as DC contract provision and vertical ring fencing, Power NI would welcome the RAs not solely basing decisions upon former incumbent status. The measure should be market dominance, regardless of historic status or position.

8.12.1 Along with general comments, the RAs would welcome stakeholder views on the following questions:

- *Do you agree with the five key principles for assessing market power mitigation policies as outlined in this section 8.3? If you think there should be alternatives, please state the reasoning.*

Set within the statutory duties of the RAs, at a high level the five key principles identified are appropriate. They are and will however, be subject to interpretation and weighting.

Power NI welcomes the RAs acknowledgement in Section 8.3.6 that there are risks to consumers (and by implication suppliers) of relying entirely on ex-post measures. As described above, Power NI believes that the market power mitigation measures must include an ex-ante element.

- *For the Forward Contracting Obligation:*
  - What should be the measure and threshold that results in a market participant being included or excluded in the FCO, i.e. what is its applicability?
  - What should be the volume and product definition of forward contracting required from a market participant who falls under the FCO?
  - How should the price be set for the volume contracted under the FCO?
  - What type of access should buyers have to FCO volumes?

Directed contracts have played a vital role in SEM both as a spot market power mitigation mechanism, their purpose, but also as a source of liquidity for suppliers, which has been universally identified as lacking in SEM. The directed contract formula, the basis of the RAs administered pricing of the contracts, has itself been vital as it has provided a benchmark forward price in a market which has been reflective of the margins / spark spread in the spot market (as evidenced in Figure 7.3 in the Consultation Paper). As discussed in previous sections of this paper, Power NI believes that the F&L workstream should be directed to produce analysis of market power in the Forward Market and to design any necessary interventions accordingly. Whilst the Forward Contracting Obligation (FCO) proposed here is intended as a spot market intervention, and welcome from a liquidity perspective, it will directly impact the Forward Market and thus should be closely coordinated with any F&L initiatives.

The measure used to determine the applicability should be consulted on during the implementation phase, as it is vital that these measures are coordinated with those falling out of the F&L workstream, whether for market power mitigation or general liquidity measures.

In terms of the volumes and types of products offered, from a supplier point of view, it is desirable that more longer dated products are sold, to aid hedging and price stability, preferably up to 2 years forward and the volume sold should be determined on the basis of what capacity needs to be contracted to completely remove incentives to abuse market power.

The pricing, product offerings and volumes all need to be closely coordinated with the F&L workstream, so as to maximise the FCO's use in supporting Forward Market liquidity. In a liquid market, it would be preferable that the prices were set by the market; however this has not been the case in SEM. Without significant improvements in liquidity, administered pricing similar to the current Directed Contracts will be necessary to ensure pricing is a fair reflection of spot market expectations, and, as mentioned previously, to provide the market with a benchmark forward price in the absence of any other.

In terms of buyer access, directed contracts represented only a small fraction of a supplier's required volumes hence they are unlikely to significantly impact any competitive entry or exit, and using market shares is the fairest way of apportioning the contracts.

Additionally, in the absence of a liquid Forward Market in the SEM, Directed Contracts also perform an important role in providing an independent point of reference for mark to market valuation of trades and as the basis for collateral calculations. If the Forward Market in the ISEM were to similarly suffer from a lack of liquidity, the absence of such a mechanism could further frustrate whatever forwards market trades might be available.

Whichever mechanism is decided upon, it is vital that it is expedited, as liquidity in Q4 17 and beyond, and hence the ability to meet customer expectations of price stability/fixed prices, is heavily dependent on it and will become a significant issue for suppliers in the very near future.

- *Which of the balancing market mitigation options do you consider most appropriate, i.e. MMU-triggered intervention, automated intervention via a PST or via the "flagging and tagging" approach, or prescriptive bidding controls? Where feasible please relate the preferred approach the five key principles for this workstream of effective, targeted, flexible, practical and transparent.*

Within the Consultation paper the RAs describe 3 options to mitigate BM market abuse. Option 1 which is described as MMU triggered intervention appears to identify ex-post market abuse and look to prevent it reoccurring. This methodology inherently fails to prevent the first instance of abuse which suppliers and customers will have been exposed to. For this reason Power NI does not consider Option 1 as meeting the *'effective'* criteria.

Option 2 which introduces an automated intervention will by its nature be highly prescriptive as the logic will have to be physically coded. It is unlikely that the complexities of the ISEM market will lend itself to allow for such an algorithm to be developed. It is difficult to envisage a way in which such coding could take place while still meeting the requirements of being effective, targeted and flexible.

Option 3 appears to be following the prescriptive requirement criteria utilising a formulaic approach. Similar to Option 2 it is again difficult to envisage how this would deal with the complexities of the Balancing Market.

From presentations and discussion at the public workshop it was suggested that a principled based option should also be considered in relation to Balancing Market. Power NI believes such an approach is consistent with the SEM (as the BCoP affords some latitude) and could enshrine the principle of SRMC. Power NI accepts that flexibility will need to be afforded to generators due to the complex inter-dependencies of the ISEM design however participants should be required to justify identified bids to the MMU against a SRMC principle if required.

The RAs should also be cognisant of the likely future coupling of Balancing Markets and ensure that measures put in place for ISEM can be reasonably enduring in nature.

- *Which ex-ante bidding/offer market power mitigation options for the DA and ID markets do you favour – bidding principles and ex-post assessment, or ex-post assessment only? Where feasible please relate the preferred approach to the five key principles for this workstream of effective, targeted, flexible, practical and transparent.*

Similarly to the Balancing Market, the DAM and ID markets will be complex and have multiple inter-dependencies. This renders it virtually impossible to implement prescriptive bidding controls. Participants should however be in a position to reasonably justify an approach ex-post to the MMU.

- *If ex-ante bidding principles were to be adopted, how flexible should they be and how would this be facilitated/enshrined in their wording?*

Ex-ante bidding principles should be flexible enough to reflect the uncertainties of ISEM yet robust enough to be effective. Power NI believes a market abuse condition should be included in licences in addition to a principled based approach to bidding, monitoring and enforcement. In practical terms it is likely that the licence condition will have to refer to a MMU procedural assessment / justification of bids which they have flagged in some way.

- *Under what structural conditions or in combination with other market power mitigation measures should vertical ring-fencing of the incumbents be relaxed?*

The analysis clearly highlights that ESB is and will remain dominant in both generation and supply. The vertical ring-fencing of ESB therefore should remain in place as long as such dominance remains.

Power NI believes it is this dominance and not ESB's former incumbent status that is the relevant metric. Both the generation and supply markets are fully open to competition, as a result the RAs should move away from considerations of former incumbent only measures and develop a framework which facilitates the assessment of dominance in a non-discriminatory way. For clarity, such a framework may lead to the RAs implementing market power mitigation measures such as ring fencing on organisations which are not former Irish market incumbents.

Power NI further considers that the Viridian Group companies are not dominant in either generation or supply and therefore no longer meet the criteria for ring fencing provisions to be in place.

- *Under what circumstances and criteria (or metrics) should the application of ring-fencing to other market participants be considered?*

As described above, when considering ring fencing, Power NI believes the RAs should not solely base decisions upon former incumbent status. The measure should be market dominance, regardless of historic status or position.