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1 May 2013

Joanna Whittington
Partner
Ofgem
9 Millbank
London SW1P 3GE

Submitted via Email: REMIT@ofgem.gov.uk

Dear Ms Whittington,

Regulation on Wholesale Energy Market Integrity and Transparency (REMIT)

The Global Financial Markets Association (GFMA)¹ is pleased to provide comment on the Office of Gas and Electricity Markets (Ofgem) open letter on Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) dated 15 March 2013. Our members are keen to maintain an active dialogue with Ofgem throughout this process and would therefore like to offer some constructive comments that we hope will serve as part of that ongoing dialogue. We are also taking this opportunity to send a copy of this letter to the Agency for Co-operation of Energy Regulators (ACER) with whom we have also been in correspondence regarding a number of issues regarding implementation of REMIT.

GFMA welcomes the development of an EU wide registration and transparency regime for the wholesale energy market and welcomes Ofgem's involvement in this work. Our responses to the questions raised in the open letter are set out in Annex 1.

We have consistently supported EU wide initiatives in this context (e.g. registration, data and

¹ The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit <http://www.gfma.org>.

reporting frameworks). Moreover, we strongly support the move to increasing transparency in these markets and believe that the most value will be delivered by having a single EU wide platform for these markets which concentrates data in one place. We consider it vitally important that stakeholders are able to obtain published information in a timely manner, without the need to search a number of sources.

GFMA appreciates the opportunity to provide comment on Ofgem's consultation and would be happy to discuss our response with you.

Yours Sincerely,



Vickie Alvo
Executive Director
GFMA

cc Volker Zuleger, ACER
Submitted via email: volker.zuleger@acer.europa.eu

Attachments:

Annex 1
GFMA Comments on Regulation on Wholesale Energy Market Integrity and Transparency (REMIT)

Annex 2
List of previous correspondence regarding REMIT sent to various regulatory bodies

ANNEX 1

REGULATION ON WHOLESALE ENERGY MARKET INTEGRITY AND TRANSPARENCY (REMIT)

Registration

The following questions relate to the registration process.

1. Are there specific issues you would like the user manual to cover or other questions you have about registration?

As already discussed in one of our comment letters¹, the registration process under Article 9 REMIT is not an approval process and we still consider that this issue needs to be clarified.

We note that Ofgem's open letter reflects the wording in Article 9 REMIT (requiring market participants to submit a registration form to the NRA prior to entering into a transaction that is required to be reported to ACER) and does not suggest an authorization regime. However, ACER has discussed the registration obligation in a number of contexts (most notably in its consultation paper PC_2012_R_08) in terms which indicate that ACER considers that a market participant may not commence trading until ACER has processed and acknowledged its registration, or that market participants would be prohibited from dealing with a counterparty unless that counterparty was registered with ACER.

This interpretation is not supported by the text of REMIT and we would welcome clarification that Article 9 requires market participants to submit a registration form before trading, but does not create an approval process.

2. ACER may make extracts of the participant register publically available, provided that commercially sensitive information is not disclosed. What registration data on market participants would you value being made public by ACER? What data would you be concerned about being made public in this way?

As a general point, when publishing information, ACER should make it clear that the fact of publication does not imply accuracy of the information or that ACER has verified the information.

We agree that commercially sensitive information has to be removed from any extracts of the participant register that is made publically available. We also note that ACER is subject to an obligation of professional secrecy under Articles 12 and 17 of REMIT in relation to any confidential information received, exchanged or transmitted under REMIT. This

¹ GFMA letter dated 21 May 2012, at pages 4 and 5.

obligation may extend to information which is not commercially sensitive, but which a counterparty considers to be confidential and marks as such. ACER's right under Article 12 to publish information that it receives is expressed to be subject to these obligations of confidentiality.

Moreover, we think that ACER should publish only the information which is essential to enable organised markets, brokers and other categories defined in Article 8(4) to verify whether a market participant is registered. We suggest that ACER use the public registers of the financial services regulators as a model in terms of the information they make public.

Transparency

The following questions relate to transparency platforms and their use.

3. What do you see as the advantages and disadvantages of moving towards the use of transparency platforms, either at EU level, regional or national level?

In summary, we do not see any disadvantages to increasing transparency and would support the move towards the use of transparency platforms. We believe that the most value will be delivered by having a single EU wide platform applicable to these markets, concentrating data in one place, and thereby providing a "one stop shop" for all stakeholders. We consider it vitally important that stakeholders are able to obtain published information in a timely manner, without the need to search a number of sources, including various internet sites.

In particular, there should be no restrictions on access to the transparency platform (including requirements to register in order to view the information, even if no fee is charged). Any information disclosed by market participants must be freely available to the public without restriction.

We recognize that certain markets operate on a less EU wide basis than others (e.g. electricity). However, we do not think that is a reason in and of itself to have a regional/national platform. In any event, if it is considered critical to have a regional or national platform, this should not be at the expense of the pan-European platform and should only occur in very limited circumstances.

We suggest that the regulatory information services (such as RNS) used in financial services are an appropriate model or the publication on ACER's website or a national regulator's website (if relevant). As we have noted before², in order to avoid the risk of duplication of regimes for participants in the securities market, we think it is important that those participants can disclose the information through a RIS. Therefore, any transparency platform should fulfil any RIS requirements.

² See GFMA letter of 29 March 2012, at page 3.

As noted above, we think that it is important that information is available to market participants in a timely manner, without the need to search numerous sources. We therefore do not consider that disclosure on company specific websites is appropriate to meet a disclosure obligation (although we note that firms will still need to make inside information disclosures under the market abuse regime for financial instruments.) Further, we still do not consider social media websites e.g. Facebook and Twitter appropriate to fulfil a disclosure obligation. Among our objections are the fact that there may internal restrictions established by some firms in accessing this data, the necessity to be a registered user to read it and the hacking attempts suffered by these systems.³

4. Are there significant differences between the needs of electricity and gas market participants for a transparency platform? If so, what are these?

There are no significant differences between the needs of the electricity and gas markets for a transparency platform. Although the markets are different in some respects, we consider that their needs are well aligned in this regard. Both markets require timely disclosure of relevant information. We understand that there is debate within the industry as to the nature of this information however that does not undermine the principle of disclosure. The fundamental driver to disclosure is that the information would materially influence the price of the relevant commodity and that it be disclosed on a timely basis. The relevant threshold therefore is likely to vary with the conditions prevalent in the market at the time of disclosure. (See also Question 7 below.)

We do note however that the gas market is becoming a more global market and we think that it is important to consider how activities in non-EU gas markets may materially influence the price of the relevant commodity and whether they give rise to disclosure obligations under REMIT.

We also recognize that electricity data will tend to be more granular in terms of outages (details relate to as small an outage as ½ an hour). From a trading perspective, gas market participants will focus on the aggregate supply impact for any given day; whereas an electricity trader will also focus on the specific times of any supply disruption during the day. Although these differences will need to be accommodated in the operation of any transparency platform, we do not consider that they prevent a single EU transparency platform.

5. What are the characteristics of an effective transparency platform? Do you see any issues in using transparency platforms to meet your REMIT obligations?

We consider that ACER identified the key characteristics of an effective transparency platform in its 2nd Edition Guidance (paragraph 6.2). In particular, we would like to emphasise the importance for the information to be published immediately it is received by

³ See GFMA letter of 29 March 2012, generally and specifically at page 2.

the platform as recognized in ACER's first requirement. Any delay could potentially leave market participants exposed to accusations of market manipulation.

Implicit in the characteristics identified, an effective transparency platform should also be:

- open to any stakeholder
- publicly available without restriction so any member of the public can access the information disclosed
- easily usable, specifically:
 - web based and compatible with all major web browsers
 - selection of/English language
 - easy to navigate
- ability to download historic data
- e-mail alerts for when new (inside) information is published.

6. Who are the main users in your organisation of inside information disclosed by other market participants? What information do you need published on such platforms by all participants?

We would envisage that the main users of this data will be front office (traders, analysts and sales force) and operations, as well as control and monitoring functions (e.g. risk officers, compliance and market surveillance).

We consider that anything that constitutes inside information as defined in REMIT⁴ should be disclosed. As noted in our response to Question 5, the ACER Guidance 2nd Edition (paragraph 6.2) appropriately lists the details that should be included in any disclosure. However, we would like to emphasise that a clear and precise reason for any outage (planned or unplanned) is beneficial so as to be able to understand the scope of any issues arising with a physical asset. Moreover, for the avoidance of doubt, it should be made clear that informing the market of the asset being back on line after any outage is information which is required to be published.

7. What is an appropriate GB gas market threshold for inside information disclosure and why?

We believe that applying thresholds for inside information disclosure is not necessarily the correct approach as the materiality impact of the inside information is not always correlated to the size of an asset. Thresholds can also be highly subjective in light of the then market conditions.

By way of example, if one was trying to decide by what amount gas production should be reduced to impact the price at the NBP, the threshold could vary depending on the market

⁴ Price sensitivity is part of the definition of "inside information": information will only be inside information if it may have a significant effect on the prices of wholesale energy products.

conditions and seasonality. A 10MCM (or even a 5 MCM) loss in winter during stressed market conditions will have a significant market impact but within the summer months during normal supply conditions, it is unlikely to have any impact.

We consider that at the very most, thresholds should only be used as a guideline. In this regard, we note that ACER has also indicated that thresholds should only be a guide because of the element of subjectivity e.g. whether an outage is in fact price sensitive.

However, if a threshold based approach is going to be used at all, we strongly suggest that the level should be consistent across all EU gas markets due to the high interconnection between zones and countries. This means that inside information that is specific to an asset based in one zone or country could have an impact on prices in on a number of other zones or countries. On this basis, 5MCM could be seen as an appropriate level in the context of the gas market and would therefore also apply to the GB gas market.

ANNEX 2

LIST OF PREVIOUS CORRESPONDENCE REGARDING REGULATION ON ENERGY MARKET INTEGRITY AND TRANSPARENCY (REMIT)

1. GFMA response to EC on the EC Stakeholder Consultation on Data and Transaction Report, dated 7 December 2012 <http://www.gfma.org/Initiatives/Commodities/GFMA-Submits-Comments-to-the-EC-on-the-EC-Stakeholder-Consultation-on-Data-and-Transaction-Reporting>
2. GFMA response to ACER on REMIT Data Collection Public Consultation Letter, dated 31 July 2012 <http://www.gfma.org/Initiatives/Commodities/GFMA-Submits-Comments-to-the-ACER-on-REMIT-Data-Collection-Public-Consultation-Letter>
3. GFMA response to ACER on REMIT Registration Format Public Consultation Paper, dated 21 May 2012 <http://www.gfma.org/Initiatives/Commodities/GFMA-Submits-Comments-to-ACER-on-REMIT-Registration-Format-Public-Consultation-Paper>
4. GFMA letter to ACER and Ofgem on REMIT, dated 29 March 2012 <http://www.gfma.org/Initiatives/Commodities/GFMA-Submits-Comments-to-ACER-and-Ofgem-on-the-Regulation-on-Energy-Market-Integrity-and-Transparency>
5. GFMA letter to Ofgem regarding on the potential impact of REMIT, dated 20 January 2012 <http://www.gfma.org/Initiatives/Commodities/GFMA-Submits-Comments-to-the-Office-of-Gas-and-Electricity-Markets-on-the-potential-impact-of-REMIT>