



### Information providers play an important role in improving transparency in wholesale energy markets

#### Anonymised case study<sup>1</sup>

##### Procedure

In 2015, a National Regulatory Authority (NRA) for energy was made aware, via an email sent by a third party, of a publication made by an information provider (the Provider). The publication claimed that an ongoing outage at an electricity generation facility had not been disclosed to the market through an urgent market message (UMM) by the relevant market participant (MP). The NRA started its preliminary assessment on whether the MP fulfilled its obligation under Article 4(1) of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT) vis-à-vis this incident, and promptly concluded that this was indeed the case, since no outage had actually occurred.

A few days later, the NRA, along with the Agency for the Cooperation of Energy Regulators (“the Agency”) and another NRA, received a formal complaint letter from the MP claiming that the Provider disseminated “false and misleading information” about the availability of its generation asset. According to the complaint, the content of the publication did not reflect the actual facts.

The Agency ensured that all relevant NRAs were informed about this event through secure communication channels, as several jurisdictions were affected. Three NRAs were involved in the collection and review of the facts in a coordinated effort.

The NRAs and the Agency assessed the succession of events that took place within the Provider’s organisation before and after the publication of false information and the potential benefits that the involved parties stood to gain from the disseminated information. The NRAs examined, among other things, the processes the Provider used to collect, analyse and publish information. The Provider was also asked to clarify the validation and quality control procedures it conducts before publication, as well as its rectification and removal procedures of incorrect publications.

The procedure was closed in 2017 with the relevant NRAs’ formal request that the Provider review and improve its quality control and information validation processes, since the investigation revealed that the Provider’s relevant internal procedures were insufficient and

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did not prevent the dissemination of false information in a situation where this could have been avoided.

#### Potential Breach

The events were analysed in the context of Article 5 of REMIT, which prohibits market manipulation, and with particular regard to the definition included in Articles 2(2)b - “disseminating information through the media, including the internet, or by any other means, which gives or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, including the dissemination of rumours and false or misleading news, where the disseminating person knew, or ought to have known that the information was false or misleading” and 2(3)b of REMIT - “disseminating information [...] with the intention of giving false and misleading information [...]”.

Save the Date!

SEPTEMBER

6-7

### ACER Energy Market Integrity and Transparency Forum 2018

The Agency is pleased to announce that the Agency’s Energy Market Integrity and Transparency Forum 2018 will take place in Ljubljana in the afternoon of 6 September and the morning of 7 September. The event will be, like in the previous year, organised with the support of the Slovenian Ministry of Foreign Affairs.

Additional information will be available by the end of May on the [ACER website](#).

Sections 6.3 and 6.4 of the [ACER Guidance](#) were also relevant to the assessment. Section 6.3 provides examples about this type of market manipulation - *“Forms of market manipulation include [...] making it appear that the availability of electricity generation capacity or natural gas availability, or the availability of transmission capacity is other than the capacity which is actually technically available where such information affects or is likely to affect the price of wholesale energy products”*, while section 6.4 provides additional details - *“Spreading false/misleading information through an officially recognised channel for disseminating information to users of an organised market is particularly serious as it is important that market participants are able to rely on information dissemination via such official channels”*.

It is important to note that the application scope of Article 5 of REMIT is not restricted to market participants, but instead concerns “any person”, including – as is the case here – information providers. In their analysis of this case, the NRAs established the following:

- The Provider is recognised as an expert in the field of energy;
- The information was disseminated to a large audience of the energy sector, including traders;
- The published information was related to an electricity generation asset whose availability and use of capacity was likely to impact the price, supply, or demand for wholesale energy products at the time of publication;
- The publication itself pointed out to price impacts that the alleged events could have on wholesale energy products;
- The information was factually wrong and thus had the potential to mislead the market as to the supply, demand, or price of wholesale energy products; and
- The Provider was aware or ought to have been aware of public information that was provided by the Transmission System Operator and by the MP concerned and which contradicted its claim.

Finally, the NRAs concluded that the in-

formation was materially false and potentially misleading. However, in this specific case, their assessment revealed that there was no intent to publish incorrect information and that the specific information at that time did not impact supply, demand, or prices of energy wholesale products in the short term, but that such events certainly tend to reduce long-term trust in the market. Lastly, at the request of the NRAs, the Provider adjusted its data quality processes and procedures for the publication of information in order to prevent misleading publications in the future.

### Key Takeaways

The Agency and the NRAs acknowledge that information providers play an important role in improving the transparency of the markets. Furthermore, such companies can play a useful ‘watchdog’ role by identifying abnormalities in the markets. However, in case the information that is disseminated by credible information providers is false or even misleading, it has the potential to create confusion as well as to reduce transparency and trust in the market.

This is why it is important that any legal or natural person which uses the media to disseminate information that has the potential to give signals as to the supply, demand or price of wholesale energy products, has adequate processes in place to safeguard the quality of that information. These safeguards shall include strict quality control processes and mechanisms for a timely rectification of information.

<sup>1</sup> This case is presented anonymously to ensure the Agency’s fulfilment of the obligation included under Article 17 of REMIT (professional secrecy). This Article safeguards the confidential information received by the Agency in the course of investigations performed by NRAs.

## ACER Guidance on the Application of Article 5 of REMIT to Transmission Capacity Hoarding

**With the aim of ensuring the integrity of valuable EU cross-border trading capacities, the Agency published the second Guidance Note (Guidance Note 1/2018) on transmission capacity hoarding in**

### **intraday electricity markets that could constitute market manipulation under REMIT.**

Article 5 of REMIT prohibits any engagement, or any attempt to engage, in market manipulation on wholesale energy markets. The current 4<sup>th</sup> edition of the Agency’s Guidance on the application of REMIT provides examples of the most common types of market manipulation under Article 5 of REMIT. Under certain circumstances, transmission capacity hoarding can qualify as market manipulation under REMIT.

Transmission capacity hoarding is defined by the Agency as a behaviour consisting of acquiring all or part of the available transmission capacity without using it or without using it effectively.

The Agency’s focus on the cross-border transmission capacities in the intraday time frame is due to their ability to couple markets and open up opportunities to trade close to real time. If efficiently used, they reduce the need for balancing services and thus contribute to lower network fees, which benefit all consumers.

Currently, these capacities represent approximately 27% of the total available capacity<sup>2</sup>. Due to the growing importance of intermittent generation, intraday cross-border trading is expected to grow even more in the coming years. The Agency is committed to ensuring that available capacities benefit European consumers of electricity.

By using the experience it gained so far through the review of potential cases involving capacity hoarding, the Agency produced, in collaboration with the National Regulatory Authorities, a Guidance Note on this topic.

The Guidance Note:

- explains the concept of transmission capacity hoarding and provides illustrative examples of capacity hoarding in the intraday markets with implicit and explicit capacity allocation;
- assesses capacity hoarding against the definition of market manipulation under REMIT and provides illustrative examples on how capacity hoarding can lead to false/misleading signals and/or secure an artificial price;
- defines six indicators that can be used

to identify suspicious behaviour involving capacity hoarding that is likely to constitute market manipulation or an attempt to manipulate the market under Article 5 of REMIT (price difference across bidding zones, portion of the available transmission capacity acquired, time span between transactions from the same market participant, direct or indirect reversal of the

transaction, use of wash trades across bidding zones, and introduction of inconsistent orders).

<sup>2</sup> Estimated value, based on intraday offered capacities in the 'economic' direction and national intraday volumes for a selection of EU borders in 2016, considering the extrapolation of the results to all the EU borders.

### Transmission Capacity Hoarding and REMIT

**As mentioned above, capacity hoarding is defined as the acquisition of all or part of the available transmission capacity (ATC) without using it or without using it effectively.**

It is important to note that transmission capacity is considered used effectively when it is used to fulfil a market participant's legitimate need driven by the (expected) supply and demand of electricity in the different bidding zones.

In order to constitute market manipulation and a potential breach of Article 5 of REMIT, capacity hoarding must comprise the following two elements: (i) the acquisition of a decisive part of the available transmission capacity; and (ii) the non-use or non-effective use of that capacity.

The capacity acquired (either explicitly or implicitly) is deemed decisive if it represents an amount of the ATC that is potentially capable to reduce or hinder price convergence from taking place between the connected bidding zones that would otherwise happen due to the fair and competitive interplay of the market forces of supply and demand.

The Guidance Note is available on the [REMIT Portal](#).

With regard to the Guidance Note, the Agency would like to highlight that the Danish Energy Regulatory Authority (DERA) recently handed over two cases to the Danish State Prosecutor for Serious Economic and International Crime. Both cases relate to capacity hoarding behaviour on the Nordic intraday market, Elbas. DERA's investigation into the behaviour of two market participants supports a reasonable suspicion that both companies have engaged in market manipulation by securing the price of one or several wholesale energy products at an artificial level. DERA considers the specific behaviour of both companies to constitute market manipulation that is prohibited by Article 5 of REMIT. For more information, please see DERA's press release [here](#).

## Data Quality Activities at the Agency

**The Agency is committed to ensuring a high quality of REMIT data. After the initial period of data collection, the Agency has detected several common data quality issues. Some general issues were communicated to the stakeholders in February 2017 with the publication of an Open Letter about the Agency's ongoing assessment of the completeness, accuracy and timely submission of the data received under REMIT.**

The Agency has since been continuously reviewing the submitted REMIT data as well as conducting regular and ad hoc assessments of the received data by comparing it to the publicly available reference data and by consulting with the relevant stakeholders. The data quality assessments are carried out on the basis of reporting guidance compliance checks, REMIT data analysis, and issues flagged by the Agency's surveillance analysts and National Regulatory Authorities (NRAs).

Data quality-related actions recently taken include:

- The Agency has provided feedback to the NRAs regarding the completeness of data and the timeliness of reporting. Whilst the Agency's priority is currently to ensure completeness of data, NRAs are also looking into potential cases related to alleged breaches of Articles 8 and 9 of REMIT.
- The Agency regularly organises sessions with NRAs in order to ensure a common understanding of and a coordinated approach on REMIT data quality.
- The Agency regularly organises sessions with Registered Reporting Mech-

anisms in order to discuss and provide further reporting guidance. Additionally, reports have been sent to some Registered Reporting Mechanisms in order to clarify data reporting.

- The Agency regularly organises sessions with Organised Market Places in order to better understand the particularities of the collected datasets and to keep up with trading developments at specific Organised Market Places. Reports have been sent to some Organised Market Places in order to clarify data reporting.
- The Agency regularly organises sessions with ENTSO-E, ENTSG and GIE in order to discuss and address the quality of reported fundamental data. The Agency plans to prepare additional guidance as well as a letter on data reporting, particularly with regard to the correct use of EIC codes and other issues that were detected during the analysis of data. In the long term, the Agency may also prepare validation rules for fundamental data.

In the coming months, the Agency will continue its activities related to data quality assurance as well as increase their scope. The goal is to ensure that all reporting parties fulfil their REMIT-related tasks by making sure that the reported data is compliant with REMIT requirements. This will enable the Agency and NRAs to perform, as specified in Article 7 of REMIT, their market monitoring tasks, which require the timely submission of complete and accurate data to the Agency.

## Statistics

### 159 REMIT Cases under Review

The Agency had 159 REMIT cases under review at the end of Q1 2018. REMIT cases are potential breaches of REMIT that are either notified to the Agency by external entities or identified by the Agency through its surveillance activities.

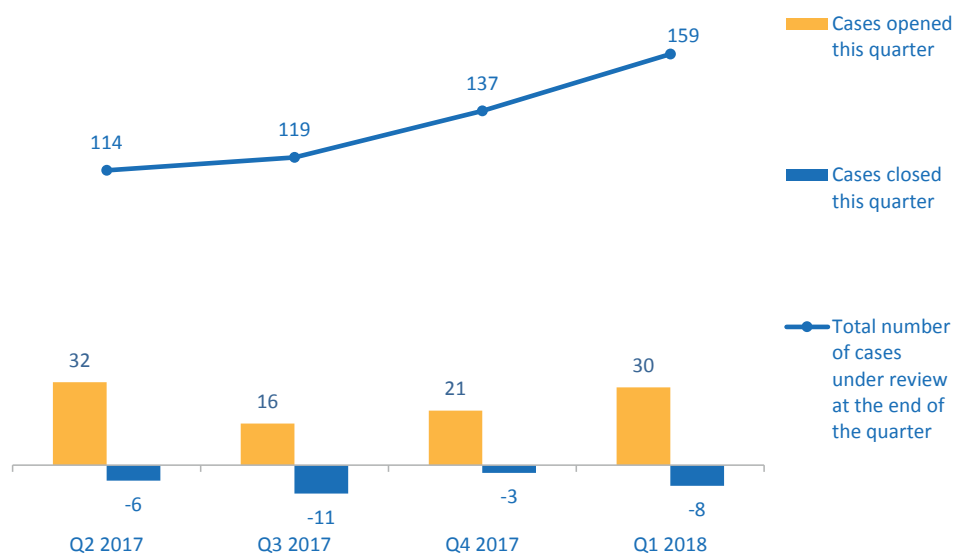
A case could, after a thorough investigation by the relevant national authority, lead to sanctions. A case could also be closed without sanctions, for instance if the suspicions were unfounded.

Figure 1 on the right shows the number of cases that were under review by the Agency in the past four quarters.

The Agency is responsible for the monitoring of wholesale energy markets and aims to ensure that National Regulatory Authorities (NRAs) carry out their tasks in a coordinated and consistent way, but it is not, however, responsible for the investigation of potential breaches of REMIT.

EU Member States have the obligation to ensure that their NRAs have the required

Figure 1 Potential REMIT Breach Cases - Quarterly Statistics



Source: ACER.

investigatory and enforcement powers to fulfil their responsibilities.

### REMIT Queries

The Agency has been receiving a decreasing number of questions through the various communication channels that have been put in place for the stakeholders (i.e. the Agency's Central Service Desk (CSD) and to the online REMIT query form).

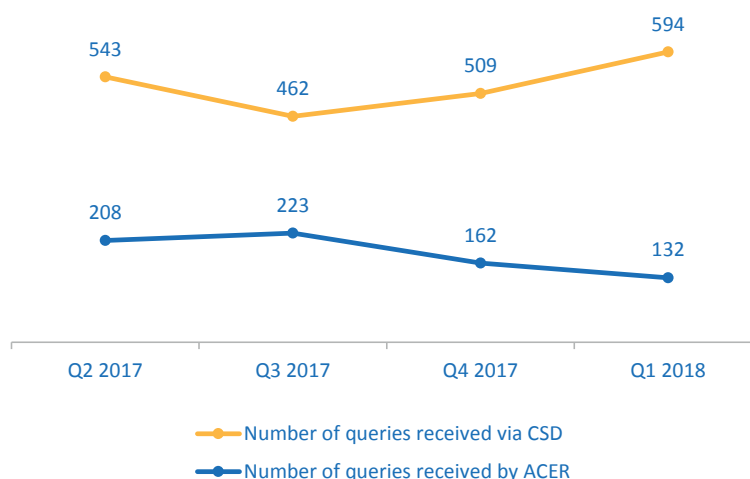
Figure 2 on the right illustrates the total number of queries received by the Agency in the last four quarters.

The Agency, when necessary, responds to specific questions on a one-to-one basis. Its main means of responding to queries, however, remains the publicly available documentation, such as:

- Questions & Answers on REMIT;
- Frequently Asked Questions (FAQ) on transaction data reporting; and
- FAQ on REMIT fundamental data and inside information collection.

REMIT documentation is made available on the REMIT Portal at <https://documents.acer-remit.eu> and in the Knowledge Base at <https://kb.acer-remit.eu>.

Figure 2 Statistics on REMIT Questions Reaching the Agency



Source: Questions sent to the CSD and to the online REMIT query form.

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