



Department
of Energy &
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**Department of Energy & Climate
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To
Designated GB NEMOs
Interconnector operators
Energy UK
Power Traders forum
copy to JESG and Department for Enterprise, Trade and
Investment Northern Ireland

15 January 2016

Dear Colleague

I am writing to set out proposals for the monitoring and enforcement of nominated electricity market operators (NEMO) under Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (CACM) in GB¹.

Background

CACM came into force on 14 August 2015. It sets out provisions for coupling of the day-ahead and intra-day electricity markets across the European Community. An integrated EU wholesale electricity market provides a number of important benefits, including increased security of supply and increased competitiveness.

To achieve market coupling, the Regulation requires the creation of harmonised trading arrangements across the interconnectors which link the transmission systems in different Member States. The trading arrangements establish a capacity allocation and congestion management method where interconnection capacity and electricity is sold at the same time in one daily day-ahead auction and then continuously during the intra-day period. The aim is to maximise the efficient use of interconnection and to ensure that electricity flows follow prices.

NEMO Role and Designation

To develop, implement and operate the systems required for market coupling, the Regulation requires that each Member State designates one or more entities as a NEMO. This designation process has been conducted by Ofgem, as National Regulatory Authority (NRA) for GB under CACM. On 10 December 2015, Ofgem announced that APX Commodities Limited and Nord Pool Spot AS are designated as NEMOs in Great Britain.

¹ NEMOs operating in Northern Ireland will be regulated by the Utility Regulator.

In addition to providing day-ahead and intra-day trading in the Member State in which they are designated, NEMOs have the right offer these services in other Member States, subject to certain exceptions.

NEMOs have a key role in the development of the terms and conditions and methodologies needed to achieve market coupling. They are required to cooperate with other NEMOs, and for some elements, relevant Transmission System Operators, to agree these.

Adoption of terms and conditions and methodologies will be decided by qualified majority voting. Each Member State will have one vote. DECC, in conjunction with the Department for Enterprise, Trade and Investment Northern Ireland, will set out proposals for allocation of the UK vote among designated NEMOs in due course.

Once terms and conditions and methodologies have been agreed and implemented, NEMOs are responsible for the on-going operation of a number of market coupling functions. These include maintaining and operating the algorithms, systems and procedures needed for the day-ahead and intra-day market and validating and disseminating the results of trading.

Proposal for proportionate monitoring and enforcement powers:

Ofgem, as NRA for GB, is required to monitor the on-going compliance with designation criteria and performance of each NEMO offering day-ahead and intra-day trading services in GB. In addition, the regulation requires designating authorities to ensure compliance with the CACM regulation by all NEMOs performing single day-ahead and/or intra-day coupling within their Member State in accordance with Article 19 of Regulation (EC) No 714/2009. We consider it is important that NEMOs, which will operate an exclusive route to short term cross-border trading, are regulated to deliver reliable, robust, and cost-efficient market coupling. Unreliable and inefficient access to cross-border trading for market participants may disrupt or distort the wider wholesale market with detrimental impacts on consumers.

CACM sets out procedures for the revoking the designation of non-compliant NEMOs. In our opinion, this would be an action of last resort. Where a NEMO, designated in the NRAs Member State, fails to maintain compliance with designation criteria, CACM provides that designation can be revoked if compliance is not restored within six months of notification of non-compliance. Where a NEMO, designated in another Member State, fails to maintain compliance with designation criteria, the NRA can suspend the right to offer day-ahead and intra-day trading in its territory, where that NEMO is unable to restore compliance within three months of notification of non-compliance.

In general, we expect the monitoring of compliance to be achieved through Ofgem's ongoing monitoring of the wholesale market, relying largely on existing, publicly available data. Informal engagement with NEMOs, stakeholders, and wider regulatory bodies at a national, regional, and European level will also support this.

In addition, Ofgem would expect to undertake an annual designation criteria compliance check of NEMOs operating in GB. This would take the form of an informal request for information specific to compliance with the designation criteria. We do not expect this annual exercise to be as comprehensive as the original designation application process. A proportionate approach will be developed through engagement with the NEMOs.

In general, Ofgem would not expect to use formal powers to require information as part of ongoing monitoring or the annual compliance checks. Any powers to formally request information would be used only in the event that Ofgem were unable to access information considered necessary to monitor and enforce compliance. Ofgem would expect to undertake any investigation and take any enforcement action in line with the processes set out in their Enforcement Guidelines².

We believe changes to legislation are required, to ensure that Ofgem has sufficient powers to meet its obligations. Where necessary, Ofgem must have appropriate powers to gather information required to satisfy itself of NEMOs on-going compliance with CACM, to investigate further where non-compliance is suspected, and to take necessary enforcement action to secure compliance.

Options

A number of options for achieving this have been considered.

Our preferred approach, which we believe provides the best fit with our objectives of effective, proportionate regulation, is to amend the Electricity Act 1989 so that existing enforcement powers (contained in Sections 25-28) can be applied to NEMOs. This would be achieved by including NEMOs within the definition of Regulated Person and adding the NEMO requirements of CACM to a new category of relevant requirements within Schedule 6A. These amendments would be made by regulations under section 2(2) of the European Communities Act 1972.

Other options considered include: a 'do nothing' option, relying solely on revocation of designation as a means of ensuring compliance; regulating NEMOs through wider regulation of power exchanges; creating a new licence for NEMOs; or regulating them through an existing licensee. These options were felt to be less well fitted to our objectives, either likely to impose disproportionate burdens (such as licensing or wider regulation of power exchanges), provide insufficient confidence or fail to fulfil the EU obligation to be able to ensure compliance ('do nothing').

Consultation

We are consulting on our preferred proposal for GB regulation. We would welcome the views of the recipients of this letter and would be happy to arrange meetings to discuss the proposal in more detail during the consultation period. We are also happy to hear the views of those who will have been made aware of this consultation, through stakeholder groups, such as the Joint European Standing Group.

It would be helpful if responses could consider the following questions:

To what extent do you agree that monitoring and enforcement powers are required to ensure the compliance of NEMOs with CACM requirements?

²www.ofgem.gov.uk/sites/default/files/docs/2014/09/enforcement_guidelines_12_september_2014_published_version_1.pdf

Do the proposals set out above provide effective and proportionate regulation of NEMO functions? Do you have alternative suggestions or modifications to our proposal?

What do you think the approach should be for those obligations where NEMOs in more than one Member State are responsible for delivery of a requirement?

Would the proposal generate costs to NEMOs? If so please provide details and estimates of costs. How do these differ between the options identified? To what extent would extra cost be transferred to market participants?

Would the proposal generate benefits to consumers, NEMOs or market participants? Please provide details and estimates of benefits. How do these differ between the options identified?

What do you estimate the impact of on-going monitoring would be on NEMOs and industry more widely?

Responses should be sent to me at the above email or postal address by Friday 11 March 2016. We will consider all responses received. We will be providing a summary of stakeholder views and our response to them, including our intended course of action.

Amending legislation would be laid shortly after the Government's response to this consultation is published.

Yours faithfully

Joe Parsons