

The Market Monitoring Unit (MMU)

Governance Process Manual

Consultation Paper

23 December 2010

SEM/10/085

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2 INTRODUCTION

2.1 PURPOSE OF THIS PAPER

The purpose of this consultation paper is to give market participants the opportunity to consider and input into the process to be followed by the MMU, Oversight Committee and SEM Committee with respect to formal investigations and informal inquiries into Licencees' compliance with the Bidding Code of Practice and relevant Licence Conditions on Cost-Reflective Bidding in the Single Electricity Market.

The MMU has conducted several formal investigations and informal inquiries to date. The Regulatory Authorities (RAs) wish to:

- clarify the role of the MMU and its responsibilities
- consult on the demarcation of types of investigation (formal or informal) and issues there under, including the publication of the complaint and of the MMU/Oversight Committee/SEM Committee findings.

The Process Manual in Appendix 1 is intended to set out the procedures that should be followed by the MMU staff during investigations.

2.2 BACKGROUND

The MMU was established within the Northern Ireland Authority for Utility Regulation (**the Utility Regulator**), pursuant to, and forms one part of, the Market Power Mitigation strategy within the SEM¹.

¹ See Section 5.3 of [AIP-SEM-31-06](#)

The Commission for Energy Regulation (**CER**) and the Utility Regulator (together the **Regulatory Authorities (RAs)**) commissioned Cambridge Economic Policy Associates (**CEPA**) to conduct an independent review of the processes and procedures used by the MMU and to assess the ability of the MMU to conduct its functions in accordance with legislative obligations and international best practice. Guided by the recommendations received, this paper has been developed for consultation.

2.3 RELATED DOCUMENTS

The following documents are of relevance to this paper:

Table 1.1 Regulatory Authorities MMU framework

Document reference	Key content	Date
AIP/SEM/62/06 (Market monitor identity consultation document)	Set out three options for the MMU, including a standalone entity, the market or system operator(s) and the RAs. Evaluation criteria for the MMU are also set out by the RAs.	June 2006
AIP/SEM/82/06 (Market monitor identity decision document)	Sets out the RAs' decision for the MMU to be independent of all market participants and to operate within the RAs' regulatory offices.	July 2006
AIP/SEM/143/06 (Market monitoring in the SEM consultation paper)	Set out the high level roles and responsibilities of the market monitor and requested comments in relation to the functions of the MMU.	September 2006
AIP/SEM/217/06 (Market monitoring in the SEM decision paper)	Paper sets out more clearly the role of the MMU and its roles and responsibilities. Clarifies that the MMU will monitor the spot market only and would not specify and codify the steps in an investigation.	December 2006
AIP/SEM/511/07 (Market monitoring information paper)	Clarifies the relevant boundaries of the MMU (including between the spot and contract markets and the national competition/financial authorities) and sets out guidelines on how the MMU expects to interface with market participants.	October 2007

2.4 STRUCTURE OF THIS PAPER

- Section 3 – Overview of Legal Framework and Enforcement Powers. This section describes the legal framework of the SEM, the SEM Committee and the Joint Regulatory Arrangements applicable to the Oversight Committee and the MMU.
- Section 4 – Market Monitoring Unit. This section sets out the roles and powers of the MMU;
- Section 5 – Investigations. This section describes the MMU’s current investigation procedures and their proposed changes;
- Section 6 – Publication of Investigation Material.
- Section 7 – Views invited.

3 OVERVIEW OF LEGAL FRAMEWORK AND ENFORCEMENT POWERS

The legal framework of the SEM, the SEM Committee and the Joint Regulatory Arrangements applicable to the Oversight Committee and the MMU are explained below. Additionally, the functions and duties of the SEM Committee and the enforcement mechanisms applicable to licensed generators are set out below.

3.1 OVERVIEW OF SEM LEGISLATION

3.1.1 SEM COMMITTEE

The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (2007 No. 913 (N.I. 7) (the SEM Order) and the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007 (the Electricity Act) (“collectively referred to as the SEM Legislation”) respectively provide for the creation of the SEM Committee.

As described in the Joint Regulatory Arrangements (AIP/SEM/07/565)² the central decision-making rule which governs the exercise of regulatory functions shall be that:

- i. Any decision as to the exercise of a relevant function of the Commission in relation to a SEM Matter shall be taken on behalf of the Commission by the SEM Committee, and,

² [AIP-SEM-07-565 Joint Regulatory Statement plus annexes](#)

- ii. Similarly, any decision as to the exercise of a relevant function of the Authority in relation to a SEM Matter shall be taken on behalf of the Authority by the SEM Committee.

A matter is a SEM matter if the SEM Committee determines that the exercise of a relevant function of the Authority or the Commission as the case may be, in relation to that matter, materially affects, or is likely materially to affect, the SEM.

The principal objective of the SEM Committee is to protect the interest of consumers of electricity in Northern Ireland and Ireland supplied by authorised persons, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale or purchase of electricity through the SEM.

Article 9(2) SEM Order and Electricity Act requires the SEM Committee to carry out their electricity functions in the manner they consider is best calculated to further the principal objective, having regard to a number of factors, including:

- the need to secure that all reasonable demands for electricity in Northern Ireland and Ireland are met;
- the need to secure that authorised persons are able to finance their regulated activities;
- the need to secure co-ordinated regulation of the SEM;
- the need to ensure transparent pricing in the SEM; and
- the need to avoid unfair discrimination between consumers in Northern Ireland and consumers in Ireland.

In addition, subject to Article 9(2), the SEM Committee are required to carry out their electricity functions in the manner they consider is best calculated to, among other things promote efficiency and economy on the part of authorised persons and secure a

diverse, viable and environmentally sustainable long-term energy supply in Northern Ireland and Ireland. Further, subject to Article 9(2), the SEM Committee must have regard to the effect on the environment in Northern Ireland and Ireland of activities and the need (where appropriate) to promote the use of energy from renewable sources.

The SEM Committee has an additional duty not to discriminate unfairly between authorised persons or between persons who are applying to become authorised persons. Further, in carrying out any of their functions in relation to the SEM, the SEM Committee may have regard to the interests of gas consumers in Northern Ireland and Ireland.

Finally, in carrying out their functions in relation to the SEM, the SEM Committee must have regard to principles of best regulatory practice.

3.2 SCOPE OF AUTHORITY OF THE OVERSIGHT COMMITTEE AND MMU UNDER THE JOINT REGULATORY ARRANGEMENTS

3.2.1 OVERSIGHT COMMITTEE

As described in the Joint Regulatory Arrangements (AIP/SEM/07/565) and as established under the relevant legislation, the SEM Committee will be the decision making authority on all SEM matters.

The SEM Committee may, under the SEM legislation, establish sub-committees. Anything which is authorised or required to be done by the SEM Committee may be done by any sub-committee of the SEM Committee which is so authorised³. A sub-committee of the SEM Committee known as the “Oversight Committee” was established

³ Schedule 1A (13) of the Electricity Act and Schedule 2 (5) of the SEM Order

at the SEM Committee's meeting on 28 November 2007. The Oversight Committee is a committee made up of senior members of staff of each of the Regulatory Authorities appointed by the SEM Committee.

An Oversight Committee matter shall be defined as one which does not require the Oversight Committee to decide upon a matter of SEM policy. The Oversight Committee is then authorised to make decisions with respect to all Oversight Committee matters⁴.

Under this framework, the Oversight Committee carries out its duties under the delegated authority of the SEM Committee. The Oversight Committee oversees the operation of the MMU in this context.

3.3 THE MMU

In addition to being supported by the Oversight Committee, the SEM Committee is supported by a number of Joint Management Units (JMUs) which shall supervise and coordinate key regulatory work streams. The Market Monitoring Unit is one such JMU which has been identified as performing a key SEM regulatory function. Furthermore, the MMU is an integral part of the Regulatory Authorities' Market Power Mitigation Strategy developed in 2006. The MMU is detailed below.

3.4 RELEVANT FUNCTIONS OF THE COMMISSION AND THE AUTHORITY REGARDING LICENSEES

Any decision as to the exercise of a relevant function of the Authority or the Commission in relation to a SEM matter shall be taken on behalf of the Authority or the Commission, as the case may be, by the SEM Committee. For the purposes of this Process Manual it is useful to outline the 'Relevant Functions' of the Regulatory

⁴ See AIP/SEM/08/017 SEM Committee Scheme of Delegation at Section 3, 29 January 2008 Final

Authorities which may be exercised on behalf of the particular Regulator and which may be relevant to and utilised in relation to a MMU Investigation.

3.4.1 RELEVANT FUNCTIONS OF THE AUTHORITY (THE UTILITY REGULATOR)

Section 6(4)(a-d) of The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 provides that a Relevant Function of the Authority means:

- (a) a function under Part II of the Electricity (Northern Ireland) Order 1992 No. 231 (N.I. 1) (the “Electricity Order”);
- (b) a function under the Energy (Northern Ireland) Order 2003 No. 419 (N.I. 6) (the “Energy Order”) which relates to electricity;
- (c) a function under the Electricity Order 1992 (Amendment) Regulation (Northern Ireland) 2005 (SR 2005/335); and
- (d) a function under Article 3 of the Order, other than a function specified as not being a relevant function under this Article (for example, the determination of disputes under Article 26 and the fixing of the maximum resale price of electricity under Article 47 of the Electricity Order are not relevant functions for the purposes of this Order).

A matter will be a “SEM matter” if the SEM Committee determines that the exercise of a relevant function of the Authority in relation to that matter materially affects or is likely materially to affect the SEM.

Schedule 3 of the SEM Order confers powers of entry (to the Authority) if the SEMC determines:

- (a) That there are reasonable grounds for suspecting that a licence holder is contravening, or has contravened, any condition of his licence; and
- (b) That any such contravention would materially affect or be likely materially to affect the SEM.

Electricity Order

Article 28 of the Electricity Order states that where the Authority is satisfied that a licence holder is contravening (or is likely to contravene) any relevant condition or requirement, it shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

Article 29 states that before making a final or provisional order, the Authority shall give notice:

- stating that he proposes to make or confirm the order and setting out its effect;
- setting out:
 - (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
 - (iii) the other facts which, in his opinion, justify the making or confirmation of the order; and
- Specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made.

Article 31 gives the Authority power to require information from a Northern Ireland licence holder where it appears to the Authority that a licence holder may be contravening, or may have contravened any relevant condition or requirement.

Article 48 states that it the duty of the Authority to investigate any matter which appears to be an enforcement matter and which is the subject of a representation

(other than one appearing to the Authority to be frivolous) made to the Authority by or on behalf of a person appearing to the Director to have an interest in that matter.

Energy Order

Part VI of the Energy Order gives the Authority the power of enforcement of relevant conditions of electricity licences (some of these Articles repeat the provisions granted to the Authority under the Electricity Order);

Article 42 of the states that where the Authority is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, it shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

Article 45 gives power to the Authority to impose financial penalties onto licence holders who have contravened licence holders.

Article 51 of the Energy Order gives the Authority power to require information from a Northern Ireland licence holder where it appears to the Authority that a licence holder may be contravening, or may have contravened any relevant condition or requirement.

3.4.2 RELEVANT FUNCTIONS OF THE COMMISSION (CER)

Section 8A(6) of the Electricity Act (as inserted by the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007) provides that a Relevant Function of the CER means a function under the Electricity Regulation Act 1999 (as amended) relating to electricity and a function under the Internal Market Regulations.

The Relevant Functions of the CER which may be exercised by the SEM Committee in relation to the conduct of and outcome to an investigation include, inter alia, the functions and duties to:

- To monitor the performance of, revoke and enforce licences under the Act (Section 9(1) (g) of the Act). With regard to this Relevant Function it is important to highlight Condition 15 of the Generic Licence⁵ (or is equivalent) on Cost Reflective Bidding in the SEM, and the power of the CER to issue a direction to the licensee there under, and Condition 12 on the Provision of Information to the Commission, both of which are relevant to the activities of the MMU.
- To monitor licensees to ensure they continue to conform to the conditions and requirements of their licences under section 14(12) of the Act;
- To publish information and advice in accordance with the provisions of this Act (section 9(1)(h) of the Act);
- To monitor the level of transparency and competition (section 9(1D) (h)).
- To promote competition in the generation and supply of electricity in accordance with the Act (section 9(4)(a));
- To appoint an Authorised Officer to carry out any of the acts set out in section 11(4) of the Act in relation to licensees. Section 12 of the Act confers upon the Authorised Officer the power obtain a search warrant where there is reasonable grounds for suspecting that there has been a contravention of a condition or requirement of a licence.

⁵ <http://www.allislandproject.org/en/generation.aspx?page=2&article=f51097ff-25d3-40dd-8c73-48264829e2b2>

- **Issue directions to a licensee in accordance with the following sections of the Act:**
 - **Section 23** states that where the Commission is satisfied that where certain listed circumstances have arisen or are likely to arise it may direct the holder of the licence to discontinue or refrain from specified practices. The circumstances include that immediate action is necessary to protect the interest of other holders of licences or authorisations, or where the CER is of the opinion that the licensee is contravening or likely to contravene a licence conditions or requirement and immediate action is necessary to cease or prevent same.
 - **Section 24** states that where the CER is of the opinion that the holder of a licence or an authorisation may be contravening (or may be likely to contravene) a condition or requirement, it may issue a notice to the licensee stating the condition or requirement which the CER considers that the licensee may be contravening (or may be likely to contravene), the acts or omissions which in the opinion of the CER may constitute or would be likely to constitute contravention of the condition or requirement concerned; and specify the period within which representations or objections may be made. On consideration of representations or objections a direction may be made to the licensee to take such measures as are necessary to cease the contravention or to prevent a future contravention.
- **To issue a determination under Section 25 of the Act.** Section 25 states that where the Commission decides not to give a direction under Section 24, the Commission may make a determination that the holder of a licence or an

authorisation has committed a specified breach of a condition or requirement.

As soon as practicable after making a determination the Commission shall:

- publish a notice of the determination in a newspaper circulating in the State
 - Serve a copy of the notice and a copy of the determination on the holder of the licence or authorisation to whom the determination relates.
-
- Section 26 states that in order to ensure compliance with a direction given under section 23(2) or section 24, the Commission may apply in a summary manner *ex parte* or on notice to the High Court for an order requiring the holder of a licence or an authorisation who, in the opinion of the Commission, is contravening or who is likely to contravene a condition or requirement to discontinue or to refrain from specified practices.

The above list is not intended to be an exhaustive summary of the Relevant Functions of the CER but is used to provide an indication of the powers that the SEM Committee may exercise in relation to a licensee whose bidding behaviour is under investigation.

3.5 OVERVIEW OF LICENCE CONDITIONS RELEVANT TO MMU ACTIVITIES

3.5.1 IRELAND GENERATION LICENCES

The MMU monitors compliance by Generators with Condition 15 of the Generic SEM Generation Licence (or its equivalent).

Condition 15 requires, among other things that:

1. **The Licensee shall ensure that the price components of all Commercial Offer Data** submitted to the Single Market Operation Business under the Single Electricity Market Trading and Settlement Code, whether by the Licensee itself or by any person acting on its behalf in relation to a generation unit for which the Licensee is the licensed generator, **are cost-reflective.**

[...]

6. The Licensee shall, in carrying out the activity to which paragraph 1 refers, act so as to **ensure its compliance with the requirements of the Bidding Code of Practice.**

[...]

8. The Licensee shall, **if requested to do so by the Commission, provide** the Commission with: (a) a **reasoned explanation** of its calculations in relation to any Commercial Offer Data; and (b) **supporting evidence** sufficient to establish the consistency of that data with the obligations of the Licensee under this Condition.

9. In any case in which **Commercial Offer Data** are submitted to the Single Market Operation Business which are **not consistent with the Licensee's obligation under paragraph 1** of this Condition, the Licensee **shall immediately inform the Commission** and provide to the Commission a **statement of its reasons** for the Commercial Offer Data submitted. [...]"

(Emphasis Added)

Notwithstanding the Relevant Functions listed above in relation to enforcement of a licence condition and the powers to take various measures in relation to a breach or likely breach of a licence condition, In order to enforce Condition 15 the CER or the Authority as the case may under Condition 15(7), "issue directions to the Licensee for the purposes of securing that the Licensee, in carrying out the activity to which paragraph 1

refers, complies with this licence and with the Bidding Code of Practice, and the Licensee shall comply with such directions.”

The MMU may also require information from Generators, informally and voluntarily. Alternatively, the SEM Committee may decide if necessary to invoke Condition 12 of the Generic SEM Generation Licence (or its equivalent), regarding the Provision of Information to the Commission.

Condition 12 requires, among other things that the Licensee shall furnish to the Commission, in such manner and at such times as the CER may require, such information and shall procure and furnish to it such reports as the CER may consider necessary in the light of the Conditions or as it may require for the purpose of performing the functions assigned or transferred to it by or under the ERA. ‘Information’ is broadly defined in Condition 12 to include any books, documents, records, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the CER) of any description and in any format specified by the CER.

This condition 12 is also found in other forms of licence i.e. the Market Operator’s Licences, and information may be sought from other licensees in relation to an Investigation.

3.5.2 NORTHERN IRELAND GENERATION LICENCES

Under Condition 10 of the Northern Ireland Supply Licences, the Licensee is obliged to furnish to the Authority, in such manner and at such times as the Authority may require, such information as the Authority may consider necessary or as it may require for the purpose of performing any functions assigned to it by or under the Electricity Order, the Energy Order, the SEM Order or the Directive Regulations. This licence condition allows the Authority to request any information deemed necessary from licensees.

Northern Ireland Generation licences contain a similar condition (Condition 11) as that under Condition 10 of the Supply Licence, whereby the licensee is again obliged to provide such information as requested by the Authority for the purpose of performing its functions under the Electricity Order, the Energy Order, the SEM Order or the Directive Regulations.

Under Condition 17 of the Generation Licences, licensees are under an obligation to ensure cost reflective bidding in the SEM. This condition includes a provision obliging Licensees to comply with the Bidding Code of Practice.

4 THE MARKET MONITORING UNIT (MMU)

4.1 ROLE OF THE MMU

The MMU forms part of the Market Power Mitigation strategy developed by the RAs during 2006. The MMU reviews the behaviour in the market on an ex-post basis. This includes investigating the exercise of market power, monitoring the compliance of market participants with the bidding code of practice and other market rules and reviewing prices reported in the market.

The MMU is one of four identified Joint Management Units (JMUs) located within the RAs. The four JMUs are:

- Market Modelling;
- Market Monitoring;
- Market Operator Regulation;
- Trading & Settlement Code;

The role of the MMU currently consists of the following responsibilities:

- Monitor and report on issues relating to the SEM spot electricity market to ensure that it produces the outcomes which would be expected in a competitive market;
- Evaluate the operation of the market to detect design flaws or structural problems and make recommendations as to modifications to the Trading and Settlement Code which the RAs should initiate;
- Enforce the SEM Bidding Code of Practice (BCOP)⁶;

⁶ [Bidding Code of Practice Decision and Response to Comments AIP-SEM-07-430 Response and Decision BCOP 2.pdf](#)

- Conduct investigations into the exercise of market power, including but not limited to the violations of bidding principles or other markets rules and reporting alleged infractions of market rules to the RAs for enforcement action;
- Serve as an interface for complaints from market participants;
- Ensure that the monitoring programme will be conducted in an independent and objective manner.

The MMU's functions and communications with other parts of the RAs can be summarised as follows:

- *Reporting* – including producing daily, fortnightly, monthly and annual reports and presentations to RA staff, the Oversight Committee and the SEM Committee.
- *Statistical analysis and data* – the MMU receives large quantities of market data from the Single Electricity Market Operator (SEMO), which they process and store in databases. Staff within the RAs use the MMU as a source of data and statistical analysis for their policy work, analysis and modelling.
- *Policy development* – the policy role of the MMU requires the unit to operate closely with other JMUs and to be fully aware of other ongoing work in the RAs. The policy function of the unit can also require the MMU to report to the Oversight and SEM Committees on wider SEM design and harmonisation issues.
- *Investigations & Monitoring* – typically involve a combination of technical issues, policy and process which the MMU need to communicate to internal stakeholders including RA Directors, SEM Oversight Committee and the SEM Committee. The MMU is also expected to monitor the exertion of market power by, for example, strategically withholding capacity from the market, including examining patterns of unit outages over time to see if the timing of outages created uplift to bidder revenues.

The MMU also manages other projects not associated with monitoring, reporting or investigations. In 2010 the MMU manager and analysts have been responsible for, inter-

alia, the Capacity Payments Mechanism, PPB Regulation, Generator Unit Agreement cancellations and supporting projects such as the Market Power & Liquidity workstream. On average each MMU analyst spends approximately 50% of their time carrying out market monitoring.

4.2 BIDDING CODE OF PRACTICE (BCOP)

As part of the Market Power Mitigation Strategy, the MMU monitors compliance with Condition 15 (17 in Northern Ireland) of the Generic SEM Generation Licence (or its equivalent) and the SEM bidding principles contained in the Bidding Code of Practice (BCOP) (AIP/SEM/07/430).

The licences of all generators in both jurisdictions require them to comply with the published BCOP. The bidding principles form one of the key elements of the Market Power Mitigation strategy developed for the SEM.

Central to these bidding principles is a requirement for generators to bid their Short-Run Marginal Costs (SRMC) into the market. This obligation seeks to remove the ability of generators to profit from the use of market power. The MMU's role in monitoring compliance with the bidding principles and the short and long term commercial impacts of any decisions and investigations made by the unit is crucial in the further development of processes and transparency of the SEM bidding principles.

Ongoing market developments may lead to it becoming desirable to modify the BCOP. Where it feels that it is appropriate, the MMU will recommend to the SEM Committee that it consult upon a change in the BCOP. The procedures for making amendments are detailed in the Bidding Code of Practice itself and will be subject to public consultation.

4.3 MMU ADVISORY/INFORMATION CONDUIT/COMPLAINT CONDUIT ROLE

The roles and responsibilities of the MMU were defined in the 'Market Monitoring in the SEM Decision paper' (Decision Paper AIP/SEM/06/217). It is worth emphasising some key points from this Decision Paper that are relevant to this Process Manual.

- Governed under the Regulatory Arrangements, the MMU monitors the entire spot electricity market to ensure that bidding in that market follows the bidding principles;
- The MMU is an advisory arm of the Regulatory Authorities and a conduit for complaints. It has an ombudsman function;
- The MMU will investigate well documented complaints and refer complaints it believes to be well founded to the Regulatory Authorities for review;
- While patterns may be the primary trigger for investigations, the MMU may elect to investigate single events.
- The MMU has no enforcement authority or role, and is not an adjudicatory body or regulatory tribunal. The Regulatory Authorities through the SEM Regulatory Arrangements will remain the enforcement authority with respect to transgressions in the market and will be responsible for deciding the extent of any sanction and deciding if any licence conditions were violated. Due Process will be followed and the MMU would not be the deciding entity.

The relevant boundaries between the MMU, the competition authorities and the financial authorities are set out in Information Paper AIP/SEM/07/511. This paper also details how the MMU expects to interact with market participants but this is proposed to be largely replaced following the outcome of this consultation.

4.4 INTERACTION WITH MARKET PARTICIPANTS AND OTHER INTERESTED PARTIES

The information paper “Scope of the MMU and interaction with market participants and other interested parties” sought to meet the RAs’ and MMU’s commitment to publish a document that explicitly defined:

- The scope of MMU oversight and its operations;
- The boundaries between the MMU, RAs, Competition Authorities and Financial Authorities;
- The process for the MMU to initiate an investigation; and
- Guidelines for how the MMU expected to interface with market participants.

The process followed when conducting an investigation is described in the next section.

4.5 AUTHORITY OF THE MMU MANAGER

The MMU Manager, and the Shadow MMU Manager within the CER⁷, has typically acted on behalf of both RAs in determining whether an issue merits a formal regulatory function such as a formal investigation. As part of this work, it is intended to clarify that the MMU Manager will retain the delegated authority to judge matters as warranting a classification of Level 0, 1, 2 or 3 (see below).

The MMU Manager does not require approval to classify and treat cases as Level 0, 1 or 2 (informal inquiry). However should it be the view of the MMU Manager that a matter requires a formal investigation under the classification of Level 3, they will request

⁷ A Shadow MMU Manager exists within the CER. This Shadow Manager will be kept aware at all times of any complaints received, the status of any informal inquiries and will be consulted with before the MMU ask the Oversight Committee to launch a formal investigation.

permission to launch such an investigation/make such a classification from the Oversight Committee.

Parties subject to or with a valid interest in a case or matter will retain the ability to appeal directly to the SEM Committee in writing regarding the operational decisions taken by the MMU Manager.

4.6 COMPLAINT CLASSIFICATIONS

The existing procedures for complaints set out in AIP/SEM/07/511⁸ are proposed to be largely retained, although for clarity it is proposed that formal complaints, once accepted under the conditions, may be classified at Level 0, 1 or 2 (informal inquiry) by the MMU rather than automatically triggering a formal investigation. This could be a reasonable course of action taken when, for example the matter is relevant and worthy of consideration but of a trivial nature.

Should the MMU deem the complaint to warrant a Level 3 classification, the MMU will request approval from the Oversight Committee to launch a formal investigation and potentially the issuance of interim Directions from the SEMC.

⁸ [Scope of the MMU and interaction with Market Participants and other Interested Parties](#)

5 INVESTIGATIONS

5.1 JURISDICTION OF THE MMU WITH RESPECT TO INVESTIGATIONS

The MMU is a Joint Management Unit (JMU) managed by the Oversight Committee under the OC's delegated authority from the SEM Committee. When conducting an inquiry/investigation, the MMU is acting in a delegated information-gathering and analysis role. It has the delegated powers to request information from market participants, but does not have any formal decision making powers. It will consider all the information at hand and report to the Oversight Committee if necessary.

5.2 CURRENT INVESTIGATION PROCESS

At present, a case is initiated either:

- Through a complaint raised to the MMU by a third party; or
- By the MMU.

There are different types of cases upon which the MMU could be expected to carry out an inquiry/investigation:

- Particular events, such as price spikes;
- The behaviour of particular participants, such as:
 - Bids that are inconsistent across generators;
 - Bids by a single generator that are inconsistent across time;
 - Bids that are unusual and appear unrelated to input price fundamentals;
 - and
 - Breaches of market rules.

If an informal inquiry or a formal investigation is launched, the MMU is given the delegated authority to act on behalf of the SEMC and request information from any relevant parties.

5.2.1 INFORMAL INQUIRY

A case is initiated either by the MMU or a third party. The MMU will carry out an initial analysis on each case and decide whether to explore it further. If the case is to be explored further, the MMU will normally initiate an informal inquiry and commence communication with the party it is investigating, asking it to provide any information the MMU feels is relevant. The MMU will analyse this information and decide whether a request to the Oversight Committee for a formal investigation is warranted. The matter is then referred to the OC to determine what further action should be taken.

5.2.2 FORMAL INVESTIGATION

If (following an initial analysis or an informal investigation) the MMU considers that the suspected breach would have a major impact upon the market, it will bring the case to the Oversight Committee and ask the Oversight Committee's permission to launch a formal investigation.

This formal investigation will be carried out by the MMU. The MMU will request information from the party subject to the investigation, as well as relevant third parties. It will analyse this information and submit a report to the Oversight Committee. If following review of this report, the OC consider the party is in breach of licence, the issue then becomes one for the SEM Committee's consideration.

The MMU's report will be forwarded to the party under investigation, asking for a response. Once the party has made this response, the SEMC will come to a final

determination as to whether or not the party is in breach, and what measures should be taken.

5.3 PROPOSED INVESTIGATION PROCESS

Because the MMU is in constant review of all parties within the market, it is proposed that the MMU create a Traffic Light Report containing the following categories:

Table 2: MMU Traffic Light Report

Level	Concern level	Description
0	Low	A simple day to day query on COD, TOD, Availability etc, asking for additional information and explanation for change if any.
1	Medium	A low to medium concern with a more detailed information request query.
2	High	Medium to high concern, a highly specific detailed query for information with an urgent need to process as it may have a significant impact on the market/customers.
3	Investigation	Formal process - see process manual

The MMU Traffic Light Report will be published on the AIP website on a monthly basis. It will make the market aware of cases that are currently being examined by the MMU.

The following information will be contained within the Traffic Light Report:

- The level (0, 1, 2 or 3) that a case is currently at within the Traffic Light Report;
- The generating unit(s) the case relates to; and
- The issue being investigated (e.g. Technical and Commercial Offer Data, availability)

If a party is not under the attention of the MMU, it will not be given a rating and will not appear on the Traffic Light Report.

When a case is raised, the MMU will consider its potential impact and the MMU will decide whether it should be labelled as a Level 0, Level 1 or Level 2 (informal inquiry). If the MMU Manager considers that a formal investigation is necessary, it will present the case to the Oversight Committee and ask them for permission to launch a formal investigation. The informal Inquiry or the formal investigation will be carried out using the methodology described in the process manual (Appendix 1).

It is envisaged that the majority of cases will be initiated as a Level 0. The OC will be kept informed of all cases at Level 0, Level 1 and Level 2, but, as stated above, only the OC can permit the launch of formal investigation (Level 3). Within the MMU Traffic Light Report, specific details of the case will not be published. However, this will not restrict the capacity of the Oversight Committee to publish information following a Formal Investigation.

5.3.1 LEVEL 0, LEVEL 1 AND LEVEL 2 – INFORMAL INQUIRIES

The MMU will carry out an initial analysis of cases at this level in order to build a case and determine whether that case warrants further investigation. This will involve phone-calls, e-mails and other communications between the MMU, the party under investigation, the Market Operator & System Operators and other third parties (e.g. the party that raised the complaint, if one exists). Such communications may involve seeking explanation of unplanned outages and asking for a build-up of Technical and Commercial Offer Data for any particular day or period of days.

If, following an informal Inquiry, the MMU suspects that a party may be in breach of its obligations, the MMU manager will take one or more of the following actions:

- Where the MMU is confident that the behaviour of the party should be changed, it can request that party to alter their behaviour. This will not constitute a direction under licence or legislation;
- Ask the OC to refer the case to the SEMC to issue the party with a binding direction under legislation (the OC will decide whether or not to pass the case to the SEM Committee);
- Where the MMU feels the case needs formal investigation, it will bring the case to the Oversight Committee and ask them for permission to launch a formal investigation. The MMU may, with approval from the OC, seek an interim direction from the SEM Committee.

If, following an informal Inquiry, the MMU is satisfied that no further investigation is necessary, it will close the case and inform the party under suspicion that no breach has been found. The party will be removed from the Traffic Light Report and the Oversight Committee will be given a summary of the inquiry at their next meeting. A short report will be issued to the party that raised the complaint, where one exists.

5.3.2 LEVEL 3 – FORMAL INVESTIGATION

A formal investigation is sanctioned by the Oversight Committee. The MMU will carry out the investigation gathering and processing all relevant information it deems necessary and appropriate under relevant information gathering powers. It will submit a report to the Oversight Committee based on its findings. This process would be expected to last no more than two months and is laid out in detail in the Appendix to this paper.

5.3.3 ENFORCEMENT DECISION

Based on the evidence received from the MMU following its formal investigation, the Oversight Committee shall determine whether the matter warrants referral to the SEMC.

If the matter does not warrant referral to the SEMC, the formal investigation will be closed and the party under the investigation will be notified. A short report stating that the formal investigation has ended and the party was not found to be in breach of the obligations being investigated will be published. The case will be removed from the Traffic Light Report.

If, based on the relevant recommendations received from the MMU, the Oversight Committee determines that the matter does warrant referral to the SEMC, the party will be provided with MMU's report and asked for a response within 20 working days. The SEMC will then consider the response from the party and arrive at a final determination.

This determination will fall into one of three enforcement levels:

Enforcement Level A – No Breach: it is determined that there is no breach of the obligations in relation to the issues being investigated. No actions will be taken and a short statement will be published.

Enforcement Level B – Communication to the Party under Investigation: communication will be sent from the SEMC to the party subject to the investigation asking them to change their behaviour. No punitive measures will be taken against the party. A redacted report will usually be issued to the party that raised the complaint (if one exists) and a brief report that narrates the case and its outcomes may be published.

Enforcement Level C – Direction under Licence: The SEM Committee will issue a formal direction under licence in order to secure compliance. A decision report will be published. Further actions, including punitive measures and referral to relevant authorities may be taken.

Following either an informal inquiry or a formal investigation, the SEM Committee may publish a clarification to the Bidding Code of Practice. Following certain inquiries/investigations, it may also be appropriate to amend the BCOP, using the procedures described therein.

5.4 REMINDER

A complaint can be brought to the attention of the MMU by a third party. Under normal circumstances, these will be entered into the traffic light report as a Level 0, Level 1 or Level 2. If the MMU considers it necessary to launch a formal investigation, the case will be brought to the attention of the OC who will be asked for permission to launch a formal investigation.

It should be noted that the MMU acts on behalf of the Oversight Committee and operates under its full delegated powers. It is therefore expected that any information request from the MMU, whether under an Informal Inquiry (Level 0/Level 1/Level 2) or a Formal Investigation (Level 3) will be responded to in an expedient manner.

5.5 LIASION WITH THE MMU

While the procedures above describe the methodology that the MMU will use when investigating a possible breach of the Bidding Code of Practice and/or Licence Conditions, the MMU would prefer to be made aware in advance of any changes a market participant intends to make to its bidding formulation. This will allow the MMU

to review in detail the particular change and let the market participant know at an early stage whether such an action would be likely to be perceived as a licence breach.

6 PUBLICATION OF INVESTIGATION MATERIAL

The objectives and functions of the SEM Committee in relation to the SEM include the protection of the interests of consumers of electricity in Ireland and Northern Ireland; the need to ensure transparent pricing in the market and the promotion of competition. Transparency is a key undertaking which the SEMC wish to endeavour towards within the MMU investigation process.

The RAs wish to obtain views of respondents and they wish to consult on what aspects of the investigation are published and to whom. They seek opinions on:

- *Should the Traffic Light Report devised by the MMU, signifying when a party is subject to Inquiry/investigation, be made public?*
- *Once a case has been investigated, what level of information is to be published, to whom and in what arena?*

The proposals laid out above and in the Process Manual related to publication of material are:

- Following an informal Inquiry (Level 0/Level 1/Level 2) the MMU will issue communication to the party subject to the Inquiry. Where a case was raised by a third party, that party will be notified of the outcome of the case (in a redacted form). The case will be removed from the Traffic Light Report. A publication may be made that outlines the outcome and closure of the case.
- Following a Formal Investigation (Level 3), the SEM Committee will issue a determination to the party under investigation. (Redacted) notification will be issued to the market on the outcome of the investigation.

7 VIEWS INVITED

Views are invited regarding the proposals described in this paper, as well as the Process Manual (Appendix 1). These should be addressed (preferably via email) to both Kenny Dane at kenny.dane@uregni.gov.uk and Clive Bowers at cbowers@cer.ie by **5pm on 25 February 2011**.

The SEM Committee intends to publish all comments received. Those respondents who would like certain sections of their responses to remain confidential should submit the relevant sections in an appendix marked confidential together with an explanation as to why the section should be treated as confidential.