

Quarterly Report by Market Surveillance 2nd Quarter 2015, 1 April to 30 June

This report gives an update regarding surveillance, regulations and incidents Market Surveillance (MS) has worked on as well as news from MS from the first quarter of 2015. The report aims at increasing the understanding of how MS operates and the interpretation of the Market Conduct Rules (MCR).

News

Market Conduct Rules (MCR)

Nord Pool Spot has changed the Market Conduct Rules (MCR) valid for the Nordic and Baltic countries. The changes are implemented to better adapt to REMIT and the Transparency Regulation and to harmonise with the MCR at N2EX. To prevent double regulation, the prohibition against market manipulation and the prohibition against insider trading are removed from the MCR. MS will still monitor possible breaches of the prohibition against market manipulation and insider trading according to REMIT, and suspected breaches will be reported to the relevant authorities. The updated MCR entered into force 16 June 2015.

Until REMIT and the Transparency Regulation are implemented in Norway, an appendix to the MCR is added to ensure that trading in Norway is subject to similar rules as those set out in the above-mentioned regulations.

The intention is to also remove the disclosure requirements from the MCR, but they will be kept as they are until 1 January 2016 when the NRAs will fully take on the task of monitoring the disclosure requirements. This will allow for a transitional period with MS monitoring the disclosure requirements until 1 January 2016.

Practical Implications

The practical implications are the following:

- MS will continue to monitor the market with respect to insider trading and market manipulation according to REMIT Article 15 rather than a separate set of MCR
- MS will conduct initial investigations in order to detect possible insider trading and market manipulation according to REMIT
- MS will report suspected breaches of REMIT Article 3 and 5 (insider trading and market manipulation) to the relevant National Regulatory Authority (NRA), who will have the authority to investigate and give sanctions based on national laws
- MS will continue to monitor the disclosure requirements in the Market Conduct Rules until 1 January 2016. More information regarding the changes planned from 1 January 2016 will be given in due course.

The exchange information with links to the new MCR and a document explaining the changes can be found [here](#):

<http://www.nordpoolspot.com/message-center-container/nordicbaltic/exchange-message-list/2015/q2/no.-232015---changes-in-nord-pool-spots-rulebook-from-16-june-2015/>

Courses and seminars

Nord Pool Spot offers tailored in-house training for companies who wish to understand the MCR, REMIT and how to use the UMM (Urgent Market Message) system. Our expertise and long experience in the business will enable participants to understand the regulation, how to comply with the MCR and REMIT and how to efficiently use the UMM system. More information can be found on the Nord Pool Spot website.

During the autumn, MS plans to have a one-day course for all members. The full content of the course, time and date will be communicated in due time before the course. The intention is to increase the awareness and help members to understand REMIT and practical implications of the regulation. If you have any wishes or input on the content of the one-day course, do not hesitate to contact us.

Interpretation of REMIT – final customers with a consumption capacity > 600 GWh/year

There has been some uncertainties regarding the interpretation on REMIT when it comes to final customers with a consumption capacity of more than 600 GWh/year. According to REMIT, contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products, unless the final customer has a consumption capacity of 600 GWh per year or more. Nord Pool Spot is of the opinion that contracts traded at an organised market shall always be considered to be wholesale energy products, as these contracts are not contracts for the supply and distribution of electricity to final customers. However, there has been some uncertainty related to the interpretation of REMIT in this area.

Nord Pool Spot has therefore distributed a memo to ACER and the NRAs explaining our interpretation of REMIT, and in particular the consequences of allowing some final customers to trade at organised markets without the transactions being considered transactions in wholesale energy products. Such an interpretation may imply that the transactions will not be covered by the prohibition of insider trading and market manipulation.

The uncertainty whether small customers are subject to the rules set out in REMIT or not, and whether they need to report orders and transactions or not makes it challenging for small customers to prepare for the new regime. Nord Pool Spot has therefore urged that a conclusion has to come as soon as possible.

REMIT – cases sent to authorities

The obligation of Nord Pool Spot as set out in REMIT article 15, is as follows:

“Any person professionally arranging transactions in wholesale energy products who reasonably suspects that a transaction might breach Article 3 or 5 shall notify the national regulatory authority without further delay.

Persons professionally arranging transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to identify breaches of Article 3 or 5.”

Nord Pool Spot is obliged to have routines to identify breaches of market manipulation and insider trading, and report this to the national regulator. MS has had as a principle that when a case is reported to the authorities, we inform the member(s) involved. However, in some of the countries Nord Pool Spot operates in, there is a law against informing the participant involved that a case has been forwarded. Nord Pool Spot is in the process of changing the rulebook for the Nordic and Baltic area so that in the future there will be no obligation for Nord Pool Spot to report to the participant in question if a case is forwarded to the NRA. The change has been presented to the Customer Advisory Board, and will be implemented during the autumn. At N2EX, there is not a need to make a similar change, as this is already covered under the current rulebook.

Cooperation with NRAs

The Regulatory Council sub-group regarding REMIT issues had one meeting during the second quarter. ACER, Ofgem and almost all the Nordic and Baltic regulators participated in the meeting. We believe this cooperation helps to achieve effective monitoring and equal treatment of Nord Pool Spot members regarding considerations on potential breaches of REMIT. The next meeting will be held during September.

Reduction of production due to market conditions

There have been several inquiries after a reduction in the nuclear power production due to market conditions. It is therefore natural for us to comment on what kind of considerations that are necessary in relation to such reductions.

In general, it will be problematic if a market participant withholds capacity from the market with the intention of pushing up prices, while it will normally not be any problems related to placing price dependent orders in the day-ahead market reflecting marginal production costs.

Actual production is considered to be part of the market participant's own plans and strategies for trading, and is therefore not to be considered inside information. It is common that production output at power plants are dependent on market prices, and nuclear power producers are subject to the same rules as other production technologies. However, if the unit is unavailable to the market, it may be considered inside information.

The considerations discussed above represent MS' interpretation only, and it cannot be ruled out that National Regulatory Authorities may have a different interpretation.

Investigations and findings

Cases sent to authorities

According to article 15 of REMIT, MS is obliged to inform the NRA should there be any suspected breach of the prohibition against market manipulation or the prohibition of insider trading as set out in REMIT. According to the market place licence from Norwegian regulator, NVE, Nord Pool Spot is also obliged to report possible breaches of other laws and regulations affecting the Nord Pool Spot market. To ensure an efficient, transparent and well-functioning market, MS also

reports possible breaches on our own initiative, for example when we receive input from participants on specific incidents.

MS has sent three cases to the authorities during the second quarter of 2015. Two cases involved erroneous orders in Elspot and Elbas, and the other case was forwarded on the background of suspicious behaviour when trading in Elbas.

Breaches of the Market Conduct Rules

There have been 7 breaches of the MCR which have been concluded on during the last quarter and which have resulted in non-public warnings. All the cases were related to the disclosure requirements. In these cases MS has concluded that the severity of the breaches could not justify a public warning or violation charge. However, these breaches of the MCR can be taken into account should there be more breaches of the MCR in the future.

Input from market participants

MS has received 8 tip-offs from market participants during the period from 1 April 2015 to 30 June 2015. It is crucial for MS to receive input from market participants. We follow up on every tip-off we receive. We investigate the incident and if we suspect there can be a potential breach of REMIT or other rules or regulations we report to relevant authorities. The information received is described below:

- MS has received two tips regarding a mismatch between information published in UMM and information given in media on two different occasions. MS investigated the cases, and found no breach of the MCR.
- MS received a complaint regarding capacity given in Elbas between two areas. MS is still investigating the matter.
- MS received three questions regarding reduction of nuclear power production, and information published to the market. MS is looking into the matter.
- MS received input regarding information subject to the disclosure requirements that was published through another source before it was published in the UMM system. MS is looking into the matter.
- MS received input regarding suspicious trading behaviour in Elbas. MS has investigated the incident and sent the case to relevant national regulatory authorities according to REMIT Article 15.

Statistics

The table below shows a summary of statistics for 2013, 2014, Q1 and Q2 2015.

Investigations from MS	2013	2014	1 st quarter 2015	2 nd quarter 2015
Number of written investigations initiated in the period	99	77	14	18
Number of statements of breach/non-public warnings issued in the period	46	35	13	7
Number of written warnings	0	0	0	0
Number of violation charges	0	0	0	0
Number of cases sent to authorities	6	12	2	3
Number of tip-offs received from members	28	33	9	8

Concluded breaches	2013	2014	1 st quarter 2015	2 nd quarter 2015
Disclosure requirements	44	35	13	7
Market manipulation	0	0	0	0
Good Business Conduct	1	0	0	0
Insider trading	2	0	0	0

The numbers may be updated from previous reports

How to contact MS

If you have any question connected to Market Conduct Rules, REMIT or other issues, contact MS

- per e-mail: market.surveillance@npspot.com
- per telephone: +47 67 10 91 35
- if you have any immediate questions outside office hours, contact the trading desk at +47 67 10 91 10