

## Changes in the Market Conduct Rules – Background and explanations

Nord Pool Spot (NPS) has revised the Market Conduct Rules (MCR) with effect from 27 May 2013. There was a general need for an update of the rules, and it has been necessary to make a number of changes in order to align the MCR with the new EU regulation on wholesale energy market integrity and transparency (REMIT).

The purpose of this document is to explain the background for these changes. There has been made a number of changes in the wording in order to improve the MCR, and to align these with the market conduct rules of N2EX. However, the focus below will primarily be on the material changes in the content of REMIT, and hence, not all changes in the MCR are described here.

The rules relating to the prohibition of insider trading and market manipulation have been updated to align them with the equivalent provisions in REMIT, and must be interpreted in the light of REMIT. Including these rules in the MCR ensures that the largest possible extent of EU market participants are subject to the same rights and prohibitions prior to REMIT being implemented in Norway.

### **MCR Section 1 - Introduction**

In Section 1.3 it is specified that Market Surveillance (MS) has the authority to act on behalf of NPS in all matters regulated by the MCR, with some exceptions related to disciplinary actions. This is a clarification, and does not represent any material change

### **MCR Section 2 - Interpretation**

A new Section 2 clarifies important principles for interpreting the MCR. This is primarily a clarification, and is not intended to imply any significant change in how the MCR are interpreted. The section contains definitions of inside information and market manipulation, and the changes to these will be explained in the sections regarding the prohibition of market manipulation and the prohibition of insider trading.

### **MCR Section 3 - Good Business Conduct**

It is specified that each Member shall ensure that any Orders issued by it reflect a genuine purchase or sales interest, and that all Transactions to which it is a party are genuine. This requirement partly overlaps with the prohibition of market manipulation, but it is wider in the sense that Orders and Transactions that do not send a false or misleading signal or do not secure prices at an artificial level may still be a breach of this requirement. The background for this requirement is that it is important that Members trading on the Physical Markets have sufficient routines to ensure the quality of their Orders. Incidents that may be harmful to the market may

yet fall outside the prohibition of market manipulation, and it may be important for Nord Pool Spot to be able to follow up such incidents with a Member in order to ensure the integrity of the market.

Section 3.3 specifies that a Member may not in any way improperly influence the price or price structure in the Physical Markets, or otherwise disturb other Members' access to or participation in the market.

Examples of incidents that may disturb other Member's access to the market could be if automated trading or technical setup is done in a way that has an effect of disturbing other Members' access to or participation in the market. An example of an incident that could improperly influence the price could be if a TSO gives a capacity to the ELSPOT market that does not reflect the actual physical situation.

#### **MCR Section 4 – Prohibition of insider trading and duty of confidentiality**

##### Definition of inside information

The definition of inside information is changed in order to align it with the definition found in REMIT. The change means that for information to represent inside information, it must be likely to have a significant effect on prices if made public, which has not been the case previously. In this respect, the new definition is narrower than the one that was in place previously. On the other hand, the requirement that only information that Members would expect to receive in accordance with accepted market practice can be inside information has now been removed. This suggests a widening of the definition of inside information.

In NPS's view this widening will not have a major impact on the Nordic and Baltic market since all information relating to the Nordic and Baltic market that is likely to have a significant effect on prices is already something that the market would expect to receive according to the disclosure requirements. However, any information that is not relating to the Nordic and Baltic market that is likely to have a significant impact on prices will be defined as inside information. This can especially be relevant for the ELBAS market in Germany.

##### Prohibition of insider trading

The prohibition of insider trading has been changed to align it with REMIT. This also implies that similar exemptions from the prohibition of insider trading are implemented in the MCR as those implemented in REMIT.

The current exemption relating to Chinese walls is deleted, as NPS cannot have an exemption that does not exist in REMIT. However, Chinese walls may still be relevant as they can be important in documenting that a Member has not used inside information.

Section 4.2(b) specifies that anyone using the exemption must notify NPS without delay. NPS is of the opinion that such information should be given as soon as possible, and normally at least within 24 hours from when the transaction was entered into.

### **MCR Section 5 – Disclosure requirements**

The obligation for a client representative to give information on behalf of its clients is removed in order to align the MCR with REMIT. However, client representatives may still be covered by the disclosure requirements as the client representative may be responsible for the operational matters of the Client according to Section 5.1 of the MCR.

It is also specified that information that is likely to significantly affect the price of one or more derivatives based on Products if made public shall fall under the disclosure requirements. Nord Pool Spot believes that it is important that information relating to the derivatives markets is published via the UMM System, and in order to allow this it is essential that Nord Pool Spot is able to require the disclosure of such information.

The obligation to disclose information was previously related to incidents concerning more than 100 MW. However, this has now been changed to 100 MW or more, meaning that also incidents of exactly 100 MW have to be reported. This is done in order to align the MCR with the REMIT guidelines issued by ACER.

According to Section 5.2 (a) any outage, limitation, expansion or dismantling of capacity of 100 MW or more for one Generation Unit, Consumption Unit, or 100 MW or more for one Production Unit with installed capacity of 200 MW or more, shall be disclosed for the current year and three (3) calendar years forward, including changes of such plans. Previously, there has been a requirement to publish such information six (6) weeks forward, or three (3) years forward if the information relates to more than 400 MW. However, the upcoming transparency regulation requires that such information is disclosed three (3) years forward, and in order not to be in conflict with these guidelines it is necessary to reflect this requirement in the MCR. Nord Pool Spot has chosen not to implement the exact wording found in the transparency guidelines, but has aimed to ensure that the MCR covers at least the same information as the transparency regulation in this particular area. This implies that while previously, there was a requirement to publish information relating to more than 200 MW for one Production unit (station) it is now a requirement to publish incidents relating 100 MW or more for Production units with an installed capacity of 200 MW or more.

New sections 5.2 (b) and (c) have been implemented in order to address any outage, limitation, expansion or dismantling of capacity in the transmission grid that reduced cross zonal capacity or power feed-in and/or consumption by 100 MW or more. These sections are intended as a clarification and do not represent any significant

change compared to the practice that has already been in place with the old Market Conduct Rules.

An obligation to disclose information regarding erroneous or missing Orders in the Elspot market of more than 200 MW has been introduced. Members were previously obliged to disclose such information if it would be likely to significantly affect prices if made public. The new rule is more specific, and is intended to make it easier for Members to follow the disclosure requirements. The threshold of 200 MW is chosen as this corresponds with the threshold for giving information relating to Production Units. However, Members may also be obliged to disclose information regarding erroneous or missing Orders of less than 200 MW if such information is likely to significantly affect prices of one or more Products. This may be the case for smaller bidding areas or in cases where the power balance is strained. However, under normal circumstances, it will not be necessary to give information regarding erroneous or missing Orders of less than 200 MW.

The exemptions from the disclosure requirements relating to information that a client representative receives in this capacity regarding its Client is removed from the MCR. The same applies for the exemption relating to information regarding another Member that a Member receives from a contracting party when contemplating or entering into a transaction outside NPS. This brings the MCR in line with REMIT, but does not mean that Members will be required to disclose such information in the future.

### **MCR Section 6 – Prohibition of Market Manipulation**

The prohibition of market manipulation has been changed in order to align it with REMIT. Attempting to manipulate the market, as well as actual manipulation, is therefore also prohibited.

There is an exemption if the person who entered into the transaction or issued the Order establishes that his reasons for doing so are legitimate and that the transaction or order conforms to accepted market practice. In order to be accepted market practice it is sufficient that this is a practice that it is considered accepted market practice by NPS. This may be considered on a case by case basis, or may be published by NPS. Previously, certain behaviour could only be considered to be accepted market practice if this was specified in the MCR.

Finally, Enclosure 1 to the MCR is deleted, and the whole regulation on market manipulation is included in the MCR. This is due to the reduced number of words caused by, among other things, that the specific prohibitions are deleted.

### **MCR Section 7 – Duty to provide information upon request**

In order to ensure close cooperation with other market places, information may be shared with the market surveillance teams of other relevant market places upon written agreement with the relevant market place which provides any confidential information disclosed in this way may only be used for the purposes of market surveillance. In addition, NPS may disclose information to relevant regulatory bodies, e.g. energy regulators and competition authorities of relevant countries and in the EU, including ACER, even if such information is not required according to applicable law.

### **MCR Section 8 – Publication of Information Relating to Investigations**

NPS can publish the fact that it has initiated an investigation of a named Member if such publication is necessary to sustain the integrity of the relevant market. In such cases the Member whose identity has been made public may require NPS to disclose the results of the investigation. Publishing an investigation of a named Member in this way will primarily be relevant to investigations where the market/Members are aware that an incident has occurred and where the name of the Member is already known. In such cases it may be necessary for the market to be given this information and for it to be made clear that the incident is being investigated. If the name of the Member is not already known it will in most cases not be necessary to publish the name of the Member.

### **MCR Section 9 – Disciplinary Actions**

A new disciplinary action of “non-public warning” has been introduced as a formal disciplinary action. Currently MS issues written “statements of breach” to Members committing smaller breaches of the MCR. MS has the authority to issue such non-public warnings without conferring with the board of directors of NPS. In addition, the ability to issue oral warnings has been removed as this was not used in practice, and MS are of the opinion that any disciplinary action should be notified in writing. In order to avoid confusion, what is today called a “written warning” will be renamed “public warning”.

### **MCR Section 10 – Procedures for Investigation of Breaches and Disciplinary Actions**

It is specified that any recommendation for a daily charge shall follow the same disciplinary procedures as is the case for a public warning or a violation charge.

In addition, the board of directors of Nord Pool Spot may delegate the power to take disciplinary action against any Member to the CEO of Nord Pool Spot.

### **Definitions**

Along with the update of MCR certain updates of the definitions (trading appendix 1) have been made. A number of new definitions have been included, in particular new definitions that are identical to similar definitions found in ERGEG guidelines for



Fundamental Electricity Data Transparency as follows: Consumption Unit, Generation Unit and Production Unit.