

REMIT Quarterly

ACER guidance on the application of REMIT and transaction reporting

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Spanish NRA sanctions two market participants for illegally marking the close on the gas markets

Article 5 of REMIT prohibits any engagement in, or any attempt to engage in, market manipulation on wholesale energy markets.

In November 2018, the Spanish national regulatory authority (NRA) (CNMC) adopted and published two Decisions. The Decisions imposed fines of EUR 120,000 to Multienergia Verde, S.L.U. ('Multienergia') and EUR 80,000 to Galp Natural, S.A. ('Galp') for marking the close, which constitutes market manipulation and attempted market manipulation prohibited by Article 5 of REMIT.

The two Decisions specify that (i) Multienergia marked the close with artificial prices on several products and indexes of the Spanish wholesale gas market (MIBGAS - Mercado Ibérico del Gas) from 15 to 20 January 2017, and that (ii) Galp marked the close with an artificial price on the day-ahead product in the same market on 17 January 2017.

CNMC concluded that Multienergia, a traditional buyer of gas, executed over a period of six consecutive days several sales of gas at the closing of the market. These sales were of reduced volume (many times with the minimum volume size, i.e. 1 MWh/day) and at prices very different (lower) from those of other transactions in the market. Using this behaviour on the illiquid market, Multienergia managed to artificially fix 16 prices/benchmarks, including the intraday auction price, the last daily price (for intraday, D+2, and D+3), and the daily reference price (for D+2 and D+3). For example, Multienergia set the last daily price in the intraday market at EUR 26, EUR 30 and EUR 1, respectively, on three of the days when the over-the-counter prices for the same delivery were ranging between EUR 36 and EUR 40.

In addition, CNMC concluded that Multienergia tried to fix the price of one wholesale energy product on 17 January 2017 and four additional prices/benchmarks on 20 January 2017 unsuccessfully.

Multienergia claimed its intention was not to trade in the wholesale energy products, but to give the market a certain price signal as retaliation for observed movements on the price that were caused by other market participants. Therefore, CNMC concluded the market participant committed its behaviour intentionally, as it was aware of the anomalous nature of its orders aiming to decrease prices on the MIBGAS.

Regarding the behaviour of Galp on 17 January 2017, CNMC concluded that this market participant, a typical net seller of gas in MIBGAS, executed two minimum volume transactions of gas (as a buyer) of the day-ahead product. These transactions were executed at the close of the market and at prices very different (higher) from those prevailing in previous transactions. The transactions were executed at a price level 7% higher (i.e. 38.95 EUR/MWh) than the one at which the same market participant had sold natural gas just a few instances before in the same market. This price was also significantly higher than the prices prevailing on the over-the-counter market. Therefore, CNMC concluded that the market participant fixed the last daily price at an artificial level and thus breached Article 5 of REMIT.

Multienergia has appealed the Decision to Audiencia Nacional. Galp has not appealed the Decision and has paid the fine.

Section 6 of the ACER Guidance on the application of REMIT (available [here](#)) provides examples of different types of practices that can constitute market manipulation under REMIT. In particular, it specifies that marking the close 'involves deliberately buying or selling wholesale energy products at the close of the market in an effort to alter the closing price of the wholesale energy product. This practice may take place on any individual trading day, but is particularly associated with dates such as future/option expiry dates or quarterly/annual portfolio or index reference/valuation points.'

CNMC Decisions are available (in Spanish) here:

- Multienergia: <https://www.cnmc.es/expedientes/sncde05417>
- Galp: <https://www.cnmc.es/expedientes/sncde10617>

First sanctions imposed under REMIT in the German gas market

Article 5 of REMIT prohibits any engagement in, or any attempt to engage in, market manipulation on wholesale energy markets.

This past February, the German NRA for energy, Bundesnetzagentur (BNetzA), imposed a fine of EUR 150,000 on Uniper Global Commodities SE ('Uniper'), while two traders working for the company received fines of EUR 1,500 and EUR 2,000, respectively.

In its decision, BNetzA held that in October 2016, two traders of Uniper engaged in market manipulation on the German within-day gas market, which affected hourly products for delivery at the locational points Elten and Vreden (at the Germany-Netherlands border), breaching the prohibition under Article 5 of REMIT¹. Uniper was held accountable for negligent violation of its supervisory duty.

The affected market is mostly used by the market area manager (NetConnect Germany - NCG) to cover its balancing needs, and has few participants as well as low levels of liquidity.

At the time of the events, it was customary for NCG to inform market participants in advance, via its website, about its hourly balancing requirements. This information allowed all market participants to know on which side of the market NCG would be placing orders. Moreover, based on the past activity of NCG on the market, market participants could predict the point in time when NCG would enter its order(s) very accurately.

BNetzA's decision established that, based on this knowledge, in six instances during October 2016, two traders from Uniper introduced orders on both sides of the order book in a way that prevented other market participants from entering into transactions with NCG.

The illegal behaviour of the traders typically involved the following steps:

1. Depending on NCG's declared balancing needs and very shortly before NCG became active on the market, Uniper's traders placed a high volume buy/sell order to serve NCG's needs.
2. Almost at the same time (within a second), Uniper's traders placed an order on the other side of the order book displaying a low volume at a price exactly one price tick lower/higher than the order placed at step 1. This order was typically an iceberg order² with a hidden quantity.

3. The combination of steps 1 and 2 ensured that NCG's order(s) matched the order placed by Uniper's traders at step 1. Indeed, if another market participant tried to place a better order, it was automatically matched with the iceberg order placed at step 2, and this continued until the hidden quantities of the iceberg order were depleted or the order was withdrawn (by the time this happened, NCG's order had already been executed)³.
4. In some of the examined instances, Uniper's traders withdrew the remaining volume of the iceberg order from the market as soon as Uniper traded with NCG.

According to BNetzA, the described behaviour foreclosed the market by blocking other market participants from placing a better order for long enough to prevent them from entering into transactions with NCG.

Therefore, NCG had no visibility over the orders that the other market participants were trying to place at better prices and could only trade with Uniper. Because the behaviour wrongly signalled to NCG that Uniper trader's orders were the best possible trading option at the time, BNetzA concluded that the behaviour gave false or misleading signals to NCG as to the supply and demand of the product at stake.

The described behaviour amounts to a breach of Article 5 of REMIT and constitutes market manipulation as defined in Article 2(2)(a)(i) of REMIT: '*entering into any transaction or issuing any order to trade in wholesale energy products which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products*'.

As for Uniper, BNetzA held it accountable for violating its duty of supervision by not implementing adequate control measures, especially regarding new trading strategies. Under German law, Uniper had an obligation to have suitable and necessary means of supervision in place to prevent manipulative trading strategies, or at least to make them more difficult to practice.

BNetzA's sanction decisions have not been appealed and are thus final.

Section 6 of the ACER Guidance (available [here](#)) provides examples of different types of practices that can constitute market manipulation under REMIT.

¹ To consult BNetzA's press release, please see: https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2019/20190220_Marktmanipulation.html (EN).

² Iceberg orders are orders that include a hidden volume that only progressively becomes visible once the visible part of the order is matched. Once the visible part of the order is aggressed, another part of the order with a similar volume appears on the order book, until all hidden quantity is depleted or until the remaining quantity of the order is withdrawn from the market. Iceberg orders are common and legitimate trading instruments available at many venues.

³ Emphasis is put on the fact that, in the present case, it is the combination of the steps 1 and 2 that constituted the manipulative practice. The mere use of iceberg orders is in itself not questioned.

REMIT documentation updates

Update of the ACER guidance

On 17 July, the Agency published an updated version of the 4th edition of the Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT).

The changes introduced in Chapter 7 covered sections 7.1 and 7.2 on the disclosure of inside information in an effective manner. The purpose of these changes was to provide a more detailed guidance on the disclosure mechanisms to be used for the publication of inside information. In particular, the Agency specified that, in order to achieve effective disclosure according to Article 4 of REMIT, the information should be disclosed using an inside information platform or a transparency platform.

The proposed additions introduced in Chapter 8, which relate to section 8.2.3 on the exemptions from the prohibition of insider trading, were intended to provide a more precise interpretation of Article 3.4(b) of REMIT.

In order to remain consistent with the ACER Guidance and in order to determine a transition period for compliance with the updated requirements of the ACER Guidance, the relevant sections of the Manual of Procedures (MoP) on transaction data, fundamental data and inside information reporting and of the Frequently Asked Questions (FAQs) on REMIT fundamental data and inside information collection were also updated accordingly.

Public Consultation on the definition of inside information

In July, the Agency also published a Public Consultation on the definition of inside information, and invited all interested parties to submit their feedback by 16 September 2019.

The purpose of the Public Consultation was to collect information about the market participants' experiences and approaches regarding their assessments of inside information and their compliance with the obligation to disclose inside information in an effective and timely manner. The Agency will use the input provided by stakeholders to enhance its guidance on the disclosure of inside information according to REMIT, including guidance on thresholds for the definition of inside information and the disclosure of inside information.

Third Open Letter on REMIT data quality

Following its first two Open Letters on REMIT data quality that were published over the past two years, the Agency published the 3rd Open Letter on REMIT data quality on 26 July.

REMIT Open Letters are intended to promote cooperation between the Agency and reporting parties by informing them of the Agency's regular assessments of the completeness, accuracy and timely submission of the data received under REMIT. Using the findings from its assessments, the Agency aims to help its stakeholders ensure that their data reporting is consistent with the REMIT reporting requirements.

The Agency remains committed to ensuring a high quality of data, and will continue to allocate specialist supervisory resources to this endeavour in order to advance its market monitoring capabilities further.

More than 200 REMIT breach cases under review

The Agency had 202 REMIT cases under review at the end of Q3 2019. 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.

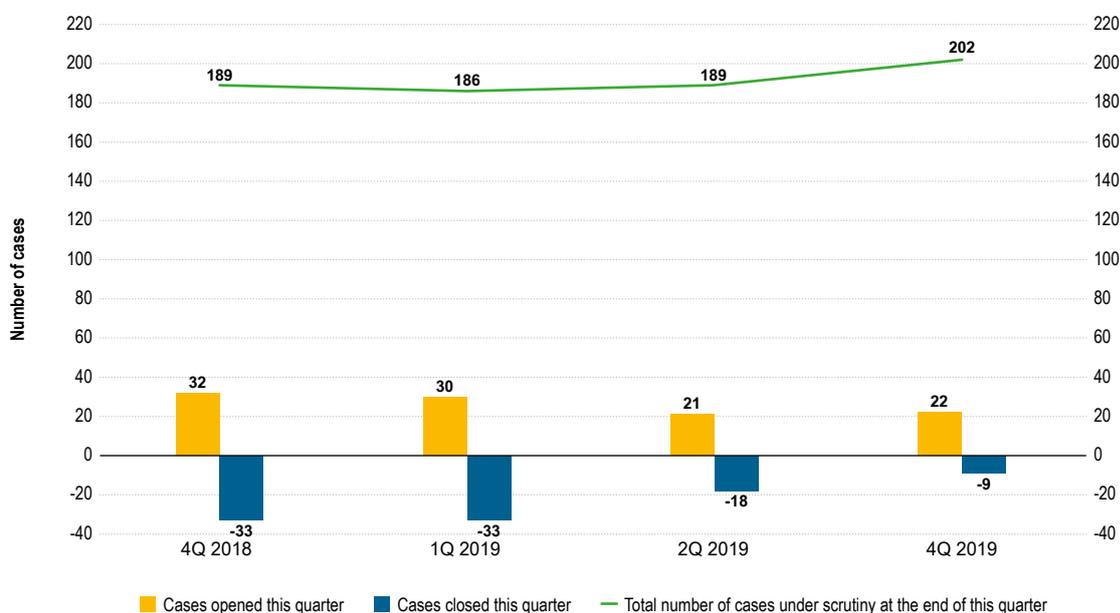
A case could, after a thorough investigation by the relevant national authority, lead to sanctions. A case could also be closed without sanctions, for instance if the suspicions were unfounded.

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

Table 1 lists the cases where a Decision imposing a sanction was issued by the relevant national authority in the last four quarters. Some of these Decisions are currently under appeal. An overview of all market abuse Decisions (breaches of Articles 3 and 5) imposing sanctions can be found at <https://www.acer.europa.eu/en/remit/Pages/Overview-of-the-sanction-decisions.aspx>.

The Agency is responsible for the monitoring of wholesale energy markets and aims to ensure that national regulatory authorities carry out their tasks in a coordinated and consistent way, but it is not, however, responsible for the investigation of potential breaches of REMIT.

Figure 1: Potential REMIT Breach Cases - Quarterly Statistics



Source: Case Management Tool (CMT).

Table 1 - Overview of market abuse Decisions (breaches of Articles 3 and 5) imposing sanctions (Last 4 quarters)

Case ID (ACER ID)	Decision date	NRA, Member State	Market Participant	Type of REMIT breach	Fine	Status	Source
N34/2019	September 2019	MEKH (HU)	MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság	Article 5	HUF 1,000,000 (approx. 3,000 €)	Final	Link
N24/2017	05 September 2019	OFGEM (UK)	Engie Global Markets	Article 5	£ 2,128,236.00 (approx. 2,393,427.80 €)	Final	Link
CP7/2016	20 February 2019	BNetzA (DE)	Uniper Global Commodities SE + Two traders	Article 5	150,000 € and fines of 1,500 € and 2,000 € for each trader respectively.	Final	Link
N25/2015	21 December 2018	Prosecutor/DUR (DK)	Neas Energy A/S	Article 5	153,000 DKK (approx. 20,400 €)*	Final	Link
N55/2017	28 November 2018	CNMC (ES)	Multienergía Verde, S.L.U.	Article 5	120,000 €	Under appeal	Link
N63/2017	28 November 2018	CNMC (ES)	Galp Gas Natural, S.A.	Article 5	80,000 €	Final	Link
N16/2015	30 October 2018	Prosecutor/DUR (DK)	Energi Danmark A/S	Article 5	DKK 1,104,000 (approx. 147,000 €)*	Final	Link
N8/2014	05 October 2018	CRE (FR)	VITOL S.A.	Article 5	5,000,000 €	Under appeal	Link

Note: Article 18 of REMIT establishes that the rules on penalties for breaches of Article 3 and 5 of REMIT are established by the Member States. The implementation regime is therefore different across Member States and some breaches of REMIT may be sanctioned under national provisions. Please consult the sources for the status of the proceedings and more information on the Decisions. The sources have been consulted until the end of this quarter.

* This amount includes both the (i) fine and (ii) confiscated profit.