
Capacity Market Advisory Group (CMAG) Analysis

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| Date | 25th July 2024 | Classification | Public |
| CP or Subject | CP379 | Document version | Draft |

Objectives

- To review legal text options for CP379
 - To clarify existing data sharing provisions in the CM Rules and the Regulations
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Overview

Key Findings

- Regulation 65 sets out Protected Information, relating to any individual or business, provided to any Administrative Party (DESNZ, ofgem, DB, CMSB) and any of their suppliers, in the course of those parties carrying out capacity market functions [The Energy Act 2013, Part 2 EMR, Chapter 3 CM = sections 27-43].
- Those parties can only use that Protected Information for carrying out capacity market functions, so any other use or disclosure would be prohibited (although not specifically so).
- The Rules then refer to specific subsets of that data, i.e. Capacity Market Confidential Information (CMCI), Applicant Confidential Information (ACI) and bidding information, used in particular circumstances.
- The Regulations and Rules also set out when some of that information can be made public by the Administrative Parties, e.g. through Regulation 47 The non-payment register and in the CM Rules Chapter 7 Capacity Market Register.
- The original concerns raised under this CP379 relate to Exhibit C Certificate of Conduct, which at section (e) concerns itself with Applicants, any member of their Group, or person to whom CMCI has been disclosed, not disclosing CMCI except in specific circumstances – where DESNZ and CMSB are not specifically listed.
- However, we can see that Exhibit C (e)(i)(aa) provides an exemption for the disclosure of CMCI where the disclosure is in accordance with any requirement under “an enactment” which includes the CM Regulations and hence is covered by Regulation 65. This Regulation allows disclosure of Protected Information (which includes CMCI) to Administrative Parties, including DESNZ and CMSB.
- Consequently it is not clear that the suggested legal text for CP379 is required to address the sharing of CMCI with DESNZ and CMSB as this is already covered by Regulation 65.
- Meanwhile, the alternative legal text Options A to C, all appear to limit the definition of CMCI to ‘bidding information’ as described in 5.13.1(e). This is specifically at odds with the broader intent of Exhibit C.

Questions for consideration by CMAG

- Do CMAG Members believe that the CP379 legal text addresses a valid problem?
- Do CMAG Members believe that the current restrictions on the disclosure of Capacity Market Confidential Information (CMCI) imposed under Exhibit C(e) are too onerous?

Analysis

1. CP379

1.1 Issue

- 1.1.1 Exhibit C Certificate of Conduct, section (e) allowable Capacity Market Confidential Information (CMCI) disclosure parties, omits CMSB and DESNZ.
- 1.1.2 The original proposed solution was simply to add DESNZ and CMSB to Exhibit C, but this was not included in the proposed legal text below.
- 1.1.3 However, our analysis has shown that under Exhibit C(e)(i)(aa) the wording 'by enactment' will, under Regulations 63/65, already include Administrative Parties (including SoS/DESNZ and CMSB/ESC) and so.

2. Proposed legal text

2.1 Option A

- 2.1.1 Limit Capacity Market Confidential Information (CMCI) in 1.2 Definitions to only relate to 5.13.1(e).

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|---|---|
| Capacity Market Confidential Information | means all data and other information of whatever nature and in whatever form, including but not limited to written, oral, electronic and in a visual or machine-readable form (including but not limited to CD-ROM, magnetic and digital form) relating to matters set out in 5.13.1(e) either: (a) relating to the affairs of an Applicant or CMU to the extent relevant to its participation in the capacity market or its obligations under the Regulations or the Rules; or (b) supplied to an Applicant Related Party under or in accordance with the Rules, the Regulations or the Auction Guidelines |
|---|---|

- 2.1.2 This limits CMCI to only being "any information relating to any Continuing Bid or Exit Bid made by an Applicant with regard to a Bidding CMU" and relates purely to the prohibited activity of sharing such bidding information in order to manipulate the Clearing Price for an Auction.
- 2.1.3 This is a much smaller 'bidding subset' of what Applicant's would consider to be their 'confidential information' that has been submitted to EMR-DB or CMSB and covered under Reg 65 Protected Information provided to Administrative Parties (and their suppliers) in carrying out capacity market functions.
- 2.1.4 This does not seem to address the issue described in the CP379 proposal form which states that the CM Rules may require CM Participants to share CMCI with CMSB or DESNZ.

2.2 Option B

- 2.2.1 'Move' Capacity Market Confidential Information from 1.2 Definitions to only relate to 5.13.1(e).

| | |
|--|---|
| Capacity Market Confidential Information | means all data and other information of whatever nature and in whatever form, including but not limited to written, oral, electronic and in a visual or machine-readable form (including but not limited to CD-ROM, magnetic and digital form) either: (a) relating to the affairs of an Applicant or CMU to the extent relevant to its participation in the capacity market or its obligations under the Regulations or the Rules; or (b) supplied to an Applicant Related Party under or in accordance with the Rules, the Regulations or the Auction Guidelines |
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5.13 Prohibition on other unreasonable business methods

5.13.1(e) disclosing, or attempting to disclose, or inciting another person to disclose, any information relating to any Continuing Bid or Exit Bid made by an Applicant with regard to a Bidding CMU

(“Capacity Market Confidential Information”), whether directly or indirectly, to any person, except where the disclosure is:...

- 2.2.2 As with Option A, this limits CMCI to only being “any information relating to any Continuing Bid or Exit Bid made by an Applicant with regard to a Bidding CMU” and relates purely to the prohibited activity of sharing such bidding information in order to manipulate the Clearing Price for an Auction.
- 2.2.3 So, as with Option A, this is a much smaller ‘bidding subset’ of what Applicant’s would consider to be their ‘confidential information’ that has been submitted to DB or CMSB and covered under Regulation 65 Protected Information provided to Administrative Parties (and their suppliers) in carrying out capacity market functions.
- 2.2.4 This does not seem to address the issue described in the CP379 proposal form which states that the CM Rules may require CM Participants to share CMCI with CMSB or DESNZ.
- 2.3 **Option C**
- 2.3.1 Limit Capacity Market Confidential Information in 1.2 Definitions to only relate to 5.13.1(e), by moving key text from there into the Definition and cross referencing CMCI in 5.13.1(e).

| | |
|---|---|
| Capacity Market Confidential Information | means any information relating to any Continuing Bid or Exit Bid made by an Applicant with regard to a Bidding CMU all data and other information of whatever nature and in whatever form, including but not limited to written, oral, electronic and in a visual or machine- readable form (including but not limited to CD-ROM, magnetic and digital form) either: (a) relating to the affairs of an Applicant or CMU to the extent relevant to its participation in the capacity market or its obligations under the Regulations or the Rules; or (b) supplied to an Applicant Related Party under or in accordance with the Rules, the Regulations or the Auction Guidelines |
|---|---|

5.13 Prohibition on other unreasonable business methods

5.13.1(e) disclosing, or attempting to disclose, or inciting another person to disclose, any **Capacity Market Confidential Information** ~~information relating to any Continuing Bid or Exit Bid made by an Applicant with regard to a Bidding CMU~~, whether directly or indirectly, to any person, except where the disclosure is:...

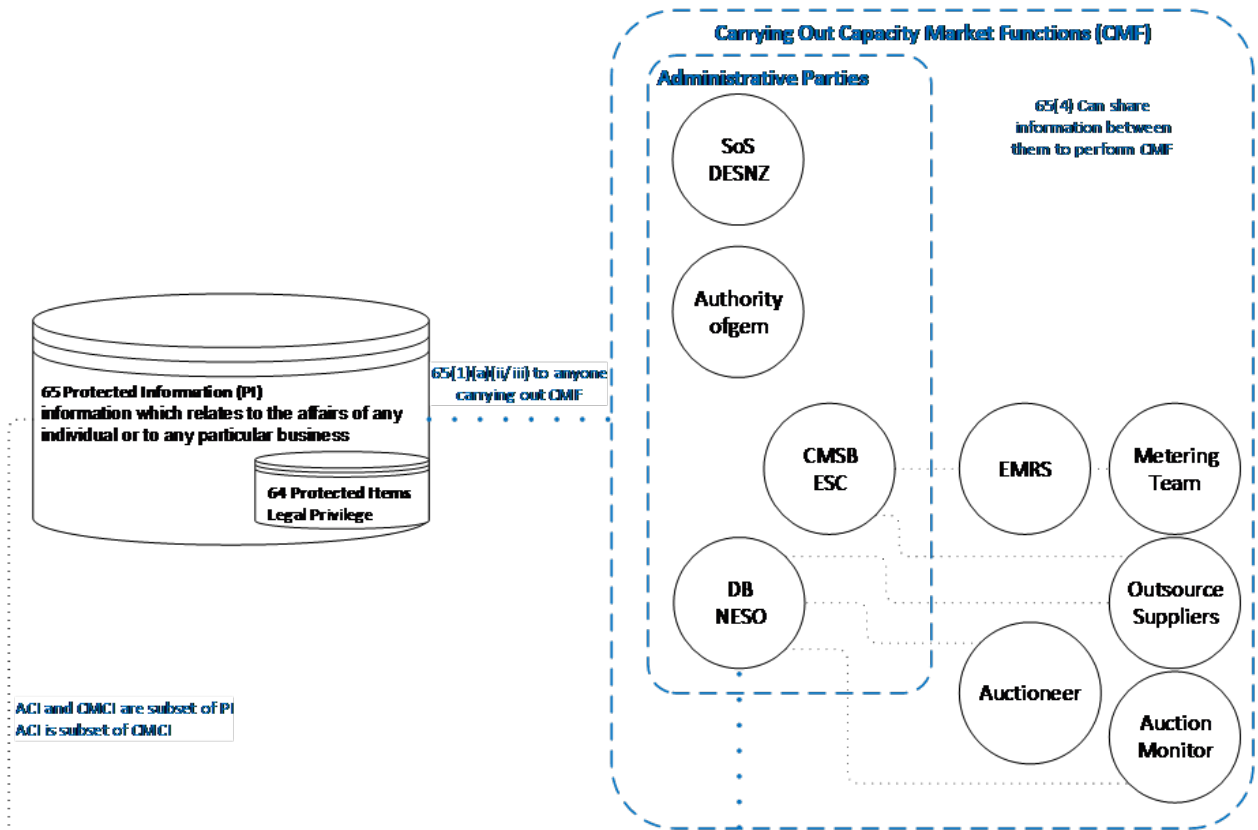
- 2.3.2 As with Options A and B, this limits CMCI to only being “any information relating to any Continuing Bid or Exit Bid made by an Applicant with regard to a Bidding CMU” and relates purely to the prohibited activity of sharing such bidding information in order to manipulate the Clearing Price for an Auction.
- 2.3.3 So, As with Options A and B, this is a much smaller ‘bidding subset’ of what Applicant’s would consider to be their ‘confidential information’ that has been submitted to DB or CMSB and covered under Reg 65 Protected Information provided to Administrative Parties (and their suppliers) in carrying out capacity market functions.
- 2.3.4 This does not seem to address the issue described in the CP379 proposal form which states that the CM Rules may require CM Participants to share CMCI with CMSB or DESNZ.

3. CMAG Secretariat Review

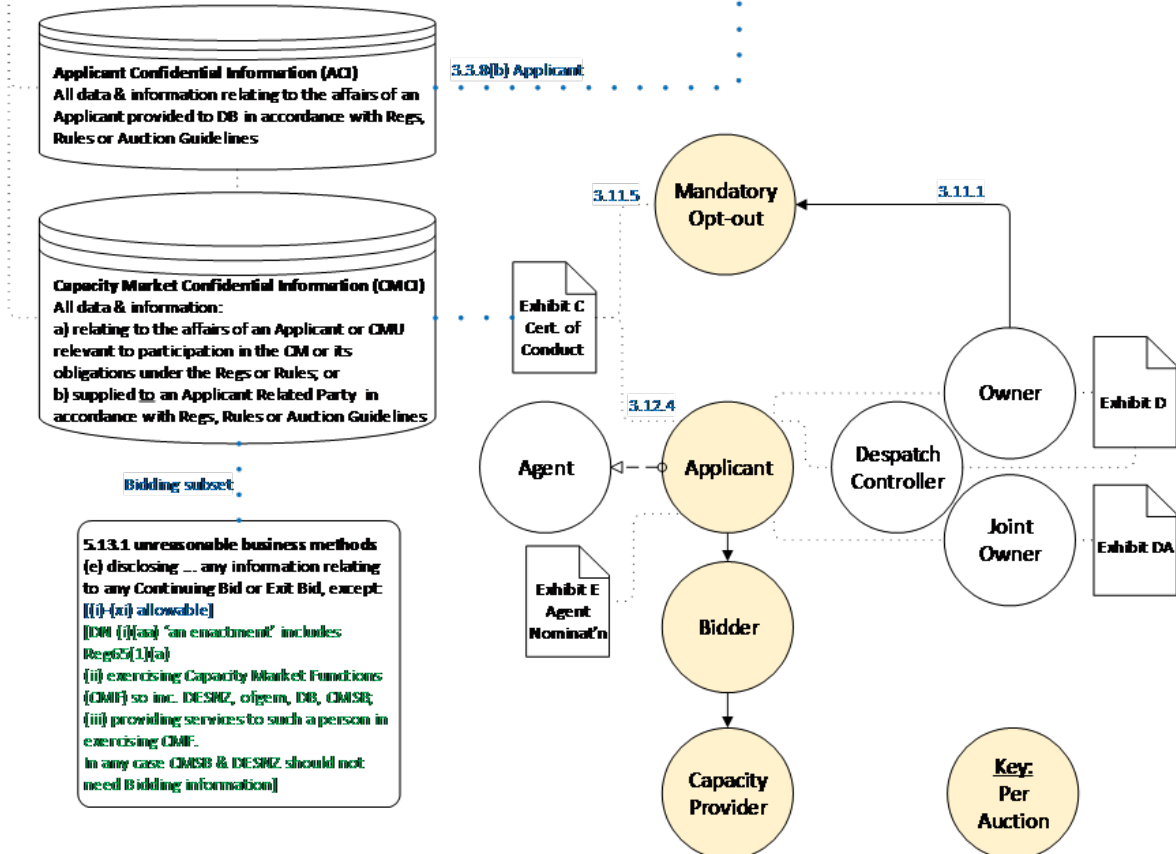
3.1 Existing Rules

3.1.1 As set out in the Appendices, the Regs and Rules relating to 'confidential' information are addressed as follows:

How 'protected information' is used in the Regulations



How 'confidential information' is used in the Rules



Appendices

Extract from current Regulations

PART 8 Information

Duties to provide information

63.—(1) The Secretary of State may, for the purpose of any review of the capacity market under regulation 81 [SoS review of these Regs], require—

- (a) an administrative party; [Reg 2 “administrative parties” means— (a) the Secretary of State; (b) the Authority; (c) the Delivery Body; and (d) the Settlement Body; ie DESNZ, ofgem, DB, CMSB]
- (b) an electricity supplier; or
- (c) the owner of a CMU (whether or not a capacity provider),

to provide the Secretary of State with any specified information. [DN To DESNZ including Protected Information (inc Rules Confidential Information), but note it is from the Owner, not the Applicant – who could be a Despatch Controller]

(2) The Authority may, for the purpose of exercising its functions under regulation 82 [SoS & ofgem review of Rules] or 83 [ofgem annual report to SoS on operation of CM], require—

- (a) an administrative party;
- (b) an electricity supplier; or
- (c) the owner of a CMU (whether or not a capacity provider),

to provide the Authority with any specified information. [DN To ofgem including Protected Information (inc Rules Confidential Information), but note it is from the Owner, not the Applicant – who could be a Despatch Controller]

(3) A person appointed under capacity market rules as an auction monitor may require—

- (a) any bidder in a capacity auction; [DN bidder may be Applicant or Agent]
- (b) the Delivery Body; or
- (c) the auctioneer,

to provide it with any specified information relating to the conduct of a capacity auction.

(4) Any requirement on a person to provide information under this regulation must be made by giving notice to the person in writing; and references in this regulation to “specified information” mean information specified in such a notice.

(5) Any person on whom a requirement is made under this regulation must, subject to regulation 64, comply with the requirement as soon as reasonably practicable.

Limitation on duty to provide information

64.—(1) A person may not be required under these Regulations or capacity market rules to produce, disclose or permit the inspection of protected items. [DN difference between 65(1) Protected Information and 64(2) Protected Items.]

(2) In paragraph (1) “protected items” means— [DN basically, legally privileged communications]

- (a) communications between a professional legal adviser (“LA”) and LA’s client or any person representing LA’s client which fall within paragraph (3);
- (b) communications between LA, LA’s client or any person representing LA’s client and any other person which fall within paragraph (3) (as a result of sub-paragraph (b) of that paragraph);
- (c) items which—
 - (i) are enclosed with, or referred to in, such communications;
 - (ii) fall within paragraph (3); and
 - (iii) are in the possession of a person entitled to possession of them.

- (3) A communication or item falls within this paragraph if it is made—
- (a) in connection with the giving of legal advice to the client; or
 - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

Protection of information

65(1)(a)(ii) allows a person who has received Protected Information (PI) under Regs/Rules to use it in performing Capacity Market Functions (CMF) and (iii) extends this to their suppliers.

65(3)(a) allows DEZNS, ofgem, DB to use PI for any EMR function, ie beyond CMF.

65(4) allows PI disclosure to any person to perform CMF

65.—(1) A person who, by virtue of these Regulations or capacity market rules, has obtained information which relates to the affairs of any individual or to any particular business (“protected information”) must not except as provided in paragraphs (2) to (4)—

- (a) use that information for any purpose other than—
 - (i) participating in the capacity market; [eg Despatch controller, Agent]
 - (ii) exercising capacity market functions; or [ie by DESNZ, ofgem, DB, CMSB]
 - (iii) providing services to a person exercising capacity market functions; or [eg outsourced services such as EMRS, Metering Team, Auction Monitor, CGI, etc]
 - (b) disclose that information.
- (2) Paragraph (1) does not prohibit a use or disclosure of protected information which is—
- (a) made with the consent of the person to whom the information relates; or
 - (b) required by—
 - (i) an enactment (including capacity market rules);
 - (ii) auction guidelines; [Reg 2 ‘has the meaning given in regulation 21’, Reg 21 auction parameters, timetable, how to apply, as required by rules or SoS – see below.]
 - (iii) a licence condition (where the person using or disclosing the information is a licence holder);
 - (iv) a condition of an industry code to which the person using or disclosing the information is a party; or
 - (v) [F1a retained] EU obligation.

(3) Paragraph (1) does not prohibit the use of protected information—

- (a) by the Secretary of State, the Authority or the Delivery Body, for the purpose of exercising any EMR functions;
- (b) by the Authority, for the purpose of exercising any other statutory functions; or
- (c) where the Delivery Body is the national system operator, by the national system operator for the purpose of exercising its functions, to the extent that the use of the information is permitted by the conditions of the national system operator's transmission licence.

(4) Paragraph (1) does not prohibit the disclosure of protected information—

- (a) to a person exercising capacity market functions, to the extent that the disclosure is required to enable that person to carry out those functions; [PI disclosed to anyone so they can perform CMF]
- (b) by an administrative party to any public authority exercising any functions in relation to competition law, to the extent that the disclosure is required to enable that authority to carry out those functions in relation to the capacity market;
- (c) by an administrative party to a person providing services to it in connection with its performance of capacity market functions, to the extent that the disclosure is required to enable that person to provide those services; [PI disclosed to suppliers so they can perform CMF]
- (d) which is already publicly available (other than by reason of a breach of this regulation); or

(e) in accordance with an order of a court.

(5) In this regulation—

“capacity market functions” means functions conferred by or by virtue of Chapter 3 of Part 2 of the Act; [The Energy Act 2013, Part 2 EMR, Chapter 3 CM = sections 27-43]

“EMR functions” means functions conferred by or by virtue of Chapter 2, 3 or 4 of Part 2 of the Act; [The Energy Act 2013, Part 2 EMR, Chapter 2 CFD = sections 6-26, Chapter 4 Investment Contracts = section 44]

F2...[EU obligation]

“licence” means a licence under section 6 of EA 1989.

Auction guidelines

21.—(1) The Delivery Body must, before the start of the prequalification window, publish guidelines for the capacity auction (“auction guidelines”).

(2) The auction guidelines must contain—

- (a) the provisional date on which the capacity auction is to start;
- (b) details of how to apply to prequalify to bid in the capacity auction;
- (c) the timetable for submission and determination of applications, which must in particular include the closing date for submission of applications;
- (d) the auction parameters;
- (e) the de-rating factor for each generating technology class, [F1and for each interconnector CMU,] as determined by the Delivery Body [F1or the Secretary of State] under capacity market rules; and
- (f) such other information as may be—
 - (i) required by capacity market rules; or
 - (ii) directed by the Secretary of State or the Authority.

(3) The Delivery Body must, not less than 3 weeks before the date specified under paragraph (2)(a), publish a final version of the auction guidelines which contains—

- (a) the date on which the capacity auction is to start; and
- (b) any changes made to the auction parameters under regulation 13.

CHAPTER 3 Capacity Market

27. Power to make electricity capacity regulations
28. Capacity agreements
29. Capacity auctions
30. Settlement body
31. Functions of the Authority or the national system operator
32. Other requirements
33. Electricity capacity regulations: information and advice
34. Power to make capacity market rules
35. Provision about electricity demand reduction
36. Enforcement and dispute resolution
37. Licence modifications for the purpose of the capacity market
38. Amendment of enactments
39. Principal objective and general duties
40. Regulations under Chapter 3
41. Capacity market rules: procedure
42. Capacity market rules: further provision
43. Pilot scheme for electricity demand reduction

CHAPTER 2 Contracts for Difference

6. Regulations to encourage low carbon electricity generation
7. Designation of a CFD counterparty
8. Duties of a CFD counterparty
9. Supplier obligation
10. Direction to offer to contract
11. Standard terms
12. CFD notifications
13. Allocation of CFDs
14. CFD notification: offer to contract on standard terms
15. Modification of standard terms
16. Sections 12 to 15: further provision
17. Payments to electricity suppliers
18. Application of sums held by a CFD counterparty
19. Information and advice
20. Functions of the Authority
21. Regulations: further provision
22. Enforcement
23. Limits on costs to be incurred
24. Consultation
25. Shadow directors, etc.
26. Licence modifications

CHAPTER 4 Investment contracts

44. Investment contracts

Key:

Capacity Market Confidential Information

Applicant Confidential Information

Continuing Bid or Exit Bid [From 5.13.1(e) but also relates to 5.7 Continuing Bids and 5.8 Exit Bids]

1.2 Definitions

1.2.1 In these Rules:

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| Agent | <p>means a person nominated by an Applicant pursuant to Rule 3.3.5 to perform its obligations with respect to a CMU (whether as Applicant, Bidder or Capacity Provider) under the Regulations and the Rules</p> <p>[3.3.5 An Applicant may nominate an Agent to submit an Application for a CMU on its behalf and to otherwise perform its obligations under the Regulations or the Rules (whether in its capacity as Applicant, Bidder or Capacity Provider) provided that:...]]</p> |
| Agent Nomination Form | <p>means an agent nomination form in the form set out in Exhibit E</p> |
| Applicant | <p>means the person that has submitted, or is entitled to submit, an Application with respect to a CMU as determined in accordance with Rule 3.2 [Identifying the Applicant for a CMU]</p> <p>[DN this includes:</p> <p>Owner (with Exhibit D Applicant Declaration);</p> <p>Joint Owner (with Exhibit DA/DB/DC Joint Owner Declaration);</p> <p>Despatch Controller (with Aggregator Declaration & Legal Owner Declaration);]</p> |
| Applicant Confidential Information | <p>means all data and other information of whatever nature and in whatever form, including but not limited to written, oral, electronic and in a visual or machine-readable form (including but not limited to CD-ROM, magnetic and digital form) and relating to the affairs of an Applicant that is furnished to the Delivery Body by the Applicant or an Applicant-related Party under or in accordance with the Rules, the Regulations or the Auction Guidelines</p> |
| Applicant Declaration | <p>means an applicant declaration in the form set out in Exhibit D</p> <p>[by Legal Owner, Despatch Controller]</p> |
| Applicant-related Party | <p>means, in relation to a CMU, its Applicant (or Bidder or Capacity Provider, as applicable) and any Agent its Applicant may appoint</p> |
| Auction Guidelines | <p>has the meaning given in Rule 2.2.1</p> <p>[2.2.1 The Delivery Body must, prior to the opening of the Prequalification Window, publish auction guidelines that will include further specific details as to the running of each individual Capacity Auction (the "Auction Guidelines").</p> <p>:</p> <p>2.2.3(c) instructions on using the EMR Delivery Body Portal and the IT Auction System, including how to:</p> <p>(i) register, and complete security and identity checks for, all individuals that require access to such systems (subject, in the case of any Agent, to compliance with Rule 3.3.5);</p> <p>(ii) submit prequalification information (including the required file format for the uploading of any supporting documentation);</p> |

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| | <p>(iii) participate in the Capacity Auction using the IT Auction System and any backup systems (including how to submit an Exit Bid and a Duration Bid Amendment); and</p> <p>(iv) access the Capacity Market Register and submit notifications to the Delivery Body;]</p> |
| Bid | means a Continuing Bid or Exit Bid made (or deemed to be made) by a Bidder with regard to a Bidding CMU in accordance with Chapter 5 (and “Bidding” must be construed accordingly) |
| Bidder | <p>means, for a Capacity Auction:</p> <p>(a) each Applicant for an Existing CMU which has Prequalified; and</p> <p>(b) each Applicant for any other Prequalified CMU in relation to which a confirmation has been submitted pursuant to Rule 5.5.14 [confirmation of participating in Auction]</p> |
| Certificate of Conduct | means a certificate of conduct in the form set out in Exhibit C |
| Capacity Market Confidential Information | <p>means all data and other information of whatever nature and in whatever form, including but not limited to written, oral, electronic and in a visual or machine-readable form (including but not limited to CD-ROM, magnetic and digital form) either:</p> <p>(a) relating to the affairs of an Applicant or CMU to the extent relevant to its participation in the capacity market or its obligations under the Regulations or the Rules; or</p> <p>(b) supplied to an Applicant Related Party under or in accordance with the Rules, the Regulations or the Auction Guidelines</p> |
| Capacity Provider | <p>means, for any Capacity Committed CMU and Delivery Year or part of a Delivery Year:</p> <p>(a) the person who was the Applicant for that CMU at Prequalification; or</p> <p>(b) if a transfer of the Capacity Agreement for that CMU and Delivery Year or part of a Delivery Year has been registered on the Capacity Market Register, the transferee</p> |
| Market Manipulation | <p>means:</p> <p>(a) the submission of Applicant Confidential Information and/or Bidding in a Capacity Auction, in each case which:</p> <p>(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of a Capacity Agreement;</p> <p>(ii) secures, or attempts to secure, by a person, or persons acting in collaboration, the Clearing Price of a Capacity Agreement at an artificial level; or</p> <p>(iii) employs or attempts to employ a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the Clearing Price obtained in a Capacity Auction; or</p> <p>(b) disseminating information through the media which gives, or is likely to give, false or misleading signals as to the supply of, or demand for, or likely Clearing Price of a Capacity Agreement in the Capacity Auction or value of a Capacity Agreement in the Secondary Market where the person doing this knows or ought to have known the information to be false or misleading</p> |

3. Application for Prequalification: Process and Information

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3.3 Submitting an Application for Prequalification

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3.3.8 In submitting an Application, an Applicant:

- (a) is bound to comply with the Auction Guidelines applicable to the relevant Capacity Auction; and
- (b) consents to the disclosure of **Applicant Confidential Information** in accordance with the Regulations or the Rules.

3.11 Opt-out Notifications

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3.11.5 The person submitting an Opt-out Notification must make a declaration of the matters set out in Exhibit C as at the date of the Opt-out Notification.

3.11.6 For the purposes of Rule 3.11.5, Exhibit C is to be read as if references to the Applicant or to Applicant-related Parties were references to the person submitting the Opt-out Notification.

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3.12 Declaration to be made when submitting an Application

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3.12.4 Each Application and each Opt-out Notification must be accompanied by a Certificate of Conduct [\[Exhibit C\]](#) signed by two directors of the Applicant or the person submitting the Opt-out Notification (as applicable).

5. Capacity Auction

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5.12 Prohibition on Market Manipulation

5.12.1 All Applicant-related Parties must not engage in Market Manipulation.

5.13 Prohibition on other unreasonable business methods

5.13.1 The following activities are prohibited in relation to the Capacity Auction:

- (a) doing anything which would constitute a breach of any law intended to prohibit or restrict anti-competitive practices relevant to participation in the Capacity Auction;
- (b) submitting to the Delivery Body or the Authority any information in connection with the Capacity Auction which is false or misleading;
- (c) doing anything which would constitute a breach of the Bribery Act 2010 as amended from time to time with a view to influencing the outcome of a Capacity Auction;
- (d) offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of an Administrative Party;
- (e) disclosing, or attempting to disclose, or inciting another person to disclose, **any information relating to any Continuing Bid or Exit Bid made by an Applicant** with regard to a Bidding CMU, whether directly or indirectly, to any person, except where the disclosure is:
 - (i) in accordance with any requirement under:
 - (aa) an enactment;

[\[DN Reg 63 Duties \(of Owner, but not Despatch Controller as Applicant\) to provide information:](#)

[\(1\) Any information \(other than Reg 64 \[legal advice\] Protected Items\) to SoS/DESNZ undertaking review of Regs](#)

[\(2\) Any information \(other than Reg 64 \[legal advice\] Protected Items\)](#)

- to Authority/ofgem or SoS/DESNZ under Reg82 in undertaking review of the Rules; or
 - to Authority/ofgem under Reg83 producing annual report on operation of CM to SoS/DESNZ
- (3) Any information relating to the conduct of a capacity auction (other than Reg 64 [legal advice] Protected Items) from a Bidder (Applicant, so Owner or Despatch Controller, or Agent) to Auction Monitor
- Reg 65(1)(a)(ii) exercising capacity market functions (ie Administrative Parties including DESNZ, ofgem, DB, CMSB) ; or (iii) providing services to a person exercising capacity market functions]
- (bb) a licence under section 6(1) of EA 1989 (where the Applicant is the holder of such a licence); or
- (cc) a document maintained under such a licence;
- (ii) to the Delivery Body; [DN who oversee the Auction process anyway]
 - (iii) to a member of that Applicant's Group;
 - (iv) to any Agent nominated by or on behalf of the Applicant to conduct its Application and Bidding provided that such Agent is not also the Agent of any other Applicant (unless such other Applicant is a member of the Applicant's group);
 - (v) to the legal owner of the Bidding CMU;
 - (va) where the Application is for an Interconnector CMU, to any person who is a Joint Owner in relation to that Interconnector CMU;
 - (vi) to any potential purchaser of the Bidding CMU;
 - (vii) where the Applicant is the legal owner of the Bidding CMU, to any third party having Despatch Control with respect to that Bidding CMU;
 - (viii) to any provider of finance with respect to the Bidding CMU;
 - (ix) to any shareholder in the Applicant;
 - (x) to the professional advisers of:
 - (aa) the Applicant;
 - (bb) any member of the Applicant's Group;
 - (cc) any shareholder in the Applicant or, where such a shareholder is a company and a member of a Group, of any other company which is a member of that Group; or
 - (dd) any potential purchaser of the CMU; or
 - (xi) in respect of information that was already public; and/or
- (f) obtaining or attempting to obtain information relating to a Continuing Bid or Exit Bid made by any other Applicant save where such disclosure to the Applicant would be permitted under Rules 5.13.1(e)(ii) to 5.13.1(e)(x).

EXHIBIT C: FORM OF CERTIFICATE OF CONDUCT

[NAME]

(Incorporated in England and Wales or Scotland under Registered No. [●])

[ADDRESS OF REGISTERED OFFICE]

[APPLICATION YEAR] Certificate of Conduct

We, being directors of [name] (the “Company”), HEREBY CERTIFY as at the date of this certificate that, having made due and careful enquiry and to the best of our knowledge, information and belief ⁵⁵:

(a) the Company has complied with all laws intended to prohibit or restrict anti-competitive practices relevant to its Application or proposed participation in a Capacity Auction;

(b) neither the Company nor any other Applicant-related Party [Bidder, Capacity Provider or Agent] (if any) has engaged in any Market Manipulation;

(c) neither the Company nor any other Applicant-related Party (if any) has done anything which would constitute a breach of the Bribery Act 2010 as amended from time to time with a view to influencing the outcome of a Capacity Auction;

(d) neither the Company nor any other Applicant-related Party (if any) has offered to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of an Administrative Party; and

(e) neither the Company nor any member of the Company’s Group nor any person to whom Capacity Market Confidential Information has been disclosed, has disclosed Capacity Market Confidential Information, whether directly or indirectly, to another person (including advisors and providers of finance) except where the disclosure was:

(i) in accordance with any requirement under :

(aa) an enactment; [see DN under 5.13.1(e)(i)(aa) above.]

(bb) a licence under section 6(1) of EA 1989 (where the Company is the holder of such a licence); or

(cc) a document maintained under such a licence;

(ia) to the Authority; or

(ib) to the Competition and Markets Authority; or

(ii) to the Delivery Body; or

(iii) to a member of that Applicant’s Group; or

(iv) to its Agent provided that such Agent is not also the Agent of another Applicant (unless the other Applicant is a member of the Applicant’s Group); or

(v) where the Applicant is not the legal owner of the CMU to which the Application relates, to the legal owner of the CMU;

(va) where the Application is for an Interconnector CMU, to any person who is a Joint Owner in relation to that Interconnector CMU;

(vi) to any potential purchaser of the CMU;

(vii) where the Applicant is the legal owner of the CMU, to any third party having, or potentially having, Despatch Control with respect to that CMU;

(viii) to any provider of finance with respect to that CMU;

(ix) to any shareholder in the Applicant or, where such a shareholder is a company and a member of a Group, to any other company which is a member of that Group;

(x) to the professional advisers of:

(aa) the Applicant;

(bb) any member of the Applicant’s Group;

(cc) any shareholder in the Applicant or, where such a shareholder is a company and a member of a Group, of any other company which is a member of that Group; or

- (dd) any potential purchaser of the CMU; or
- (xi) in respect of information that was already public.

Capitalised terms in this certificate have the meaning given to them in the Capacity Market Rules 2014 unless otherwise indicated.

| | |
|-----------------------------------|-----------------------------------|
| DATED: [dd/mm/yyyy] ⁵⁶ | DATED: [dd/mm/yyyy] ⁵⁷ |
| Signed | Signed |
| | |
| Director | Director ⁵⁸ |
| Print Name: | Print Name: |

55 For sole director companies, substitute “I, being the director of [APPLICANT], HERBY CERTIFY as at the date of this certificate that having being made due and careful enquiry and to the best of my knowledge, information and belief:”.

56 Signatures need to be dated: The date for each signature is to be provided on the day in which the relevant director signs, in the format: day, month, year (dd/mm/yyyy).

57 Signatures need to be dated: The date for each signature is to be provided on the day in which the relevant director signs, in the format: day, month, year (dd/mm/yyyy).

58 No second signature is required for sole director companies, see Rule 1.3A