

# Bird & Bird

## A sharper tool to tackle market abuse – the proposed reinforcement of REMIT, and lessons learned from competition enforcement

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Peter Willis, Partner, London  
[peter.willis@twobirds.com](mailto:peter.willis@twobirds.com)

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# Background to REMIT

- Regulation on Wholesale Energy Market Integrity and Transparency - Regulation 1227/2011
- Adopted in order to increase market transparency, and to tackle conduct not thought to be easily addressed by the competition rules
- Prohibits insider trading and market manipulation in respect of wholesale energy products; requires publication of inside information, registration of market participants and transaction reporting
- Market surveillance by ACER – identifies suspicious conduct and reports to the NRAs, which investigate and enforce
- Over 100 individual decisions to date – mostly penalties of only a few thousand euros, but largest penalty around €42.5m
- Concern that it is inadequate to address current energy market conditions

# Proposed extension of scope

## *Minor changes to scope of obligations*

- Enhanced rules on transparency and reporting
- Stronger supervision and regulation of inside information platforms and reporting mechanisms
- Prohibition on manipulation extended to the individuals involved
- Formalised regulation of algorithmic trading

# Stronger investigation/enforcement powers

## *New powers for ACER and NRAs*

- ACER to have investigation powers, in cases involving products in  $\geq 3$  Member States, or in  $\geq 2$  Member States and additional factors, including powers to:
  - request information
  - carry out on-site inspections
  - impose penalties for obstruction
  - request support of NRAs
- Subject to procedural safeguards
- ACER prepares report and may require NRAs to impose penalties – up to at least 15% of total turnover for legal persons and €5m for individuals
- REMIT infringement already a criminal offence in some Member States

} all very familiar to  
competition lawyers

# Assessment

*Will the proposed changes make a difference?*

- The scope changes are unlikely to make a major difference to the effectiveness of REMIT, although they will increase compliance costs
- The additional enforcement powers are interesting – clearly inspired by DG COMP's competition powers, and intended to add EU weight to investigations
- Giving ACER more effective powers of investigation, but passing the enforcement on to the NRAs, is a creative solution to ACER's agency status, but will it be workable in practice?
- Energy market participants will need to be prepared for larger and more complex investigations, including high-stress and high-profile dawn raids



# Thank you

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