

# **Memorandum of Understanding**

**Between the Gas and Electricity Markets Authority**

**and**

**The Department for Business, Energy and Industrial Strategy  
and**

**Her Majesty's Treasury**

# Memorandum of Understanding between the Gas and Electricity Markets Authority, the Department for Business, Energy and Industrial Strategy and Her Majesty's Treasury

## *Introduction*

1. The Memorandum of Understanding (MoU) is between the Gas and Electricity Markets Authority (the Authority), the Department for Business, Energy and Industrial Strategy (BEIS) and Her Majesty's Treasury (HM Treasury). Its purpose is to establish a framework for co-ordination between the Authority, BEIS and HM Treasury in response to the financial distress of a holder of a licence granted under s7A (1)(a) or (b) Gas Act 1986 or under s6(1)(d) Electricity Act 1989 (an "energy supply company"), including in circumstances where the Authority or BEIS is considering making an application for an Energy Supply Company Administration Order in accordance with section 96 Energy Act 2011. Nothing in this MoU replaces or affects the legal responsibilities of each of the three parties.

## *The MoU*

2. In the event of deterioration in the financial health of an energy supply company, particularly a large energy supply company, the Authority, BEIS and HM Treasury may need to work together in a number of ways. The primary focus of this MoU is on the parties' approach to use of powers associated with Energy Supply Company Administration Orders.
3. This MoU sets out the role of each party, and explains how they will work together towards the objectives of ensuring the continued supply of gas and electricity to consumers of the energy supply company in financial distress, and ensuring the overall stability of the gas and electricity markets while also considering the impact on taxpayers and energy bills.
4. The division of responsibilities is based on three guiding principles:
  - **Accountability.** Each party must be accountable for its actions, so each must have clear and well defined responsibilities.
  - **Avoidance of conflicting actions.** Each party must have a clearly defined role to ensure no conflicting actions are taken.
  - **Regular information exchange.** So each party may discharge its responsibilities as efficiently and effectively as possible.

## **The Authority's responsibilities**

5. The Authority's principal objective is to protect the interests of existing and future consumers. The Authority is required to have regard to the need to ensure that licence holders are able to finance their activities which are the subject of obligations on them under certain enactments including the Gas Act 1986 and Electricity Act 1989. At all stages, the primary responsibility for the financial integrity of an energy supply company lies with that company's management.
6. The Authority has arrangements in place to monitor the financial health of energy supply companies. These arrangements include but are not limited to:

- collecting market performance information;
  - reviewing market indicators, including share price movements, credit ratings and market implied ratings; and
  - requesting additional information from companies as necessary.
7. The default position is that the Authority will lead and co-ordinate the initial response to a developing case of financial distress. This includes handling liaison with the company concerned, BEIS and other key industry stakeholders in either the gas or electricity sector or both.
  8. A case of financial distress may be addressed without intervention by the Authority such as through a company restructuring or a trade sale.
  9. The Authority also has powers to take action. It has the power to revoke a supply licence and appoint a Supplier of Last Resort (another energy supply company) to take on that company's customers in certain circumstances. The Authority would exercise those powers in accordance with its published guidance. The Authority also has the power, with the consent of the Secretary of State, to make an application for an Energy Supply Company Administration Order in accordance with section 96 Energy Act 2011 (which applies, with modifications, sections 156-167 Energy Act 2004). The default position is that the Authority will decide whether to make such an application. This is without prejudice to the Secretary of State's decision on whether to give consent to such application or to make an application itself.
  10. Where the Authority becomes aware of an energy supply company in financial distress it will consider the appropriate course of action, including but not limited to those outlined above.
  11. The Authority will coordinate the initial response to a developing case of financial distress using its own financial means. This may involve an operational spend to manage the consequences of an energy supply company experiencing financial distress such as the appointment of external consultants with expertise in administration. In the first instance, the Authority will as far as possible meet the costs of responding to a firm in financial distress from within existing resources. In the event that the required funding during this pre-administration phase is greater than the Authority's ability to support, the Authority will consult with and provide a detailed justification for any funding request to cover its operational expenditure to BEIS.

### **BEIS responsibilities**

12. The Secretary of State for BEIS has overall accountability for the security and resilience of energy supplies. If BEIS considers an application necessary, it may apply itself for an Energy Supply Company Administration Order, or it may consent to the Authority making the application pursuant to section 156(1) Energy Act 2004 as applied with modifications by section 96 Energy Act 2011.

13. While, as set out above, the default position is that the Authority will lead on all cases of financial distress involving an energy supply company, BEIS at the Secretary of State's discretion may identify cases, including where the Secretary of State makes the application for an Energy Supply Company Administration Order, where BEIS will assume responsibility for some or all of the tasks which will otherwise fall to the Authority in accordance with paragraph 9. Where BEIS decides to assume responsibility for some or all of the tasks which will otherwise fall to the Authority, BEIS will provide the Authority with prior written notice setting out those tasks for which it is assuming responsibility. The Authority will in any event continue to regulate the activities of that company and to provide advice to BEIS in managing the energy supply company administration.
14. Where a company is in energy supply company administration and the energy administrator recommends financial support is necessary, the Secretary of State is responsible for determining, subject to HM Treasury consent, pursuant to sections 165 to 167 Energy Act 2004 as applied with modifications by section 96 Energy Act 2011 whether it will:
- make grants or loans to the company;
  - agree to indemnities; or
  - provide guarantees.
15. BEIS officials on behalf of the SoS will:
- liaise with, and at its discretion consider advice from the Authority on issues related to the making of grants or loans, agreeing to indemnities or providing guarantees.
  - need to consider in each case whether the provision of any grants, loans, indemnities or guarantees could constitute state aid under Article 107 TFEU and will be responsible for making any application to the European Commission which is considered necessary or advisable.
  - be responsible for key communications and external messages, including liaising with the press while a company is in energy supply company administration.<sup>1</sup> Public communications, and key private communication to the company, will be agreed with HM Treasury, in consultation with the Authority. BEIS officials are responsible for keeping its ministers up to date on developments.

### **HM Treasury responsibilities**

16. HM Treasury has overall responsibility for setting the ground rules for the administration of public money and is accountable to Parliament for doing so. It is responsible for ensuring Departments, including the Authority, use their powers only as Parliament has intended and that revenues raised, and resources so raised are spent within agreed limits. The Treasury cannot delegate to BEIS decisions to spend money or commit resources (including

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<sup>1</sup> The Authority is responsible for key communications when it exercises its supplier of last resort powers.

contingent liabilities) which are novel, contentious or could cause repercussions elsewhere in the public sector.

17. In this context HM Treasury would expect to be kept informed by the Authority and/ or BEIS in the event of the deterioration in the health of a large energy supply company and provided with all relevant information on a regular basis in the event of an application for energy supply company administration or other insolvency procedures in relation to an energy supply company. The specific statutory responsibilities of HM Treasury in circumstances where an energy supply company enters energy supply company administration and BEIS recommends making grants, or loans, agreeing to indemnities or providing guarantees to the energy supply company are set out in sections 165 to 167 Energy Act 2004 as applied with modifications by section 96 Energy Act 2011. In these circumstances the approval of HM Treasury is required prior to the Secretary of State for BEIS making grants or loans, agreeing to indemnities or giving guarantees.
18. HM Treasury is responsible for keeping its ministers up to date on developments and will keep BEIS and the Authority up to date on key related communications.

#### **Co-operation and communication**

19. The Authority, BEIS and HM Treasury will cooperate closely in responding to a case of financial distress. This will avoid conflicting actions or the duplication of effort and prevent organisations or the business concerned being faced with conflicting demands where all organisations have an interest. The Authority will supply BEIS and HM Treasury with relevant information of any emerging problem at the earliest opportunity where in its judgment there is a risk of a company entering into energy supply company administration.

#### **Information exchange**

20. Free exchange of information, at the earliest available opportunity, is essential if each party is to meet its responsibilities. Information exchanges will take place on several levels, including the following:
  - Working level meetings between the Authority and BEIS , including HMT where necessary;
  - Via the Authority communications team and joint briefings to both BEIS and HM Treasury during the pre-administration phase;
  - At senior executive level between the Authority, BEIS and HM Treasury.
21. It is the responsibility of all three organisations to adopt a proactive, open approach regarding information sharing, and to achieve effective liaison between the Authority, BEIS and HM Treasury. Any information-sharing between the three organisations is subject to relevant restrictions on disclosure of confidential or commercially sensitive information or any other restriction or prohibition in law.

22. It is the responsibility of whichever of the three organisations is first made aware of a case of financial distress to alert the other parties at the earliest possible opportunity as appropriate. Further, it is the responsibility of each of the organisations to keep each other up to date with developments as appropriate. Communications will occur through agreed points of contact within each organisation.

**Arrangements for reviewing the MoU**

23. The parties to this MoU agree that this MoU shall be reviewed from time to time as considered necessary.

*Signatures*

24. The MoU has been signed by senior representatives of each organisation. This reflects the importance that the organisations place on working effectively together to resolve issues of financial distress where possible in a timely and efficient manner.

Signed on behalf of the Gas and Electricity Markets Authority

A handwritten signature in black ink, appearing to read "Andrew Ditcher". The signature is written in a cursive style with a large initial 'A'.

Title: Senior Partner, Consumers and Competition

Date: 5 December 2016

Signed on behalf of the Department for Business, Energy and Industrial Strategy

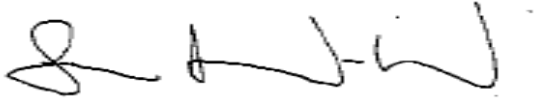
A handwritten signature in blue ink, appearing to read "Adam Smith", with a horizontal line underneath.

Title: Director, Energy Markets and Infrastructure, Department for Business, Energy and Industrial Strategy

Date: 10<sup>th</sup> November 2016



Signed on behalf of Her Majesty's Treasury

A handwritten signature in black ink, appearing to be 'S. J. W.', written in a cursive style.

Title: Director, Enterprise and Growth Unit, HM Treasury

Date: 7<sup>th</sup> November 2016