



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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Dear Mr Crouch,

You sought the Committee's advice about accepting a commission under the terms of your independent consultancy. The Committee has now considered your application.

Commission details

You advised the Committee that you proposed to take up a new assignment working for the Agency for Cooperation of Energy Regulators (ACER). You described this role as supporting ACER's work on developments in European gas markets and sector coupling. This paid work would involve potentially 10-12 days spread over a few months.

ACER was created by the EU energy market legislation known as the Third Energy Package. The Third Energy Package was enacted to improve the functioning of the internal energy market and resolve structural problems. Alongside the establishment of ACER, the legislation covers: the unbundling energy suppliers from network operators; strengthening the independence of regulators; cross-border cooperation between transmission system operators and the creation of European Networks for Transmission System Operators; and increased transparency in retail markets to benefit consumers.

ACER was established to help the various national regulators cooperate and work towards the completion of the single EU energy market for electricity and natural gas and is independent from governments and energy companies.

You informed the Committee your contact with ACER whilst at Ofgem was related to Ofgem's participation in ACER's Board of Regulators and working groups. You also said that Ofgem's relationship, and your own prior personal involvement with ACER, is similar to that you had with another European regulator, the Council of European Energy Regulators (CEER). You did not work directly with the regulator as Senior Partner, Improving Regulation; but would have met at conferences and also with Ofgem employees working with European regulators as part of their Ofgem duties.

Depending on the outcome and impact of Brexit, you noted that Ofgem's participation in ACER may come to an end.

Ofgem's Chief Executive, Dermot Nolan confirmed he does not believe this work causes any conflicts in line with the business appointment rules. Therefore, Ofgem have no concerns regarding you taking up this work.

The Committee's consideration

The Committee¹ agrees this commission is consistent with the terms of your independent consultancy - to advise on issues relating to developments in the energy sector.

The Committee notes Ofgem have a relationship with ACER, working with them to develop the requirements of a comprehensive regulatory framework for cross-border competition and investment (as a result of European legislation). The Committee considers the nature of the work ACER does, and its relationship of Ofgem as a participant in its work minimises the risk this commission could be seen as a reward for actions you took in office. Further, the Committee notes you were not responsible for this relationship in the last two years you were there.

The assignment that you propose to accept with ACER is supporting its work on developments in European gas markets and sector coupling. Given the Agency brings together regulators from across Europe; and already has input from Ofgem (notwithstanding Brexit, and the impact it might have on Ofgem's participation in ACER), the issue of commercial unfair advantage does not arise here. As such, the Committee considers the conditions imposed on your consultancy appropriately mitigate any remaining risk you could offer any form of advantage to ACER, by virtue of your time in office.

Under the Government's Business Appointment Rules, the Committee's advice is that this commission with the Agency for Cooperation of Energy Regulators (ACER) should be subject to the conditions that apply to your independent consultancy, which are as follows:

- you should not draw on (disclose or use for the benefit of yourself or the organisations to which this advice refers) any privileged information available to you from your time in Crown office;
- for two years from your last day in Crown service, you should not become involved in or advise on matters relating to any enforcement cases opened by, or pending in, Ofgem during the time that you were responsible for enforcement at Ofgem;
- for two years from your last day in Crown service, you should not provide advice to any company or organisation on the terms of, or with regard to the subject matter of, a bid or contract relating directly to the work of Ofgem;
- for six months from your last day in Crown service, you should not become involved in or advise on matters relating to "R/IO-2" and Ofgem's retail price cap;
- for two years from your last day in Crown service you should not become personally involved in lobbying the UK Government on behalf of those you

¹ This application for advice was considered by Sir Alex Allan; Jonathan Baume; Baroness Angela Browning; Lord Michael German; Terence Jagger; Dr Susan Liautaud; Richard Thomas and John Wood. Baroness Helen Liddell was unavailable.

advise under your independent consultancy or their subsidiaries, partners or clients. Nor should you make use, directly or indirectly, of your Government and/or Crown Service contacts to influence policy or secure business or funding on their behalf; and

- for two years from your last day in Crown service, before accepting any commissions and or/before extending or otherwise changing the nature of any commission, you should seek advice from the Committee. The Committee will decide whether each commission is consistent with the terms of the consultancy and consider any relevant factors under the Business Appointment Rules.

By 'privileged information', we mean official information to which a Minister or Crown servant has had access as a consequence of his or her office or employment and which has not been made publicly available. Applicants are also reminded that they may be subject to other duties of confidentiality, whether under the Official Secrets Act, the Civil Service Code or otherwise.

The Business Appointment Rules explain that the restriction on lobbying means that the former Crown servant/Minister "*should not engage in communication with Government (Ministers, civil servants, including special advisers, and other relevant officials/public office holders) – wherever it takes place - with a view to influencing a Government decision, policy or contract award/grant in relation to their own interests or the interests of the organisation by which they are employed, or to whom they are contracted or with which they hold office.*"

I should be grateful if you could let me know when you take up this commission, or if it is announced that you are to do so. This will enable the Committee to publish this letter on the Committee's website, and where appropriate, refer to it in the relevant annual report.

Yours sincerely

Tiffany Amusu
Committee Secretariat

