NVE
The Norwegian Energy Regulatory Authority – RME

Erroneous orders in the Day-Ahead market may constitute a breach of the prohibition against market manipulation.

As outlined in the Regulation of 24 October 2019 No. 1413 concerning grid operations and power market regulation (NEM regulation), erroneous orders in the Day-Ahead market may constitute a breach of the prohibition against market manipulation. In certain circumstances, an erroneous order in the Day-Ahead market may give, or be likely to give, false or misleading signals as to the offers for, supply of, demand for, or the price of a wholesale energy product.

The prohibition against energy market manipulation does not imply that breaches require intent for the rule to apply. Therefore, it is important for stakeholders to have routines that reduce the probability of erroneous orders.

Provisions on market conduct and transparency in the energy market came into effect 1 March 2018 and can be found in Chapter 5 of the grid operations and energy market regulation (referred to as NEM regulation in Norwegian). One of the main provisions prohibits market manipulation within wholesale energy markets.

Since the prohibition came into effect, the Norwegian Energy Regulatory Authority (NVE-RME) has investigated certain cases concerning erroneous orders in the Day-Ahead market. Erroneous orders may occur due to human or technical errors during bidding. Sales orders registered as purchases, or missing orders due to technical issues, are typical examples.

We seek to provide further guidelines to market participants on how we will be assessing erroneous orders in the Day-Ahead market in the future. We would like to emphasise the fact that this assessment is not exhaustive on when the market manipulation prohibition may be applied.

An erroneous trade may well be covered by the prohibition against market manipulation

The prohibition against market manipulation is outlined in Section 5-4 of the NEM regulation, which states that «*any engagement in, or attempt to engage in, market manipulation on wholesale energy markets is prohibited* ».

In our opinion, the definition of market manipulation in Section 5-1, seventh definition, letter a) of the NEM regulation, is particularly relevant for erroneous trade. Firstly, the definition implies that «a transaction or submission of trade order for a wholesale energy product is made». [1] This condition will be definitely satisfied for orders and transactions in the Day-Ahead market.

Furthermore, the transaction or submission of a trade order must be likely to give an incorrect or misleading signal on supply, demand, or price.

An erroneous trade can basically fulfil both conditions, and as such classify as a breach.

Specific intent not required

Market conduct rules and prohibition against market manipulation are designed to ensure socioeconomically efficient prices and confidence in pricing. The market is vulnerable irrespective of whether actions are intentional or not.

The definition of market manipulation in Section 5-1, seventh definition, letter a) of NEM regulation is impartial, and does not presuppose a conscious choice to give misleading or incorrect market signals. Erroneous orders may as such constitute a breach of the prohibition against market manipulation according to Section 5-4 of the NEM regulation.

Actions – including unintentional ones – may still have an impact on the choice of reactive measures or on stipulation of the fine. If an infringement penalty or fine is to be given, according to NEM regulation Sections 8-3 and 8-4, the outlined notions of fault must be fulfilled.

Orders must be likely to give incorrect or misleading signals

An order is classified as market manipulation if it gives or if it is likely to give an *incorrect* or *misleading* signal. There is no clear distinction between incorrect or misleading signals, and they might overlap.

Erroneous orders in the Day-Ahead market entail that supply or demand, connected to such orders, does not correspond to the actual supply or demand of the relevant market player in the Day-Ahead market.

In our opinion, classifying all erroneous trades as market manipulation would be too harsh a measure. Characteristic for erroneous trades is that they are likely to give an incorrect or misleading signal, which effectively means that such trade orders must be of significance or interest to the market.

Trade orders in the Day-Ahead market are not clearly visible to other market players. However, visibility is not a condition for the order to give or be likely to give a misleading signal to the supply of, demand for or the price of a wholesale energy product. A trade order in the Day-Ahead market has the potential to directly affect the pricing in the Day-Ahead auction. Additionally, notable changes in bidding will be visible through the aggregated demand/supply curves published by the marketplace, with the exception of non-activated block bids. As sellers and buyers within same price area are offered the same price after market clearance in the Day-Ahead market, erroneous trades in the Day-Ahead market may directly affect all market player trading in the given price area. The surrounding price areas may also be affected if the erroneous trade influences the price area structure. The result of the market clearance may also give further implications.

As a result, an erroneous trade in the Day-Ahead market may be likely to give a misleading signal. The question being, in which cases.

Decisive factors for whether a trade order can give a misleading signal

When assessing whether an erroneous order is likely to give a misleading signal in the Day-Ahead market, NVE-RME evaluates each case on its own merits. In our investigations we consider factors such as distinguishing features of power trading, specifics of the Day-Ahead market and any further ramifications for the market. Which erroneous order is likely to give a misleading signal to the Day-Ahead market must be assessed in light of the rationale behind this piece of legislation and of the Energy Act's objective to ensure a socioeconomically efficient power trade. This part of the NEM regulation aims to ensure that market participants have confidence in price formation in the market. Hence, erroneous trades that potentially can affect market clearance and price formation must be covered by the prohibition.

The position of a market participant in the relevant market is a crucial to the assessment, and so is the scope of the erroneous order in question. In our opinion, it is impossible to quantify a lower limit for whether an erroneous order is likely to give a misleading signal on a wholesale energy product. Even small deviations between the actual order and intentional supply/demand can, in given circumstances, constitute market manipulation. This can for example be the case in constrained power situations.

The outcome of an action is only one aspect of the total evaluation, while the impact of an erroneous trade cannot in itself be decisive for if the action is covered by the ban on market manipulation.

Market players must have good routines

As we have already seen several cases of erroneous orders in the Day-Ahead market, we would like to stress the importance that market players are responsible for placing orders correctly. Each market player must therefore establish and maintain good routines to minimise the probability of erroneous orders. Furthermore, market players must be extra cautious when placing orders for larger volumes, or in constrained power situations.

Additionally, it is crucial that market players inform the market as required by Section 5-3 of the NEM regulation. The combination of erroneous trade and withholding information regarding an incident will seem misleading to an even larger degree, as well as undermining market trust. Such incidents will be more severely punished.

[1] Other definitions on market manipulation may, depending to the circumstances, be relevant. However, we will use this definition as it applies in most cases.