



European Union Agency for the Cooperation  
of Energy Regulators

# The 6<sup>th</sup> Edition of the ACER Guidance

REMIT Forum 2021

Antonio Santos

ACER - Market Surveillance and Conduct Department

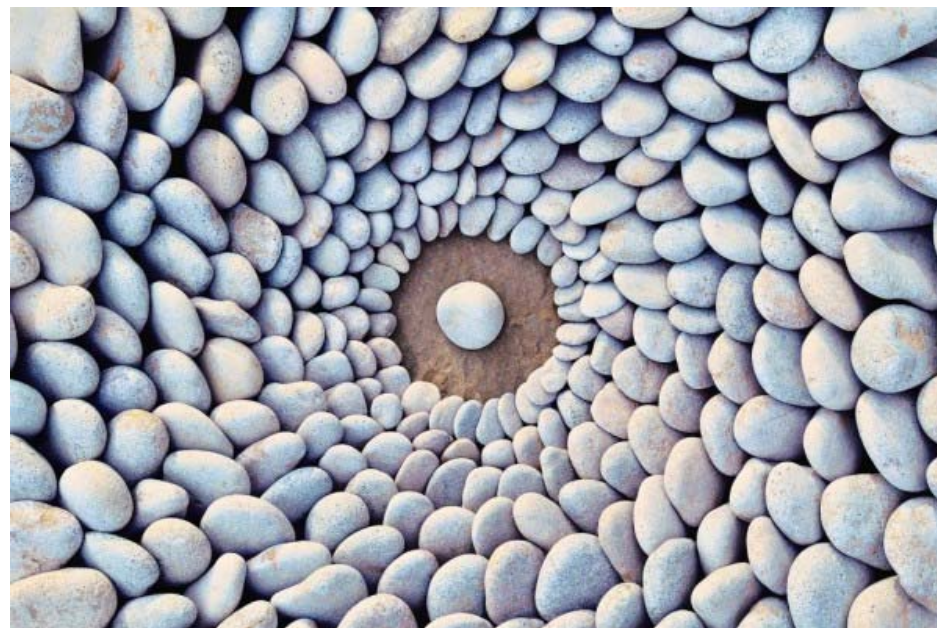
Thursday, 28 October 2021 / 14:00 – 16:30 CET

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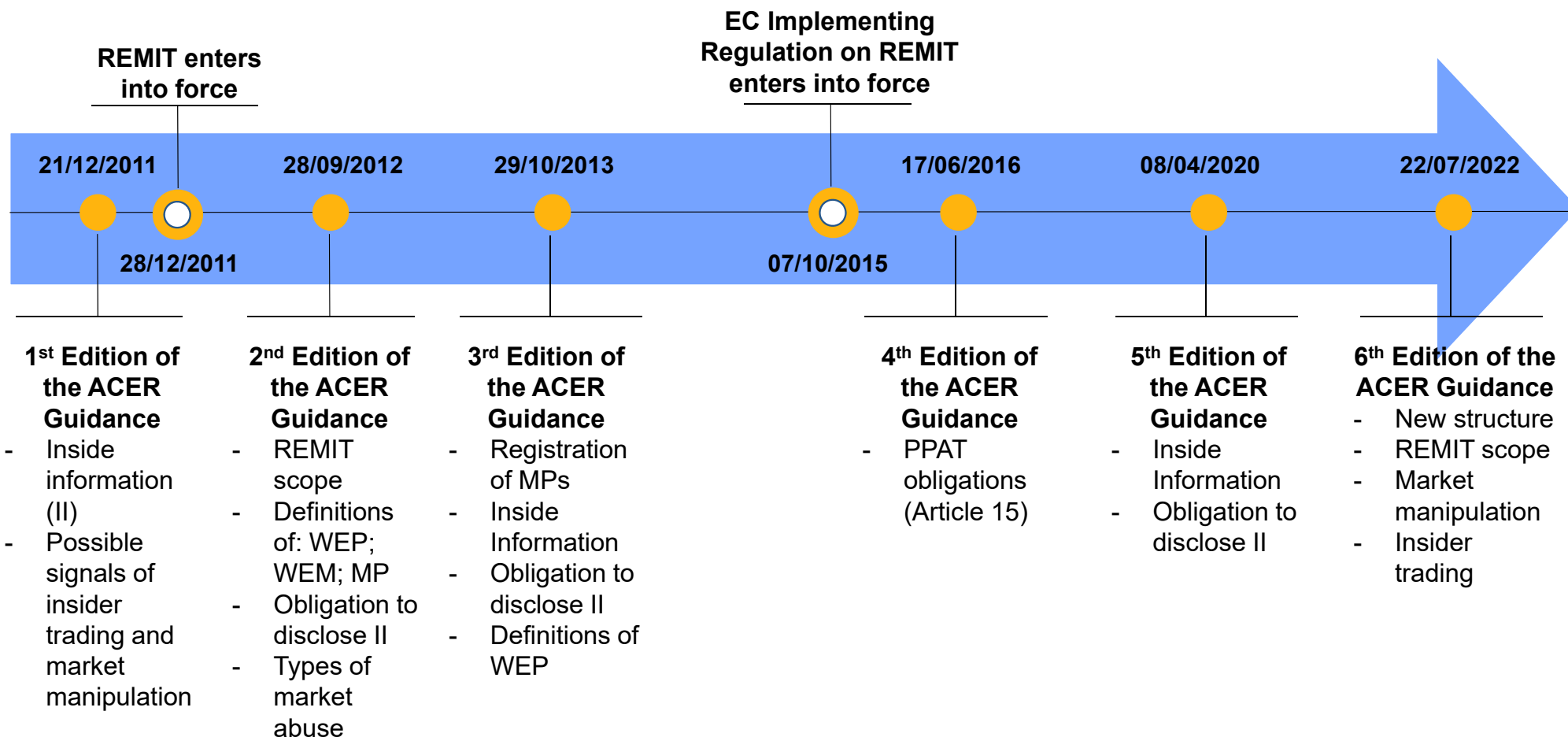
- The aim of the ACER Guidance
- The history
- The rationale for the revamping
- The new structure

# What is the aim of the ACER Guidance?

- **ACER has a coordination role under REMIT**
  - Ensuring cooperation among NRAs on the application of the provisions
  - Ensuring an adequate allocation of potential REMIT breach cases
- **ACER aims at ensuring consistency in the application of the market abuse regime**
  - Same rule, similar reasoning, equivalent decision
  - Ensure level-playing-field across Europe
  - Article 1(3) of REMIT
- **The publication of the ACER Guidance is also a legal obligation:**
  - Article 16(1) of REMIT



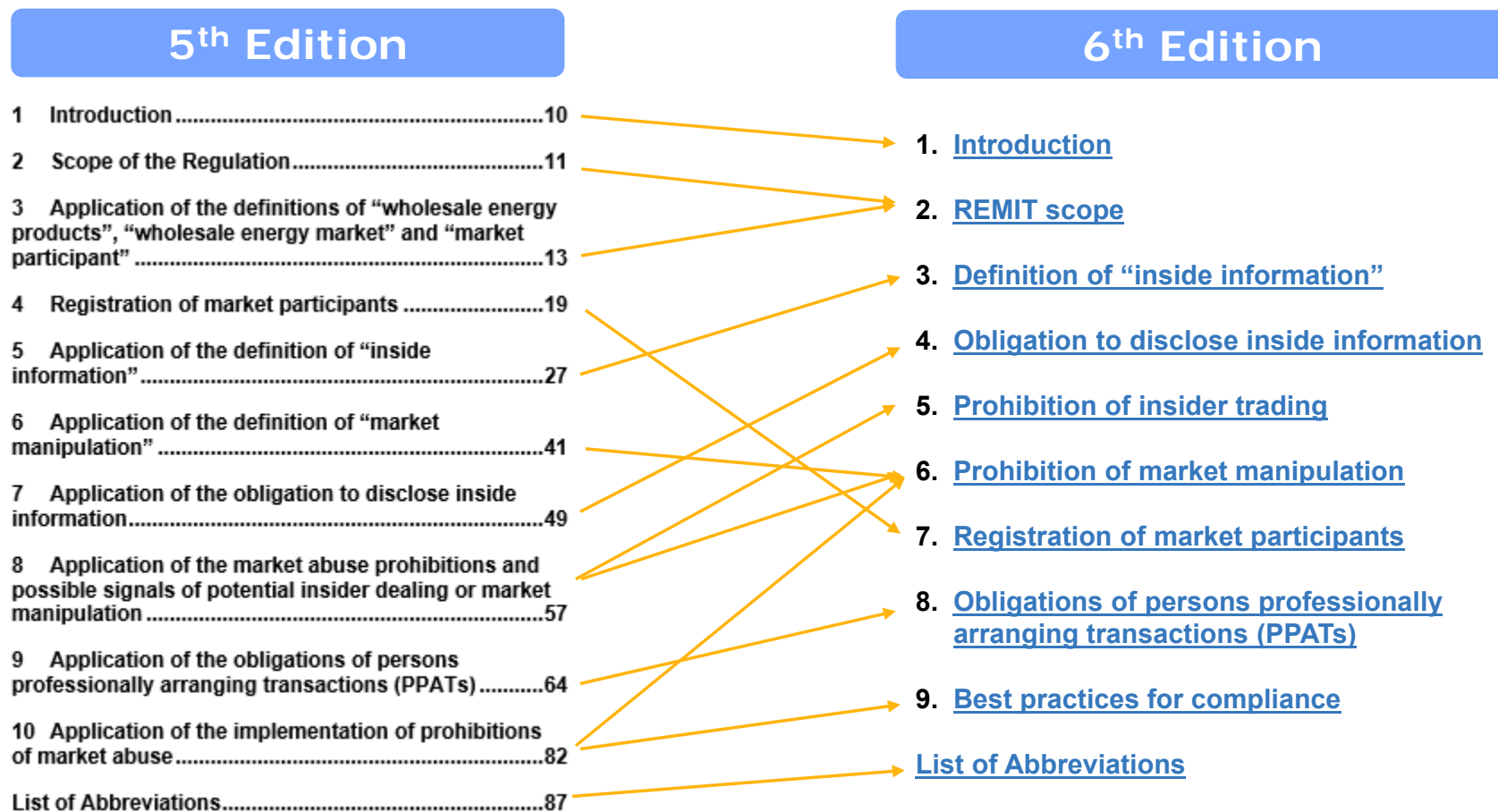
# The history of the ACER Guidance



# The rationale for the revamping

- **Structural improvements were necessary**
  - During the last 10 years, several new chapters and add-ins were introduced but the structure remained untouched
  - This created some structural misalignments and unveiled the need to update some of the older chapters
  - ACER received criticism from external stakeholders for the evident lack of update of some sections and misalignment between sections
  - ACER is currently revamping its external communication strategy and structurally improving the Guidance is a must





# Thank you!

## More info?

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# New Chapter 2 of the ACER Guidance – REMIT Scope

REMIT Forum 2021

Dimitris Lelovitis

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Thursday, 28 October 2021 / 14:00 – 16:30 CET

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### 2.1 Introduction

### 2.2 Products and markets in scope

**2.2.1** Wholesale energy products (WEP)

**2.2.2** Wholesale energy markets (WEM)

### 2.3 Geographical scope

**2.3.1** Delivered in the Union - for contracts for the supply under Article 2(4)(a) of REMIT

**2.3.2** Produced, traded and delivered in the Union - for derivatives under Article 2(4)(b) of REMIT

**2.3.3** Transportation in the Union – for transportation contracts under Article 2(4)(c) and derivative contracts under Article 2(4)(d) of REMIT

**2.3.4** Located in the Union – for contracts for the supply and distribution to final customers with a consumption greater than 600 GWh/year

### 2.4 Legal and natural persons in scope

### 2.5 Exceptions to the general scope

### 2.6 Examples of REMIT scope

- Setting-out the general scope of Regulation (EU) No 1227/2011 (REMIT).
- Identifying the exceptions to the general scope and illustrating the rationale of such exceptions.
- Overview of the chapter structure.

## 2.2. Products and markets in scope

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- Definition of WEP
- New table summarising the categories of products in the scope of REMIT
- Insertion of two practical examples:
  - concept of ‘Wholesale energy market’ – this example keeps the existing definition under previous Section 3.3;
  - concept of ‘Contract of the final customer’ - this example keeps the existing definition under previous Section 3.2.
- In addition, text from the Q&As, namely Q&A 3.3.20, 3.3.23, and 3.3.32

## 2.3. Geographical scope

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- Clear definition of the concepts of ‘produced, traded and delivered in the Union’ : incorporating existing text from Q&As – i.e. Q&A 3.3.24, 3.3.34, 3.3.36 - and/or TRUM (e.g. Annex III) and/or FAQs)
- Explanation of the nuance on this criteria across the different articles:
  - **2(4)(a)** : ‘delivered in the Union’ ;
  - **2 (4) (b)** :‘produced, traded and delivered in the union’;
  - **2(4) (c)** and **2(4)(d)** : ‘relating to transportation in the Union’

## 2.3. Geographical scope - Subsections

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- 2.3.1 : Delivered in the Union - for contracts for the supply under Article 2(4)(a) of REMIT
- 2.3.2 : Produced, traded and delivered in the EU - for derivatives under Article 2(4)(b) of REMIT
- 2.3.3 : Transported in the EU – for transportation contracts under Article 2(4)(c) and derivative contracts under Article 2(4)(d) of REMIT
- 2.3.4 : Consumption plants located in the EU – for contracts for the supply and distribution to final customers with a consumption greater than 600 GWh /year

## 2.4. Legal and natural persons in scope

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- Identification of the type of natural or legal persons that may fall in the scope of REMIT.
  
- Determination of the personal scope in respect to each of the five main prohibitions and obligations defined in REMIT towards legal and natural persons:
  - ✓ (i) Prohibition of insider trading - Article 3(1) of REMIT;
  - ✓ (ii) Obligation to publish inside information under Article 4(1) of REMIT;
  - ✓ (iii) Prohibition of market manipulation - Article 5 of REMIT;
  - ✓ (iv) Obligation to report REMIT data - Article 8 of REMIT and
  - ✓ (v) Obligation to register - Article 9(1) of REMIT.

## 2.5 Exceptions to the general scope

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- Chapter 2 updated with the legal references (Articles 3 and 5 and the concept of financial instruments)
- Article 1(2) of REMIT draws a brighter line among the scope of application of the market abuse prohibitions of Articles 3 and 5 of REMIT and the market abuse prohibitions of MAR.
- Accordingly, Articles 3 and 5 of REMIT shall not apply to wholesale energy products which are financial instruments and to which Article 9 of Directive 2003/6/E (and as of the 3 July 2016, Article 2 of MAR)
- Article 1(2) of REMIT does not exclude the application of other Articles of REMIT to any type of wholesale energy product (including the ones that are also financial instruments)

# Thank you!

## More info?

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# New Chapter 5 of the ACER Guidance – Insider trading

REMIT Forum 2021

Michal Miko

ACER - Market Surveillance and Conduct Department

Thursday, 28 October 2021 / 14:00 – 16:30 CET

Public

- Explains the main goals/structure of this **new Chapter**:
  - More clarity on each of **three types** of insider trading
  - Provides an updated **list of indicators**
  - Clarifies the **scope of the prohibition**
  - Explains the **exemptions**

## 5.2. Forms of insider trading

- Includes a table summarising the **different forms** of insider trading:
  - **On** market vs. **Off** market
  - **Effect** form vs. **Attempted** form of insider trading

Forms of insider trading		
	Attempted form	Effect form
On-market	Using inside information by trying to acquire or dispose wholesale energy products	Using inside information by acquiring or disposing of wholesale energy products
Off-market		Disclosing inside information
		Recommending or inducing to acquire/dispose wholesale energy products

## 5.2. Definitions of insider trading (i)

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- Introduces the **legal text** of the insider trading prohibition provision **under REMIT**.
- Includes new text explaining **each of the 3 types** of behaviour defined in Article 3(1) of REMIT together with examples:
  - **Using** inside information:
    - (i) acquiring or disposing of **wholesale energy product** (or trying to do so);
    - (ii) for its own **account** or for the account of a third party;
    - (iii) **directly or indirectly**;
    - (iv) wholesale energy products to which that **information relates**.
  - **Example:**
    - Using inside information by entering into transactions - **Lack of updates** on Urgent Market Message while trading;
    - Using inside information by trading - **Front running**.

## 5.2. Definitions of insider trading (ii)

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- **Disclosing** inside information:
  - (i) disclosure of (inside) information to any other person; and
  - (ii) disclosure is not made in the normal course of the exercise of their employment, profession or duties.
  - **Example:** Disclosure of inside information from the power plant director to the trade union representative
- **Recommending or inducing trading** on the basis of inside information
  - **Example:** Chief Technology Officer recommendation to an energy trader working at a different company to buy electricity forwards

## 5.3. List of indicators

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- Includes the **list of indicators** of insider trading.
- Introduces **signals** and **practices**:
  - **Possible signals** (isolated elements of actions and market movements that can indicate insider trading):
    - Relevant or/and sudden changes in the **traded volumes**;
    - Relevant and/or sudden change in the **prices**;
    - Change in the trading **behaviour** of a market participant;
    - **Profit** (potential) increase or change;
    - The **lack of compliance** with other REMIT obligations on inside information.
  - **Types of practices** (more typified and recurrent combinations of actions that can indicate the possibility of insider trading):
    - Front running or pre-positioning;
    - Double Printing.

## 5.4. Scope of the provision

- Explains who is ‘insider’.
- A non-exhaustive **list of examples** of the **five categories** of insiders listed in Article 3(2) of REMIT is provided:

### Some examples of insiders

Categories of insiders	Non-exhaustive list of examples
Members of the administrative, management or supervisory bodies of an undertaking	<ul style="list-style-type: none"> <li>- Chief executive officer or other members of the management of an undertaking who are exposed to facts that can qualify as inside information;</li> <li>- Managers of the control centre deciding on the rescheduling of planned outages;</li> <li>- Procurement managers responsible for the purchase/service contracts of the critical parts of a power plant;</li> <li>- Members of the supervisory board who are exposed to facts that can qualify as inside information.</li> </ul>
Persons with holdings in the capital of an undertaking	<ul style="list-style-type: none"> <li>- Shareholders (natural or legal persons) of the market participant who may be informed about the company's non-public information;</li> <li>- The legal person which possesses information with respect to business or facilities which its parent undertaking or related undertaking, owns or controls or for whose operational matters that legal person or undertaking is responsible, either in whole or in part.</li> </ul>

### Some examples of insiders

Categories of insiders	Non-exhaustive list of examples
Persons with access to information through the exercise of their employment, profession or duties	<ul style="list-style-type: none"> <li>- A market participant which possesses information with respect to businesses or facilities which it owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part;</li> <li>- A natural person, acting on behalf of the market participant, which possesses information with respect to businesses or facilities which the market participant, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part;</li> <li>- PPATs introducing and/or executing orders in the wholesale energy markets on behalf of their clients.</li> </ul>
Persons who have acquired such information through criminal activity	<ul style="list-style-type: none"> <li>- IT hackers stealing information from the IT system of the market participant or the IT system of the PPAT used by the market participant;</li> <li>- Market participant competitors that may have had access to that information through industrial espionage.</li> </ul>
Persons who know, or ought to know, that it is inside information	<ul style="list-style-type: none"> <li>- Administrative staff that deals with the administrative processes regarding power plant unavailabilities;</li> <li>- The spouse or friend of an employee of the market participant which typically possesses information with respect to businesses or facilities which the market participant, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible (either in whole or in part), and that are aware or should be aware of the type of activity that the employee is responsible for and the sensitivity of the information he/she deals with.</li> </ul>

## 5.4. Scope of provision

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- Explains the responsibility of the **company** (legal person) vs. that of the **trader** (natural person) emphasising the need for **Chinese walls** between the traders and operational staff.
  - From these categories, it can be concluded that the concept of persons who possess inside information included in REMIT goes well **beyond** the one of **market participants** or natural persons acting on their behalf. It is also explicitly acknowledged in Article 3(5) of REMIT, that where the person who possesses inside information is a legal person, the prohibitions laid down in Article 3(1) of REMIT shall also **apply to the natural persons** who take part in the decision to carry out the transaction for the account of the legal person concerned.
  - This puts a particular **responsibility on the traders** acting on behalf of market participants and invites market participants to have proper **compliance measures** in place to ensure an appropriate workflow for the inside information handled [...].



- Article 3(3) of REMIT provides an **exemption for the TSOs** from two forms of insider trading, but only ‘when purchasing electricity or natural gas in order to ensure the safe and secure operation of the system in accordance with their obligations under points (d) and (e) of Article 12 of Directive 2009/72/EC or points (a) and (c) of Article 13(1) of Directive 2009/73/EC’.
- Article 3(4) of REMIT grants an exemption from all three forms of insider trading to:
  - (a) **transactions** conducted in the discharge of an obligation [...] where that obligation results from an agreement concluded, or an order to trade placed, **before the person** concerned **came into possession of inside information**;
  - (b) transactions entered into by electricity and natural gas producers, [...] the **sole purpose** of which is to **cover the immediate physical loss** resulting from **unplanned outages**, where not to do so would result in the market participant not being able to meet existing contractual obligations or where such action is undertaken in agreement with the TSO(s) concerned in order to **ensure safe and secure operation** of the system [...];
  - (c) market participants acting under national emergency rules, where national authorities have intervened in order to **secure the supply of electricity or natural gas** and market mechanisms have been suspended in a Member State or parts thereof [...].”

# Thank you!



## More info?



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# New Chapter 6 of the ACER Guidance – Market Manipulation

REMIT Forum 2021

Marie-Judith Moriconi

ACER - Market Surveillance and Conduct Department

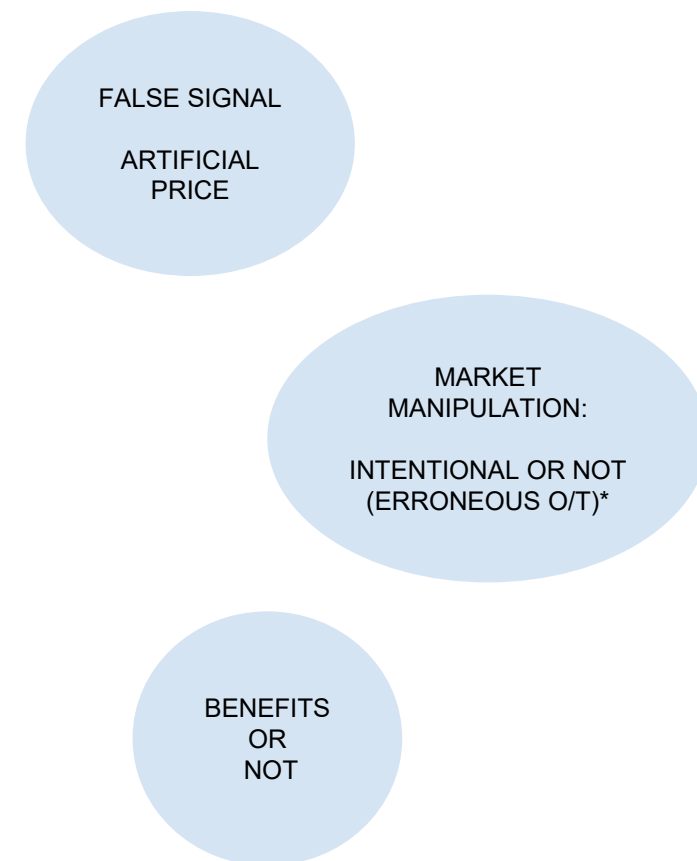
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- Main goals and structure of this **new Chapter**:
  - Clarification of the **definitions of market manipulation and attempted market manipulation**
    - Focus on the **four types** of manipulation (false/misleading signal, artificial price, use of deception/contrivance, dissemination of false information)
  - Updated list of **indicators** of market manipulation
    - Signals
    - Types of practices
  - Clarification of the **scope** of the prohibition
  - Explanation of the **exemptions**

## 6.2. Definitions of market manipulation and attempted market manipulation

		Intention	Effect	
			Likely effect	Real effect
On-market	Giving false/misleading signals	Attempted market manipulation	Market manipulation	
	Securing artificial price			
	Using fictitious devices/deception/contrivance			
Off-market	Disseminating false or misleading information			



\* 'O/T' stands for 'orders or transactions'

## 6.2.1. False/misleading signals

Identification of  
suspicious O/T

Further assessment

Market participant's rationale for trading

Context of the trading activity

Non-genuine O/T

Uneconomical

No real  
interest in  
buying/selling  
energy

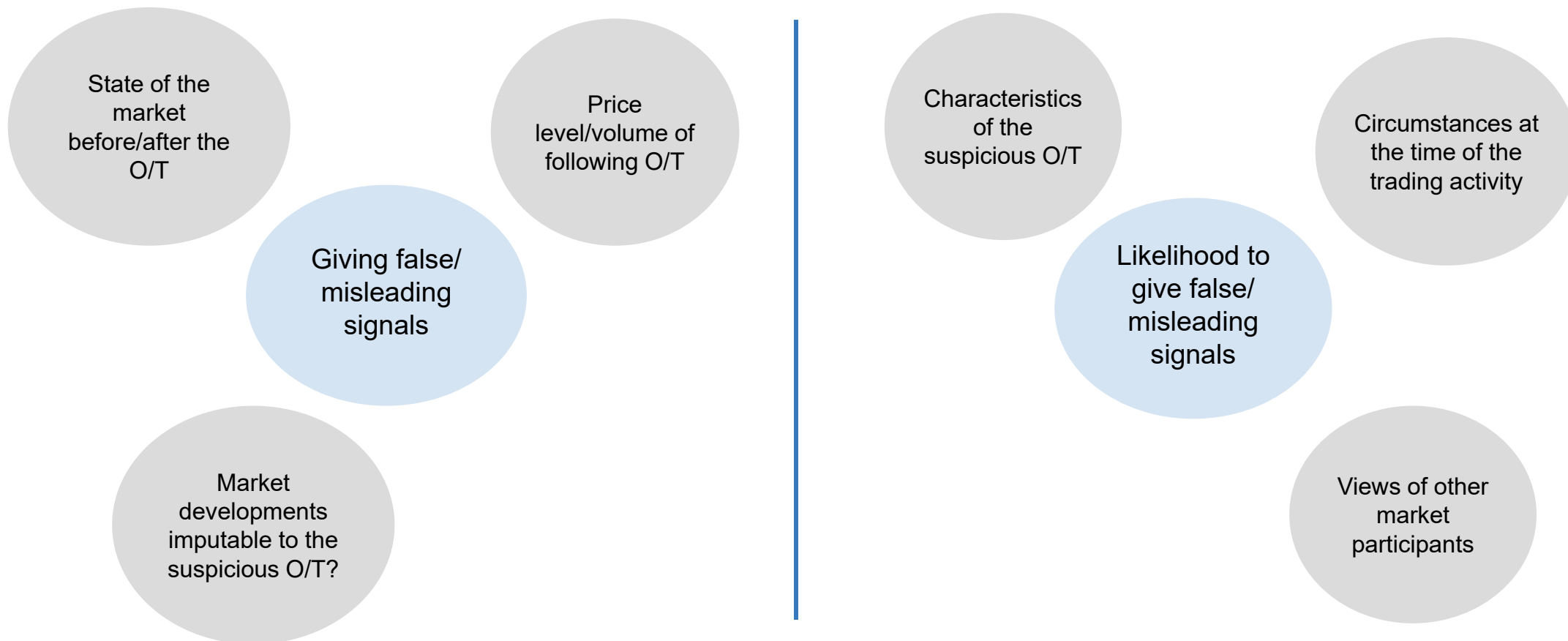
No intention  
to execute

Erroneous

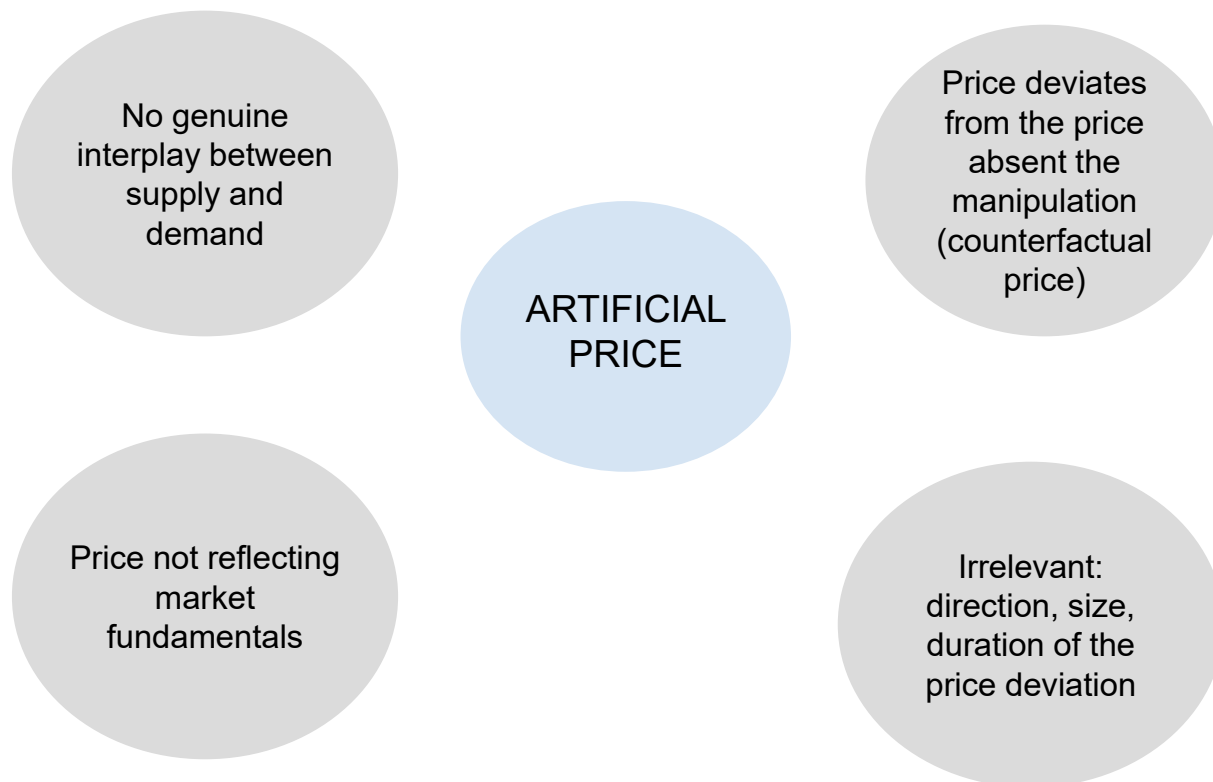
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False/  
misleading signals

## 6.2.1. False/misleading signals

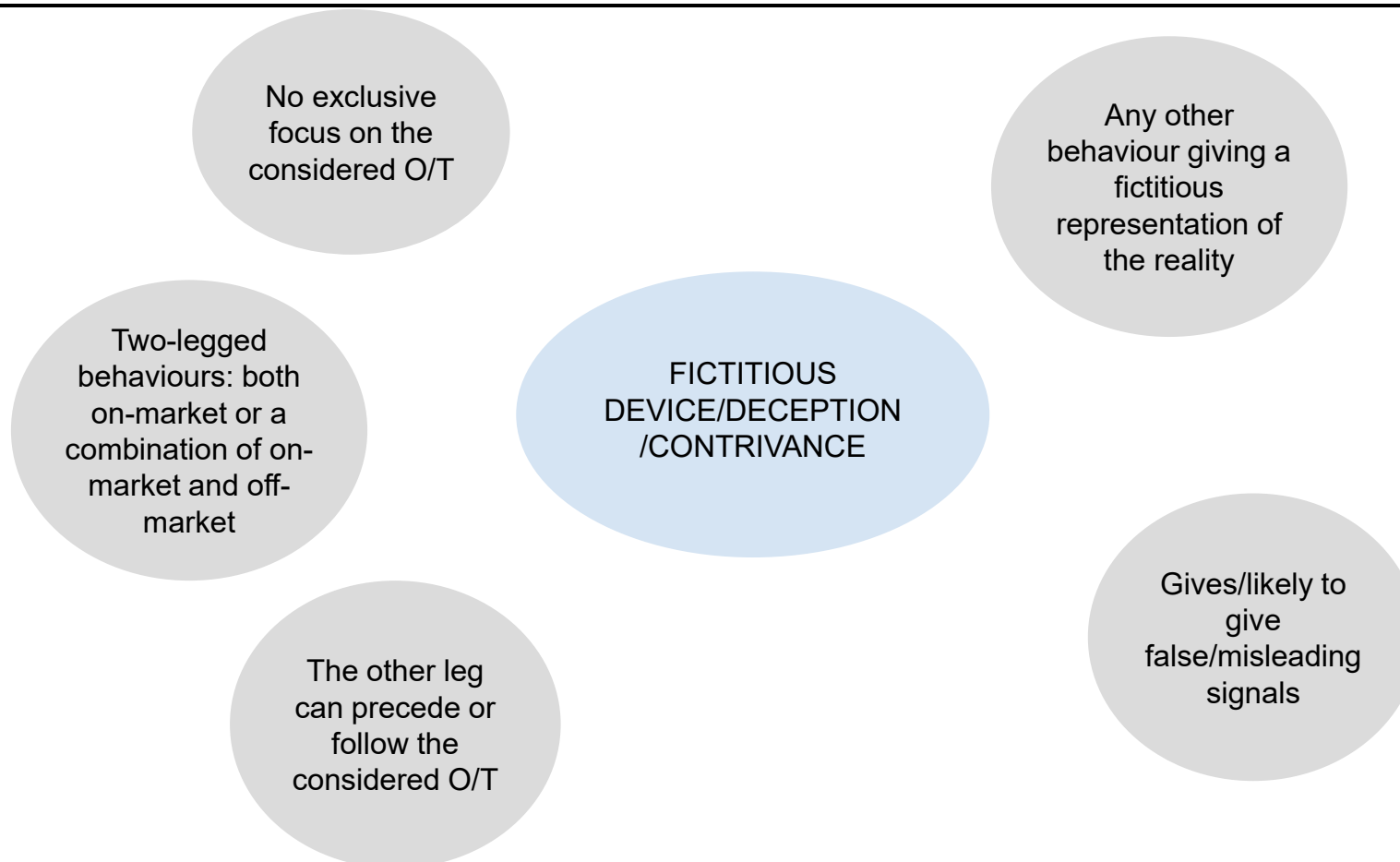


## 6.2.2. Artificial prices

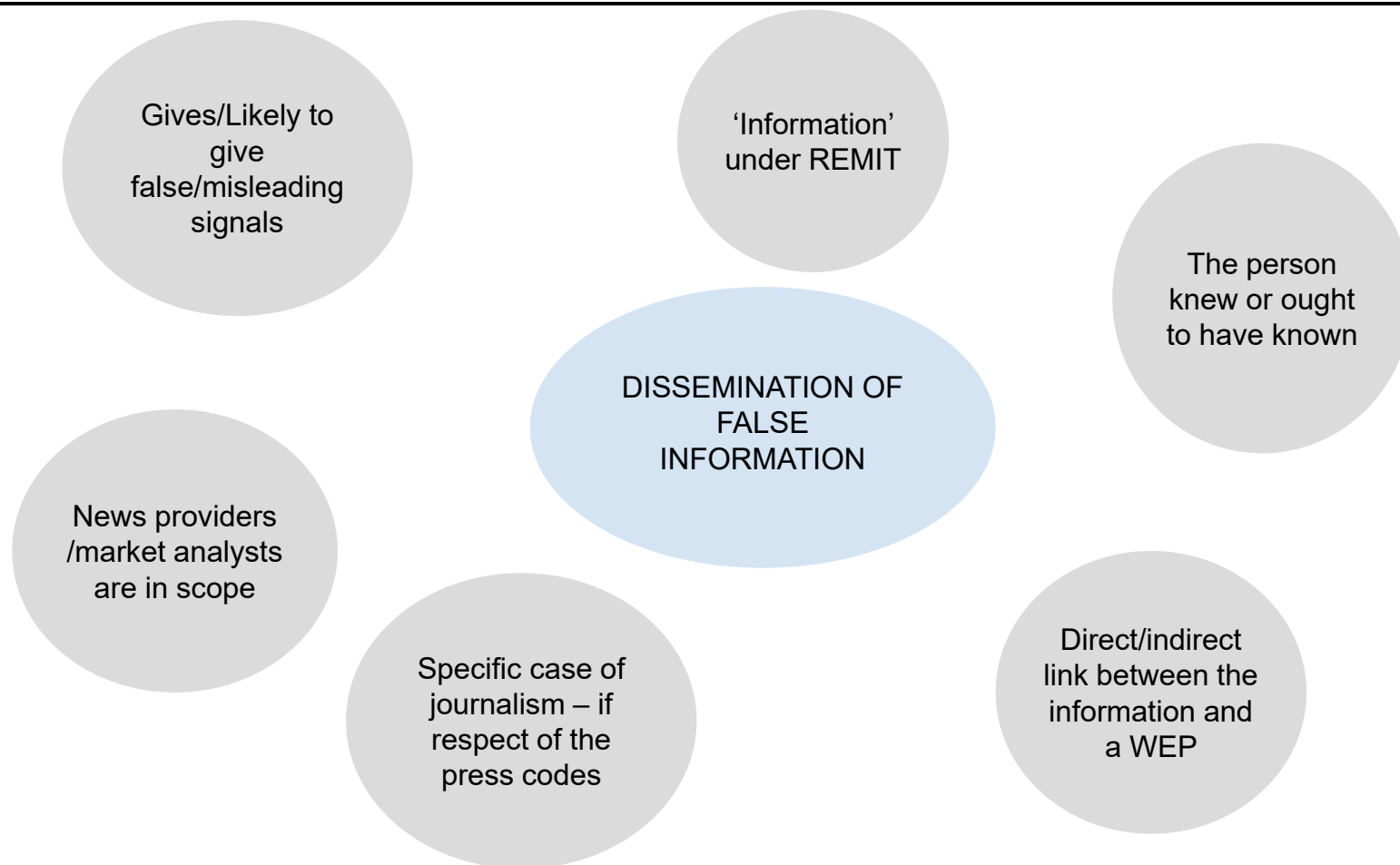




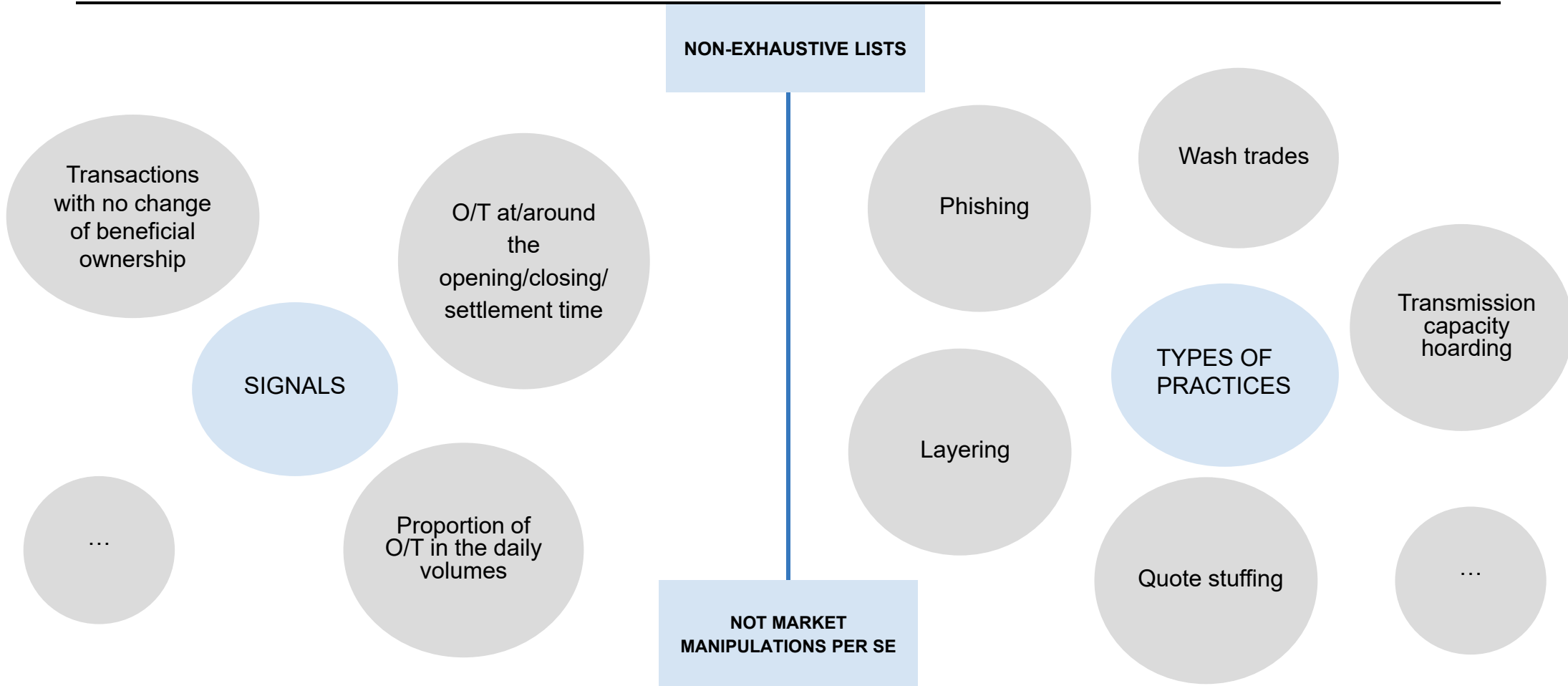
## 6.2.3. Fictitious devices/deception



## 6.2.4. Dissemination of false information



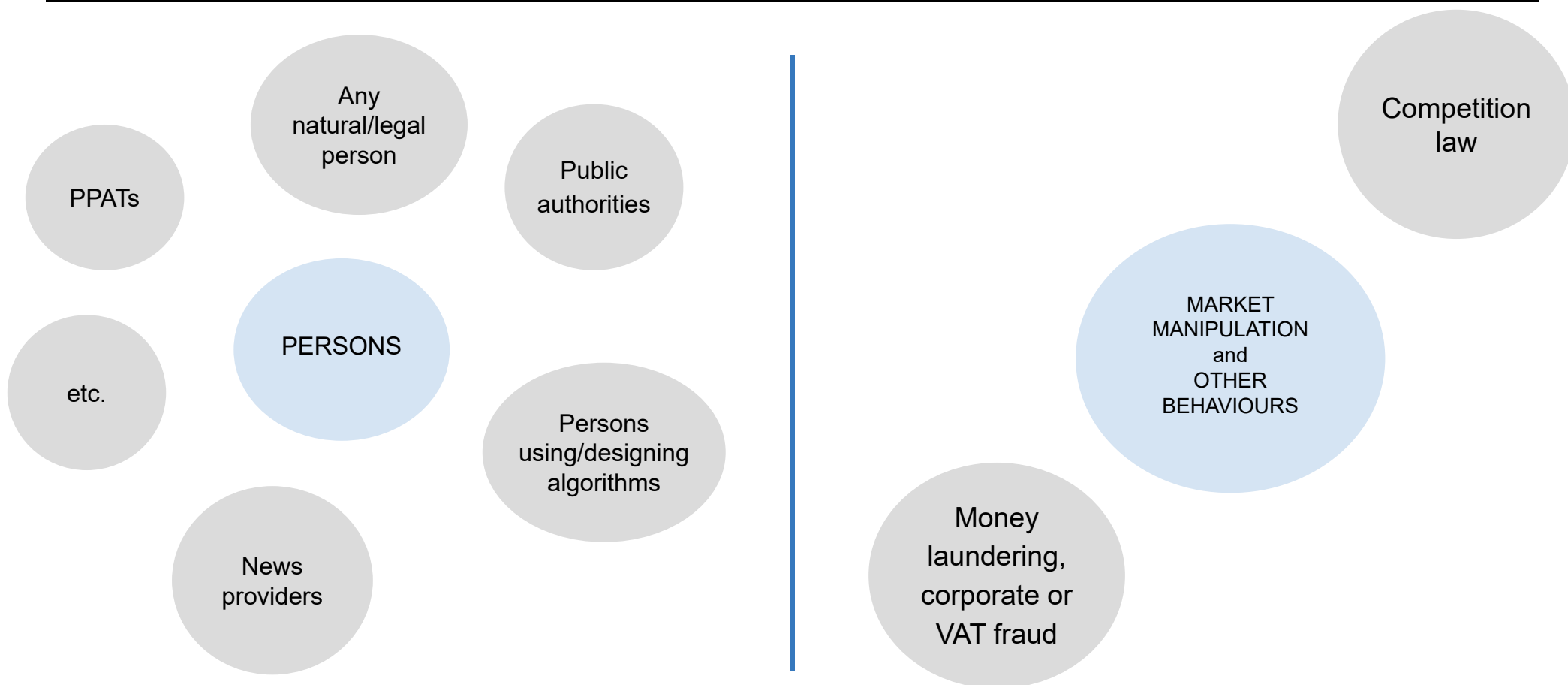
## 6.3. List of indicators



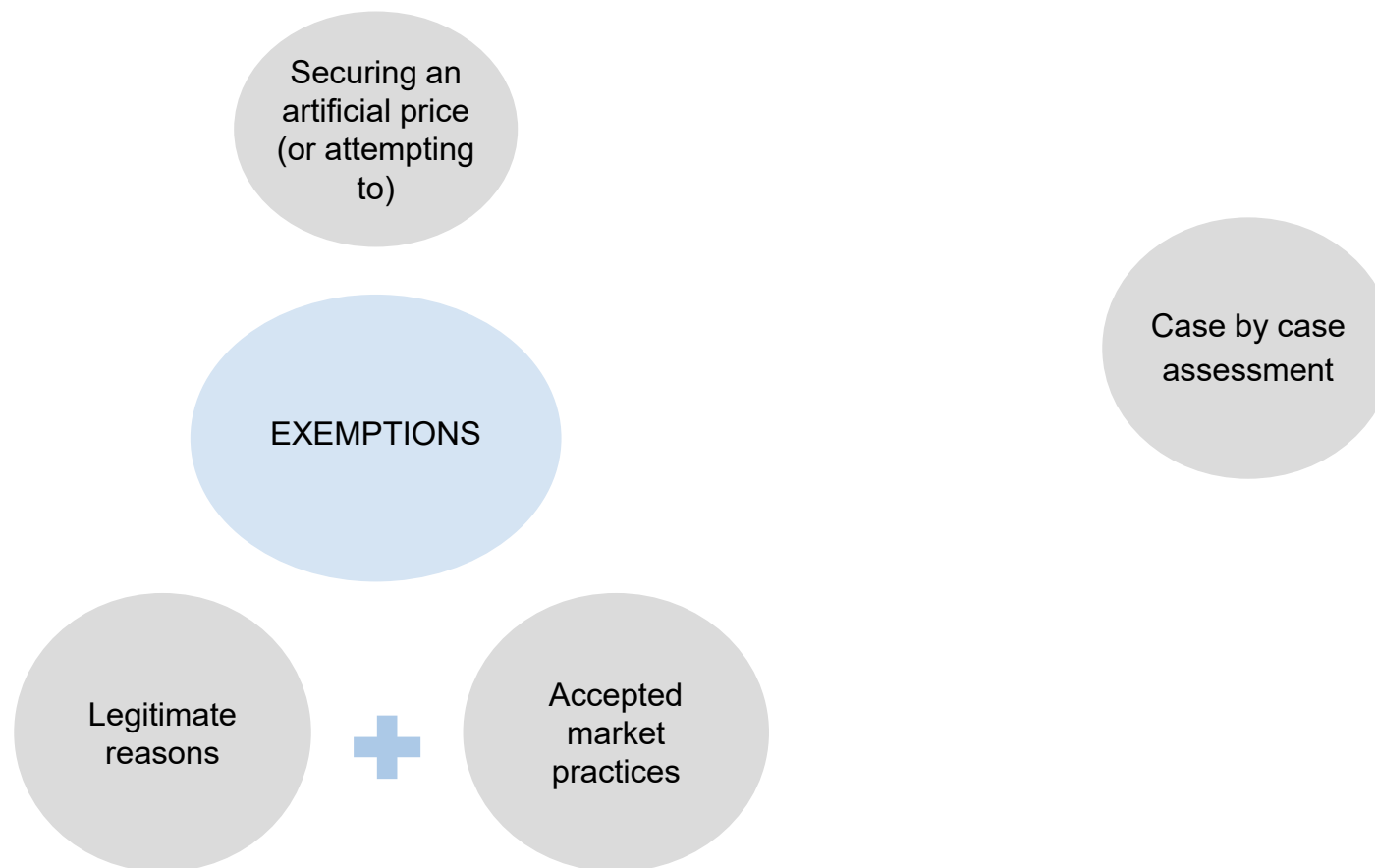
List of signals also designed taking into account the Annex I of MAR

List of indicators also designed taking into account the Annex II of Reg. 2016/522

## 6.4. Scope of the provision



## 6.5. Exemptions



# Thank you!

## More info?

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