

Wholesale market information: review of clause 13.2 exclusions

Background and context

15 September 2015

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Introduction

- Authority's 2015/16 work programme includes an item relating to wholesale market information
 - Item 2.19 Wholesale market information – review of wholesale market information disclosure (WMID) exclusions in Part 13 of the Code
 - aim: enhancing the disclosure of information that influences the forward price curve facilitates an active hedge market, which assists with enhancing retail market competition
- the WAG is considering including this review as an item in its work plan
- the purpose of this presentation to the WAG is to:
 - set out the purpose of WMID arrangements in a competitive market
 - describe the current WMID arrangements and history of their development
 - provide the context for the WMID review
 - seek WAG input on key questions for the review and how to address these

Background on wholesale market information disclosure

Role of information disclosure in markets

- an effective information disclosure regime is a fundamental feature of a well-functioning competitive market
- information disclosure regulation is a tool for eliminating information asymmetry amongst market participants
 - information asymmetry will lead to transfers of wealth from uninformed to informed market participants when they trade with each other, potentially leading to inefficient market outcomes
- effective information disclosure regulation can also:
 - reduce information costs
 - assist existing and potential market participants in making informed decisions
 - enhance confidence in the integrity of the market by removing opportunities for insider trading and the creation of a false market
 - facilitate market monitoring
- possible adverse impacts of information disclosure include information infrastructure costs, facilitating collusion, and reduced incentive to innovate

Effective disclosure of wholesale market information

- information disclosure obligations are common in wholesale markets for electricity
- in New Zealand these electricity markets comprise:
 - the wholesale market for energy
 - the ancillary services market
 - the market for financial hedge contracts for electricity
- it is important that information disclosure obligations operate effectively
- the Authority considers that an effective disclosure regime should:
 - build confidence in the electricity market
 - promote efficient monitoring and information provision
 - reduce any information asymmetry between informed and uninformed market participants and interested parties

Current WMID arrangements

Current WMID arrangements – key elements

- the disclosure obligations in clause 13.2A of the Code are the core of the wholesale market disclosure regime
- other elements of the regime include:
 - Authority guidelines to assist participants with meeting their disclosure obligations under clause 13.2A
 - provisions in clause 13.2 regarding misleading, deceptive or incorrect wholesale market information
 - specific provisions in the Code requiring publication of market information such as spot prices, bids/offers etc through the Wholesale Market Information System (WITS and the WITS Free-to-air platform WITS-FTA)
 - the hedge disclosure and spot price risk disclosure obligations in the Code
 - the Authority's monitoring and compliance arrangements
- the Authority also encourages and facilitates voluntary disclosure of wholesale market information through a variety of means

Current WMID arrangements – design intent

- the Code creates a ‘continuous disclosure’ obligation for information that is relevant to the wholesale electricity markets
 - new clause 13.2A was modelled on comparable provisions for companies listed on the NZ Stock Exchange (NZX), modified for electricity market context
- the core test for ‘relevant to the wholesale electricity market’:
 - information the participant expects, or ought reasonably to expect, if made publicly available, will have a material impact on prices in the wholesale market
 - wholesale market includes spot, ancillary services, hedge and FTR markets
- specified circumstances when information does not need to be disclosed
 - the ‘exclusions’ in the previous clause 13.2 were retained but reworded, and augmented by relevant exclusions in the NZX disclosure regime
- the onus is on the participant to determine if information must be disclosed
- if information must be disclosed, the participant must:
 - make the information readily available to the public, free of charge, as soon as reasonably practicable after becoming aware of the information

Clause 13.2A of the Code

13.2A **Participant** must make **disclosure information** readily available

- (1) Each **participant** must make all **disclosure information** in relation to the **participant** readily available to the public, free of charge, as soon as reasonably practicable after the **participant** becomes aware of the information.
- (2) Despite subclause (1), a **participant** is not required to make **disclosure information** readily available to the public if—
 - (a) the **disclosure information** is **excluded Code information**; or
 - (b) doing so will commercially disadvantage the participant in a material manner; or
 - (c) the **participant** is bound by a legal obligation to keep the **disclosure information** confidential; or
 - (d) doing so will be a breach of law; or
 - (e) the **disclosure information** is already readily available to the public; or
 - (f) the **disclosure information** concerns an incomplete proposal or negotiation; or
 - (g) the **disclosure information** comprises matters of supposition or is insufficiently definite to warrant being made readily available to the public; or
 - (h) the **participant** claims legal professional privilege or privilege against self-incrimination in respect of the **disclosure information**; or
 - (i) the **disclosure information** is a trade secret.
- (3) A **participant** that relies on subclause (2) must, as soon as reasonably practicable, make the **disclosure information** readily available to the public, free of charge, if subclause (2) ceases to apply to the **disclosure information**.
- (4) If information ceases to be **disclosure information**, a **participant** is no longer required to make the information readily available to the public.
- (5) A **participant** that does not make information readily available to the public under this clause must, if required to do so by the **Authority**,—
 - (a) satisfy the **Authority** that subclause (2) applies to the **disclosure information**, if the **participant** relies on subclause (2); or
 - (b) satisfy the **Authority** that the information is not **disclosure information**.
- (6) A **participant** must not enter into a confidentiality agreement with another person for the purpose of avoiding making **disclosure information** readily available to the public under this clause.

Key definitions from Part 1 of the Code

disclosure information, in relation to a **participant**, means information that—

- (a) is about the **participant**; and
- (b) is held by the **participant**; and
- (c) the **participant** expects, or ought reasonably to expect, if made publicly available, will have a material impact on prices in the wholesale market

excluded Code information means information—

- (a) that relates to **bids, offers, reserve offers**, or any **asset capability statement**; or
- (b) that is provided to the **Authority**, any investigator, or the **Rulings Panel** and that is required to be kept confidential under this Code or the **Act**; or
- (c) in relation to which the **Rulings Panel** has prohibited publication or communication

participant has the meaning given to it in section 5 of the **Act**, which can be summarised as:

- (1) participants: a generator; Transpower; a distributor; a retailer; any other person who owns lines; a person who consumes electricity that is conveyed to the person directly from the national grid; a person, other than a generator, who generates electricity that is fed into a network; a person who buys electricity from the clearing manager; any industry service provider identified in subsection (2).
- (2) industry service providers: a market operation service provider; a metering equipment provider; a metering equipment owner; an ancillary service agent; a person that operates an approved test house; a load aggregator; a trader in electricity; any other industry service provider identified in regulations made under section 109 of the Act.

wholesale market means—

- (a) the spot market for electricity, including the processes for setting real time prices, forecast prices and forecast reserve prices, provisional prices and provisional reserve prices, interim prices and interim reserve prices, final prices and final reserve prices
- (b) markets for ancillary services
- (c) the hedge market for electricity, including the market for FTRs

Clause 13.2 of the Code

13.2 Misleading, deceptive, or incorrect information

- (1) A **participant** must not disclose to any person any information under this Part that, at the time the information was disclosed, was misleading or deceptive or likely to mislead or deceive when taken in the context of activities under this Part.
- (1A) In assessing whether information, at the time of disclosure, is misleading or deceptive or is likely to mislead or deceive, a **participant** must act reasonably and prudently.
- (2) If a **participant** discovers that information previously disclosed by it to a person under this Part was misleading, deceptive or incorrect, the **participant** must immediately—
 - (a) disclose further information so that the person is not misled or deceived by the information; or
 - (b) disclose corrected information to the person.

Development of the WMID arrangements over time

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Timeline of WMID development – WAG activities

Date	Development	Outcome
July 2011	WAG accepts Wholesale Market Information Project (WMIP) as a work plan item	WAG considered a range of issues relating to the role of information in markets, the availability and accessibility of wholesale market information, and the effectiveness of the existing disclosure arrangements.
23 Mar 2012	WAG publishes its WMIP discussion paper for consultation	WAG presented its review of existing arrangements and outcomes. WAG proposed amendments to Clause 13.2 of the Code. WAG identified a number of areas for enhancing information including thermal fuel quantity, snowpack information, transmission and generation outage information.
9 Aug 2012	WAG submits its WMIP recommendations to the Authority Board	WAG recommended (amongst other things) that the Authority: • pursue amendments to clause 13.2 of the Code • pursue a 'facilitated disclosure' approach to enhancing availability and accessibility of thermal fuel quantity and snowpack information • initiate with Transpower a review of POCP with a view to enhancing information on transmission and generation availability and outages of relevance to forward price curve evaluation and security of supply.

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Timeline of WMID development

Date	Development	Outcome
9 Nov 2012	Authority publishes a Code amendment consultation for clause 13.2	Authority proposed revised drafting for clause 13.2 including a new clause 13.2A, drawing heavily on the WAG recommendations.
26 Mar 2013	Authority consults on draft guidelines for clause 13.2	Authority published draft guidelines to assist participants understand the (draft) WMID obligations. Authority also provided feedback from submissions on the Code amendment consultation, but holds over decisions pending consultation on the guidelines.
15 Feb 2013	Authority holds participant workshop on draft guidelines	Authority presented revised WMID regime and draft guidelines to interested parties and sought feedback.
14 Jun 2013	Code amendment gazetted	After considering submissions, the Authority finalised and published the Code amendment and guidelines. The revised clause 13.2 and new clause 13.2A were gazetted, but the operational date was set at 1 Oct 2013. The delay was to enable parties to take steps to be ready for compliance with the new regime, and for POCP amendments to be implemented (in particular, open access to POCP).
1 Oct 2013	Code amendment comes into effect	Revised clause 13.2 and new clause 13.2A became operational.

Context for the project

Framework for considering effectiveness

- effectiveness of WMID arrangements relies on a variety of factors, including:
 - all participants are fully aware of their disclosure obligations
 - the test for information disclosure is appropriate
 - all participants appropriately apply the test for disclosure at all times
 - the set of exclusions is appropriate
 - all participants appropriately apply the exclusion provisions at all times
 - participants' compliance with disclosure obligations is effectively monitored and enforced
 - the regime is delivering outcomes consistent with the Authority's statutory objective

Observations on operation of current arrangements

- observations suggest that the availability and accessibility of wholesale market information has generally improved since the new regime became operational on 1 October 2013
- the hedge market survey, carried out in 2014, identified:
 - that most respondents believed that there was sufficient information available to determine the market price for contracts in 2014
 - respondents did not suggest there was any shortage of information available on how to manage risk
 - respondents generally agreed that the Authority did have a role in providing information that helped promote competitive and in educating consumers about the industry. Some felt the key role of the Authority was to ensure information was provided to enable a level playing field

Observations on operation of current arrangements (cont)

- however, some parties have observed behaviour that might suggest some disclosure information has not been disclosed, or has not been disclosed in a timely fashion:
 - plant outage announcements made after the OMF and NZX daily reports so that the information is not disseminated before the trading window
 - plant dispatched in a way that was inconsistent with POCP declarations
 - plant running when it is declared unavailable in the Planned Outage Co-ordination Process (POCP)
 - permanently retired plant coming back into service without notice
 - information about a major gas outage known by parties with gas contracts earlier than by other parties
 - hedge trading activity in advance of major market announcements that might suggest some parties may have been aware of the impending announcement
- the hedge market survey identified that:
 - more timely and accessible information on outages was among the most commonly requested information
 - some respondents requested more outage information be disclosed through POCP

Some possible questions...

- has the availability and accessibility of wholesale market information generally improved since the new WMID regime was implemented?
- are all participants fully aware of their WMID obligations?
- could the WMID guidelines be improved to better assist participants understand and meet their WMID obligations?
- is WMID compliance being sufficiently well monitored and enforced?
- are there issues with the way participants are using the POCP forum as their WMID mechanism for outage information?
- are one or more WMID exclusions frustrating the effectiveness of the overall WMID regime?
 - in particular, is the exclusion “if doing so will commercially disadvantage the participant in a material manner” (subclause 13.2A (2)(b)) reducing confidence in the trading of futures?

What comments do WAG members have on these questions?

What other questions could be asked?

Some possible means to address the key questions...

- consider appropriateness and effectiveness of the existing WMID regime in the context of the Authority's statutory objective
- engage with a representative set of participants to hear their thoughts on the effectiveness of the current regime
- engage with potential new entrant participants to hear their expectations for an effective regime
- liaise with Authority's Market Performance, and Legal and Compliance staff to identify possible issues – actual and hypothetical
- case study analysis of key issues identified to determine what, if any, cost-effective measures could be adopted to address the issues

What comments do WAG members have on these possible activities?
What other means could the WAG adopt to address the key questions?

Indicative timeframe and possible next steps

Phases and deliverables	Suggested timeframe
WAG meeting to discuss project	September 2015
If WAG accepts the project, then...	
Prepare project termsheet Prepare WAG discussion paper	by April 2016
Submit discussion paper to Board for comment	June 2016
Publish WAG discussion paper for consultation	June/July 2016
Prepare summary of submissions following consultation	August 2016
Prepare recommendations paper for the WAG	by March 2017
Board to consider recommendations	April 2017
Maintain watching brief, provide further WAG input as needed	As required

Reference materials and additional reading

WAG Discussion Paper: Wholesale Market Information Project

Link	http://www.ea.govt.nz/dmsdocument/12741
Prepared by	WAG
Date	23 March 2012
Synopsis	<i>This discussion paper presented an assessment of current wholesale market information availability and set out areas where possible enhancements could be made.</i> <i>The paper included:</i> • a “stocktake” of wholesale market information that could be readily obtained from publicly available websites • a discussion of what wholesale market information was required for forward price curve determination • a “traffic light” rating to identify any significant information gaps • identification of practicable options for addressing each of the significant information gaps. <i>The key information gaps identified were information on thermal fuel, snowpack, transmission and generation availability and outages, ASX contract trading prices, contract cover information, and hydro and climate outlook information. WAG proposed a mixture of facilitated disclosure and a laissez-faire approach to addressing many of these information gaps. In addition, the WAG recommended pursuing ongoing consultation on improving the accuracy and currency of information available through POCP. The WAG considered that the stress-testing regime would provide the most appropriate avenue at this time for enhancing information on the market’s contract cover.</i> <i>The paper also identified a number of areas where drafting of clause 13.2 of the Code was deficient. These included:</i> • it did not apply to all participants • the definition of “relevant information” was too wide and difficult to comply with • the scope of the markets to which the clause applied were unclear. <i>The paper identified some possible amendments to clause 13.2 to address these issues. The WAG also noted that it envisaged the Authority would prepare and publish a guideline on information disclosure obligations.</i>

Reference materials and additional reading

WAG Wholesale Market Information Project Recommendations Paper

Link	http://www.ea.govt.nz/dmsdocument/13660
Prepared by	WAG
Date	9 August 2012
Synopsis	<i>This paper set out the WAG’s conclusions and recommendations to the Board following the WAG’s consideration of submissions on its discussion paper.</i> <i>The WAG:</i> • recommended that the Authority pursue the WAG’s proposed amendments to the existing disclosure regime in the Code (clause 13.2) that clarify certain aspects of the obligations, scope and exclusions • recommended that the Authority pursue a “facilitated disclosure” approach to enhancing the availability and accessibility of thermal fuel quantity information and snowpack information, and review the effectiveness of the arrangement after 12 months of operation • concluded that a case could not be made for including thermal fuel price information in the facilitated disclosure arrangement, largely as a result of the commercially sensitive nature of pricing information • recommended that the Authority should initiate with Transpower a review of POCP and the associated Red Spider database of outage information • recommended that the Authority review contractual arrangements for access to WITS • concluded that the Authority’s stress-testing regime was sufficiently comprehensive as to not require any further steps to enhance information on the market’s contract cover • concluded that no case could be made for the Authority pursuing enhancements in the other areas explored by the WAG, notably ASX contract trading prices and hydro/climate outlook information.

Reference materials and additional reading

Consultation Paper: Wholesale Market Information Disclosure Obligations

Link	http://www.ea.govt.nz/dmsdocument/13939
Prepared by	Authority
Date	21 December 2012
Synopsis	<i>This consultation paper set out the Authority's proposed changes to clause 13.2 the Code to deliver a more effective information disclosure regime. The Authority largely adopted the proposed amendments that WAG recommended to the Board in its recommendations paper.</i> <i>The Authority proposed to amend clause 13.2 by deleting the current disclosure obligations and including new disclosure obligations in a new proposed clause 13.2A so that:</i> <i>all participants, rather than a subset of participants, are obligated to disclose information</i> <i>only information that is expected to have a material impact on prices in specified markets (subject to some exclusions) is required to be made publicly available</i> <i>it specifies the markets to which the information disclosure applies</i> <i>it more clearly sets out when a participant is not required to make the information publicly available</i> <i>the onus of proof requirements are re-drafted.</i> <i>the Authority also proposed to release guidelines to assist interested parties to understand the disclosure obligations.</i>

Reference materials and additional reading

Consultation Paper: Proposed clause 13.2A Guidelines

Link	http://www.ea.govt.nz/dmsdocument/14570
Prepared by	Authority
Date	26 March 2013
Synopsis	<i>This purpose of this consultation paper was:</i> <i>to provide participants and interested parties with an update on the Authority's consideration of the proposed amendment to clause 13.2 of the Code</i> <i>to consult on guidelines on the application of the proposed information disclosure obligations in clause 13.2A of the Code.</i> <i>The consultation paper noted key issues that had been raised with the proposed Code amendment in submissions and during the development of the guidelines, and noted the Authority's response to these issues. The consultation paper noted that the Authority had considered it appropriate to retain the "commercially disadvantage the participant in a material manner" exclusion.</i> <i>The consultation paper included draft guidelines on the application of the proposed information disclosure obligations in clause 13.2A of the Code.</i>

Reference materials and additional reading

Guidelines for Participants on wholesale market information disclosure obligations

Link	http://www.ea.govt.nz/dmsdocument/15138
Prepared by	Authority
Date	17 June 2013
Synopsis	<i>The purpose of the guidelines is to:</i> • <i>set out the expectations of the Authority in relation to participants' compliance with their disclosure obligations in the Code</i> • <i>provide guidance to participants bound by the disclosure obligations to assist them in making disclosure decisions</i> • <i>provide guidance to parties interested in obtaining information as to what information is likely to be available under the disclosure obligations.</i> <i>The guidelines provide general information to help participants understand aspects of the Code with which they may have to comply. The information in the guidelines is not intended to be definitive and should not be used instead of legal advice. If there is any inconsistency between the guidelines and the Code, the Code takes precedence.</i>