

20 November 2017

James Moulder
Chair
Market Development Advisory Group

Dear James

Market Development Advisory Group work plan for 2017/18 – request to undertake *Review of spot market trading conduct provisions* project

The Authority Board requests the Market Development Advisory Group (MDAG) include in its 2017/18 work plan a project titled *Review of spot market trading conduct provisions*.

The project involves reviewing clauses 13.5A and 13.5B (trading conduct provisions) of the Electricity Industry Participation Code 2010 (Code) in light of recent events that have tested those provisions. The review may take into account any findings from case studies, performance reports and compliance reports.

The project's aim is to ensure the trading conduct provisions are effective in promoting outcomes consistent with workable competition. Please note this aim varies slightly from that published in the Authority's 2017/18 work programme.

We also note clause 13.5 requires bids and offers must be lawful. Arguably, this clause also relates to trading conduct, but we are not aware of any issues arising in relation to this clause. Accordingly, reviewing clause 13.5 is outside the proposed scope.

Background

The trading conduct provisions came into force in June 2014. Since then, the Authority has conducted two compliance investigations with respect to potential breaches of the trading conduct provisions:

- a) an investigation into the trading conduct by Meridian Energy on 2 June 2016, which involved high offer prices by Meridian during a period when it was pivotal in an attempt to prevent constraints on the HVDC link (Meridian investigation)
- b) an investigation in relation to conduct by Mercury Energy on 8 December 2016, in which Mercury undertook a "trial" to understand how other participants would respond to Mercury's reduction of reserves supplied in the national reserve market (Mercury investigation).

The Board also considered a market performance review into events relating to the Meridian investigation.

Proposed project scope

We request the MDAG to consider the following matters, which would form the project scope:

- a) trading conduct affecting outcomes in the energy and instantaneous reserves markets in the New Zealand wholesale electricity market (spot market)
- b) whether the trading conduct provisions are adequate to promote the Authority's statutory objective, or whether changes are required to better promote outcomes consistent with workable competition
- c) options, including guidelines, to aid in the interpretation of 'high standard of trading conduct' in clause 13.5A of the Code
- d) in light of any proposals to assist with interpreting 'high standard of trading conduct', whether the safe harbour provisions should be modified to ensure that behaviour of parties operating within the safe harbour provisions is consistent with a high standard of trading conduct
- e) whether the trading conduct provisions should be broadened to apply to parties not subject to offer requirements but whose actions can impact on spot market outcomes inconsistent with workable competition, or whether it would be preferable to address this by other means, such as amending other Code provisions
- f) whether the trading conduct provisions should apply to actions other than offers that can impact on spot market outcomes inconsistent with workable competition, or whether it would be preferable to address this by other means, such as amending other Code provisions.

Should MDAG identify matters it considers are best addressed by amending other Code provisions, one option would be for these matters to be addressed through subsequent MDAG projects. We will consider the merits of this option once there is more clarity about what amendments, if any, may be required.

I look forward to the MDAG considering including the *Review of spot market trading conduct provisions* project in its 2017/18 work plan.

Yours sincerely



Carl Hansen
Chief Executive