

MINUTES

Meeting number: 3

Venue: Mercury Energy, Boardroom, Level 3, 109 Carlton Gore Road, Newmarket, Auckland

Time and date: 9:00am to 4:45pm, Thursday, 15 March 2018

Attendees

- James Moulder (Chair)
- James Flannery [left 3:03pm]
- James Flexman
- Darren Gilchrist
- Stu Innes
- Rebecca Osborne
- Bruce Rogers
- Matt Rowe [items 1 and 2; left 11:28am]
- James Tipping [by teleconference; left 3:03pm]

Apologies

- None

In attendance

- Murray Henderson (Principal Market Analyst, System Operations, Transpower)
- John Rampton (General Manager Market Design, Electricity Authority) [joined 10:52am]
- Tim Street (Manager Wholesale Markets, Electricity Authority)
- Alistair Dixon (Principal Adviser Market Design, Electricity Authority)
- Avi Singh (Administrator Market Design, Electricity Authority)
- John Stephenson (Partner, Sense Partners) [items 1, 2 and 3; left 2:33pm]

Guest speakers on Review of spot market trading conduct provisions

- Phillip Anderson (Portfolio Manager, Asia-Pacific Energy, Cumulus, City Financial) [item 1; joined 9:03am, left 9:30am]
- Rebekah Cain (Regulatory Affairs Manager, Genesis Energy) [item 1; joined 11:30am, left 1:00pm]

- Julian McCree (Derivatives Manager, Genesis Energy) [item 1; joined 11:30am, left 1:00pm]
- Chris Ewers (Energy Trading Manager, Meridian Energy) [item 1; joined 11:30am, left 1:00pm]
- Jason Woolley (Regulatory Affairs Manager, Meridian Energy) [item 1; joined 11:30am, left 1:00pm]
- Toby Stevenson (Director, Sapere Research Group) [item 1; joined 11:30am, left 1:00pm]
- Phil Gibson (General Manager Hydro and Wholesale, Mercury Energy) [item 1; joined 1:22pm, left 1:45pm]

Guest speakers on Saves and win-backs

- Al Yates (Chief Executive, Ecotricity) [item 2; joined 9:30am, left 11:00am]
- Luke Blincoe (Chief Executive, Electric Kiwi) [item 2; joined 9:30am, left 11:00am]
- Gary Holden (Chief Executive, Pulse Energy) [item 2; joined 9:49am, left 11:00am]
- Johnathan Eele (Vocus Energy General Manager, Vocus Group) [item 2; joined 9:30am, left 11:00am]
- Graham Walmsley (Regulatory and Commercial General Manager, Vocus Group) [item 2; joined 9:30am, left 11:00am]

The meeting opened at 9:03am

1 Review of spot market trading conduct provisions

Guest speaker Phillip Anderson (City Financial) discussed his perspective on the *Review of spot market trading conduct provisions* with the MDAG. In particular, he contended:

- offer prices should reflect underlying supply and demand so the correct price signals are sent
- any potential guidance to help participants comply with their obligations should focus on sending efficient price signals or how to correctly resubmit an offer
- trading behaviour should follow similar patterns whether a participant is pivotal or not
- participants have no inherent right to use their assets without inhibition to manage constraints
- the timing of an action (eg, hours, days, weeks out from dispatch) was key to determining whether it satisfied a 'high standard of trading conduct'
- that in determining whether offers in pivotal situations are comparable to non-pivotal situations, the periods for comparison should be wider (eg, weeks or months) than adjacent comparable trading periods.

The group decided to halt this agenda item at this point and resume the item later

2 Saves and win-backs

Guest speakers Al Yates (Ecotricity), Luke Blincoe (Electric Kiwi), Gary Holden (Pulse Energy), Johnathan Eele and Graham Walmsley (both Vocus Energy) briefly outlined their views on the *Review of spot market trading conduct provisions* before discussing their perspectives on Saves and win-backs with the MDAG. The guest speakers broadly contended:

- the ease of switching has resulted in a high win-back rate for incumbent large retailers, who use transfer pricing to sustain their win-backs, without reducing prices for consumers
- incumbent retailers, in winning back customers, often lock them into long-term contracts with high termination fees, blocking competition for these customers who entrant retailers have incurred significant costs in identifying and acquiring
- incumbent large retailers use tactics which potentially breach the Fair Trading Act 1986 to save or win-back customers, negatively affecting the industry's reputation
- losing retailers should only contact customers by letter or email to avoid "win-backs in disguise" during the "heat of the moment" over the phone
- the existing saves protection scheme is the appropriate starting point but requires modification to address win-backs, and should be mandatory
- there should be a cooling-off period preventing win-backs for between 30 and 60 days following a switch.

After the guest speakers departed, the group discussed the views presented and:

- requested the secretariat to ask Electra whether saves and win-backs were a significant contributing factor in the sale of their electricity retailing business
- asked the secretariat to invite Consumer New Zealand to the next MDAG meeting to provide a consumer perspective
- considered whether removing a potential barrier to competition could inadvertently provide some participants with a "leg-up"
- discussed the operation and length of switch cancellation periods, and whether restricting win-backs would result in reduced prices for consumers
- noted some current potential issues to consider were different from the issues the Authority identified in its 2014 problem definition.

| **Action – 3.1:** Secretariat to ask Electra whether saves and win-backs were a significant contributing factor in the sale of their electricity retailing business by next MDAG meeting

| **Action – 3.2:** Secretariat to invite Consumer New Zealand to meet with the MDAG by next MDAG meeting

The MDAG decided to halt this agenda item at this point and resume the item later

1 Review of spot market trading conduct provisions

The group resumed this agenda item

Following a reminder from the Chair to members and guests about their obligations under the Commerce Act 1986, guest speakers Rebekah Cain and Julian McCree (both Genesis Energy), Chris Ewers and Jason Woolley (both Meridian Energy), and Toby Stevenson (Sapere Research Group) discussed their perspectives on the *Review of spot market trading conduct provisions* with the MDAG.

The guest speakers broadly contended:

- a 'high standard of trading conduct' is insufficiently clear language for participants to know what their obligations are
- guidelines would be helpful, but cannot substitute for the meaning contained in the Electricity Industry Participation Code 2010 (Code)
- the safe harbour relating to pivotal generators in Part 13.5B(1) of the Code requires further clarification:
 - o Meridian Energy's guest speakers provided proposed new Code wording to reflect their position that managing a risk (such as avoiding a constraint) met a high standard of trading conduct, provided the conduct was proportionate to the risk
 - o Sapere Research Group's guest speaker considered the Authority should amend these Code provisions to reflect the original 2013 proposal by the Wholesale Advisory Group (WAG)
- trading conduct rules in financial markets are clearer than the equivalent rules in the Code.

After the guest speakers departed, Phil Gibson (Mercury Energy) briefly outlined his views to the group that:

- participants should be able to use their assets to manage risks, noting a difference between mitigating loss and making a gain
- the potential for unintended consequences should be carefully considered when proposing changes to the trading conduct regime
- the investment required in the grid to eliminate constraints (and therefore net pivotal opportunities) is not likely to be attractive
- all non-generator participants have the opportunity and the signals to hedge their market positions, just as generators do.

The MDAG decided to halt this agenda item at this point and resume the item later

3 Meeting Administration

The Chair moved this item forward on the agenda ahead of its scheduled order

3A Apologies

No apologies were received.

3B Interests register

The Chair tabled the MDAG interests register and noted there were no changes from the previous meeting.

3C Minutes of previous meetings

The Chair tabled minutes of the previous meeting on Thursday, 8 February 2018.

The MDAG noted a member's email suggesting changes to the record of the discussion on telecommunications industry practices in the *Saves and win-backs* agenda item of the minutes. The group agreed to make the suggested changes.

James Tipping proposed confirmation of the minutes, which James Flexman seconded.

3D Matters arising

There were no matters arising.

3E Action list

The Chair noted all actions from the previous meeting were completed. The MDAG discussed inviting guests from the Financial Markets Authority and OM Financial to attend a future meeting to provide their views on the *Review of spot market trading conduct provisions*.

- | **Action – 3.3:** Secretariat to invite the Financial Markets Authority and OM Financial to meet with the MDAG by **June 2018 MDAG meeting**

3F Correspondence

The Chair tabled correspondence for the group to note, namely a letter from the MDAG Chair to Transpower's General Manager System Operations and Innovation inviting the system operator to nominate an observer to attend MDAG meeting.

The Chair welcomed the system operator's nominated observer Murray Henderson on behalf of the MDAG.

3G MDAG meeting dates calendar

The group decided on the following dates to complete its 2018 meeting schedule (all to be held in Wellington):

- Tuesday 7 August
- Tuesday 18 September
- Wednesday 5 December.

3H Work plan update

The Chair tabled the work plan update for the MDAG to note.

2 Saves and win-backs

The group resumed this agenda item

The MDAG began considering a draft issues paper in light of the earlier discussion with guest speakers. The group examined whether:

- smaller retailers faced higher acquisition costs and therefore a higher cost-to-serve
- a clearer distinction between new entrant retailers and acquiring retailers should be drawn
- co-ordination problems could potentially lead to market failure
- visible improvements in market efficiency were required if issues relating to competition were to be fixed:
 - o a key consideration was whether existing market behaviour reflected workable competition, and would allow the market to be sustainable in the long term.

To help answer these questions, the MDAG asked the secretariat to update the draft issues paper, where possible, by:

- incorporating any relevant earlier analyses by the Authority

- incorporating insights from the discussion with guest speakers
 - ensuring the paper does not reach conclusions on matters the group seeks feedback on.
- | **Action – 3.4:** Secretariat to update draft *Saves and win-backs* issues paper by next MDAG meeting

1 Review of spot market trading conduct provisions

The group resumed this agenda item

The MDAG discussed:

- the previous consideration by the WAG of a 'high standard of trading conduct' provision to apply to situations not involving a pivotal generator
- whether plant can be used to manage basis risk
- whether hedges are priced reflecting the exercise of market power.

The MDAG decided to halt this agenda item at this point and resume the item later

4 Publication of meeting papers

The Chair moved this item forward on the agenda ahead of its scheduled order

The group agreed to withhold publication of:

- the draft *Saves and win-backs* issues paper to enable further consideration by members at the next MDAG meeting
- presentations from guest speakers provided in confidence.

James Flannery proposed publishing all other meeting papers on the Authority's website without alteration, which James Flexman seconded.

1 Review of spot market trading conduct provisions

The group resumed this agenda item

The MDAG continued its earlier discussion, noting:

- no guest speakers expressed significant concern about whether ramp rates or reserve co-efficients were used to artificially increase prices
- a focus on behaviours, including the intent to achieve a particular outcome, may be a more helpful lens for viewing trading conduct through than a focus on outcomes
- different views in the industry about what constituted the relevant market
- the suggestion that harm should be shown before a party can initiate an allegation under the trading conduct provisions
- the notice period given in relation to conduct, its duration and the time between the notice and the conduct are all crucial aspects in determining a 'high standard of trading conduct'.

The group asked the secretariat to:

- investigate the reasons why the Authority did not fully adopt the WAG's recommendation for trading conduct to be considered through a behavioural, rather than an outcome, lens
- invite Mike Roan from Meridian Energy to the next MDAG meeting

- begin drafting a preliminary problem definition based on group discussion to date.
- | **Action – 3.5:** Secretariat to investigate why the Authority did not fully adopt the WAG's recommendations for trading conduct by next MDAG meeting
- | **Action – 3.6:** Secretariat to invite Mike Roan from Meridian Energy to meet with the MDAG by next MDAG meeting
- | **Action – 3.7:** Secretariat to draft a preliminary *Review of spot market trading conduct provisions* problem definition by next MDAG meeting

The Chair also asked the secretariat to draft a letter on his behalf to Mercury Energy thanking them for hosting the MDAG.

- | **Action – 3.8:** Secretariat to send thank you letter to Mercury Energy by next MDAG meeting

The meeting ended at 4:04pm

I, James Moulder (MDAG Chair), certify that the minutes recorded disclose all issues discussed at the meeting (date at the top), are recorded truthfully and without bias.

Signature:



Date: Thursday 12 April 2018 (12.04.2018)