

MINUTES

Meeting number: 9

Venue: Electricity Authority, Meeting Room 1, Level 7, ASB Bank Tower, 2 Hunter Street, Wellington

Time and date: 9:00am to 4:00pm, Tuesday, 6 November 2018

Attendees

- Bruce Rogers (Acting Chair)
- James Flannery
- James Flexman
- Darren Gilchrist [items 1 to 5; left 3:53pm]
- Stu Innes
- Rebecca Osborne
- Matt Rowe [joined 9:46am]
- James Tipping

Apologies

- None

In attendance

- Murray Henderson (Principal Market Analyst, System Operations, Transpower)
- James Stevenson-Wallace (Chief Executive, Electricity Authority) [item 1; left 9:59am]
- Tim Street (Manager Wholesale Markets, Electricity Authority) [items 1 to 3; left 2:18pm]
- Craig Evans (Manager Retail and Network Markets, Electricity Authority) [item 4; joined 2:18pm, left 3:41pm]
- Alistair Dixon (Principal Adviser Market Design, Electricity Authority)
- Avi Singh (Administrator Market Design, Electricity Authority)
- Elly Kappatos (Personal Assistant to General Manager Market Design, Electricity Authority) [item 4; joined 2:18pm, left 3:41pm]
- John Stephenson (Partner, Sense Partners) [item 4; joined 2:18pm, left 3:41pm]

The meeting opened at 9:30am

1 Introduction to the new Authority Chief Executive, and request for clarification about the MDAG's independence

The Authority's Chief Executive introduced himself to the MDAG before responding on the Authority Board's behalf to the MDAG's request for clarification about its independence. He noted:

- how the independence of advisory groups is considered and managed in a broader state sector context
- the broader regulatory framework for the electricity sector that places a natural constraint on the MDAG's independence, comprising the Authority's enabling legislation and statutory objective, the Official Information Act 1982, the advisory group charter and terms of reference, and various other materials
- comments by MDAG members regarding the substance and manner in which it received feedback from the Authority Board and former Chief Executive on a draft version of its *Saves and win-backs* issues paper
- the Authority would seek to improve future communication between the MDAG secretariat and senior Authority staff and the Authority Board in relation to the MDAG's activities.

3 Independence of advisory group chairpersons

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

The secretariat summarised a proposal by Authority staff to relax the independence requirement for advisory group chairpersons, noting the next step involved seeking the Authority Board's approval to consult on the proposal.

2 Review of spot market trading conduct provisions

The secretariat gave a presentation, beginning with an overview of the existing trading conduct provisions in the Electricity Industry Participation Code 2010 (Code). The group noted:

- the Authority considers financial benefit to include reducing a loss as well as making a profit for the purpose of the safe harbour provisions
- it was possible for a generator to become pivotal even if they did not change their offers from one trading period to the next.

The MDAG then considered issues identified in an earlier version of the term sheet which had not been discussed previously, and agreed to include the following issues in its problem definition:

- some of the safe harbour provisions in the Code are only available to some plant
- the safe harbour provisions may shelter and facilitate behaviour that would otherwise be considered inconsistent with a high standard of trading conduct, such as:
 - non-pivotal parties engaging in market manipulation, because they are protected if they have offered all their capacity and made timely updates to their offers
 - always pivotal parties can make offers that result in material and sustained price increases. This is possible because the safe harbour test seeking to address this involves a comparison to either an 'other comparable trading period' or 'immediately preceding trading period', and these must be a trading period where

the party is not pivotal, which is not possible for always pivotal plant. Further, the price change between individual trading periods may not be material

- always pivotal parties offering prices expected during supply scarcity, even where no such scarcity exists. This is possible because, unlike parties sometimes subject to competition, they are never in a situation where they can access the safe harbour by ensuring their offers are consistent with their offers when not pivotal
- the safe harbour provisions may be difficult to apply in practice
- the trading conduct provisions do not provide guidance on when re-offering is appropriate, although other Code provisions allow offer revisions (with restrictions).

The secretariat then presented charts and illustrative scenarios of behaviour by pivotal generators. The MDAG agreed:

- the test for such behaviour should be whether it would be considered consistent with behaviour in a workably competitive market
- its discussion paper should propose:
 - including the 'workable competitive market' test in the Code to supplement the overarching 'high standard of trading conduct' provision
 - deleting the safe harbour provisions, particularly because the 'workable competitive market' test could be applied to situations involving pivotal parties
 - other parts of the Code absorb the safe harbour provisions relating to offering all capacity and making timely updates to offers
 - making the trading conduct provisions applicable across the entire wholesale market, not just the spot market
- its discussion paper would need to discuss potential practical difficulties with proposing a greater shift towards a conduct-based regime, compared to the existing outcomes-based regime driven by the safe harbour provisions
- guidelines (including examples) and cases establishing precedents would be needed to help develop an understanding of the 'workable competitive market' test
- its final proposal should be clear and provide the Authority with sufficient confidence to test any new or updated Code provisions through a compliance process, including by referring cases to the Rulings Panel
- greater attention should be given to how the trading conduct provisions interact with the wholesale market information disclosure provisions
- the Authority's market performance team should highlight examples of behaviour consistent, or not in alignment, with outcomes prevailing under general market conditions by publishing findings of reviews and investigations (both formal and informal) into alleged breaches of the trading conduct provisions.

Following this discussion, the group asked the secretariat to:

- update the term sheet
- circulate an outline of a draft discussion paper within a week of this meeting
- prepare a draft discussion paper for the December MDAG meeting.

| **Action – 9.1:** Secretariat to update trading conduct term sheet by next MDAG meeting

| **Action – 9.2:** Secretariat to circulate an outline of a draft trading conduct discussion paper by 13 November

| **Action – 9.3:** Secretariat to prepare a draft trading conduct discussion paper by next MDAG meeting

4 Saves and win-backs

The MDAG considered enquiries from Vocus Group about whether, before finalising its recommendations paper, the MDAG intended to:

- hold further interactions with stakeholders
- consider submissions to the Electricity Price Review (EPR) as they relate to *Saves and win-backs*.

The MDAG agreed it had no plans at this time to further interact with stakeholders or consider EPR submissions.

The secretariat then gave a short presentation summarising conclusions and recommendations in the draft recommendations paper. The MDAG considered the draft paper and agreed:

- to explore whether or not to request a limit on use of the switch withdrawal process, provided there was a data solution available to introduce a new registry code identifying win-backs
- retailers should be reminded of their obligations to explicitly inform consumers of all legal rights (particularly under the Fair Trading Act 1986) they may have in save and win-back situations
- price transparency could be improved
- the Authority should keep a watching brief on save and win-back activity, potentially with reference to a set of principles justifying when and to what level there should be a review
- data recently issued by the EPR may be useful
- the paper should include further information around points raised by new entrant retailers that:
 - there is no practical distinction between saves and win-backs to consumers
 - high win-back rates impede competitive entry and growth by increasing transaction costs of acquisition for smaller retailers
 - losing retailers being notified (at any time) of an impending switch provides them with an unfair competitive advantage
- there should be greater explanation of the tables in the data appendix.

The MDAG then asked the secretariat to prepare an updated draft of the recommendations paper for the December MDAG meeting, incorporating any further comments members provided via email.

| **Action – 9.4:** Secretariat to prepare updated draft of *Saves and win-backs* recommendations paper by next MDAG meeting

5 Meeting Administration

5A Apologies

No apologies were received.

5B Interests register

The Acting Chair:

- tabled the MDAG interests register
- reviewed the interests disclosed/updated
- gave relevant group members permission to act.

5C Minutes of previous meetings

The Chair tabled minutes of the previous meeting on Wednesday, 5 September 2018.

James Flexman proposed confirmation of the minutes, which Darren Gilchrist seconded.

5D Matters arising

There were no matters arising.

5E Action list

The Acting Chair noted all actions from the previous meeting were completed.

5F Correspondence

The Chair tabled correspondence from the Chair of the Authority Board thanking the MDAG for joining the Authority Board for its strategy day.

5G 2019 MDAG meeting dates calendar

The MDAG agreed to schedule a meeting on Tuesday, 12 February 2019, and to consider a draft calendar of other 2019 meeting dates at its next meeting.

5H Work plan update

The Acting Chair tabled the work plan update for the group to consider. The MDAG agreed to:

- update the project milestones in the next meeting's work plan update
- consider presenting, once finalised, its *Saves and win-backs* recommendations paper to the Ministerial Electricity Price Review prior to publication.

6 Publication of meeting papers

The group:

- decided not to publish the *Saves and win-backs* materials as the group was yet to finalise its recommendations paper
- approved publishing all other meeting papers on the Authority's website without alteration.

The meeting ended at 3:58pm

I, **Bruce Rogers (MDAG Deputy 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 20 December 2018 (20.12.2018)