

MINUTES

Meeting number: 7

Venue: Electricity Authority, Boardroom, Level 7, ASB Bank Tower, 2 Hunter Street, Wellington

Time and date: 9:25am to 3:25pm, Tuesday, 7 August 2018

Attendees

- James Moulder (Chair)
- James Flannery
- James Flexman
- Darren Gilchrist
- Stu Innes
- Rebecca Osborne
- Bruce Rogers
- Matt Rowe [items 1, 2 and 3; left 2:55pm]
- James Tipping

Apologies

- None

In attendance

- Murray Henderson (Principal Market Analyst, System Operations, Transpower)
- John Rampton (General Manager Market Design, Electricity Authority) [left 1:30pm, rejoined 2:29pm]
- Tim Street (Manager Wholesale Markets, Electricity Authority)
- Andrew Springett (Senior Legal Counsel, Electricity Authority) [item 3; joined 1:35pm, left 1:58pm]
- Alistair Dixon (Principal Adviser Market Design, Electricity Authority)
- Peter Wakefield (Senior Investigator, Electricity Authority) [item 3; joined 1:35pm, left 1:58pm]
- Avi Singh (Administrator Market Design, Electricity Authority)
- Elly Kappatos (Personal Assistant to General Manager Market Design, Electricity Authority) [item 1; left 12:35pm]
- John Stephenson (Partner, Sense Partners) [item 1; left 12:35pm]
- Jean-Pierre de Raad (Partner, Sense Partners) [item 1; left 12:35pm]

The meeting opened at 9:27am

1 Saves and win-backs

The MDAG considered the draft summary of submissions on its issues paper, noting cross-submissions had not yet been received. In particular, the group discussed:

- recent consideration of this issue by regulators in Australia and the United Kingdom
- the extent to which submitters identified market or regulatory failures warranting intervention, particularly with reference to the definitions of market and regulatory failures in the issues paper
- the fact that existing market arrangements require losing retailers to be notified immediately when a customer has left them, whether this occurs in other competitive markets, and how this has been addressed in other markets in which post-payment predominates
- trialling new regulatory arrangements to test what impact they may have, noting the potential for unintended consequences
- whether new entrant retailers could enter into 45-day contracts with customers as an alternative to imposing a moratorium on win-backs
- the extent to which fixed-term contracts between retailers and customers becoming the default arrangement in the market may be undesirable
- whether submitters' reference to concepts such as price discrimination and predatory pricing was consistent with their economic and legal definitions
- the extent to which consumer apathy was relevant in relation to the project scope, and whether greater price transparency would help consumers
- needing to fully understand what submitters consider to be customer data
- the need to consider the extent to which current save and win-back activity potentially restricts competition and harms the long-term benefit of consumers
- reminding retailers about 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
- whether the tort of inducement of breach of contract may be relevant in save and win-back situations
- the apparent disparity between the data relating to save and win-back activity in the issues paper and the data referenced by submitters.

The group then agreed to:

- invite Electric Kiwi to attend the 5 September MDAG meeting to discuss the data sets, subject to Electric Kiwi providing a waiver relating to the anonymised data in the issues paper
- obtain an independent peer review of the data if Electric Kiwi did not provide a waiver or wish to meet with the MDAG.

Action – 7.1: **Secretariat** to invite Electric Kiwi to attend 5 September MDAG meeting by **next MDAG meeting**

2 Advice for the Authority Board's strategy day

After the secretariat noted the Board was seeking advice on the Authority's *Strategic directions for market development* document, the MDAG discussed its invitation to the upcoming Authority Board strategy day on 5 September and agreed to give a short presentation prepared by various members focusing on three key themes:

- more agile regulation
- questions for market design under a decarbonised energy sector
- implications of mass participation.

| **Action – 7.2:** MDAG members to prepare strategic advice presentation by Authority Board strategy day

3 Review of spot market trading conduct provisions

The MDAG heard from the Authority's Senior Legal Counsel and Senior Investigator regarding the process, largely mandated by the [Electricity Industry \(Enforcement\) Regulations 2010](#) (Regulations), for assessing alleged breaches of the Electricity Industry Participation Code 2010. The Regulations are administered by the Ministry of Business, Innovation and Employment.

After considering the process for assessing alleged breaches, the group identified its three key elements for a successful enforcement regime:

- rigorous policing, where allegations are investigated and cases heard to ensure the rules maintain their effectiveness
- publication of findings from investigations and rulings from cases, including identities of parties involved, to ensure the wider market is aware of compliance actions being taken
- clear and enforceable rules, to help parties comply with their obligations.

The MDAG then considered the extent to which the Bank Bill Benchmark Rate guidance, issued by the Financial Markets Authority (FMA), could inform its consideration of how to better clarify what constitutes a high standard of trading conduct. In particular, the group discussed the:

- broad applicability of the FMA's principles-based approach, particularly the concept of legitimate purpose
- limitations of relying on guidance designed for the financial sector, particularly because the electricity market involves trading of a physical commodity.

The secretariat presented the term sheet to the MDAG, who:

- discussed whether:
 - there was a certain price level at which a generator could be considered pivotal (in addition to a specific time and place)
 - a generator that was always pivotal was therefore always in a safe harbour, or never in it
 - load side participants should be required to comply with the trading conduct provisions, given their ability to materially impact prices
- agreed behaviour not consistent with a high standard of trading conduct included:
 - having plant available, but not on outage and not offered into the spot market

- the use of engineering factors (eg, ramp rates) to affect offers that did not reflect the underlying physical capability of the plant.

Following this discussion, the MDAG asked the secretariat to present further detail on:

- net pivotal situations at its 5 September meeting
 - all items in the term sheet not yet considered by the group at its 25 October meeting.
- | **Action – 7.3:** Secretariat to present further detail on net pivotal situations by next MDAG meeting
- | **Action – 7.4:** Secretariat to present further detail on all items in the *Review of spot market trading conduct provisions* term sheet not yet considered by 25 October MDAG meeting

4 Meeting Administration

4A Apologies

No apologies were received.

4B Interests register

The Chair:

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

4C Minutes of previous meetings

The Chair tabled minutes of the previous meeting on Tuesday, 26 June 2018.

The MDAG delegated confirmation of the minutes to the Chair, subject to the addition of the following points:

- for the *Review of spot market trading conduct provisions* agenda item, include the comment by guest speaker Karl Arns from OM Financial that he had limited experience working in Australian markets
- for the *Apologies* agenda item, Stu Innes joined the group from Albania via teleconference at short notice.

4D Matters arising

There were no matters arising.

4E Action list

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

4F Correspondence

The Chair tabled letters he sent to:

- guests who attended the 26 June MDAG meeting to thank them for speaking to the group on the *Review of spot market trading conduct provisions*, specifically the:
 - Head of Conduct at the Financial Markets Authority

- Dealer, Institutional Commodities at OM Financial
- the former Chief Executive of the Authority to thank him for his service.

The Chair moved item 4G (Annual report) forward on the agenda ahead of its scheduled order before the group had considered item 3 (Review of spot market trading conduct provisions)

4G Annual report

The MDAG asked the secretariat to provide a draft annual report for its consideration at the next meeting, noting its preference for brevity.

| **Action – 7.5:** Secretariat to circulate draft MDAG annual report by next MDAG meeting

4H Work plan update

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


5 Publication of meeting papers

The group:

- decided not to publish the *Saves and win-backs* papers as they were still in heavily draft form
- approved publishing all other meeting papers on the Authority's website without alteration.

The meeting ended at 3:23pm

I, Bruce Rogers (Acting 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 20 September 2018 (20.09.2018)