MARKET DEVELOPMENT ADVISORY GROUP

MINUTES

Meeting number: 10

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

Time and date: 9:00am to 3:00pm, Wednesday, 5 December 2018

Attendees

- Tony Baldwin (Chair)
- James Flexman
- Darren Gilchrist
- Stu Innes
- Rebecca Osborne
- Bruce Rogers
- James Tipping

Apologies

- James Flannery
- Matt Rowe

In attendance

- Murray Henderson (Principal Market Analyst, System Operations, Transpower)

- John Rampton (General Manager Market Design, Electricity Authority)
- Tim Street (Manager Wholesale Markets, Electricity Authority) [items 1, 2 and 4; left 9:58am, re-joined 12:07pm]
- Craig Evans (Manager Retail and Network Markets, Electricity Authority) [item 3; joined 9:45am, left 12:15pm]
- Alistair Dixon (Principal Adviser Market Design, Electricity Authority)
- Hannah Hopper (Adviser Wholesale Markets, Electricity Authority) [items 2 and 4; joined 12:07pm]
- Avi Singh (Administrator Market Design, Electricity Authority)
- Elly Kappatos (Personal Assistant to General Manager Market Design, Electricity Authority) [item 3; joined 9:45am, left 12:15pm]

- John Stephenson (Partner, Sense Partners) [item 3; joined 9:53am, left 12:15pm]

The meeting opened at 9:30am

1 Meeting Administration

1A Apologies

Apologies were received from James Flannery and Matt Rowe.

1B Interests register

The Chair tabled an updated MDAG interests register including his disclosures upon appointment. There were no other changes from the previous meeting.

1C Minutes of previous meetings

The Chair tabled minutes of the previous meeting on Tuesday, 6 November 2018.

The MDAG delegated confirmation of the minutes to the Deputy Chair, subject to the following clarifications:

- for *Saves and win-backs*, noting the MDAG's agreement 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

- for the *Review of spot market trading conduct provisions*:
    - the MDAG's 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

    - 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.

1D Matters arising

The Chair introduced himself to the group and noted he looked forward to working with everyone.

1E Action list

The Chair noted all actions from the previous meeting were completed, including the action listed as 'ongoing' to prepare a draft trading conduct discussion paper.

1F 2019 MDAG meeting dates

Subject to the secretariat checking potential alignment with industry events, the MDAG agreed to the following 2019 meeting dates:

- Monday 18 February
- Tuesday 26 March
- Tuesday 7 May
- Wednesday 19 June
- Tuesday 30 July
- Thursday 5 September

- Tuesday 22 October
- Tuesday 3 December.

1G Work plan update

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

3 Saves and win-backs

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

The MDAG considered an updated draft of the recommendations paper and agreed:

- to restructure the paper to follow a more deductive format
- to include a short summary at the beginning of the paper explaining how the MDAG reached its recommendations
- to include simple examples of what constitutes a save and a win-back
- to clarify market power issues relating to incumbency, but not relating to customer acquisition, are outside the project scope
- to add an overarching recommendation stating the MDAG does not consider there is enough evidence at this time to warrant any changes to the existing save protection scheme
- to consider recommending the Authority add a customer withdrawal code in the registry that accurately reflects when a win-back is effected, subject to the secretariat confirming whether this is feasible
- to ask the Authority Board to remind retailers 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
- to emphasise why the Authority should keep a watching brief on save and win-back activity
- the paper should directly address the concern that losing retailers receiving a notification (at any time) of a switch provides them with an unfair competitive advantage – and particularly what the impact could be of ring-fencing knowledge of the switch notification within the losing retailer's switching operations
- 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 February MDAG meeting.

> **Action – 10.1:** Secretariat to prepare updated draft of *Saves and win-backs* recommendations paper by next MDAG meeting

2 Review of spot market trading conduct provisions

The Chair summarised his understanding of the events that resulted in the Authority asking the MDAG to review the trading conduct provisions. The MDAG then considered a draft discussion paper and discussed:

- how outcomes can help spotlight questionable conduct, and make it more likely conduct is found to be in breach

- how to explain what constitutes workable competition eg, testing how parties would behave if they were not pivotal
- potential principles to help explain how the trading conduct provisions support promoting the Authority's statutory objective
- how attempts to provide greater certainty can inadvertently create further uncertainty
- the need for the Authority to highlight particular events and publish a database of decisions, regardless of whether a breach allegation is upheld
- presenting potential packages of options on a spectrum that would address issues identified in the problem definition.

Following this discussion, the group asked the secretariat to prepare an updated draft of the trading conduct discussion paper for the February MDAG meeting.

> **Action – 10.2:** Secretariat to prepare an updated draft of trading conduct discussion paper by next MDAG meeting

4 Publication of meeting papers

The group:

- decided not to publish either the draft *Saves and win-backs* recommendations paper or the draft *Review of spot market trading conduct provisions* discussion paper
- approved publishing all other meeting papers on the Authority's website without alteration.

The meeting ended at 2:43pm

I, Tony Baldwin (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: A J Baldwin *Date:* Wednesday 27 March 2018
(27.03.2019)