

# Investigation reports on HSOTC breaches alleged of Meridian and Contact

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Prepared by: **Jeremy Ford**  
**Interim Compliance Manager**

**Sarah Gillies**  
**General Manager**

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## 1 Purpose

- 1.1 This paper provides the Board with final, updated investigation reports into Meridian and Contact regarding their alleged breaches of the Code. This follows the Board's request that the investigator seek further information from Meridian.
- 1.2 A draft communications plan has been developed and is at Appendix D. This is still subject to legal review.
- 1.3 This paper should be read in conjunction with the previous board paper that was considered at the board meeting on 2 March 2021, with the same title. (The relevant draft Board Minutes from that meeting are reproduced at paragraph 4 in the Background section, below.)

## 2 Recommendations

- 2.1 It is recommended the Board:
  - (a) **Note** the additional information provided by Meridian on 10 March and 19 March 2021 that is included in the relevant correspondence at Appendix A of the investigator's updated report, and summarised at paragraphs 47-48 of the investigator's report
  - (b) **Note** that the investigator's recommendations are unchanged from the reports that were considered by the Board on 2 March 2021
  - (c) **Accept** the investigator's recommendation that the Board discontinues both investigations
  - (d) **Approve** the overall communications approach, as set out at Appendix D, and **delegate** to the Chief Executive to make any final changes to the communications.

## 3 Rationale

- 3.1 The investigator sought clarification from Meridian in relation to comments made to Select Committee by Meridian's Chief Executive regarding Meridian's traders not understanding or following instructions.
- 3.2 Meridian confirmed that it had not identified any instructions that were not followed by particular traders, although noted "*a couple of specific instances*" where there was a risk of misunderstanding. Meridian explained that the comments made by its Chief Executive were "*intended to refer to the fact that following the events of November 2019 to January 2020 Meridian identified and made improvements to some of its internal communications processes*".
- 3.3 The investigator considered the information did not affect his assessment of the alleged breaches and made no changes to his recommendations.

3.4 [REDACTED] S9(2)(h)

## 4 Background

4.1 The Board previously considered the investigation reports at its meeting on 2 March 2021. The draft Minutes record the Board:

(a) **noted** the investigator's assessment that, based on information available at the time of his reports, Meridian and Contact did not breach the high standard of trading conduct under clause 13.5A(1) of the Code, based on findings that each generator complied with one or more of the 'safe harbour' provisions under clause 13.5B

(b) **noted** [REDACTED] S9(2)(h)  
[REDACTED]  
[REDACTED]

(c) **noted** [REDACTED] S9(2)(h)  
[REDACTED]  
[REDACTED]

(d) **noted** the withdrawal by the investigator of his reports in order for the investigator to seek further information from Meridian, and for the investigator to resubmit his updated reports in due course to the Board for decisions.

(e) **requested** that the communications plan be approved by the Board.

4.2 A key finding of the investigator was that the safe harbour provisions that are available when a generator is pivotal have created a situation where maintaining offers at similar levels will not result in a breach of the trading conduct rules.

4.3 This is referred to as 'static' offer behaviour by the investigator. Such behaviour can be contrasted with 'dynamic' offer behaviour that would be expected in the circumstances to result in prices decreasing as a result of the excess water. Similar dynamic offer behaviour would likely result in increased prices where potential water shortages are expected.

4.4 The investigator's conclusions reflect that the safe harbour provisions are fundamentally premised on pivotal generators (i) not causing price increases and/or (ii) maintaining consistency of offers. The investigator was satisfied that Contact and Meridian met one or both of these safe harbour provisions.

4.5 The investigator found that both Contact and Meridian maintained their offers at generally consistent levels, despite the water having zero value when being spilled under flood conditions. (See paragraph 5 in the investigator's reports, at Appendices A and B of this paper<sup>1</sup>).

## 5 Next steps

5.1 The Authority must publicise the decision, together with the reasons for the decision. A draft Notice in respect of the investigation into Meridian is at Appendix C, for the Board's review. A similar Notice will be published in respect of the investigation into Contact.

5.2 The draft communications plan is at Appendix D and outlines the general approach the Authority proposes to take. This plan is still subject to legal review.

<sup>1</sup> In the case of Meridian, see further paragraphs 30-32 of the investigator's report that found Meridian's offers were generally consistent irrespective of whether or not Meridian was pivotal. In the case of Contact, see paragraphs 30-35 of the investigator's report that found Contact's offers, when pivotal, were generally consistent with its offers when not pivotal.

## 6 Attachments

Note: the attachments a, b, and c have been published on the Authority's website

6.1 The following items are attached to this paper:

- (a) Investigator's report on alleged breaches of clause 13.5A(1) by Contact Energy Limited between 11 November and 28 December 2019
- (b) Investigator's report on alleged breaches of clause 13.5A(1) by Meridian Energy Limited between 10 November 2019 and 16 January 2020
- (c) Draft Notice of the Authority's decision under regulation 29 of the Electricity Industry (Enforcement) Regulations 2010
- (d) Draft Communications Plan (provided separately) **withheld under S9(2)(g)(i)**