

Wholesale Market Information: Review of disclosure exclusions

Summary of submissions

10 October 2016

The Electricity Authority (Authority) asked the Wholesale Advisory Group (WAG) to:

“investigate whether the current exclusions from making wholesale market information readily available to the public under subclause 13.2A(2) of the Code are appropriate and efficient”

The exclusions from making disclosure information readily available to the public are part of the wholesale market information (WMI) disclosure obligations in clause 13.2A of the Code. That clause creates a ‘continuous disclosure’ obligation for participants for information relevant to wholesale electricity markets.

The WAG published its discussion paper on 28 June 2016. The paper:

- set out the WAG’s view that some information is not being disclosed, or is not being disclosed in a timely fashion, and that disclosure concerns have the potential to reduce confidence and competition in the wholesale market
- presented the WAG conclusion, based largely on case study assessment, that some of the disclosure exclusions may not support the Authority’s statutory objective
- proposed three possible Code amendment options targeted at addressing issues the WAG had identified, in particular with the “commercial disadvantage” exclusion (but without expressing a preferred option)
- proposed three possible market facilitation measures

The submission period closed on 23 August 2016, and seven submissions were received.

The WAG discussion paper and full set of submissions are available here

<http://www.ea.govt.nz/development/work-programme/risk-management/wholesale-market-information-clause-13-2-and-fuel/consultation/#c16099>

WAG's WMI Discussion Paper (published 28 June 2016) – summary of submissions received

Q1: What comment do you have on the WAG conclusion that the existing WMI disclosure regime could be enhanced if concerns with exclusions (b) and (g) could be addressed in a cost effective way?	
Submitter	Submitter's comment
Genesis	We agree that a market failure has not been identified and, further, it is unclear where the efficiency gains arise from removing the disclosure exclusions. Therefore, neither a cost-benefit analysis nor proposals to amend the exclusions are necessary at this time. This would suggest that an appropriate regulatory response to the concerns raised by the WAG is ongoing monitoring of wholesale market information disclosures to determine whether or not there is any market failure requiring correction and, perhaps, analysis as to how, when and what disclosure exclusions are being utilised by wholesale market participants.
MEUG	MEUG welcomes the Electricity Authority requesting WAG to review the disclosure exclusions in cl. 13.2A because at least one of those exclusions, namely (b) "commercially disadvantage", has been questionable for some time.
Mercury	We strongly agree that if a way can be found to address concerns with these exclusions in a cost-effective way it would enhance the disclosure regime.
Meridian	Meridian partly agrees with WAG's conclusion. In particular, we agree that further consideration of exclusion (b) (commercial disadvantage) is warranted. Meridian is less convinced that exclusion (g) (information insufficiently definite) is a problem. We note that the wording of exclusion (g) – through use of the term "insufficiently" – has its own implicit trade-off i.e. the exclusion only applies so long as the relevant information is insufficiently definite. Once the information becomes sufficiently definite, the exclusion no longer applies. Meridian considers this is a sensible approach. The release of insufficiently definite information is likely to lead to misinformation which subsequently needs to be corrected. This would detract from rather than enhance the effectiveness of the information disclosure regime. We also note that this exclusion is consistent with the NZX disclosure regime. Meridian considers, where possible, it is sensible and desirable to align these two information disclosure regimes.
Nova	Cost effectiveness is not Nova's primary concern with the proposed amendments. Nova is concerned that the proposed broadening of the Market Participant's disclosure obligations will not achieve the EA's intended effect as they will not be enforceable against all relevant parties – for example the gas market participants, such as Shell, OMV, Greymouth Petroleum and Origin Energy. The uneven application of the disclosure requirements has the potential for unintended consequences.
Pioneer	Pioneer has not reviewed the suggested options for Code changes in detail but strongly agree that information disclosure provides benefits. We support the focus on timely and accurate information disclosure on outages and major financial contracts. From our perspective as a small player in the wholesale market our interest is to see timely information that is easy for people entering the market to access and understand. The information disclosure rules should also limit the ability of any party to abuse their market power and enable proactive and regular monitoring to ensure compliance.
Transpower	

Q2: What comments do you have on the WAG’s assessment of these Code amendment options?	
Submitter	Submitter’s comment
Genesis	
MEUG	<p>The two step process followed by WAG was useful to refine exclusions to focus on. The use of conceptual figures to rank options relative to risk of unintended consequences versus expected benefits with the estimated scale of implementation costs reflected in the size of the “bubble” representing an option in figures 2 and 6 is also a useful technique to rank options to consider further. However that conceptual illustrative technique gives no information on the relative scale of benefits and costs – that additional analysis is still needed to consider options for other than obvious changes to be implemented.</p> <p>MEUG’s preference is for any changes to the Code to be based on quantitative CBA. Therefore relying on the qualitative assessment in the paper of costs and benefits risks making an error on the relative scale and range of benefits and costs of alternatives relative to the status quo. A precautionary approach is preferred until such time as quantitative estimates of the pros and cons can be assessed.</p>
Mercury	<p>We support removing the commercial disclosure exclusion and adding a reasonable person and good trading conduct provision. Our experience has been that some market participants are not taking the disclosure requirements as seriously as is appropriate and therefore they need to be both tightened and more closely monitored.</p>
Meridian	<p>Meridian has the following comments:</p> <ul style="list-style-type: none"> • We do not support the use of a “good conduct” provision. We consider the expectation of good conduct is implied by the information disclosure obligation i.e. a participant must comply with its obligations under the Code, otherwise it is not practicing “good conduct”. There is no reason for a good conduct provision to apply to the wholesale market information disclosure regime but not to other parts of the Code. • We do not support the use of a “purpose statement” in the Code. A purpose statement is already included in the disclosure guidelines. It will provide no additional guidance to include such a statement within the Code. Again, it is not clear why a purpose statement should be used for the wholesale market information disclosure regime but not for other parts of the Code. • We do not agree that the “reasonable person (condition)” option should be eliminated from further consideration. We agree this would theoretically tighten the use of all exclusions. However, Meridian considers this is appropriate and consistent with WAG’s objective of devising a more effective information disclosure regime. We do not agree there will be a high risk of unintended consequences as there is an inherent reasonableness test in applying this condition. In fact, we consider “reasonableness” is the appropriate test to apply in this situation. We note also that use of a reasonable person condition is consistent with the approach adopted under the NZX disclosure regime. • We do not agree that a “reasonable person (exclusion)” is preferable to a “reasonable person (condition)”. Including an additional reasonable person exclusion will in fact broaden the range of exclusions available to participants. This will provide a further ground for withholding information which is directly contrary to WAG’s objective of improving wholesale market information disclosure outcomes. • We do not agree with removing or replacing the “commercial disadvantage” exclusion. In some scenarios, material commercial disadvantage is a valid and fair reason for withholding information. For instance, wholesale market participants should not be required to disclose the details of their contract books – while such information could be argued to be “disclosure information” in some circumstances, release of such information would have a significant commercial impact on a participant which will

Q2: What comments do you have on the WAG’s assessment of these Code amendment options?	
Submitter	Submitter’s comment
	<p>greatly outweigh any potential benefit from its release. It is appropriate to retain reference to “commercial disadvantage” within the listed exclusions to ensure these impacts are taken into account. Rather, the objective should be to ensure this and other exclusions are applied in an appropriate way. As above, Meridian considers the correct way to do this is through the application of a reasonable person condition.</p> <ul style="list-style-type: none"> • We agree a “no trading on undisclosed information” provision would involve significant policy considerations and is outside the scope of the current review. • We do not support a requirement to “notify” when applying an exclusion. We agree this will create a significant additional burden for participants and the Authority.
Nova	No comment.
Pioneer	
Transpower	

Q3: What comments do you have on the potential benefits, risks and costs of each option?	
Submitter	Submitter's comment
Genesis	
MEUG	See response to Q. 2 above
Mercury	The benefits of tightening the disclosure regime outweigh the costs and risks in our view, particularly now that the market has evolved to include many third party participants who do not have access to information that is available to the traditional market participants such as ourselves.
Meridian	See response to Question 2.
Nova	We agree that simply removing the Commercial Disadvantage (CD) exclusion would potentially have significant unintended consequences and alternative constructs need to be considered in preference to that.
Pioneer	
Transpower	

Q4: What is your preferred option, and why?	
Submitter	Submitter's comment
Genesis	
MEUG	Removal of exclusion (b) “commercially disadvantage” because that has no comparable exclusion in NZX. Parties operating in the NZX continuous disclosure regime will be familiar with not having a “commercially disadvantage” exclusion and therefore this should be a costless option.
Mercury	See our response to question 2. We also support enhancing the WMI disclosure guidelines in particular use of POCP and the Authority's hedge disclosure platform. Consistency of use of these two platforms would be helpful as would a requirement that all participants disclose information on these platforms rather than potentially having information available in a variety of different places such as individual participant websites. This seems the most efficient outcome particularly given the public has access to POCP. If necessary this could be done by inserting a reference to POCP in the Code.
Meridian	<p>Meridian's preferred option is to add a reasonable person condition applying to all exclusions. As described above, this approach will:</p> <ul style="list-style-type: none"> • Impose an additional test on the application of any existing exclusion which is based on an appropriate threshold i.e. the threshold of reasonableness. This will enhance the effectiveness of the current disclosure regime, thereby achieving WAG's objective. • Retain the existing exclusion relating to commercial disadvantage, which is an important exclusion to apply in some cases, while at the same time making that exclusion (and all other exclusions) subject to a reasonableness test. • Apply a consistent pre-condition to all current exclusions. If the reasonable person test was only applied to particular exclusions, it is possible that problems with overreliance on other exclusions would arise in the future, which when then require further changes to the disclosure regime. This will be prevented if the reasonable person test is applied as a pre-condition to all existing exclusions now. • Enhance alignment with the NZX disclosure regime. This will simplify compliance for participants subject to both regimes, and will also allow any relevant learnings, case studies or guidance from the NZX disclosure regime to be applied to the wholesale market disclosure regime.
Nova	Nova favours adding the Good Conduct provision in the first instance. This also lends itself to further assessment and review in two or so years to see if the CD exclusion needs to be enhanced by a Reasonable Person provision.
Pioneer	
Transpower	

Q5: What comments do you have on the possible market facilitation measures the WAG has identified?	
Submitter	Submitter's comment
Genesis	
MEUG	
Mercury	See answer to Q4. We agree with all the WAG's suggestions on pg 40 of the discussion document – the inclusion of worked examples, guidance on use of POCP and the hedge disclosure regime set up by the Authority. We also support an industry workshop. It is crucial that there is clarity around what situations do and do not require disclose once any Code amendments have been implemented so that all market participants and interested members of the public understand the requirements and new entrants can research the requirements prior to entry.
Meridian	Meridian strongly supports the market facilitation measures proposed by WAG, namely: <ul style="list-style-type: none"> • Improving the wholesale market information disclosure guidelines; • Raising participant awareness and understanding of the wholesale disclosure regime; and • Encourage improvements in the use of POCP. We agree with WAG that these measures should be pursued regardless of any decision to amend the Code.
Nova	Nova fully supports implementing the proposed market facilitation measures. Enhanced disclosure is only of value to the extent that users find the information readily accessible; and disclosing parties are more inclined to release information if that process is relatively straightforward, even if the information itself is quite significant to the market.
Pioneer	We agree the suggested market facilitation measures could deliver additional benefits.
Transpower	As the WAG identifies, in 2013 we amended the POCP to enable open access so that the asset outage information held there met the “readily available to the public” test of the Wholesale Market Information (WMI) disclosure obligations. This public face may have encouraged parties to view the outage co-ordination tool as the means to satisfy obligations for and access to WMI disclosures, thereby expanding its specific role for the co-ordination of outages affecting common quality under Technical Code D of part 8. In this review, the WAG makes four suggestions for facilitation measures around the POCP: <ol style="list-style-type: none"> 1) include more specific guidance for participants using the system operator's POCP platform for meeting their clause 13.2 WMI 2) encourage better and/or more consistent use of the ‘tentative’ flag for outages posted in POCP 3) encourage direct consumer participants and gas facility owners to make better use of POCP for outages 4) investigate providing in POCP access to information from OATIS (the Open Access Transmission Information System for gas), ideally through an automated process. We support the first two measures and would be happy to assist with these developments in collaboration with participants and the Authority. We consider that creating consistency around the use of the ‘tentative’ flag should improve accuracy of and confidence in the outage information, but work will be needed to understand and align the use of the term by participants with their own outage management policies. We consider the guidelines would be an appropriate place to specify this emerging ‘flag’ policy. In 2014 – 15 we made further enhancements to the POCP to enable increased information sharing between participants about asset

	<p>outages, but consider the existing functionality is still straightforward, reliable and low cost to manage. However, the last two measures proposed would be major changes to the POCP purpose that would seem to transform the POCP platform into a broader market information disclosure vehicle. We would wish this expansion in scope, complexity and likely running cost to be tested for desirability and do-ability via the participants' working group that supports the platform.</p>
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Q6: Are there other market facilitation measures that should be considered?	
Submitter	Submitter's comment
Genesis	
MEUG	A review of the wholesale market disclosure requirements and exclusions should be resumed after the just commenced market performance review of the high spot price event on 2nd June 2016 has been completed. That review is likely to provide quantitative analysis to assist identify any gaps in information provided to the market.
Mercury	<p>We would like to see transaction disclosure to www.electricitycontract.co.nz down from five days to one day and more disclosure requirements for option products under Part 13 clause 225(1)(a) of the Code. One business day would increase transparency, thereby ensuring more efficient operation of the market. Contracts for Difference (CfDs) and Options have the potential to impact significantly on spot market dynamics and give informational advantages to the parties who are contracting. By reducing the timeframe for disclosure, other market participants can make better decisions about managing energy market risks and potentially, lower the end cost to the consumer.</p> <p>We have seen an increasing number of short-term Options going through the market. We are concerned that CfDs may be being presented as Options to avoid the more sophisticated disclosure regime that applies to CfDs. We support more disclosure, particularly the strike price and location of the contract, to enable all market participants to make more informed decisions. It would allow traders to better manage risk. Having the same disclosure requirements for CfDs and Options would ensure more efficient operation of the industry in line with the Authority's objective.</p> <p>We would also like to see the disclosure requirements for fixed price variable volume contracts (FPVV) clarified as they relate to volume. For example, as a matter of practice we disclose FPVV contracts over 1MW. The timeframe for disclosure currently in place is appropriate.</p> <p>We would support the Authority more actively monitoring information disclosure practice rather than relying on self-breach reporting. This would send a strong message that information disclosure is regarded as a serious obligation.</p>
Meridian	<p>Further to the list above, Meridian considers a greater focus from the Authority on compliance and enforcement will be an important part of raising the performance of participants with respect to their disclosure obligations.</p> <p>WAG and the Authority may also want to give consideration to developing a central disclosure platform to assist with monitoring and compliance.</p>
Nova	It would be useful if users of market information could create filters and automated alerts within POCP so that they can be confident of picking up on key market changes or events. That may be complex to set up initially, but the process itself would assist in helping make the information more useful to users. That process would also provide valuable information about the size and level of market information that users wish to be fully informed on. The alternative is that users create and rely on their own systems to highlight relevant events, but that is not necessarily available to users with limited resources.
Pioneer	
Transpower	

Other comments made in submissions	
Submitter	Submitter's comment
Genesis	<p>Physical commodity markets more relevant than equity markets</p> <p>Throughout the Discussion Paper, the WAG seeks greater alignment between the wholesale market disclosure obligations and the disclosure obligations applicable to companies listed on the New Zealand Stock Exchange (NZX). We do not agree that this is an analogous disclosure regime. The NZX is an equity market whereby participants engage to make a return on their investment; an investment market. The wholesale electricity market is a commodity market where the majority of participants are purchasing a physical product for delivery. The financial instruments traded in electricity are designed to allow participants to manage their commercial exposure in the electricity market, especially given its volatility. This means that where the “commercial disadvantage”¹ exclusion may not be appropriate in the NZX equity market disclosure rules, it is an important exclusion of market participants in the wholesale electricity market.</p> <p>Accordingly, a better comparison is that of other physical commodity markets, not an equity investment market. We suggest the WAG ought to look to other commodity markets for good practice when setting regulatory settings for information disclosure in a commodities market.</p>
MEUG	
Mercury	
Meridian	<p>Hedge disclosure requirements</p> <p>Meridian notes that subpart 5 of Part 13 sets out obligations on participants with respect to the disclosure of particular details relating to hedge agreements. This subpart (and its 20 associated clauses) provide very specific guidance on the information that needs to be disclosed in these circumstances. Meridian's view is that compliance with these specific obligations should be considered to fulfil the more general disclosure obligations in clause 13.2A with respect to disclosing information relating to hedge contracts. To make this clear, we consider that the Code should explicitly state: “Nothing in this clause 13.2A applies to the disclosure of information about risk management contracts (disclosure of information about risk management contracts is provided for in subpart 5 of Part 13 of the Code).”</p>
Meridian	<p>No requirement to disclose contract book</p> <p>Meridian would also like to be clear that in no situation do we consider it appropriate or acceptable to require the disclosure of a participant's contract book under the general wholesale disclosure obligations in the Code. This information is highly commercially sensitive.</p> <p>We consider the introduction of a reasonable person condition would be consistent with this principle, as we do not consider a reasonable person could expect the disclosure of contract book details. However, we consider that it should be explicitly stated in the Code: “Nothing in clause 13.2A requires a participant to disclose the details of its contract book that it reasonably considers to be confidential whether relating to individual contracts for the sale or purchase of electricity (or related derivatives or financial products) or relating to its aggregated position”. Also, to avoid doubt, we consider that it should be explicitly clarified in the wholesale market information disclosure guidelines that a participant's contract book is excluded from the disclosure requirements.</p>

¹ 13.2A(2) A participant is not required to make disclosure information readily available to the public if (b) doing so will commercially disadvantage the participant in a material manner.

Nova	Nova supports the other proposed market facilitation measures, including automated processes, and making OATIS gas information available (although any investment in that realm needs to be carefully considered in the context to any potential changes to the OATIS system).
Pioneer	
Transpower	