Decision Paper

Review of the Undesirable Trading Situation provisions in the Code

Prepared by the Electricity Authority

17 June 2013

Executive summary

1. Following a review of the Undesirable Trading Situation (UTS) provisions in the Electricity Industry Participation Code 2010 (Code) and consultation on proposed amendments to the UTS provisions, the Electricity Authority (Authority) has decided to amend the UTS provisions in the Code.

2. The Authority reviewed the submissions that it received in response to its proposal to amend the UTS provisions in the Code.

3. A number of issues were raised in submissions about the proposed amendments. In particular, submitters expressed:

   (a) disagreement with the application of the UTS provisions to the hedge and bilateral ancillary services markets

   (b) concerns that the proposed changes to the UTS definition would reduce certainty and that the precedent value provided by the High Court decision[1] on the 26 March 2011 UTS would be lost as a result of the changes

   (c) concerns that the Authority's powers would be too broad under the proposal to allow remedies inconsistent with the Code.

4. The Authority has carefully considered all of the issues raised in submissions, and has decided not to make any substantive changes to its original proposal.

[1] *Bay of Plenty Energy Limited* v *Electricity Authority* [2012] NZHC 238

Glossary of abbreviations and terms

Act	Electricity Industry Act 2010
Code	Electricity Industry Participation Code 2010.
FTR	Financial Transmission Rights
Hedge contract	A financial risk management product or contract for sale and purchase of electricity that protects against price risks
NZEM	New Zealand Electricity Market
UTS	Undesirable Trading Situation

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1. Introduction

1.1.1 The Authority has undertaken a review of the UTS provisions in the Code. The Authority released a consultation paper on 18 March 2013, which proposed a number of changes to address issues with the provisions that were highlighted by the investigation into the 26 March 2011 UTS, and the subsequent High Court decision.

1.1.2 The Authority received 10 submissions on its proposed changes. This paper summarises the main issues raised by the submissions and sets out the Authority's response. The Authority carefully considered all of the submissions, but has decided not to make any substantive changes to its original proposal. However, the Authority has decided to make two changes of a more technical nature.

2. Key proposals

2.1.1 The key proposals in the consultation paper on which the Authority sought feedback are discussed below.

2.2 Changes to the definition of wholesale market

2.2.1 The definition of a UTS in the Code refers to the "wholesale market". However, the Code did not precisely define what is meant by the wholesale market for electricity. The consultation paper proposed an amendment to the definition of “wholesale market” in Part 1 of the Code to explicitly include the spot market for electricity, the ancillary service markets and the hedge market.

2.2.2 It was proposed that this change would apply to other clauses in the Code that refer to the wholesale market.

2.3 Changes to the definition of undesirable trading situation

2.3.1 The consultation paper proposed a change to the definition of a UTS so that the definition is framed around the core concern from a policy perspective, which is maintenance of wholesale market confidence and integrity.

2.3.2 It was further proposed that references in the definition and elsewhere to “contingency or event” would be replaced by “situation”.

2.4 Amend examples of UTS and move to Part 5

2.4.1 The consultation paper proposed that the examples in paragraph (c) of the UTS definition be removed from the UTS definition in Part 1 of the Code. Instead, they would be listed in Part 5 of the Code as examples of possible situations that could give rise to a UTS.

2.4.2 It was also proposed that the examples be amended to improve clarity, including an explicit statement that the examples are not an exhaustive list and do not necessarily constitute a UTS unless they also meet the definition under Part 1.

2.5 Align clause 13.255 with UTS definition

2.5.1 The consultation paper proposed an amendment to clause 13.255 of the Code regarding the ability to suspend the allocation of FTRs. The drafting of that clause was based on the existing UTS provisions, and it was proposed that it should be amended to align with intended changes to the UTS provisions.

2.6 Time limit on initiating a UTS investigation

2.6.1 The consultation paper proposed that a time limit apply to the period between the occurrence of an alleged UTS and the first consideration of that alleged UTS by the Authority.

2.7 Time limit set at 10 business days

2.7.1 The consultation paper proposed that the time limit on the period between an alleged UTS occurring and any subsequent UTS investigation being initiated be set at a maximum of 10 business days.

2.8 No time limit on republishing final prices

2.8.1 The consultation paper proposed that no time limit be set on the Authority republishing final prices, so that it is not time constrained in its ability to correct a UTS.

2.9 Scope of UTS remedies

2.9.1 The consultation paper proposed that the Code be amended to allow the Authority to give directions to correct a UTS that are inconsistent with the Code, provided they are not inconsistent with the Act or any other law.

2.10 Not in breach if following directions

2.10.1 The consultation paper proposed that industry participants following directions from the Authority to remedy a UTS should not face the risk of breaching the Code as a consequence of doing so.

3. Submissions

3.1 Submissions received

3.1.1 Submissions were received from the stakeholders listed in table 1.

TABLE 1: LIST OF SUBMITTERS

Generator/retailers	Other
Contact Energy	Major Electricity Users Group (MEUG)
Genesis Energy	Transpower
Meridian Energy	Vector
Mighty River Power (MRP)	
Nova	
Powershop	
TrustPower	

4. Issues raised and Authority decision

4.1.1 The Authority thanks submitters for their engagement on this issue.

4.1.2 This section provides a high-level response to the primary issues that were raised by submitters under each proposal, and outlines the Authority's final decision.

4.1.3 Responses to more specific issues have been provided in Appendix 1, which gives a tabular summary of those issues and the Authority's response.

4.2 Changes to the definition of wholesale market for electricity

4.2.1 Most submitters agreed that the hedge and ancillary services markets (along with the spot market) are part of the wholesale market for electricity. On this basis, submitters tended to agree that the Authority could take all of these markets into account when assessing if a UTS has arisen in the wholesale market.

4.2.2 However, most submitters expressed a view that including the hedge market and ancillary services market in the definition of the wholesale market would extend the application of the UTS provisions into these areas, and that this would be undesirable.

4.2.3 Specifically, a number of submitters considered that the Authority's ability to enact remedies should be restricted to markets where the Authority is the market provider and/or rule maker. On this view, the hedge market and parts of the ancillary services market should be excluded from the UTS provisions.

4.2.4 The primary arguments for excluding the hedge market and parts of the ancillary services market from the UTS provisions included that:

(a) the hedge market is already regulated by a number of other agencies and, as such, giving the Authority power to enact remedies in the hedge market could create regulatory uncertainty and confusion

(b) those markets may involve parties that are not participants under the Code and, as such, there is a risk that any remedy that the Authority implements will only apply to some participants in those markets

(c) the Authority should not be able to enact remedies in respect of bilateral contracts where terms are agreed privately by both contract parties

(d) the Authority has not provided sufficient evidence requiring it to enact remedies in these markets.

4.2.5 In addition, a concern was raised by one submitter that the proposed definition of wholesale market would have unintended consequences arising from other clauses that refer to that definition. In particular, one submitter stated that the proposed change to the definition of wholesale market would also apply under clause 9.14(2)(a) of the Code, and may mean that the system operator would have to have regard to the hedge and FTR markets in considering the need for a supply shortage declaration.

Authority response

4.2.6 The definition of wholesale market is relevant in two main respects.

4.2.7 Firstly, it affects the scope of issues that the Authority can take into account when determining whether a UTS has occurred. The Authority considers that it should be able to take account of the spot, ancillary services and hedge markets when assessing whether a UTS has occurred in the wholesale market.

4.2.8 Submitters generally (but not unanimously) agreed with this view, but some considered that the High Court decision made it clear that the Authority can consider the ancillary services and hedge markets when determining whether a UTS has occurred. They therefore argued that no clarification to the definition of wholesale market was required.

4.2.9 Secondly, the definition of wholesale market affects the scope of actions available to the Authority to respond to a UTS. Some submitters therefore considered that, by allowing the Authority to provide for remedies in the hedge and ancillary service markets, the proposed change would expand the scope of the powers available to the Authority.

4.2.10 The above submissions suggest that some submitters have been of the view that the hedge market has, until now, been beyond the scope of the existing definition of wholesale market and hence the UTS provisions. However, the Authority does not consider that to be the case, and notes, as it did in the consultation paper, that the High Court stated:[2]

> *"The wholesale market for electricity consists essentially of the spot market and the hedge market. Customers in the wholesale market*

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[2] *Bay of Plenty Energy v Electricity Authority* [2012] NZHC 238, paragraph 16.

can purchase electricity on the spot market or hedge market or in a combination of both."

4.2.11 The Authority does not consider that the changes to the definition of wholesale market expand the Authority's powers. The change to the definition reflects what was the existing position and clarifies that the ancillary services and hedge markets are part of the wholesale market, and therefore within the scope of the UTS provisions.

4.2.12 The Authority considers that this is appropriate because the hedge and ancillary services markets are closely linked to the spot market, and the Electricity Industry Act 2010 (Act) confers on the Authority responsibilities and powers in relation to those markets.[3] The issue of remedies is discussed in section 4.9.

4.2.13 In relation to the submission that the proposed change to the definition of wholesale market would also apply under clause 9.14(2)(a) of the Code, this was not an intended outcome of the Authority's proposal. To clarify that the system operator is only required to consider the normal operation of the spot market (rather than the wholesale market generally) when making a supply shortage declaration, the Authority has decided to amend clause 9.14.

Authority decision

4.2.14 The Authority has decided to adopt the proposed definition with the following amendments:

(a) changes to clause 9.14 so that it refers to the spot market rather than the wholesale market

(b) changing "processes" to "process", as discussed in row 1.4 of Appendix 1.

4.3 Changes to the definition of undesirable trading situation

4.3.1 The current UTS definition has a number of limbs, one of which is that it is a "contingency or event that threatens, or may threaten, trading on the wholesale market for electricity and that would, or would be likely to,

[3] For example section 42(2)(g) of the Act, which required the Authority to amend the Code to facilitate, or provide for, an active market for trading financial hedge contracts for electricity, or to report to the Minister if it did not do so.

preclude the maintenance of orderly trading or proper settlement of trades".

4.3.2 The Authority proposed that this limb be replaced with a requirement that a UTS is a "situation that threatens, or may threaten, confidence in, or the integrity of, the wholesale market".

4.3.3 Most submitters did not support this proposed change. The main arguments were that:

(a) the High Court decision on the 26 March 2011 UTS provided a precedent that parties could utilise in interpreting the UTS definition in the future. This improvement in certainty would be lost under the proposed changes

(b) the "orderly trading" concept has closer parallels with the former NZEM Rules and provisions in a number of overseas markets

(c) the proposed focus on confidence in, and integrity of, the wholesale market was seen as less precise and more open to interpretation. This in turn could reduce the scope for appeals against any future decisions.

4.3.4 A number of submitters also considered that the proposed changes would lower the required standard of proof from "would be likely" to "may" when the Authority is assessing whether a UTS has occurred.

Authority response

4.3.5 The Authority proposed to replace references to "orderly trading" in the UTS definition with "confidence and integrity" so as to frame the UTS definition around the core concern from a policy perspective (maintenance of wholesale market confidence and integrity), rather than intermediate processes (trading and settlement).

4.3.6 The Authority acknowledges that the change may result in some loss of precedent value in relation to the High Court decision on the 26 March 2011 UTS. However, the Authority considers that the degree of change may be overstated as the concepts of market confidence and integrity were key aspects of the Authority's decision in relation to the 26 March 2011 UTS.

4.3.7 Specifically, the Authority notes the following excerpts from its decision on the 26 March 2011 UTS:

> *"It is in the public interest to have an electricity market in which all participants can be confident prices are competitively determined. If*

participants observe that prices are greatly divorced from supply-demand conditions and are excessively higher than underlying costs, they will lose confidence in the integrity of the market arrangements and the incentive structures surrounding the wholesale market for electricity may be greatly damaged....

UTS claims in regard to 26 March 2011 and responses to the Authority's information requests in regard to 26 March 2011, indicate that buyer confidence in the wholesale market for electricity appears to have been seriously undermined through the combination of exceptionally high prices (in the absence of an underlying supply-demand imbalance) and buyers' lack of awareness of these prices until after the events had occurred....

Finally, the indications are that, if the high prices of 26 March 2011 are allowed to stand, the reputation of the wholesale market for electricity may be damaged to the point where trading on the market may be threatened and the adverse financial impact on some parties may preclude the maintenance of orderly trading or the proper settlement of trades."

4.3.8 The High Court found that the Authority made no error of law in its decision on the 26 March 2011 UTS. In that regard, the High Court stated:[4]

"I am satisfied the Authority was entitled to take confidence in the market into account in assessing whether a UTS had occurred. In assessing threats to trading and the likelihood of orderly trading being affected, confidence in the market is relevant. Confidence, or lack of it, would not by itself be determinative of these questions. Confidence is an integral part of the operation of such a market."

4.3.9 Some submitters referred to this statement to argue that no change is warranted because the Authority can take confidence effects into account when determining a UTS. For example, one submitter stated:

"The Authority seeks to elevate confidence in the market as the "the core policy concern" [*sic*] *for a UTS. However, this position is directly at odds with the High Court judgment which held that, while confidence in the market was a relevant factor when determining a UTS, it was not a determinative factor".*

[4] *Bay of Plenty Energy v Electricity Authority* [2012] NZHC 238, paragraph 294

4.3.10 These arguments seem to misunderstand the point. Maintenance of confidence in the wholesale market is a core policy concern, and therefore a situation that threatens, or may threaten, confidence in the wholesale market should be sufficient to meet the first limb of the UTS definition.

4.3.11 The Authority acknowledges submitters' interest in retaining the concept of "orderly trading" in the definition. In particular it has carefully considered alternative drafting suggestions as proposed by submitters, including:

(a) *'a situation that threatens, or may threaten, confidence in, or orderly trading on, the wholesale market for electricity'*

(b) *'a situation that threatens, or may threaten, confidence in, or the integrity of trading on, the wholesale market for electricity'*

4.3.12 While the Authority acknowledges such alternative drafting may have maintained stronger linkages to the UTS definition considered by the High Court, the Authority ultimately concludes that the drafting retains an unnecessary focus on underlying physical market processes, rather than the core concern of the UTS provisions. The risk with the focus on physical processes is that it could prevent the Authority from acting in response to a UTS that affects other market processes, such as settlement or reconciliation or clearing (as opposed to "trading").

4.3.13 In relation to the submissions that the change from "would be likely to" to "may" in the definition of a UTS lowers the threshold for intervention, increases the Authority's discretion as to the scope of a UTS, and limits the potential effectiveness of appeal rights, the Authority accepts that the change to "may" theoretically lowers the threshold for intervention and increases the Authority's discretion. The lower threshold and greater discretion may mean that participants are more likely to seek to claim a UTS, and possibly to challenge a decision of the Authority. The greater discretion may mean, however, that a court is less likely to intervene (provided the Authority has applied the correct test).

4.3.14 However, the Code previously included both tests, but for different aspects of the UTS definition. The Authority considers a single test of "may" is more appropriate, reduces complexity and uncertainty, and in practice would probably make little difference.

4.3.15 The overall impact on the likelihood of finding a UTS depends on the interaction of the different elements in the UTS definition. While the Authority does not consider that the proposed amendments would materially alter the overall likelihood (but would improve clarity), it acknowledges that this is a matter of judgment and some submitters have different views on the issue. In this context, the Authority also notes that it has retained or enhanced other important procedural checks on the ability

to find a UTS. In particular, the Authority has not proposed any changes to paragraph (b) of the definition, and proposed that a time limit apply to the ability to initiate a UTS investigation.

Authority decision

4.3.16 The Authority has decided to adopt the proposed changes to the UTS definition.

4.3.17 To assist participants in interpreting the revised definition and understanding how the Authority will apply it in practice, the Authority will update the UTS guidelines that are published on its website.

4.4 Amend examples of UTS and move to Part 5

4.4.1 The majority of submitters were comfortable with the proposal to move paragraph (c) of the UTS definition to Part 5 of the Code, which would make it clear that the examples in paragraph (c) may constitute a UTS, but that paragraphs (a) and (b) are determinative.

4.4.2 Submitters that did not support this proposed change generally argued that the change was not desirable given the precedent provided by the High Court judgment on the 26 March 2011 UTS.

Authority response

4.4.3 Although the High Court upheld the Authority's decision regarding the 26 March 2011 UTS, the High Court also noted that the UTS definition is not without its difficulties.[5]

4.4.4 The Authority therefore considers that it is desirable to clarify the Code by moving paragraph (c) to Part 5. In essence, this clarifies the hierarchy of paragraphs (a), (b) and (c).

Authority decision

4.4.5 The Authority has decided to move the examples under paragraph (c) of the UTS definition to Part 5 of the Code, and make minor consequential amendments to the examples of what may constitute a UTS.

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[5] *Bay of Plenty Energy v Electricity Authority* [2012] NZHC 238, paragraph 130

4.5 Align clause 13.255 with UTS definition

4.5.1 Submitters generally agreed that clause 13.255 should align with the UTS definition, though some submitters did not support the proposal because they objected to the proposed changes to the UTS definition.

Authority decision

4.5.2 The Authority has decided to align clause 13.255 with the amended UTS definition.

4.6 Time limit on initiating UTS investigation

4.6.1 The majority of submitters agreed with the proposal to establish a time limit on the initiation of a UTS investigation, suggesting that it would provide certainty for market participants. They further considered that most situations that would constitute a UTS would be extremely unlikely to go unnoticed for any extended period, and a time limit is hence unnecessary.

4.6.2 One submitter objected to the proposal, raising an example where a buried data or reconciliation issue went undiscovered for some time after it occurred, but which otherwise would constitute a UTS.

Authority response

4.6.3 The Authority acknowledges the merits of a “reasonable discoverability” provision being included in the time limit on initiating a UTS investigation.

4.6.4 However, on balance, the Authority prefers a fixed time limit for the following reasons:

(a) it is extremely unlikely that a situation of sufficient materiality to constitute a UTS would go unnoticed for any extended period

(b) a time limit should provide more confidence that the UTS provisions can only be invoked in extreme circumstances

(c) the UTS provisions should not be relied upon as a fix-all in place of Code amendments. The Authority expects that any situation that has gone unnoticed for a sustained period is likely to be more appropriately handled by amending the Code on a prospective basis

(d) the existence of a time limit on a UTS investigation promotes market certainty with respect to the republication of final prices, as discussed later in section 4.8.

Authority decision

4.6.5 The Authority has decided to implement a time limit on initiating a UTS investigation.

4.7 Time limit set at 10 business days

4.7.1 Submitters generally agreed that a time limit should be in place, but there was a range of views about how such a time limit should apply.

4.7.2 While some submitters preferred a “reasonable discovery” provision, others suggested that the time limit should be linked to the next settlement date, as receipt of settlement invoices and other monthly data may lead a participant to claim a UTS.

4.7.3 Other suggestions included that a time limit would be better if applied to the making of a UTS decision, or to the time when a UTS is first alleged.

Authority response

4.7.4 The Authority reiterates its reasons for a fixed time limit outlined in section 4.6. In this sense, particularly in relation to 4.6.4(a) and 4.6.4(c), a fixed time limit was a key aspect of the package of Code changes. For the same reasons, the Authority considers that a short fixed time limit is important. It limits the Authority to being able to intervene only in those situations that provoke an immediate concern with respect to the confidence in, or integrity of, the wholesale market.

4.7.5 The Authority acknowledges the concern around the timing of data availability and has considered suggestions that the time limit be linked to the next settlement date. However, the Authority considers that any situation that is likely to be a UTS in the wholesale market will become quickly apparent, and that there are other mechanisms in the Code that deal with data and technical issues with the pricing process that are most likely to be apparent in invoices (rather than issues of the type included in the examples under the new clause 5.1(2)).

4.7.6 The Authority further notes that all of the UTS claims made under the Code, the preceding Electricity Governance Regulations, and (as far as the Authority is aware) before that under the NZEM rules, were lodged within hours or days of the event or circumstance arising.

4.7.7 In light of all these factors, the Authority considers that a 10 business day time limit is appropriate.

4.7.8 The Authority does not consider that a time limit on the making of a UTS decision, as suggested by one submitter, would provide the same benefits as a time limit on initiating a UTS investigation. Rather, it would leave open the potential for UTS claims to be lodged for situations in the distant past.

4.7.9 Furthermore, the Authority does not perceive any significant benefits in restricting the time it can take to investigate a UTS. UTSs are likely to be of varying nature and complexity, and restricting the length of an investigation would likely only result in the potential for a less thorough investigation process in some instances. The Authority considers that it is preferable to ensure decisions are made on a solid foundation by allowing time for full and proper information gathering and analysis.

Authority decision

4.7.10 The Authority has decided to amend the Code to include a 10 business day time limit between the occurrence of a suspected UTS and commencement of an investigation.

4.8 No time limit on republishing final prices

4.8.1 There was a mixed response to the proposal to not include a time limit on the republication of final prices.

4.8.2 While some submitters agreed with the proposal, two parties suggested that a limit needed to be in place to provide the market with certainty and for orderly trading. However, those parties also acknowledged that there was a need for flexibility given the uncertain time required to complete a UTS investigation and (if appropriate) apply UTS remedies.

4.8.3 One party further suggested that a best endeavours timeframe be placed on the Authority in relation to calculating and republishing final prices.

Authority response

4.8.4 The Authority agrees with submitters that final prices need a degree of finality to provide the market with certainty.

4.8.5 In this regard, the Authority notes that the proposed 10 business day time limit on the initiation of an investigation into a UTS is relevant because the only circumstance in which final prices can be republished under the Code is to remedy a UTS.

4.8.6 The time limit on launching a UTS investigation is therefore expected to mean that 10 business days after final prices are published, they cannot be republished unless they were already subject to a UTS claim.

4.8.7 While the Authority accepts that it is not desirable for prices that are subject to a UTS claim to remain uncertain for long periods, submitters acknowledged a need for flexibility around this issue. Hence, the Authority does not agree that a time limit on the investigation of a UTS should be fixed. Nor does the Authority see merit in a best endeavours obligation to investigate a UTS within a defined time frame, given that the Authority is already subject to similar requirements as a matter of administrative law.

Authority decision

4.8.8 The Authority has decided not to include a time limit on the republication of final prices, but notes that a time limit on initiating a UTS investigation creates a de facto limit for the republication of final prices.

4.9 Scope of UTS remedies

4.9.1 Submitters provided a variety of responses to the Authority's proposal that the Authority be allowed to take any action to correct a UTS, provided it is not inconsistent with the Act or any other law.

4.9.2 Some submitters supported the proposal, some suggested amendments, and others expressed significant concern. In respect of submitters in the latter two categories, concerns were largely focussed on two issues:

(a) some submitters considered that the Authority should be confined to applying remedies that are not inconsistent with the Code

(b) some submitters expressed concern that this change, in combination with the proposed changes to the definitions of a UTS and the wholesale market, would allow the Authority to take actions in the hedge market to correct a UTS. They considered such actions to be undesirable, and not available to the Authority under the Code.

Authority response

4.9.3 In relation to the first concern, the Authority considers that limiting remedies to actions that are not inconsistent with the Code would be unworkable. In particular, the Authority notes that, by definition, a situation cannot be a UTS if it can be resolved by any other means under the Code.

4.9.4 By implication, the normal application of the Code will not resolve the situation and actions not specifically provided for in the Code would be required. Whether such actions are inconsistent with the Code (or merely not provided for) would depend on what they were. However, there is a strong likelihood that, in some cases, actions will need to be inconsistent with at least some aspects of the Code. Indeed, the UTS may have arisen because the Code itself is leading to some major unintended problem.

4.9.5 If the Authority was limited to remedies not inconsistent with the Code, it could be constrained to applying less effective remedies at times, and may in some instances be unable to apply any remedy at all.

4.9.6 The second key concern was whether the Authority should be able to take actions in the hedge market to remedy a UTS in the wholesale market. As discussed in section 4.2, a number of submitters considered that this would be an expansion of the Authority's available powers and expressed significant concerns about this issue.

4.9.7 However, putting aside the question of whether the changes would confirm or expand the Authority's ability to enact remedies in the hedge or ancillary services markets (discussed in section 4.2), the underlying issue is whether the Authority should have the ability to take any actions in those markets to remedy a UTS.

4.9.8 The Authority considers that such powers are appropriate because the hedge and ancillary services markets are closely linked to the spot market, and the Act confers responsibilities and powers on the Authority in relation to those markets.

4.9.9 The position being advocated by some submitters was that the Authority should be entirely precluded from taking any action in relation to the hedge market and (some aspects of) the ancillary services market. In the Authority's view this would be a step too far because it would remove any ability to take actions in these markets, even if that was the most effective course of action available. The Authority therefore considers that this would be inconsistent with its statutory responsibilities.

4.9.10 In taking this view, the Authority recognises that important aspects of these markets may be subject to the jurisdiction of other bodies. Indeed, this point was recognised in the Consultation Paper.

4.9.11 If a UTS was to arise in which the Authority contemplated taking steps in the hedge or ancillary services market, it would clearly need to take jurisdictional issues into account. This would certainly influence the Authority's choice of remedy, including whether it applied any remedies at all.

4.9.12 Finally, the Authority notes that entirely excluding any ability to take actions with respect to the ancillary services or hedge markets may significantly weaken the Authority's ability to properly address a UTS in the wholesale market at some future point. It also appears inconsistent with the Authority's scope of responsibilities under the Act.

Authority decision

4.9.13 The Authority has decided to amend the Code to allow it to give directions to correct a UTS that are inconsistent with the Code, provided they are not inconsistent with the Act or any other law.

4.10 Not in breach if following directions

4.10.1 All submitters agreed that participants should not be considered to have breached the Code if they were acting on directions from the Authority.

Authority decision

4.10.2 The Authority has decided to adopt this proposal.

Appendix 1 Submission issues table

[Published separately due to its length]