

14 July 2020

Submissions
Electricity Authority

By e-mail: HME.feedback@ea.govt.nz

Securing access to exchange data consultation

Electric Kiwi and Haast Energy Trading (Haast) support amendment of the Electricity Industry Participation Code to allow the Authority to access market participants' data held by the ASX. Our support is contingent on the Code amendment not extending beyond access to data. We would not support, for example, the Authority having powers to include a requirement that market participants provide indemnity to the ASX in the "prescribed form".

Preferred approach

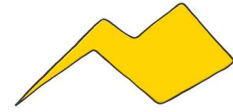
Our preference would be for the Authority to require the ASX to provide market information directly without requiring consent from each market participant. This approach would have much lower compliance costs and be more efficient.

Specific comments on the consultation paper

We have the following specific comments and observations:

- **Strengthened market monitoring and enforcement will improve confidence in the market:** It is not "the Authority gaining access to the data" that "would likely improve participants' confidence in the market". Confidence will be established by, for example, rigorously enforcing the current trading conduct rules, introduction of financial reporting requirements for the incumbent gentailers' retail and generation businesses and establishment of robust mandatory market making.
- **Gross and net pivotal positions both enable exploitation of market power:** It is not just the "participants' net position in the market" that is "an important aspect of monitoring and enforcing the current trading conduction rules". MDAG, in its review of the High Standard of Trading Conduct rules, has detailed cogently that gross and net pivotal positions in the market are both a problem. The Authority should monitor (and include on EMI) gross and net pivotal information, as well as wholesale market concentration statistics.
- **The rules should apply across all participants:** The Authority should ensure the proposed rules are applied uniformly across all participants, including financial institutions. As the Authority has noted, it is desirable to adopt an approach that is "equitable for all participants and ensures the Authority has a comprehensive view of participants' behaviour in the market".
- **The Authority should avoid overreach beyond requirements to disclose information:** The proposed Code amendment should be limited to a requirement to provide consent to the ASX to provide the de-anonymised information listed in proposed clause 13.236AA(2) and not extend beyond that. We would not support, for example, any Code amendment which would allow the Authority to widen the "prescribed form" to include the market participant providing indemnity to the ASX. A specific problem with the Authority's section 45 consent form¹ was that it included that the recipient indemnify ASX against any losses or liabilities. The form went well beyond a

¹ Letter to Phillip Anderson, Director, Haast Trading [sic], Requirement to provide information under section 46(2)(a) and reasonable assistance under section 46(2)(c) of the Electricity Industry Act 2010, 21 May 2020.



requirement to provide the Authority with de-anonymised bid, offer and trading information and to give consent to the ASX to provide the Authority with access to this information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'L. Blincoe'.

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