



23 March 2021

Submissions  
Wholesale Markets - Trading Conduct  
Electricity Authority

By email: [tradingconduct@ea.govt.nz](mailto:tradingconduct@ea.govt.nz)

### **Consultation: Wholesale markets – Trading conduct**

Contact welcomes the consultation on the proposed amendment to the High Standard of Trading Conduct (**HSOTC**) rule in the Electricity Industry Participation Code 2010 (the **Code**).

We have been involved in the development and consultation by the Market Development Advisory Group (**MDAG**) and support the revised HSOTC wording. The proposed wording is clearer than the existing HSOTC rule.

As we have previously noted, changes to the HSOTC rule in the Code may introduce additional uncertainty in the wholesale market for the following reasons:

- With any new test, clarity with how the proposal specifically operates will take time, as the Authority considers any allegations of breach, the wording and its application, and subsequent precedents that are set.
- The new standard covers any spot market offer, with the Authority having to objectively apply the *Significant Market Power* test in each instance. In contrast, the safe harbour provision under the existing HSOTC provisions applied where a generator was not pivotal – rightly or wrongly reducing the number of trading periods where the HSOTC test might be applied.
- Responding to investigations into HSOTC allegations is time-consuming, expensive and can have reputational impacts – irrespective of the ultimate outcome of such investigations. These impacts do not fall evenly between complainants and respondents to an allegation. As a result, the risk of multiple and vexatious allegations remains.

Our response to the specific consultation questions is attached.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Chris Abbott".

**Chris Abbott**  
GM Regulation & Government Relations



Question	Contact Response
<b>Q1.</b> Do you agree with the issues identified with the current trading conduct provisions (clauses 13.5A and 13.5B) in the Code?	Contact agrees with the issues identified by the MDAG, set out in para. 2.9 in the paper.
<b>Q2.</b> Do you agree the proposed trading conduct rule is preferable to other options? If you disagree, please explain your preferred option in terms consistent with the Authority statutory objective in section 15 of the Electricity Industry Act 2010.	Contact agrees that the proposed updated HSOTC rule is preferable to the alternatives, and that a clearer conduct rule is the most appropriate to address conduct where market power exists in the electricity spot market. The HSOTC rule is appropriately framed within an economic efficiency framework. The MDAG's additional proposal to include supplementary guidelines or principles within the Code are unnecessary, and would have been likely to increase rather than decrease ambiguity.
<b>Q3.</b> Do you agree that the Authority has appropriately considered alternatives to the proposed rule?	Yes
<b>Q4.</b> Do you have any comments on the Authority's view on submitters' issues and concerns?	No
<b>Q5.</b> Do you agree with the Authority's decision for not providing specific examples or hypothetical scenarios in guidelines on how the proposed rule should be applied?	Yes. While guidelines can be useful, we agree with MDAG's conclusion that the boundary is "a matter of judgement, not a mechanical formula". Individual participants can develop internal guidelines to guide their spot market offers for periods that they may have significant market power.
<b>Q6.</b> Should the Authority provide access to anonymised information on the findings of cases that have been considered but not progressed and the content of 'please explain' notifications, where appropriate?	Yes – on the basis that the details can be anonymised.
<b>Q7.</b> Do you agree that the proposal is a material improvement on the status quo?	
<b>Q8.</b> Do you agree with the objectives of the proposed amendment?	Yes – Contact agree that the proposed new rule, which reduces the ambiguity and deficiency of the current rule, will improve efficiency of the spot market in situations where competition is weak.



<b>Q9.</b> Do you agree that the relative assessment approach used in the CBA is sufficient to determine whether the proposal has net benefits relative to the status quo?	
<b>Q10.</b> Do you agree the proposed amendment will result in net benefits?	
<b>Q11.</b> Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	Yes – the proposed HSOTC is consistent with the requirements of section 32(1) of the Act.