

29 March 2021

Sal Shah
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Electricity Authority
By email to tradingconduct@ea.govt.nz

Dear Sal

Wholesale markets – Trading Conduct Consultation Paper

1. This is a submission by the Major Electricity Users' Group (MEUG) on the Electricity Authority consultation paper "Wholesale markets – Trading conduct" dated 9th February 2021.¹
2. MEUG members have been consulted in the preparation of this submission. This submission is not confidential. Some members may make separate submissions.
3. In our last submission to the Market Development Advisory Group (MDAG) in November 2020 MEUG:
 - a) Suggested a multi-party rather than separate be-spoke briefings and Q&A opportunities would have better.
 - b) Recommended that a cost-benefit-analysis (CBA) was needed and if quantification was difficult, then at least factors to consider should be listed.
 - c) Submitted that "... we accept the status quo is unworkable and not a viable option for the future" and "MEUG has no reason to disagree with proposed changes to the operative "rule" clauses 13.5A(1) and (2) on slide 17, i.e., these are the rules that apply to supplier offers and ancillary service agent reserve offers."
 - d) Set aside any view on the proposed revised purpose clause that is now a preamble clause (new clause (1)) and after the relevant operative "rule" clauses, a new clause (3) that explains when market power becomes "significant" until we had considered the views of other parties and a CBA if, and when, that might be available.
 - e) Noted our current pilot analysis of Meridian Energy's economic performance over the last two decades and, in our view, how that type of analysis could be a useful complement to the EA's existing monitoring and market facilitation work.

¹ Refer URL <https://www.ea.govt.nz/assets/dms-assets/27/Consultation-paper-Trading-conduct-v4.pdf> at <https://www.ea.govt.nz/development/work-programme/pricing-cost-allocation/review-of-spot-market-trading-conduct-provisions/consultations/#c18781>.

2. MEUG appreciates this recent consultation round by the EA and the inclusion of a CBA rather than bypass those processes and rely on MDAG's consultation processes to introduce the proposed Code amendment.² Undertaking a CBA and this consultation has met our request in 3 b) above and while qualitative, MEUG agrees it is better to move forward with where MDAG has recommended because the alternative of the status quo is as said last time, "not viable" (paragraph 3 c) above).
3. This is not a fully on-board endorsement that the proposed approach will solve possible short-term offer behaviour leading to long-term outcomes for consumers that are less than would be expected in a workably competitive market. Rather it is, as mentioned beforehand, better to move forward though MEUG has one caveat.
4. That caveat is the EA recognise the uncertainty around how effective the Code amendment might be and the risks that the proposed more active monitoring might be an overreach, inhibit innovation and add costs to the sector.³ Consequently, MEUG recommends the EA in designing the monitoring regime also consider how to measure the success of that work. Not easy, but a measure or measures or indicators of whether the Code amendment and increased surveillance costs incurred by the EA and regulatory costs incurred by affected participants are adding value or not to the long-term benefit of consumers should be put in place. Alternatively, a post implementation review of the Code amendment should be timetabled say 2 to 3-years after coming into effect.
5. MEUG looks forward to considering the first step for the EA in implementation the Code amendment when it publishes how it will more actively monitor the market:

"The Authority aims to publish the principles and methodology it proposes to use to monitor compliance and how it determines whether questionable offering behaviour could constitute an alleged breach that merits further investigation."⁴
4. Finally, MEUG notes the consultation paper and the detailed EA view of issues raised by submitters in appendix F makes no mention of the items in paragraph 3 a) and 3 e) above., i.e., multi-party discussions preferred and using economic profit analysis as a complement to the EA's existing and proposed monitoring tools. If the consultation on trading conduct is not the correct forum to discuss those topics, then we would welcome an opportunity to separately discuss these points with the EA.

Yours sincerely



Ralph Matthes
Executive Director

² Consultation paper paragraph [2.16].

³ The section titled "Unintended efficiency costs" in the consultation paper, paragraphs [D.62] to [D.68] consider these risks and concludes they will be less with the proposed Code amendment compared to the status quo. MEUG is not convinced that is correct because the HSOTC rules are essentially unworkable, suppliers had probably worked that out, and apart from the risk of the EA wasting resources to pursue a code breach, there was no risk of regulatory overreach. The proposed code amendment does, in MEUG's view, therefore carry more and not less risk of regulatory overreach.

⁴ Ibid paragraph [5.5]