



24 October 2020

Tony Baldwin
Chair
MDAG
Electricity Authority

By e-mail: MDAG@ea.govt.nz

Dear Tony,

MDAG's revised HSOTC proposals should help mitigate abuses of significant market power in the spot market

Electric Kiwi and Haast Energy Trading (Haast) support MDAG's revised HSOTC proposals.

We agree with MDAG that the revised HSOTC proposal is superior to the original MDAG proposal and the current HSOTC rules. We support the independent retailer recommendations to revise the definition of significant market power, but our support for the MDAG proposal is not contingent on these changes being made.

In finalising the MDAG recommendations, it will be important for the group to satisfy itself they capture all limbs of the statutory objective, including promotion of competition and reliable supply.¹ MDAG should also satisfy itself there are appropriate provisions for dealing with all forms of undesirable trading conduct, including that the HSOTC rules continue to capture transient market power (as implied by the specification that "there may be ... periods when, one or more generators, or ancillary service agents, as the case may be, has significant market power").

MDAG has run a sound review of the HSOTC rules

MDAG's consultations and stakeholder engagement on the HSOTC review over the last year have been of a very high standard.

MDAG has appropriately drawn on relevant economic literature and legal precedent.

The analysis MDAG has undertaken is fundamentally sound.

The reasons for not undertaking quantified CBA were well explained and justified. We consider the use of independent Panels to test how the MDAG proposals would be interpreted was innovative and provides compelling alternative evidence in support of the revised proposals. We also consider that MDAG has provided compelling prima facie evidence of ongoing trading conduct problems.

There is nothing in any of the submissions, or cross-submissions, which should cause MDAG or the Authority to doubt the efficacy and direction of the Advisory Group's thinking. Quite the opposite.

The quality of the MDAG HSOTC review and proposals is reflected in the fact no substantial changes have been advocated in submissions (or cross-submissions).²

¹ It would not be sufficient to treat "economic efficiency" as a catch-all for efficiency, competition and reliable supply. Such an approach would effectively be contrary to the statutory objective in section 15 and render the important references to competition and reliable supply superfluous. The fact that section 15 included efficiency, competition and reliable supply as three separate, and unranked, limbs reflect that each has separate meaning and is important to the long-term benefit of consumers in their own right.

² Similarly, it is notable that no objections were raised in cross-submissions to the independent retailers' recommended revisions to the MDAG original proposal.



The main objection to the original MDAG proposals appears to have been in relation to the purpose statement. Meridian, for example, offered tentative support for “MDAG’s proposed option of a counterfactual test so that offers must be consistent with offers that the generator or ancillary service agent would have made where no generator or ancillary service agent could exercise significant market power”, but “Most importantly, Meridian does not support the “purpose statement” that is proposed to accompany the test”. The revised MDAG HSOTC proposal addresses the incumbent concerns, including the unfounded claims the proposals amount to price control, by replacing the purpose statement in its entirety.

Concluding remarks

We reiterate that a market rule is only as good as its enforcement. The Authority needs to adopt stringent market monitoring and enforcement of the trading conduct rules (regardless of whether the current HSOTC rules are changed or not).³ Going forward, enforcement needs to occur and it needs to occur in a timely manner.

We strongly support a much larger, well resourced and pro-active Compliance Team. This appears to be a position largely supported by stakeholders, with the possible exception of Mercury.⁴ It also accords squarely with the Authority’s new strategic direction.

Ultimately, if the HSOTC rules – current or replacement – and enforcement fail to ensure abuses of significant market power, including transient market power, are curbed the Authority may be left with the choice of: (i) accepting non-competitive market outcomes, contrary to its statutory objective, or (ii) structural reform, including the break-up of Meridian.⁵

Yours sincerely,

Luke Blincoe
Chief Executive, Electric Kiwi Ltd
luke.blincoe@electrickiwi.co.nz
+64 27 601 3142

Phillip Anderson
Managing Director, Haast Energy
phill@haastenergy.com
+64 21 460 040

³ We consider the Authority should adopt more stringent monitoring and compliance enforcement for all elements of the Code, including HSOTC and wholesale information disclosure.

⁴ Mercury, Cross Submission on Discussion Paper – High Standard of Trading Conduct Provisions: A Review by the Market Development Advisory Group, 27 May 2020.

⁵ <https://businessdesk.co.nz/article/election-2020/luke-blincoe-time-to-break-up-meridian>