



REVIEW OF GUIDELINES FOR PARTICIPANTS ON WHOLESALE MARKET
INFORMATION DISCLOSURE OBLIGATIONS

Submission to the Electricity Authority

PUBLIC VERSION

3 November 2020

INTRODUCTION

1. Vocus welcomes the opportunity to submit in response to the “*Wholesale market information disclosure: Review of Guidelines for participants on wholesale market information disclosure obligations*”, consultation paper, 20 October 2020.
2. Vocus supports the proposed amendments to the Guidelines.
3. If you would like any further information or have any queries about this submission, please contact:

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REFORM OF WHOLESALE MARKET INFORMATION DISCLOSURE REQUIREMENTS WILL IMPROVE CONFIDENCE IN THE MARKET

4. As we noted in response to the previous consultation, Vocus supports the work that both the Authority and the GIC are undertaking to improve wholesale market information disclosure (WMID), in relation to gas and thermal fuel supply requirements, and the coordination of work that has been done.
5. We support the amendment of the Guidelines to include additional examples of information that is required to be disclosed.
6. We particularly support also that the Authority has clarified “*Although these guidelines are not mandatory, they may be drawn upon as an interpretative source in assessing a breach allegation, and the onus is on the participant to show how any different interpretation complies with the Code*” [emphasis added].
7. This statement is particularly important given the Guidelines contain heavy qualifications such as “*Under normal circumstances, the Authority considers that the following could reasonably be expected to have a material impact on prices in the relevant markets and therefore be disclosure information*” and “*This information may be material, depending on the individual circumstances*” [emphasis added]. There are two sets of qualifications in both of these sentence extracts, which may not be needed.
8. The interpretation of the requirements of the Guidelines requires judgement about what is “*normal*” and “*material*” and is doubtless open to various different interpretations, notwithstanding Genesis’ comment that it “*does not consider updating the guidelines will have a material impact on compliance ... Genesis currently meets all obligations under the Code, which is simple to interpret*” [emphasis added].¹

¹ Genesis, Review of Thermal Fuel Information Disclosure—Consultation Paper, 2 September 2020.

GETTING THE BALANCE BETWEEN CODE AND GUIDELINES RIGHT

9. In considering amendment of the Guidelines, we reiterate this should also extend to consideration of what best belongs in (mandatory) Code versus (voluntary) Guidelines.
10. Our view is that disclosure requirements sit best in the Code unless there is benefit in providing flexibility and discretion in relation to compliance with the requirements. A useful illustration of this is that if it is not possible to prescribe ex ante all potential material that should be disclosed, there can be advantage in having principles-based Code requirements, or a mix of prescriptive and principles-based Code requirements, with more detailed examples and illustrations included in Guidelines.
11. Going back to Sapare's road safety analogy,² the Land Transport Act includes a mix of prescriptive rules, including in relation to speeding and driving under the influence of alcohol, with principles-based rules in relation to reckless or dangerous driving.
12. The Authority should take a similar approach to the WMID requirements.
13. In response to our previous submission on these points, the Authority commented *"It is appropriate for the Guidelines to be more detailed than the Code. The Authority cannot detail every situation where disclosure may be required, and judgment is needed in each circumstance to apply the rules appropriately"*. We appreciate the response to our submission on this matter.
14. We agree with the Authority's response.
15. When we look at the Authority's proposed amendments to the Guidelines through this lens, we consider the reasonable conclusion is that the new examples sit most appropriately within the Guidelines, but existing Guideline 6.27 belongs more appropriately in the Code.
16. Failing adoption of our recommendation, we welcome that *"the Authority may consider reviewing this approach and including the content of these guidelines in the Code through future amendments dependent upon participant disclosure practises"*. This will require comprehensive compliance monitoring to determine whether there are problems with relying on the Guidelines, and judgement about how they should be interpreted.

² Kieran Murray and Toby Stevenson, Sapare, Cross-submission comments: draft decision of the Electricity Authority: alleged UTS on 26 March 2011, 19 May 2011.