

From: Luke Archer
Sent: Fri, 15 Sep 2023 16:59:46 +1200
To: Murray Nash; Jo Goudie
Subject: RE: Electricity Market OTC Voluntary Code of Conduct

Thanks Murray – will wrangle the troops here and come back to you with times, likely on Monday.

Have a good weekend,
Luke

From: Murray Nash [Section 9(2)(a) Privacy]
Sent: Friday, September 15, 2023 1:55 PM
To: Luke Archer [Section 9(2)(a) Privacy]
Cc: Ritchie Hutton [Section 9(2)(a) Privacy]; Reuben Irvine
[Section 9(2)(a) Privacy]; Jo Goudie [Section 9(2)(a) Privacy]
Subject: RE: Electricity Market OTC Voluntary Code of Conduct

Hi Luke

Thanks for reaching out.

I've cc'd Jo Goudie to the conversation. Jo is the person best placed to talk re ASX situation. I'm comfortable covering the OTC market.

How about you suggest a few times that work for you all and we can (hopefully) make one work?

All the best

M

From: Luke Archer [Section 9(2)(a) Privacy]
Sent: Friday, September 15, 2023 11:39 AM
To: Murray Nash [Section 9(2)(a) Privacy]
Cc: Ritchie Hutton [Section 9(2)(a) Privacy]; Reuben Irvine
[Section 9(2)(a) Privacy]
Subject: RE: Electricity Market OTC Voluntary Code of Conduct

Hi Murray

Hope all is well. Just looping up with you about meeting at some point soon. You might have seen [in the media](#) that we've received another similar complaint from Electric Kiwi. We're still assessing the Octopus complaint alongside this one. We're keen to catch up about what's happening in the OTC/ASX space to assist us with our consideration of these complaints. Maybe a Teams call in the week of the 25th Sept?

Kind regards
Luke

From: Murray Nash [Section 9(2)(a) Privacy]
Sent: Sunday, August 13, 2023 6:42 AM
To: Luke Archer [Section 9(2)(a) Privacy]
Cc: Ritchie Hutton [Redacted]; Reuben Irvine
[Section 9(2)(a) Privacy]
Subject: Re: Electricity Market OTC Voluntary Code of Conduct

Hi all

Thanks for that.

Later this week or next I plan to share the Code with non - WG members. I will include Octopus.

FYI - Flick has agreed to sign after seeing the Code.

Note also that the voluntary Code's effectiveness should be viewed in parallel with future monitoring of the market by the Authority. On that point, I have organised that they meet with the WG next week and will discuss RFP level monitoring (as contrasted with the current approach which is executed deal focused). The focus here is on market monitoring - not code of conduct directly (it's a voluntary Code). But having said that, the broad adoption of the Code is seen as a signal for what good looks like Eg the major players participating in most or all RFP with a price. That's a huge change over current practice.

I'll be in touch regarding a meeting time.

Best

Murray

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From: Luke Archer [Section 9(2)(a) Privacy]
Sent: Friday, August 11, 2023 5:01:58 PM
To: Murray Nash [Section 9(2)(a) Privacy]
Cc: Ritchie Hutton [Section 9(2)(a) Privacy]; Reuben Irvine
[Section 9(2)(a) Privacy]
Subject: RE: Electricity Market OTC Voluntary Code of Conduct

Hi Murray

Thanks for the explanation re cl 21.1 – we assumed that there had been plenty of discussion of the entire Code line by line, but wanted to bring it to your attention just in case it had slipped through somehow.

We met with Octopus the other day to discuss its margin squeeze complaint, and the OTC Working Group came up naturally in conversation so we mentioned the draft Code and suggested they contact you. [Section 9(2)(ba) Confidential]

[Section 9(2)(ba) Confidential]

Section 9(2)(ba) Confidential

We'd be keen to catch up in the week of the 21st if you're available – virtual is OK, as Reuben will be dialling in from Auckland. Would be good to speak about both OTCs and the ASX, if you're able to.

Have a good weekend,
Luke

From: Murray Nash [Section 9(2)(a) Privacy]
Sent: Tuesday, August 8, 2023 11:36 AM
To: Luke Archer [Section 9(2)(a) Privacy]
Cc: Ritchie Hutton [Section 9(2)(a) Privacy]; Reuben Irvine
[Section 9(2)(a) Privacy]
Subject: RE: Electricity Market OTC Voluntary Code of Conduct

Hi Luke

Regarding 21.1, this section was discussed long and hard by the group. I'm aware it was signed off by all the gentailers legal teams. I think it should be interpreted not as to suggest the current market isn't competitive, but rather a simple principle that consumers are best served by a competitive market. It's a statement which is agnostic with respect to current performance, and instead speaks to what the signatories of the code are committing to (now and in the future) – a market which performs consistent with workable competition.

Regarding Octopus – I think your response is a good one. Perhaps going a bit further, "our understanding is the working group has agreed a code of conduct and the members are in the process of signing it. The intention is to then invite others to consider signing. We suggest you contact Murray Nash – the facilitator of the group – and I'm sure he would be willing to share the document with you." Feel free to give them my details.

Section 9(2)(g) Free and frank opinions

Let me know when you want to have a chat. I'm in Welly first part of next week if want a coffee. Otherwise virtual the following week.

Thanks for the response

Murray

From: Luke Archer [Section 9(2)(a) Privacy]
Sent: Tuesday, August 8, 2023 11:16 AM
To: Murray Nash [Section 9(2)(a) Privacy]

Cc: Ritchie Hutton [Section 9(2)(a) Privacy]; Reuben Irvine

[Section 9(2)(a) Privacy]

Subject: RE: Electricity Market OTC Voluntary Code of Conduct

Hi Murray

Thanks for your email and sorry for the delayed response – both Ritchie and I have been overseas and we've only just looped up on this.

We appreciate you sending this through. We've reviewed and we don't have any major feedback on either the content or the wording of the document. We appreciate the work that's gone into this project to ensure the efficient functioning of the OTC market, in particular given the issues facing ASX trading at present.

The only real comment we have is that on first glance we read the wording of cl 21.1 as implying that the wholesale market may not be a workably competitive market, and hence the need for an efficient OTC market. We presume that's not what the clause was intended to say; and we can't imagine some participants, eg the gentailers, signing something that could be read as implying agreement with that idea. We wonder whether there have been any further discussions about the wording of this clause?

We'd be interested in a catch-up at some stage soon, to touch base about this workstream as well as hearing more about how the ASX issues are coming along. Happy to have this in a couple of weeks virtually.

You might also know – we have been dealing with Doug Watt on this – that we received a broad Commerce Act complaint from [9(2)(b)(iii)] alleging a market-wide margin squeeze by the gentailers directed at independent retailers. After initial enquiries, including chatting with Doug about the ITP and EGM data the EA published recently, we have decided not to open an investigation into these allegations. However, we have subsequently received another complaint from Octopus Energy containing many of the same ideas but also talking about the difficulties in obtaining hedges. We're assessing that complaint and are meeting with Octopus tomorrow afternoon to discuss. One of the points raised in the complaint is that Octopus hasn't seen any results from the EA's OTC working group. Is there any information about this Code that we can share with Octopus – even just letting them know that *'we understand the EA's working group will be releasing a document shortly'*?

Kind regards

Luke

From: Murray Nash [Section 9(2)(a) Privacy]

Sent: Wednesday, July 26, 2023 10:32 AM

To: Luke Archer [Section 9(2)(a) Privacy]; Ritchie Hutton

[Section 9(2)(a) Privacy]

Subject: Electricity Market OTC Voluntary Code of Conduct

Dear both

You may recall that I was charged with facilitating an industry-led working group on how to improve the operation of the OTC market.

The outcome is a voluntary Code of Conduct which all members of the group have agreed to sign. The members are Mercury, Meridian, Genesis, Contact, Manawa, 2degrees, Prime, ElectricKiwi/Haast, and NZSteel (Meug representative). Other electricity market participants will have the opportunity to sign once the founding members of the group have put ink to paper.

The Code is voluntary and non-binding. As you will see, it expressly states and recognises the Commerce Act throughout.

It hasn't been easy negotiating this arrangement – I think all parties were surprised by how far we got.

The Code itself sets out some underlying principles for an OTC market that serves the enduring interests of consumers, and also addresses issues such as treating all participants consistently and in good faith, facilitating onboarding and the ability for parties to transact, efficient operation of the market (eg responding to RFPs), and a commitment to supporting monitoring by the Authority.

The tone of the document is one of recognising the benefits of a liquid and competitive OTC market for all participants, and fostering a constructive approach when dealing with other participants.

The most difficult clause to agree was 30.5 ad 30.5.1 – the latter creates an expectation that large participants will respond with a price to all RFPs, unless the counterparty doesn't have the credit line, the trade would result in an intolerable risk position, or the team is unable to respond in the specified timeframe. In all cases the party needs to provide an explanation for why not.

You will be aware that the Authority is currently consulting on their Hedge Disclosure Obligations – which monitoring of the OTC is a big part. I see the CofC as a consensus "promise" of what good looks like. I expect the Authority's monitoring will draw on this when developing future monitoring and disclosure arrangements eg how to be sure folks are "keeping the promise".

Section 9(2)(h) Legal privilege

I would appreciate any feedback you may have, if any.

I'm free to discuss with you –virtually or I'm in Wellington 15th and 16th August if you would like a coffee catch up or similar.

Best

Murray

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