



3 December 2019

Submissions
Electricity Authority
By email: winbacks.submission@ea.govt.nz

Saves and win-backs Code amendment consultation

Meridian and Powershop appreciate the opportunity to provide feedback to the Electricity Authority on the proposal to prohibit retailer-initiated win-backs for a period after a switch.

The key elements of the Authority's proposal are to:

- prohibit the losing retailer from targeted marketing to a previous customer for 180 days after a customer switches to a gaining retailer,
- specify circumstances in which the losing retailer may contact a previous customer,
- prohibit the losing retailer from passing a previous customer's information on to third parties, and
- require the losing retailer to abide by good conduct provisions.

The Authority considers that, on balance, a ban with a post implementation review of the resulting impacts after two years would best promote competition and the efficient operation of the electricity industry for the long-term benefit of consumers.

As we said in our submission on the Electricity Price Review Options Paper, provided the save and win-back rules are the same for all retailers, we can and will adapt to those new rules.

The table appended to this submission addresses the specific questions from the consultation document. In addition, this cover letter highlights key points for Meridian and Powershop, namely:

- consumer benefit (or lack thereof) needs to be closely monitored; and
- the proposed 180-day ban on win-backs is too long.

Consumer benefit (or lack thereof) needs to be closely monitored

The Authority is explicit that, “[t]he proposed amendment would make it easier for small and new entrant retailers to expand in size, increasing competitive pressure on incumbent retailers”. However, growing a certain class of retailer is not an end in and of itself in a market that is already highly competitive and where:

- barriers to entry are low;
- there are roughly twice the number of retailers in New Zealand that there were 5 years ago and three times the number of 10 years ago; and
- the combined market share of more recent entrants is up 550% in the past decade and 260% in the past 5 years.

While the proposal will undoubtedly benefit small and new entrant retailers, it is unclear whether it will benefit consumers, who may have fewer options to choose from as they may not receive better offers from losing retailers. Win-backs are a product of, and evidence of, a highly competitive market where consumers get the direct benefit of competing offers and counter-offers from all suppliers looking to win or retain a consumer’s business. Caution must be exercised when considering rules that might restrict this competitive dynamic.

The ability of retailers to make offers and counter-offers, and the freedom of consumers to receive such offers are vitally important competitive dynamics in the retail electricity market and indeed in any market. Any regulatory intervention aimed at restricting this dynamic would be a significant change, with associated risks of unexpected and unintended consequences. Similar concerns drove the Australian Competition and Consumers Commission (ACCC) to conclude:¹

“[due to] concerns about making such significant intervention on a competitive dynamic to the market, the ACCC does not recommend that retailers be banned from engaging in save or win-back activity. The ACCC also considers that any efforts to specifically regulate retailer behaviour around save and win-back activity would add regulatory burden and complexity, which would have cost impacts on consumers, and would be difficult to enforce.”

¹ ACCC *Retail Electricity Pricing Inquiry — Final Report* page 151, available at: <https://www.accc.gov.au/publications/restoring-electricity-affordability-australias-competitive-advantage>

The level of uncertainty regarding consumer benefits and the risk of unintended consequences suggests a need for close monitoring of the impact of any Code change. Assuming the rule change goes ahead, Meridian and Powershop suggest annual reviews rather than waiting for two years. Reviews should consider various measures of success not just the number of successful switches or market share of smaller retailers – these are not measures of consumer benefit per se. The Authority will have to turn its mind to more challenging questions like the impact on average prices paid by consumers and whether any unintended market distortions are observed that have a detriment to consumers – for example any changes to the use of fixed term contracts and exit fees.

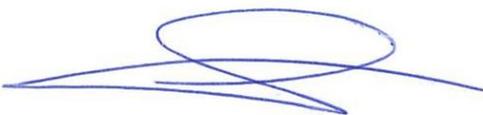
The proposed 180-day ban on win-backs is too long

It is not clear why the Authority has proposed a 180-day ban on win-backs following a switch. This proposal is triple the upper end of the 30 to 60-day time horizons proposed by small retailers in submissions to the EPR and MDAG.

Meridian and Powershop submit a shorter timeframe is more appropriate - we suggest the 60 days previously proposed by other submitters and no more than 90 calendar days. Such a timeframe would allow sufficient time for the customer to receive bills and understand the pricing and service levels provided by the new retailer. It would also be sufficient time for the gaining retailer to establish an understanding of the customer's consumption profile, payment habits and cost to serve, thus closing any information disparity between gaining and losing retailers.

Please contact me if you have any queries regarding this submission.

Yours sincerely



Sam Fleming
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Appendix A Responses to consultation questions

	Question	Response
1	Do you agree the issues identified by the Authority are worthy of attention?	<p>Yes.</p> <p>As noted in the post-implementation review, the existing opt-in switch save protection scheme has only substituted saves with win-backs and not resulted in any fundamental change in retention activity.</p> <p>The scheme either needs to be abandoned entirely or reworked.</p>
2.	Do you agree that prohibiting win-backs for a period of time will foster competition? How long should any win-back prohibition period be?	<p>Effect on competition</p> <p>Meridian and Powershop are unsure whether prohibiting win-backs for a period of time will foster or harm competition. Retention activity can be seen as the product of a highly competitive market and ensures consumers have access to more offers and can choose the best deal for their circumstances. Preventing customers from receiving better offers seems like an immediate lessening of competition. We tend to agree with the MDAG finding that “consumer perspectives on saves and win-backs are not well understood and evidence about impacts on consumers is not clear. Targeted monitoring or research is still needed to clarify these things, otherwise the impact of saves and win-backs will continue to be uncertain.”</p> <p>In the longer-term, it is possible that the proposed prohibition may foster competition, but it may not. The Authority acknowledges this trade-off at paragraph 3.3 of the consultation paper:</p> <p>“The proposed policy would support future competition by helping small and new entrant retailers to acquire customers by reducing the likelihood that a recently acquired customer will switch back to the losing retailer as a result of a win-back. The policy would temporarily inhibit competition initiated by losing retailers for the</p>

		<p>duration of the ‘switch protection period’ in the wake of a customer switch.”</p> <p>The trade-off essentially requires a certain limitation on competition in the short-term in exchange for a potential fostering of competition in the longer-term. This is a gamble and we encourage the Authority to closely monitor the impact of this proposal. Annual reviews would be preferable rather than waiting for two years.</p> <p>Length of the prohibition period</p> <p>At paragraph 3.11 of the consultation paper the Authority notes that, “time horizons of 45 and 60 days were proposed by submitters to the EPR and MDAG processes, aligning with monthly billing cycles.” It is therefore not clear why the Authority has proposed triple that timeframe as the starting point – 180 calendar days.</p> <p>180 days is far more than independent retailers have sought in recent years. Only one submission has sought a longer prohibition – Opunake Hydro Limited in 2014. The three to six months submitted by Electric Kiwi in 2014 has been superseded by their more recent submissions seeking a prohibition on win-backs for either:</p> <ul style="list-style-type: none"> • 30-60 days after a switch is processed;² or • until a customer has received their first bill from the gaining retailer (or 45 days, whichever is shorter).³ <p>Meridian and Powershop suggest a shorter timeframe of no more than 90 calendar days. Such a timeframe would allow sufficient time for the customer to receive bills and understand the pricing and service levels provided by the new retailer. It would also be sufficient time for the gaining retailer to gain an understanding of the customer’s consumption, payment habits, and cost to serve, closing any information disparity.</p>
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² <https://www.ea.govt.nz/dmsdocument/23186-letter-from-tair-to-ea-gm-market-performance-pir-of-save-protection-scheme>

³ <https://www.ea.govt.nz/dmsdocument/23178-saves-and-winbacks-electric-kiwi>

3.	Do you agree that losing retailers should be prohibited from passing information to third parties? Why or why not?	Yes.
4.	Do you agree that good conduct obligations are required? Why or why not?	Meridian and Powershop support the inclusion of good conduct obligations. However, the issue is not so much with the existence of good conduct obligations but with their enforceability. We frequently see cases where consumers have possibly been misled, especially in relation to whether offers are inclusive of GST. Saves and win-backs offer an opportunity to correct any misrepresentations and ensure a customer understands their options. In the absence of saves and win-backs there will be increased onus on the Authority and Commerce Commission to monitor and enforce compliance with the proposed Code provisions and Fair Trading Act. The consultation paper is silent on monitoring and enforcement. We suggest the Authority considers how it will operationalise these proposed Code provisions.
5.	Do you agree that the win-backs prohibition should apply to retailers? Why or why not?	Yes. If the prohibition was limited to traders (i.e. did not include type 2 retailers) this could create an advantage for type 2 retailers and a perverse incentive to use that structure.
6.	Do you agree that a win-back prohibition period should only terminate after a given period of time (eg, 180 days)? Why or why not?	Yes. However, we consider 180 days to be too long (see our response to Question 2 above).
7.	Do you agree that a losing retailer's win-back prohibition period should not be terminated if the departing customer subsequently shifts to a new ICP? Why or why not?	Yes. This will be simpler to implement.
8.	Should the save/win-back protection scheme apply to all consumers? If not, which consumers should the scheme apply to? And how should such customers be identified (eg, by	We agree that the proposal should be targeted to residential and small business consumers with category 1 and 2 metering installations. Large commercial and industrial customers consume a lot of electricity and actively manage

	the meter category at their ICP or by their ANZSIC code)?	their retail agreements, generally on a fixed term basis. No “two-tier market” problem has been identified for these customer segments. Preventing a losing retailer from making an offer to a large commercial or industrial customer therefore seems an unjustified limitation on competition, meaning these customers may miss out on better offers.
9.	What changes to the registry should be made to facilitate monitoring and enforcement of the proposed amendment?	Meridian and Powershop support registry change (b) whereby the registry manager would develop a new registry report to make it possible for retailers and the Authority to monitor saves or win-backs during switch protection periods. However, even with this process in place or one of the other registry changes proposed, it will be difficult to determine whether a win-back was trader or customer initiated and enforce the rules.
10.	Do you agree with the objectives of the proposed amendment? If not, why not?	Yes, we agree with the objective of increasing competition. However, as discussed in the cover letter of this submission and our response to Question 2, it is not clear whether the proposal will ultimately foster or hinder competition. The end objective should be the long-term benefit of consumers and the Authority needs to consider how to monitor and assess the impacts of the proposal against this objective.
11.	Do you agree the benefits of the proposed amendment would outweigh its costs?	It is extremely difficult to quantify the costs and benefits of this proposal and we are unconvinced that the benefits will ultimately outweigh the costs. For this reason, ongoing monitoring and review is critical.
12.	Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority’s statutory objective.	Meridian and Powershop prefer alternative option (b) whereby the Authority undertakes increased monitoring to better understand the nature of any problems and the costs and benefits of a Code change prior to implementing it. This would be consistent with the MDAG recommendations.
13.	Do you agree the Authority’s proposed amendment complies with section 32(1) of the Act?	As discussed in the cover letter of this submission and our response to Question 2, it is not clear whether the proposal will promote competition. What is clear is there will certainly be an

		immediate lessening of competition as customers are prevented from receiving offers from a losing retailer. It is unclear whether this immediate lessening of competition would be offset by a positive longer-term, dynamic effect on competition.
14.	Do you have any comments on the drafting of the proposed amendment?	We have nothing to add at this stage.