



# Summary of submissions

Proposed Code amendment - saves and early win-backs consultation paper

21 October 2014

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## Introduction

- 1 The Electricity Authority (Authority) has examined the effects of saves and win-backs on the retail electricity market.<sup>1</sup> The Authority is concerned that current arrangements may not create a level playing field for new and expanding retailers.
- 2 Details of the project are available from the Authority's website at <http://www.ea.govt.nz/development/work-programme/retail/winbacks-and-saves/>.
- 3 The Authority published a consultation paper "Proposed Code amendment – saves and early win-backs" in June 2014. The consultation paper is available on the Authority's website at <https://www.ea.govt.nz/development/work-programme/retail/winbacks-and-saves/>.
- 4 The consultation paper sought feedback on the Authority's proposal to address the identified adverse effects on retail competition of saves and early win-backs by:
  - (a) amending the Electricity Industry Participation Code 2010 (Code) to allow retailers to choose whether or not their acquisitions could be protected from saves and early win-backs (but requiring a retailer that chooses save protection to cease all save / early win-back activity itself)
  - (b) improving its monitoring of switching behaviour by introducing new switch withdrawal advisory codes. This paper provides a high-level summary of the comments and themes in submissions on the June 2014 consultation paper.
- 5 The Authority's decision and reasons are described in a separate paper available on the Authority's website at <https://www.ea.govt.nz/development/work-programme/retail/winbacks-and-saves/>.

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<sup>1</sup> A save occurs when a losing retailer persuades a customer to cancel an incomplete switch to a gaining retailer. A win-back occurs when the customer completes the switch, but the losing retailer later persuades the customer to return. An early win-back occurs shortly after the switch is completed. A late win-back occurs some time afterwards. These definitions of saves and win-backs were used in the Authority's June 2014 consultation paper, and are used throughout this summary of submissions.

## Who made a submission

- 6 The Authority received eighteen (18) submissions on the consultation, from the parties listed in Table 1.
- 7 This summary does not contain the full text of the submissions. However, the submissions have been published on the Authority's website at <https://www.ea.govt.nz/development/work-programme/retail/winbacks-and-saves/consultation/#c12826>.

**Table 1 List of parties making submissions**

| Generators and retailers              | Consumers and their representatives   | Network companies  |
|---------------------------------------|---------------------------------------|--------------------|
| Contact Energy (Contact)              | Catherine Tudhope                     | Vector             |
| Electric Kiwi                         | Consumer NZ                           | WEL Networks (WEL) |
| Flick Energy (Flick)                  | Grey Power                            |                    |
| Genesis Energy (Genesis) <sup>2</sup> | Major Electricity Users' Group (MEUG) |                    |
| Meridian Energy (Meridian)            | Molly Melhuish                        |                    |
| Mighty River Power (MRP)              |                                       |                    |
| Nova Energy (Nova)                    |                                       |                    |
| Opunake Hydro                         |                                       |                    |
| Powershop                             |                                       |                    |
| Pulse Energy (Pulse)                  |                                       |                    |
| Trustpower                            |                                       |                    |

## What submitters said

- 8 This section provides a high-level summary of the comments and themes in submissions. This summary outlines issues raised in submissions in more detail in the later sections.

## Comments on the problem definition

- 9 There were opposing views on the effects of saves and early win-backs on retail competition.
- 10 Nine submitters took the view that saves and early win-backs are a significant problem. Key themes raised in support of this view were that:
- (a) the retail electricity market is not a level playing field for small and new entrant retailers
  - (b) the save process allows some consumers to get a better deal than others, reducing transparency and confidence in the market
  - (c) the save process can give rise to poor marketing conduct.
- 11 Six submitters took the view that saves and early win-backs are not a significant problem. Key themes raised in support of this view were that:
- (a) the save process is an opportunity to deal with poor marketing conduct by a gaining retailer
  - (b) there is already healthy retail competition
  - (c) small and new entrant retailers do not need more help
  - (d) the save process is beneficial to consumers
  - (e) there were problems with the data and analysis of acquisition campaign profitability in the consultation paper<sup>3</sup>
  - (f) the examples of restrictions on saves in the telecommunications sector that were provided in the consultation paper are not relevant to the New Zealand retail electricity market
  - (g) the consultation paper did not adequately prove that:
    - (i) saves are detrimental to new entrants
    - (ii) blocking saves would improve competition.

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<sup>3</sup> This analysis was intended to indicate that saves can have a disproportionate negative impact on the economics of an acquisition campaign, because they can reduce the number of acquisitions without reducing the campaign cost.

- 12 Submitters that opposed saves also opposed early win-backs, and vice versa. Some submitters took the view that later win-backs (i.e. those occurring more than ten business days after the switch is completed) are also a problem.

### **Comments on the proposal**

- 13 There were opposing views on the merits of a restriction on saves and early win-backs, with ten submitters supporting some form of restriction, six submitters opposing a restriction, and the remaining submitter not expressing a view.
- 14 Some submitters proposed alternative options for restricting saves and win-backs:
- (a) some submitters preferred a blanket ban on saves and early win-backs to the opt-in provision in the proposal
  - (b) some submitters set out other purposes for which the losing retailer should still be able to contact the customer of a save-protected retailer
  - (c) some submitters commented that the restriction on win-backs should extend for a longer period.
- 15 There was support for changes to switch withdrawal advisory codes, though several submitters suggested drafting changes to the additional advisory codes proposed.
- 16 Some submitters suggested that the Authority pursue other initiatives to support retail competition.

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## Key comments on the problem definition

### Various reasons were offered as to why save rates differ between gaining retailers (Question 1)

- 17 Some retailers have lost as many as 20% of their acquisitions to saves, while others lose almost no acquisitions to saves. Consultation question 1 asked “Why do some acquiring retailers experience a much higher save rate than some others?”
- 18 Grey Power considered that larger retailers had higher save rates because they are more aggressive and can offer attractive incentives to encourage saves. Grey Power questioned why such retailers only offered such incentives when they were about to lose a consumer.<sup>4</sup>
- 19 Electric Kiwi, Nova and Pulse characterised the situation as one of incumbent retailers targeting small retailers. Pulse elaborated that:
- (a) “only a few small retailers [such as Pulse] are seeking large percentage gains [in their customer base] and are therefore considered ‘disruptive’ [and are therefore targeted for save offers]”
  - (b) “small acquiring retailers with little brand recognition are more vulnerable... [while] large acquiring retailers are immune to save calls that seek to cast aspersions on reputation, financial stability and sustainability”
  - (c) “[major retailers see relatively little gain in] putting competitive pressure on one another”
  - (d) “cutting prices to below hedge values could become common practice as the desire to eliminate the small retailer threat escalates”.
- 20 Electric Kiwi considered that in ascertaining whether “there is predation [in the market] on smaller retailers”, the Authority should ensure it considers the views of all retailers.
- 21 Meridian, MRP and Powershop also suggested reasons for the differences in save rate, including that:
- (a) more competitive offers are less likely to be saved<sup>5</sup>
  - (b) simpler offers are less likely to be saved<sup>6</sup>
  - (c) “some retailers may misrepresent their offering or not present a full picture when acquiring a new customer”<sup>7</sup>
  - (d) “some retailers may be focused on acquiring customers in the highly competitive ‘metro’ regions, resulting in a greater level of saves activity”<sup>8</sup>
  - (e) “a customer may be more amenable to a ‘save’ if their early experience with an acquiring retailer (e.g. service levels) does not meet their expectations”<sup>9</sup>

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<sup>4</sup> Grey Power, p1

<sup>5</sup> Powershop, p2

<sup>6</sup> Powershop, p2

<sup>7</sup> Meridian, p3

<sup>8</sup> Meridian, p3

<sup>9</sup> Meridian, p3

- (f) “very small retailers have negligible save rates... presumably because saving retailers target their save offers and activity at larger competitors”.<sup>10</sup>
- 22 The remaining 12 submitters did not express a clear view on the reasons for the differences in save rate.

**There were opposing views on the effect of saves and early win-backs on retail competition (Questions 3, 5, 6)**

- 23 Questions 3, 5 and 6 of the consultation paper asked:
- (a) “Do you agree that saves are likely to have a negative net effect on retail competition? State your reasons.”
  - (b) “Do you consider that win-backs have a material negative effect on retail competition? If so, why?”
  - (c) “Do you consider that early win-backs raise the same or similar issues as for saves? Please give reasons for your views.”
- 24 Nine submitters considered that saves and early win-backs are a significant problem for retail competition (Electric Kiwi, Flick, Grey Power, MEUG, Molly Melhuish, Opunake Hydro, Powershop, Pulse, WEL).
- 25 Seven submitters considered that saves and early win-backs are not a significant problem for retail competition (Consumer NZ, Contact, Genesis, Meridian, MRP, Trustpower, Vector).
- 26 Of the remaining two submitters, Nova Energy commented that it was not sure whether the net effect of saves and win-backs on retail competition was positive or negative, and Catherine Tudhope did not reply to the relevant questions in the consultation paper.
- 27 The consultation paper set out the Authority's view that saves and early win-backs do have an adverse effect on retail competition – because they make acquisition activity less rewarding – and that for small and new entrant retailers, saves and early win-backs present a barrier to entry and expansion.
- 28 Most of the submitters that considered that saves and early win-backs are a significant problem agreed with the Authority's view. Supporting comments included that:
- (a) “any positive effects of the save process on retail competition are significantly outweighed by its broader negative effects”<sup>11</sup>
  - (b) “it is imperative that saves and win-backs are contained to allow new entrants to recoup acquisition costs and stay in business”<sup>12</sup>
  - (c) “in the extreme, [saves] could lead to retailers dropping out of the market as the disadvantage becomes the difference between financial success and failure”.<sup>13</sup>
- 29 However, as set out in the remainder of this section:
- (a) these submitters also advanced other reasons why saves and early win-backs are a problem

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<sup>10</sup> MRP, p6

<sup>11</sup> Flick, p1

<sup>12</sup> Opunake Hydro, p2

<sup>13</sup> Pulse, p6

- (b) the submitters that considered that saves and early win-backs are not a significant problem disputed the Authority's reasoning, and advanced reasons why saves and early win-backs are beneficial.

## **Comments supporting the view that saves and early win-backs are a significant problem**

### **Some submitters commented that the retail electricity market is not a level playing field for small and new entrant retailers**

- 30 The consultation paper set out the Authority's view that saves and early win-backs present a barrier to entry and expansion for small and new entrant retailers.
- 31 Five submitters (Electric Kiwi, Molly Melhuish, Opunake Hydro, Powershop and Pulse) commented that the retail electricity market is not a level playing field for small and new entrant retailers. For instance:
  - (a) Pulse commented that it has been "subjected to a disproportionate share of save and win-back activity", and that large retailers disproportionately direct their save efforts against 'disruptive' small retailers
  - (b) Powershop commented that "saves impact disproportionately on new retailers, who will be in acquisition mode. New retailers who are seeking to grow are likely to be expending considerably more effort and proportionately more spend in marketing than large companies whose efforts are largely geared at staying steady. There are of course exceptions e.g. asset rebalancing"
  - (c) Molly Melhuish commented that "saves discourage competition from retailers other than the four dominant gentailers", particularly small innovative retailers.
- 32 Genesis, MRP and Trustpower noted that the parties experiencing the highest save rate are not small, new entrant retailers as such, but medium-size retailers (such as Pulse and Trustpower itself).
- 33 Trustpower went on to conclude that "the evidence does not support the idea that small retailers are being targeted", as did MRP.
- 34 MRP added that "a level playing field already exists, in that the Code treats all retailers equally with respect to save activity".<sup>14</sup>
- 35 MRP also disagreed with the consultation paper's view that small and new entrant retailers are key to retail innovation: "While new entrant and smaller retailers do make a valuable contribution, the vast majority of innovation is driven by larger competitors – by virtue of the simple fact that they have greater resources to invest." MRP proceeded to list its recent innovations.<sup>15</sup>
- 36 Four submitters (Molly Melhuish, Opunake Hydro, Powershop and Pulse) agreed with the Authority's finding that incumbent retailers apply 'cherry-picking' in the save process, and commented that this adversely affects new retailers. Comments included:
  - (a) "the large brands have segmented their customer bases for retention purposes. This means that they will have flagged the high-volume users, with good credit history, as

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<sup>14</sup> MRP, p3

<sup>15</sup> MRP, p3

targets to save. This exacerbates the situation for new entrant retailers because only the poorer quality customers' switches are likely to progress through to completion"<sup>16</sup>

- (b) "typically the information that allows the existing retailer to cherry-pick (such as accurate annual consumption figures) will not be available to the acquiring retailer"<sup>17</sup>

- 37 Pulse commented that cherry-picking not only adversely affects new retailers, but is also contrary to the intent of the Electricity (Low Fixed Charge Tariff Option for Domestic Consumers) Regulations 2004, as save offers are typically not made to low volume users.
- 38 Molly Melhuish commented that cherry-picking not only adversely affects new retailers, but can also increase energy poverty – on the basis that low volume users (who do not typically receive save offers) may face higher levels of deprivation.
- 39 The remaining ten submitters did not discuss the extent to which the retail electricity market is a level playing field for small and new entrant retailers.

**Some submitters commented that allowing saves reduces transparency and confidence in the market**

- 40 The consultation paper set out the Authority's view that "saves are not primarily a problem of market segmentation. A retailer could offer its customers an uncompetitive price, wait for price-sensitive customers to switch, and then save those customers by offering them a better deal... [Nonetheless,] the Authority considers that is unlikely to be a viable strategy for a retailer, because the save rate is too low".
- 41 Nevertheless, some submitters criticised save offers on the grounds that they created price discrimination between the customers receiving those offers, and other customers of the same retailer:
  - (a) Powershop commented that "contrary to the Authority's view... existing retailers can and do [have different tiers of pricing for sticky and price-sensitive customers], because a negative pricing movement among the whole of a relevant segment of its customer base is significantly more expensive than just making [save offers] available to a few hundred customers." Powershop concluded that "retailers should put their best offer in front of all their customers who fit the criteria for the offer, not just ones that threaten to leave"
  - (b) Pulse commented that "contrary to the Authority's assertion that [price discrimination] is not a viable strategy, retailers with large numbers of customers on posted prices are motivated to... only offer a profitable switching customer a better price at the point that the customer decides to switch. ... An alternative strategy for a large vertically integrated retailer would be to generally reduce prices, but this has the effect of reducing the overall profitability for all customers irrespective of their propensity to switch"<sup>18</sup>
  - (c) Grey Power expressed disapproval that win-backs provide "offers that are... not generally available to that retailer's customer base".
- 42 Pulse and WEL also commented that the save process does not provide transparency, because consumers that do not begin the switch process do not find out about the

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<sup>16</sup> Opunake Hydro, p3

<sup>17</sup> Powershop, p2

<sup>18</sup> Pulse, p6 and 7

opportunity to receive save offers. Pulse expressed the view that “a consistent lack of transparency will, over time, lead to low levels of consumer trust in the industry”.

- 43 Pulse and WEL also commented that the save process has the potential to undermine confidence in the accuracy of the Powerswitch website – because the website does not reflect the prices available to consumers who receive save offers. Similarly, Pulse commented that the save process may undermine confidence in the Authority’s What’s My Number campaign to promote switching.
- 44 The remaining 14 submitters did not discuss the issue of price discrimination.

### **The save process can be an opportunity for poor marketing conduct**

- 45 Three submitters commented that poor marketing conduct can occur in the save or win-back process:
- (a) Flick advised that phone calls from retailers attempting saves sometimes “contain information that could be interpreted to misinform the customer and/or to discredit Flick”
  - (b) Pulse commented that some save calls use “predatory” tactics and “coercion”<sup>19</sup>
  - (c) Grey Power claimed that win-backs are “normally the result of misleading or fear tactics or with offers that are of the under the table type – not generally available to that retailer’s customer base”<sup>20</sup>
  - (d) Grey Power also opposed the save process on the basis that it can be confusing, and as a result, “the average customer becomes ... confused as to what is ... a fair and reasonable price and can be misled into making a decision that is not necessarily in their best interests, and in the long term are put off from making any further attempt to find the best deal”.<sup>21</sup>
- 46 The remaining 15 submitters did not express the view that the save process can be an opportunity for poor marketing conduct.

### **Comments supporting the view that saves and early win-backs are not a significant problem**

#### **The save process can provide an opportunity to deal with poor marketing conduct by a gaining retailer**

- 47 Five submitters (Consumer NZ, Contact, Genesis, Meridian and Trustpower) expressed the view that the save process provides an important opportunity to address poor marketing conduct on the part of the gaining retailer. In particular, they commented that:
- (a) saves mitigate “‘slamming’ (where consumers are switched to another provider without their consent). This issue has arisen in the telecommunications market and has been exacerbated by the inability of the consumer’s existing provider to intervene in a switch. There is anecdotal evidence slamming may already be happening in the electricity market”<sup>22</sup>

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<sup>19</sup> Pulse, p2

<sup>20</sup> Grey Power, p1

<sup>21</sup> Grey Power, p1

<sup>22</sup> Consumer NZ, p2

- (b) the save process “provides [customers] with an out if they feel pressured to switch”<sup>23</sup>
  - (c) saves provide an opportunity to correct misleading information provided by the gaining retailer to the consumer, noting that:
    - (i) price comparisons made by the sales agent may be misleading – including “comparisons with and without GST, or against prices that are higher than they are on with their existing retailer”<sup>24</sup>
    - (ii) Nova, Pulse and MRP have all received warnings from the Commerce Commission about providing misleading information<sup>25</sup>
    - (iii) in the survey from UMR Research Limited provided as part of the Authority’s consultation paper, 7% of consumers that had returned to a former retailer reported that their newer retailer had given them false information
    - (iv) Trustpower provided examples of cases in which marketers from other retailers have made false claims, for example, Trustpower’s Wanganui office was relocating to Tauranga, or that customers will still receive their Tauranga Energy Consumer Trust cheque even if they are not with Trustpower.<sup>26</sup>
- 48 Catherine Tudhope raised an example of how the save process assisted her in the context of slow customer service on the part of a gaining retailer. The save process also enabled her to gain an overall saving on the power bill from her incumbent retailer.<sup>27</sup>
- 49 The remaining 12 submitters did not express the view that the save process can provide an opportunity to deal with poor marketing conduct by a gaining retailer.

**Some submitters argued that the save process is beneficial to consumers**

- 50 The consultation paper set out the Authority’s view that saves are likely to have a negative net effect on retail competition. Seven submitters disagreed with this point.
- 51 Genesis argued that the save process supports “a consumer’s right to choose their retailer [which] is a fundamental principle of NZ’s competitive retail electricity market”. Genesis commented that “given the importance of consumer choice to maximising welfare, the circumstances when it makes sense to limit choice are very rare” and compared restrictions on saves to “restricting consumers’ ability to choose different light bulbs”.
- 52 Five submitters (Vector, Contact, Genesis, MRP and Catherine Tudhope) reiterated the point made by the Authority that a consumer can derive a benefit from the save process by receiving and accepting a counter-offer from their retailer.
- 53 Pulse took a different view, noting that while a save or win-back can yield benefits for the consumer affected, “the benefits to the consumer of the save offer are often negligible relative to the acquiring retailer’s offer... incumbents have learned that merely ‘matching an offer’ has a high success rate”.

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<sup>23</sup> Contact, p2

<sup>24</sup> Contact, p1, and Trustpower, p2

<sup>25</sup> Consumer NZ, p3

<sup>26</sup> Trustpower, p2

<sup>27</sup> Catherine Tudhope, p1

- 54 Six submitters (Contact, Genesis, Meridian, MRP, Nova and Trustpower) also expressed a separate point that the save process is likely to result in consumers receiving offers from a potential acquirer that are more attractive in the first instance.
- 55 In Trustpower's words, "the current system allows switching customers to get better deals than would otherwise be the case. Campaigning retailers know that potential new customers may be won back by their current retailers, therefore need to structure propositions in such a way that they overcome that risk. If this incentive was removed, the deals offered to customers are likely to have less value because the threshold to win customers will be lower."
- 56 MRP made the same point: "A retailer seeking to acquire on price [currently] needs to beat other offers by a clearance margin to ensure that their acquisition offer is clear of any other offers, including retention offers".
- 57 Contact added that the save process encourages the gaining retailer to "lead with its best offer", including "innovating beyond price – by offering value to customers in service delivery, add-ons, payment methods, loyalty benefits..."
- 58 Genesis provided quantitative analysis of two situations in which (in its view) gaining retailers did not need to make their most competitive offers, because they knew that they would face less effective save activity from the losing retailer. These were:
- (a) in Christchurch, after the sale of Tekapo A and B to Genesis, when Meridian, the incumbent retailer, was (in Genesis's view) willing to lose some customers in order to rebalance its retail load away from the South Island
  - (b) in Dunedin in 2011, when the dominant retailer in the area, Contact, received criticism after raising its director fees, and (in Genesis's view) was less likely to successfully conduct saves as a consequence.
- 59 The remaining ten submitters did not discuss this issue, or (as noted earlier in this summary) agreed with the Authority that saves and win-backs cause a net disbenefit to consumers.

**Some submitters argued that there is already healthy retail competition or that small and new entrant retailers do not need more help**

- 60 The consultation paper outlined the Authority's primary focus for the next three years, which is to further enhance competition across the wholesale and retail markets.
- 61 Five submitters (Contact, Genesis, Meridian, MRP and Vector) argued that restrictions on saves and early win-backs are not required, because there is already a high level of competition in the retail market. For example:
- (a) Genesis commented that "the Authority's own statistics show a vibrant competitive market" with "the highest switching rate in the world, Herfindahl-Hirschman Index statistics showing consistent declines in market concentration... the Authority's analysis that \$190M of costs have been absorbed by retailers since late 2010... [and] the entrance of four new retailers into the retail market in the last 12 months"
  - (b) Contact commented that restricting saves is not necessary in order to incentivise retailers to offer their existing customers a better deal – "in an over-supplied market with a high churn rate these incentives are already very pronounced"

- (c) Meridian noted that “retail competition is presently strong, with 14 independent retailers, 25 retail brands, and the highest switching rate in the world”
  - (d) Vector submitted that it was “not convinced... that the current retail climate warrants regulatory intervention... If increased saves are the result of increased consumer switching and competitive counter-offers, we are of the view that this is a positive outcome and evidence of a healthy, competitive market.”
- 62 The consultation paper also emphasised the importance of removing barriers to entry and expansion for small and new entrant retailers as a means of increasing competition and innovation.
- 63 Four submitters (Contact, Genesis, MRP and Trustpower) argued that to benefit small and new entrant retailers, restrictions on saves and early win-backs are not necessary, because small and new entrant retailers are already succeeding. For example:
- (a) Contact commented that “[Pulse’s] recent deal with Grey Power is a good example of innovation and changing how the market operates, without relying on a prohibition on saves”
  - (b) Genesis commented that “the market remains attractive to new entrants” and that “smaller retailers [such as Pulse Energy] have been more successful over the last six months at increasing their net retail share than larger, ‘incumbent’, retail brands”
  - (c) Trustpower commented that “small retailers are net gaining customers while large retailers are net losing customers... this does not suggest that [small] retailers are struggling to acquire customers because of win-backs”, adding that “new entrants are successfully entering the market and expanding... no electricity retailer has defaulted in NZ for at least a decade.”
- 64 Consumer NZ commented that “only a small (and declining) percentage of consumers appear to be targeted by save campaigns”, and therefore that dealing with saves and win-backs should not be a priority.
- 65 Trustpower also noted that the save rate is already relatively small.
- 66 MRP agreed, and added that “the data in the consultation paper suggests that the save rate is now trending downwards... we expect that if the saves data used in the consultation paper for 2013 was updated for 2014, a different result might be found, particularly the anomalous Pulse result which may have corrected itself.”
- 67 The remaining 11 submitters either did not discuss this issue, or, as noted earlier in this summary, agreed with the Authority that overall, the proposal enhances competition in the retail market.

**Some submitters disagreed with the Authority's analysis on the effect of saves on how profitable an acquisition campaign might be**

- 68 The consultation paper included a worked example (on p13), illustrating how saves can potentially affect the profitability of acquisition activity. The example showed that a 20% save rate can change a hypothetical acquisition campaign from profitable to unprofitable.
- 69 Genesis and Trustpower each disagreed with some of the input assumptions the Authority used. Points of difference were that:
- (a) the Authority assumed a fixed campaign cost of \$100,000, while Genesis assumed a variable campaign cost of \$250 per customer successfully acquired, with a nil cost for saved customers
  - (b) the Authority assumed a 5% success rate, while Trustpower considered 7-12% was more reasonable.
- 70 Genesis and Trustpower also questioned the use of a 20% save rate: "such a significant save rate is not guaranteed across all retailers and across all campaigns".
- 71 Under either Genesis' or Trustpower's assumptions, the hypothetical campaign would still be profitable even with a 20% save rate, and even with a cherry-picking approach used to target the best customers.
- 72 Contact commented that the Authority's analysis was not sufficient because it "fails to take into account second round impacts... acquiring retailers might for example re-negotiate contracts with their acquisition agents or look for other ways to acquire customers outside of direct sales... defending retailers may change to increase the proportion of customers on [fixed term] contract and thereby reduce their risk of customers leaving".
- 73 The remaining 15 submitters did not discuss the Authority's analysis of acquisition campaign profitability.

**The submitters that did not consider that saves and early win-backs were a significant problem also did not find the telecommunications examples the Authority raised to be relevant**

- 74 The consultation paper discussed rules relating to saves and win-backs in selected telecommunications markets (Appendix E).
- 75 Five submitters (Contact, Genesis, Meridian, Trustpower and Vector)<sup>28</sup> argued that the telecommunications examples provided were not relevant to the New Zealand electricity industry.
- 76 Four submitters (Contact, Genesis, Meridian and Trustpower) commented that New Zealand's retail electricity market is much more competitive than the telecommunications markets discussed in the consultation paper. For instance:
- (a) Genesis commented that all the examples provided are cases where the regulator sought to "open up the historical monopoly position of a dominant service provider". Intervening is no longer desirable once there is genuine competition: "this is borne out by the Canadian example cited by the Authority, where the regulator reversed the restriction on saves and win-backs once the former dominant retailer market share was reduced to 70%"

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<sup>28</sup> These submitters, along with Consumer NZ, did not consider that saves and early win-backs were a significant problem in the retail market.

- (b) Trustpower commented that “the NZ electricity retail market is far more competitive than the telecommunications market, with much lower market concentration. Further, churn in the NZ electricity market is more than twice as high as in the telecommunications industry. The New Zealand electricity market is a mature and competitive industry. We fail to understand the extended emphasis on the telecommunications industry practices, and believe that it is an unsuitable example.”
- 77 Vector and Trustpower also noted that the part of the justification for prohibiting saves in the New Zealand fixed telecommunications Customer Transfer Code comes from “technical reasons relating to the operational difficulty of reversing transfers mid-stream including the possibility that a user may lose their connection”. Vector and Trustpower observed that this justification does not apply to the New Zealand electricity industry.
- 78 Meridian also noted that in the telecommunications sector, “prices are often quoted as a fixed monthly price, making it easier for a customer to compare providers. This reduces the risk of customer confusion and mitigates the need for a losing retailer to provide additional information through a saves process.”
- 79 Genesis commented that while the Authority had discussed markets where there are restrictions on saves, it should also consider examples of markets where there are no such restrictions. An example is the New Zealand retail banking sector, which has no restrictions on saves or win-backs even though it is less competitive than the retail electricity market – both in terms of switching rate, and rate of entry by new retailers.
- 80 Several of the submitters that did consider that saves and early win-backs were a significant problem expressed a view that the telecommunications industry was relevant. In particular:
- (a) Pulse noted that the telecommunication industry prohibits marketing based on a switch request, and commented that the electricity industry should follow its lead
  - (b) Opunake Hydro provided another telecommunications example, from the New Zealand Terms for Local and Mobile Number Portability
  - (c) WEL commented that the telecommunications industry “seems more proactive in updating pricing plan configurations for existing customers and sending out communications as to other offers available than what is currently seen among electricity retailers”.
- 81 The remaining ten submitters did not discuss the Authority’s examples from the telecommunications industry.

**Early win-backs are similar to saves, and some submitters considered that later win-backs are also similar (Questions 5, 6)**

- 82 Questions 5 and 6 of the consultation paper asked:
- (a) “Do you consider that win-backs have a material negative effect on retail competition? If so, why?”
  - (b) “Do you consider that early win-backs raise the same or similar issues as for saves? Please give reasons for your views.”

- 83 The consultation paper defined early win-backs as those that occur shortly after the 10-day switching window ends.
- 84 There was a general consensus among submitters that early win-backs are roughly equivalent to saves. In other words, submitters that opposed saves also opposed early win-backs, and vice versa.
- 85 The consultation paper set out that “the Authority is not generally concerned by win-backs, other than early win-backs, because they do not utilise information gained through the switching process... and because their negative impact on the profitability of acquisition activity is likely to be relatively small, compared to what the negative impact of saves has been”. Some submitters disagreed with this view on the basis that win-backs occurring some time after the switch process has ended can still adversely affect competition.
- 86 Among the nine submitters that opposed saves and early win-backs, there was a range of views on the period after a switch during which win-backs are undesirable:
- (a) Flick commented adversely on win-backs occurring within one month, commenting that “customers require a sufficient period of time with a new retailer to sufficiently experience the new retailer’s proposition. Additionally, various service providers in the industry have service delivery timeframes that mean customers may experience delays in receiving full retail services in the initial [month]”
  - (b) Pulse commented unfavourably on win-backs occurring within 35 days from the switch completion date – “a period that is likely to capture the customer’s first invoice”
  - (c) Grey Power and Molly Melhuish commented unfavourably on win-backs occurring within three months
  - (d) Electric Kiwi commented unfavourably on win-backs occurring within 3-6 months
  - (e) Opunake Hydro commented unfavourably on win-backs occurring within 12 months, on the basis that a small retailer needs time to recoup the costs of acquisition, “including setup of new metering devices”
  - (f) WEL considered that later win-backs did not have the same material negative effect on retail competition as saves and early win-backs, as the losing retailer would have accrued some revenue from the customer
  - (g) MEUG and Powershop made no comment on later win-backs.
- 87 Nova was undecided as to whether saves and early win-backs had a net negative effect on retail competition, but considered that later win-backs did not have a negative impact on retail competition.
- 88 A later section of this summary discusses the recommendation several submitters made that the Authority should extend the restriction on saves and win-backs to cover win-backs occurring some time after the switch is complete.

**Retailers do not refuse switch withdrawal requests unless they have a valid reason to do so (Question 4)**

- 89 The consultation paper identified that a gaining retailer can reject a switch withdrawal request made by a losing retailer trying to carry out a save. In theory, this mechanism could potentially mitigate any adverse effects of saves on retail competition. However, the Authority did not consider that it would be an effective means of mitigation in practice.

- 90 Question 4 of the consultation paper asked: “If you are a retailer, please advise how often you exercise the ability to refuse a switch withdrawal request. If you do not exercise this ability, what are the reasons why not?”
- 91 The retailers that replied to this question were unanimous that the only reasons for which they might reject a switch withdrawal request were:
- (a) for technical reasons, e.g. incomplete switch information<sup>29</sup>
  - (b) if the customer has specifically advised that they wish to proceed with the switch.<sup>30</sup>
- 92 These comments support the Authority’s view that a retailer’s ability to reject a save does not effectively mitigate adverse effects of saves on retail competition.

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<sup>29</sup> Meridian, p3 and Powershop, p3

<sup>30</sup> For example, Pulse, p7 and Trustpower, p3

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## Key comments on the proposal

### There are legitimate reasons why a losing retailer might need to contact a switching customer during the switch process (Question 7)

- 93 Question 7 of the consultation paper asked “What are the purposes for which a defending retailer may contact a switching customer during the switch process, other than trying to retain the customer or advising them of any termination fees they were required to pay?”
- 94 Submitters identified the following purposes:
- (a) obtaining feedback on the customer’s reasons for switching<sup>31</sup>
  - (b) ensuring accuracy of the switch information<sup>32</sup>
  - (c) advising of any technical issues that have come up in the switch process<sup>33</sup>
  - (d) getting a final meter reading<sup>34</sup>
  - (e) dealing with outstanding debt<sup>35</sup>
  - (f) dealing with an unresolved complaint<sup>36</sup>
  - (g) organising transfer of keys<sup>37</sup>
  - (h) market research to assist in changes to business policy or process<sup>38</sup>
  - (i) unrelated marketing activity, such as an acquisition campaign in the area.<sup>39</sup>
- 95 Question 7 specifically excluded ‘trying to retain the customer’ as a legitimate reason for contacting a customer. However, some submitters did list purposes that might enable the losing retailer to retain the customer on the basis that they considered these purposes to be legitimate and valuable. These included:
- (a) confirming that the customer has chosen to switch, rather than the switch being accidental or ‘slamming’ (a term used by Consumer NZ to refer to attempting to switch a customer without their consent)<sup>40</sup>
  - (b) determining whether the customer felt pressurised into switching by the gaining retailer<sup>41</sup>
  - (c) correcting false information provided by the gaining retailer<sup>42</sup>

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<sup>31</sup> E.g. Flick, p2 and Powershop, p3

<sup>32</sup> E.g. Pulse, p8, WEL, p4, and Powershop, p3

<sup>33</sup> Powershop, p3

<sup>34</sup> Meridian, p4

<sup>35</sup> E.g. Meridian, p4, MRP, p9 and Powershop, p3

<sup>36</sup> Meridian, p4 and Powershop, p3

<sup>37</sup> Meridian, p4 and Powershop, p3

<sup>38</sup> WEL, p4

<sup>39</sup> MRP, p4

<sup>40</sup> E.g. Consumer NZ, p2-3, Flick, p2, Nova, p3, and Powershop, p3

<sup>41</sup> Contact, p5

<sup>42</sup> E.g. Consumer NZ, p3, Contact, p5, and Trustpower, p4

- (d) directing the customer to an independent source of information such as Powerswitch<sup>43</sup>
  - (e) when the customer is purchasing more than one service from the retailer (e.g. dual fuel customers), informing them of any dual fuel benefits they may lose by switching<sup>44</sup>
  - (f) providing information about the loyalty scheme offered by the losing retailer.<sup>45</sup>
- 96 A later section of this summary discusses the recommendations some submitters made that the losing retailer should be allowed to contact the customer for some or all of these purposes.

### **Some retailers would opt to be protected from saves if possible (Question 8)**

- 97 Question 8 of the consultation paper asked, “If you are a retailer, how likely is it that you would choose to be protected from saves, if this was possible under the Code?”
- 98 Five retailers (Electric Kiwi, Flick, Opunake Hydro, Powershop and Pulse) affirmed that they would choose to be protected from saves if possible, or at least that they would be “very likely” to do so.
- 99 Trustpower advised that it would not opt to be protected from saves.
- 100 The remaining five retailers that made a submission (Contact, Genesis, Meridian, MRP and Nova) did not explicitly commit themselves one way or the other. However, Genesis expressed a view that if the Authority introduced an opt-in provision, all retailers would eventually opt in.

### **There were opposing views on the merits of a restriction on saves and early win-backs (Questions 11-17)**

- 101 Questions 11-17 of the consultation paper asked:
- (a) Question 11: “Do you agree that the objective for the amendment set out in Section 6.2 [of the consultation paper] is appropriate and consistent with the Authority’s statutory objective? If not, why not?”
  - (b) Question 12: “Do you agree that the proposed amendment would achieve the objective set out in Section 6.2 [of the consultation paper]? If not, why not?”
  - (c) Question 13: “Do you consider that the proposed amendment would carry a risk of unintended consequences? If so, what are they?”
  - (d) Question 14: “Do you agree with the assessment of net economic benefit? If not, what is your reasoning?”
  - (e) Question 15: “Do you agree that the proposed amendment is preferable to other options? If not, please explain your preferred option in terms consistent with the Authority’s statutory objective.”
  - (f) Question 16: “Do you agree that the Authority’s proposed amendment complies with section 32(1) of the Act?”

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<sup>43</sup> Consumer NZ, p3

<sup>44</sup> Nova, p3

<sup>45</sup> MRP, p7

(g) Question 17: “Do you agree that the Authority’s proposed amendment complies with the Code amendment principles?”

- 102 All submitters that considered that saves and early win-backs are a significant problem supported some form of restriction on saves and early win-backs, and vice versa (Table 2).
- 103 Nova was undecided as to whether saves and early win-backs are a significant problem, but still supported some form of restriction on saves and early win-backs. However, Nova did consider that the expected increase in retail competition as a result of the proposed amendment might have been overstated, and as a result, the net economic benefit might not be as significant as anticipated.

**Table 2 Submitter support for restrictions on saves and early win-backs**

|                                                                         | <b>Considered that saves and early win-backs are a significant problem</b>                                                                  | <b>Undecided, or no stated view</b> | <b>Considered that saves and early win-backs are not a significant problem</b> |
|-------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------------------------------------------------------------|
| <b>Supported some form of restrictions on saves and early win-backs</b> | Electric Kiwi<br>Flick Energy<br><br>Grey Power (qualified support)<br>MEUG<br>Molly Melhuish<br>Opunake Hydro<br>Powershop<br>Pulse<br>WEL | Nova                                |                                                                                |
| <b>Undecided, or no stated view</b>                                     |                                                                                                                                             | Catherine Tudhope                   |                                                                                |
| <b>Did not support restrictions on saves and early win-backs</b>        |                                                                                                                                             |                                     | Consumer NZ<br>Contact<br>Genesis<br>Meridian<br>MRP<br>Trustpower<br>Vector   |

- 104 The reasons submitters advanced for restricting saves and early win-backs included that:
- (a) the objectives of the proposal are appropriate, and the proposal is likely to achieve these objectives either as it stands, or with some suggested modification(s) discussed in the following section<sup>46</sup>
  - (b) the proposal will:
    - (i) ensure retailers provide their best deals to their existing customer base
    - (ii) reduce the cost of customer acquisition
    - (iii) ensure smaller retailers can vigorously compete with larger incumbent retailers<sup>47</sup>
    - (iv) allow retailers to allocate the resources and funds currently spent on saves and early win-backs to more competitive pricing, ensuring customers are on the correct price plan and increasing innovation within the industry<sup>48</sup>
  - (c) the proposal will not have unintended and undesirable consequences<sup>49</sup>
  - (d) the net economic benefit of the proposal is likely to be positive<sup>50</sup>
  - (e) the proposal complies with the Code amendment principles, either as it stands, or with some suggested modifications discussed in the following section of this summary<sup>51</sup>
  - (f) contracts alone are not an effective tool for retailers to block win-backs.<sup>52</sup>
- 105 The reasons advanced for not restricting saves and early win-backs included that:
- (a) the proposal will not have a net positive effect on retail competition, to the benefit of consumers<sup>53</sup>
  - (b) the proposal will not reduce barriers to entry for small and new entrant retailers<sup>54</sup>
  - (c) the proposal will not increase innovation<sup>55</sup>
  - (d) the proposal will reduce consumer choice<sup>56</sup>
  - (e) the proposal will increase the complexity of the market or create additional costs<sup>57</sup>
  - (f) the proposal may have unintended and undesirable consequences, including:

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<sup>46</sup> Electric Kiwi, p3, Flick, p3, Nova, p4, Opunake Hydro, p4-5, Powershop, p5, Pulse, p9 and WEL, p2

<sup>47</sup> Powershop, p5

<sup>48</sup> WEL, p2

<sup>49</sup> Electric Kiwi, p3, and Opunake Hydro, p5

<sup>50</sup> Electric Kiwi, p3, Flick, p3, MEUG, p1 and WEL, p4

<sup>51</sup> Electric Kiwi, p3, Flick, p3, Grey Power, p2, MEUG, p1, Nova, p5, Opunake p6, Pulse, p10 and WEL, p5

<sup>52</sup> Electric Kiwi, p2

<sup>53</sup> Consumer NZ, p4, Contact, p6, Genesis, p6, Meridian, p1, MRP, p8, Trustpower, p5 and Vector, p2

<sup>54</sup> Consumer NZ, p4, Contact, p7, Genesis, p9 and Trustpower, p5

<sup>55</sup> Contact, p7 and Genesis, p9

<sup>56</sup> Contact, p7 and Genesis, p4-5

<sup>57</sup> Contact, p7, Meridian, p1, MRP, p1, and Trustpower, p4

- (i) preventing retailers for contacting switching customers for the legitimate purposes set out in the previous section, such as correcting false information provided by the gaining retailer<sup>58</sup>
- (ii) an increase in the use of fixed-term retail contracts or termination fees<sup>59</sup>
- (iii) an increase in poor marketing conduct by the gaining retailer<sup>60</sup>
- (iv) an increase in acquisition activity directed at save-protected retailers<sup>61</sup>
- (v) an increase in uncertainty for consumers<sup>62</sup>
- (g) the net economic benefit of the proposal has not been quantified<sup>63</sup>
- (h) the net economic benefit of the proposal is likely to be small or negative<sup>64</sup>
- (i) the proposal does not comply with section 32(1) of the Electricity Industry Act 2010, for reasons including that:<sup>65</sup>
  - (i) the Authority has not proven it to be to the long-term benefit of consumers
  - (ii) it will reduce competition
  - (iii) it is inefficient
- (j) the proposal does not comply with the Code amendment principles, for reasons including that:<sup>66</sup>
  - (i) there is no market or regulatory failure
  - (ii) the proposal is not consistent with the Authority's statutory objective
  - (iii) the Authority did not quantify the net benefits of the proposal
  - (iv) there is no clear evidence of the benefits to competition or innovation.

106 Grey Power supported the objective behind the proposal, but did not consider that the proposal would increase competition in the retail market. Grey Power considered that the average consumer lacked adequate understanding of the electricity market, and did not have the skills to exploit the save process to their advantage.<sup>67</sup>

107 While Powershop considered that the proposal would promote retail market competition, it recommended that the Authority take steps to better quantify net benefits and costs.<sup>68</sup>

### **Some submitters proposed alternative options for restricting saves and win-backs (Question 15)**

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<sup>58</sup> Meridian, p5

<sup>59</sup> Consumer NZ, p4, Contact, p2, Genesis, p9, Meridian, p5, MRP, p5, Nova, p4, and WEL, p2

<sup>60</sup> Contact, p5, Meridian, p1, and Trustpower, p2

<sup>61</sup> MRP, p4

<sup>62</sup> Grey Power, p2

<sup>63</sup> Contact, p6, Genesis, p1, Meridian, p1 and p5, and Trustpower, p5

<sup>64</sup> Genesis, p12, Meridian, p1, and MRP, p8

<sup>65</sup> Consumer NZ, p5, Contact, p7, Meridian, p6, MRP, p9, and Trustpower, p5

<sup>66</sup> Consumer NZ, p5, Contact, p7, Meridian, p6, MRP, p9, and Trustpower, p5

<sup>67</sup> Grey Power, p2

<sup>68</sup> Powershop, p5 and 6.

- 108 Question 15 of the consultation paper asked, “Do you agree that the proposed amendment is preferable to other options? If not, please explain your preferred option in terms consistent with the Authority’s statutory objective.”
- 109 This section of the summary summarises comments from submitters on what form a restriction on saves and win-backs should take.
- 110 The Authority’s proposed Code amendment would:
- (a) allow a retailer to choose to be protected from saves and early win-backs
  - (b) place limits on how often a retailer could change its choice
  - (c) require the Authority to publish a list of all retailers that had chosen to be protected from saves and early win-backs.
- 111 If a consumer switched to a retailer that had chosen to be protected from saves, the proposed amendment would prohibit the retailer from attempting to persuade the switching customer to cancel the switch or to switch back (including by making a counter-offer or offering an enticement) until ten business days after the switch.
- 112 The proposed amendment would not prohibit the losing retailer from contacting the customer switching to advise them of any early termination fees that they were required to pay, or to offer them an enticement in the context of a general marketing campaign.
- 113 Under the proposed amendment, a retailer that had chosen save protection would not be allowed to carry out any saves or early win-backs itself.

**Some submitters commented that a blanket ban on saves and early win-backs would be preferable to an opt-in provision**

- 114 Six submitters – both among those that supported a restriction on saves and win-backs (Molly Melhuish and Pulse), and those that did not (Contact, Genesis, Meridian, MRP) – preferred a blanket ban on saves and early win-backs to the opt-in provision in the proposal.
- 115 The reasons for this were that:
- (a) an opt-in provision would create confusion and complexity<sup>69</sup>
  - (b) an opt-in provision would result in additional administrative and system costs<sup>70</sup>
  - (c) the Authority should not put retailers in the position of making a decision that will create costs for their customers<sup>71</sup>
  - (d) if the Authority introduced an opt-in provision, all retailers would eventually opt in<sup>72</sup>
  - (e) retailers might ‘flip-flop’ in and out of save protection<sup>73</sup>
  - (f) under the proposed opt-in regime that does not include type 2 retailers, retailers could opt for save protection, but use a type 2 retailer to carry out saves and win-backs<sup>74</sup>

<sup>69</sup> Contact, p1, Meridian, p2, Molly Melhuish, p2, MRP, p1, and Pulse, p2

<sup>70</sup> Meridian, p2

<sup>71</sup> Genesis, p11

<sup>72</sup> Genesis, p11-12

<sup>73</sup> Pulse, p10

- (g) if save activity reduces retail competition, then it should not be allowed under any circumstances.<sup>75</sup>
- 116 Conversely, four submitters (MEUG, Nova, Powershop and Trustpower) supported the opt-in provision in preference to a blanket ban. The reasons given were that:
  - (a) the opt-in provision reduces the risk of unintended consequences<sup>76</sup>
  - (b) allowing for different approaches helps deliver choice to consumers<sup>77</sup>
  - (c) there is inadequate evidence to justify banning saves entirely.<sup>78</sup>
- 117 The remaining eight submitters did not discuss the merits of an opt-in provision relative to a blanket ban.
- 118 No submitters supported the other options the Authority raised, which were:
  - (a) one-way save protection – i.e. allowing retailers to choose to be protected from saves, while still being able to carry out saves themselves
  - (b) providing save protection for all retailers by default, but allowing retailers to opt out of save protection if they wished.

**Some submitters commented that the losing retailer should still be able to contact the customer for some purposes that might result in retention**

- 119 The proposed amendment allowed the losing retailer to contact the customer during the switch process, for purposes other than attempting to retain the customer.
- 120 The consultation paper noted that “there may be [legitimate] purposes for which a losing retailer might need to contact a switching customer in the middle of the switch process. If participants advise any other such purposes, the Authority can add them as an exclusion in the Code drafting.”
- 121 Some submitters recommended that, if a restriction on saves and early win-backs was put in place, the losing retailer should still be allowed to contact the consumer:
  - (a) to confirm that the consumer has chosen to switch<sup>79</sup>
  - (b) to obtain information on the reason for the switch<sup>80</sup>
  - (c) to determine whether the customer felt pressurised into switching by the gaining retailer<sup>81</sup>
  - (d) to correct false information provided by the gaining retailer<sup>82</sup>
  - (e) to direct the customer to an independent source of information such as Powerswitch<sup>83</sup>

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<sup>74</sup> Pulse, p10

<sup>75</sup> Pulse, p10, MRP, p4

<sup>76</sup> MEUG, p2

<sup>77</sup> Nova, p1

<sup>78</sup> Nova, p5 and Powershop, p5-6

<sup>79</sup> E.g. Consumer NZ, p3, Powershop, p3, and Flick, p2

<sup>80</sup> E.g. Flick, p2 and Trustpower, p4

<sup>81</sup> Contact, p5

<sup>82</sup> E.g. Contact, p5 and Trustpower, p2

- (f) to inform the customer of any dual fuel benefits they may lose by switching<sup>84</sup>
- (g) in the course of unrelated marketing activity, such as an acquisition campaign in the area<sup>85</sup>
- (h) to provide information about the loyalty scheme offered by the losing retailer<sup>86</sup>
- (i) for operational purposes that do not relate to retention (as set out in previous sections).

122 However, some submitters<sup>87</sup> noted that the proposed restriction might be difficult to enforce if it allowed the losing retailer to contact the consumer for such purposes.

**Some submitters commented that the restriction on win-backs should extend for more than ten days**

- 123 Six submitters (Flick, Pulse, Grey Power, Molly Melhuish, Electric Kiwi and Opunake Hydro) supported a restriction and recommended that the restriction on win-backs should extend for more than ten days.
- 124 Opunake Hydro noted its preference that the save protection period be based not on the date “set for the switch” (as outlined in the consultation paper), but on the actual date of the switch.<sup>88</sup>
- 125 Opunake Hydro considered that “[a]llowing win-backs after 10 days [will have a] negative financial impact on new entrants because it [will allow] time for the new entrant to incur the cost of acquisition and set up of new metering devices...without time to demonstrate the benefits to the customer”.<sup>89</sup>
- 126 Flick considered that an unintended consequence of the proposed amendment was likely to be an increase in win-back activity from the day after save protection ended. In Flick’s view, this justified extending the restriction on early win-backs to at least one calendar month after switch completion.<sup>90</sup>
- 127 Suggested restricted periods submitters proposed were:
  - (a) one month after switch completion<sup>91</sup>
  - (b) 35 days after switch completion<sup>92</sup>
  - (c) three months<sup>93</sup>
  - (d) 3-6 months<sup>94</sup>

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<sup>83</sup> Consumer NZ, p3

<sup>84</sup> Nova, p3

<sup>85</sup> MRP, p4

<sup>86</sup> MRP, p7

<sup>87</sup> E.g. Contact Energy, p5 and Powershop, p5

<sup>88</sup> Opunake Hydro, p5

<sup>89</sup> Opunake Hydro, p5

<sup>90</sup> Flick, p3

<sup>91</sup> Flick, p3

<sup>92</sup> Pulse, p8

<sup>93</sup> Grey Power, p2 and Molly Melhuish, p5

<sup>94</sup> Electric Kiwi, p3

(e) twelve months after switch completion.<sup>95</sup>

- 128 MRP did not support a restriction, but suggested that if a restriction was to be put in place, it should last for three months.
- 129 The remaining 11 submitters did not comment on the duration of the period for which win-backs should be restricted, or did not agree that there should be a restriction on win-backs.

### **Some submitters made other suggestions on the proposal**

- 130 Nova recommended that the Authority should seek “advice about the impact of the Commerce Act [1986] on these proposals given their impact on competitive arrangements”.
- 131 Nova also recommended that the Authority should draft the amendment in a way that prevents a save-protected losing retailer (“retailer A”) from notifying its non-save-protected ally or subsidiary (“retailer B”) that one of retailer A’s customers is switching to another retailer (“retailer C”), in order to encourage retailer B to attempt to save the customer from retailer C.
- 132 Opunake Hydro recommended that the Authority implement the amendment within the next 4-6 months, because it is “fundamental to the competitiveness of the industry... it should not be left to the large players to determine the timetable of the change”.<sup>96</sup>
- 133 Opunake Hydro also recommended that the scope of the amendment should be extended to cover the situation in which a retailer “obtains approval from [another retailer’s] customer to obtain its consumption information for the purpose of building an optimal tariff for [that] customer”, and proceeds to contact the customer’s current retailer to ask for that consumption information. Opunake Hydro considered that the customer’s current retailer should not be allowed to take action to retain the customer in that situation.<sup>97</sup>
- 134 Pulse recommended that even later win-backs should only be permitted “if the offer made is transparently published and fully conforms to the standard / low user regulations”.
- 135 Pulse also recommended that if the Authority proceeded with the proposal, it should review the restriction on saves and win-backs three years after implementation.
- 136 Vector commented that “if any retailers were allegedly abusing an allegedly dominant position... the appropriate regulator [should] (at least) formally investigate the situation and consider solutions, which may include regulatory intervention. However, the appropriate regulatory agency for such action is the Commerce Commission, not the Authority.”<sup>98</sup>

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<sup>95</sup> Opunake Hydro, p5

<sup>96</sup> Opunake Hydro, p5

<sup>97</sup> Opunake Hydro, p2

<sup>98</sup> Vector, p2

**There was support for changes to switch withdrawal advisory codes, though submitters suggested some drafting changes (Questions 9, 10)**

- 137 The Authority also proposed to improve its monitoring of the reasons for switch withdrawals. To this end, the Authority proposed to add several new switch withdrawal advisory codes to the Registry, replacing the existing CR code.
- 138 Questions 9 and 10 of the consultation paper asked:
- (a) “Do you agree that the new withdrawal advisory codes listed in Section 5.2 [of the consultation paper] should be introduced, in order to improve transparency about switch withdrawals? If not, why not?”
  - (b) “Do you have any comments on the drafting of the new withdrawal advisory codes listed in Table 2 [of the consultation paper]?”
- 139 Ten submitters (Consumer NZ, Flick, Molly Melhuish, MRP, Nova, Opunake Hydro, Powershop, Pulse, Trustpower and WEL) agreed that the Authority should introduce new switch withdrawal advisory codes to improve transparency regarding switch withdrawals.
- 140 Pulse recommended that the Authority audit retailers’ use of the new codes from time to time to ensure that they are not being used inappropriately.<sup>99</sup>
- 141 Powershop commented that the introduction of the new codes would cause it to incur system costs on the order of \$10,000.
- 142 Consumer NZ considered that the usefulness of the new codes would depend on retailers accurately reporting the reason for a switch.<sup>100</sup>
- 143 The only submitter that disagreed outright with the proposal to add advisory codes was Meridian, on the basis that it would be costly for participants to implement the new codes. Meridian suggested that the Authority should instead carry out occasional surveys of switching customers.
- 144 Three submitters (Consumer NZ, Nova and WEL), while agreeing, expressed reservations as to the reliability of the data that would arise from the additional advisory codes.
- 145 Specific comments on the proposed new codes were that:
- (a) C1 overlaps with C3, C5 and C6<sup>101</sup>
  - (b) it would be difficult to differentiate between C0 and C2: some operators will classify all uncertain cases as C0, others will classify uncertain cases as C2<sup>102</sup>
  - (c) business consumers should not be allowed to use C1<sup>103</sup>
  - (d) clause 2 of Schedule 11.3 of the Code means C1 should never be used<sup>104</sup>
  - (e) C2 is likely to be the most frequently used code<sup>105</sup>
  - (f) C3 is unlikely to ever be used<sup>106</sup>

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<sup>99</sup> Pulse, p9

<sup>100</sup> Consumer NZ, p3

<sup>101</sup> Nova, p3-4

<sup>102</sup> Nova, p3-4

<sup>103</sup> Opunake Hydro, p4

<sup>104</sup> Powershop, p4

<sup>105</sup> Grey Power, p2

- (g) C5 may make a customer a target for a further approach by the gaining retailer<sup>107</sup>
  - (h) C0, C1 and C3 can all be omitted as they are covered by C2.<sup>108</sup>
- 146 Instead of replacing the CR code with the codes the Authority proposed, Nova specifically recommended adopting two categories (“Consumer changed mind” and “Issues with the switch and new retailer”) to classify switch withdrawals on a broad level, with sub-categories under the two categories to provide specific detail.<sup>109</sup>
- 147 The remaining seven submitters did not discuss the proposed changes to switch withdrawal advisory codes.
- 148 Opunake Hydro also suggested the Authority should provide monthly reporting on reasons for switch withdrawals (broken down between business and residential consumers) on its website.

**Some submitters suggested that the Authority should pursue other initiatives to support retail competition**

- 149 Consumer NZ took the view that “saves are unlikely to have a significant effect on retail competition” and instead drew the Authority’s attention to:<sup>110</sup>
- (a) the growth of fixed-term retail contracts that “can have a deadening effect on competition”
  - (b) the importance of price transparency.
- 150 Similarly, Grey Power supported:<sup>111</sup>
- (a) prohibiting fixed-term retail contracts with termination fees
  - (b) the importance of “clear, advertised and unambiguous pricing” to ensure fairness to the consumer.
- 151 Molly Melhuish commented that “international literature suggests the most important commercial opportunities are in DSR [demand-side response]. This is best done by firms independent of the network monopolies and (here) independent of the gentailer oligopoly. Code changes that promote competition from such firms are essential for them to thrive.”<sup>112</sup>
- 152 Contact commented that “bigger benefits can be achieved for new entrant retailers by, for example:<sup>113</sup>
- (a) reducing the complexity and number of tariffs at the network level
  - (b) eliminating the low user fixed charge, [which] fails to help the most vulnerable and more than doubles the complexity of offering residential plans
  - (c) reducing the occasions where embedded networks can be set up

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<sup>106</sup> Powershop, p4

<sup>107</sup> Meridian, p4

<sup>108</sup> MRP, p8

<sup>109</sup> Nova, p3-4

<sup>110</sup> Consumer NZ, p2

<sup>111</sup> Grey Power, p2

<sup>112</sup> Molly Melhuish, p5

<sup>113</sup> Contact, p4

(d) reducing exposure to price variability through reducing the number of pricing nodes

(e) ensuring a healthy hedge market.”

153 Contact recommended that if the Authority proceeds with its proposal, it should also put in place an “active monitoring regime” of the marketing conduct of gaining retailers.<sup>114</sup>

154 Meridian suggested that if the Authority proceeds with its proposal, it might also consider “imposing a limit on early contract termination fees” on the basis that the proposal is likely to result in fixed term retail contracts becoming more prevalent.<sup>115</sup>

155 Powershop noted that “Code references to the Door to Door Sales Act 1967 are out of date and need to change to reflect the cooling off period for uninvited direct sales in 36M of the Fair Trading Act 1986, as effected by the Fair Trading Amendment Act 2013”.<sup>116 117</sup>

156 The remaining 11 submitters did not suggest other initiatives that the Authority should consider.

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<sup>114</sup> Contact, p4

<sup>115</sup> Meridian, p5

<sup>116</sup> Powershop, p4

<sup>117</sup> The Authority has corrected this with the change to clause 1(2) of Schedule 11.3 of the Code under the Electricity Industry Participation Code Amendment (ICP Switching) 2014.

## Appendix A Consultation questions

| #   | Question                                                                                                                                                                                                                      |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q1  | Why do some acquiring retailers experience a much higher save rate than some others?                                                                                                                                          |
| Q2  | Do you have any comments on the findings of the Authority's investigation of retailer save practices?                                                                                                                         |
| Q3  | Do you agree that saves are likely to have a negative net effect on retail competition? State your reasons.                                                                                                                   |
| Q4  | If you are a retailer, please advise how often you exercise the ability to refuse a switch withdrawal request. If you do not exercise this ability, what are the reasons why not?                                             |
| Q5  | Do you consider that win-backs have a material negative effect on retail competition? If so, why?                                                                                                                             |
| Q6  | Do you consider that early win-backs raise the same or similar issues as for saves? Please give reasons for your views.                                                                                                       |
| Q7  | What are the purposes for which a defending retailer may contact a switching customer during the switch process, other than trying to retain the customer or advising them of any termination fees they were required to pay? |
| Q8  | If you are a retailer, how likely is it that you would choose to be protected from saves, if this was possible under the Code?                                                                                                |
| Q9  | Do you agree that the new withdrawal advisory codes listed in Section 5.2 should be introduced, in order to improve transparency about switch withdrawals? If not, why not?                                                   |
| Q10 | Do you have any comments on the drafting of the new withdrawal advisory codes listed in Table 2?                                                                                                                              |
| Q11 | Do you agree that the objective for the amendment set out in Section 6.2 is appropriate and consistent with the Authority's statutory objective? If not, why not?                                                             |
| Q12 | Do you agree that the proposed amendment would achieve the objective set out in Section 6.2? If not, why not?                                                                                                                 |
| Q13 | Do you consider that the proposed amendment would carry a risk of unintended consequences? If so, what are they?                                                                                                              |
| Q14 | Do you agree with the assessment of net economic benefit? If not, what is your reasoning?                                                                                                                                     |
| Q15 | Do you agree that the proposed amendment is preferable to other options? If not, please explain your preferred option in terms consistent with the Authority's statutory objective.                                           |

| #   | Question                                                                                          |
|-----|---------------------------------------------------------------------------------------------------|
| Q16 | Do you agree that the Authority's proposed amendment complies with section 32(1) of the Act?      |
| Q17 | Do you agree that the Authority's proposed amendment complies with the Code amendment principles? |