March 27, 2018

Carl Hansen, CEO
The Board of Directors
Electricity Authority

By email: carl.hansen@ea.govt.nz

Re: Save Protection Scheme

Carl and the EA Board,

It has been about 4 years now since we first raised the unfairness associated with early win-backs in the electricity market.

At that time, we encouraged the EA to follow the lead of the telecommunications industry and prohibit marketing activity derived from switch notifications. We indicated that without regulating win-backs, it was the same as endorsing behaviours that were anti-competitive, predatory, unfair and allowed the adaptation of win-backs as the primary retention strategy of incumbent retailers. We also observed very little consumer benefit, as at that time, a win-back could be achieved by matching the new price and discrediting the new retailer. Providing a losing retailer a "last right of refusal" was simply an unfair advantage and easily abused.

To the EA's credit, over the subsequent two years, a voluntary scheme was introduced which attempted to insert a short period that would allow a customer to distinguish between a legitimate win-back and save. Pulse welcomed this; as it looked like an earnest attempt by the EA to mitigate the damage associated with these unsavoury behaviours.

As we indicated to you, we agreed to be a "protected participant" even though we had reservations that the foundation of the scheme was potentially unworkable. In our submissions, we reasoned that even with the "event date" concept, losing retailers could still indicate that the deal with their new retailer could be unwound without consequences. We said this would be an abuse of the "gentlemen's agreement" the industry has to manage billing and metering entanglements surrounding legitimate cancelations. We believed that this technicality, when combined with only a minor distinction between a win-back and a save, could trigger motivations to speed up the switch process and to compel the consumer, with clever sales scripting, to also act with haste. While many customers, even with the added sales pressure, vocally abhorred the idea of unwinding their deal (based on their personal ethics of "a deal is a deal"), about 30% to 40% are persuaded "in the heat of the moment" to stay with the losing retailer and, in many cases, are leveraged into an arrangement with more favourable conditions for that retailer.

This initial set of reservations turned out to be correctly placed; and after trying to work with the new rules for a while, we presented to you the problems with the scheme. In fact, we shared our view that the Scheme introduced even more aggressive behaviours. The statistics supporting the increase in long-term lock-ins were becoming apparent and we observed that the period between a switch notification and a marketing call from the losing retailer collapsed to less than 1 hour. In fact, we had hundreds of so-called win-backs occur before the switch notification was even confirmed.

We also routinely receive cancelations only to find out later that the customer never actually agreed to switch back; they just thought we forgot to complete the switch and carried on thinking poorly of Pulse's ability to execute. A surprising and unexpected consequence of the Scheme.

This has had a serious financial impact

Over the four years this has been debated, Pulse had 26,000 customers we fairly won, reversed within the first few hours or days of a switch. At our current retention rates, this represents over $250 million in lost revenue. It also represents a loss of shareholder value of approximately $20 million. In addition, we believe the customers who locked-in with the losing retailer are probably "scorched earth" for Pulse; particularly since win-backs are coupled with unflattering characterisations by the win-back agent. You can imagine our angst when, even though it was our hard-working effort that created the lower cost for the customer, we had to suffer the indignation of an unrebuttable strike at our reputation. We were not even given the chance to prove our worth as a service provider either. I remind you that we have NPS scores in the 40 to 60 range; so a sullied reputation is not deserved; particularly if served up by a competitor in a non-transparent phone call, motivated only to retain.

Commerce Commission options

I am aware that your reflex at this point of the conversation is to direct us to the Commerce Commission. I reiterate our position on this matter as previously communicated, the prospect of fighting this out in the Commerce Commission is not a viable option for a small retailer as we do not have the financial capability, the executive time or the legal team to unearth the hard evidence held within our competitor's processes. This is particularly pertinent when we know that the behaviours are solvable by a simple change to the Save Protection Scheme, which is well within your power.

Adding to the difficulties of engaging the Commerce Commission, our observation is that the Gentailers have been positively reinforced by the EA's Scheme and see license to create "no-fly zones" for challenger brands. With the backing of the Scheme, Gentailers conclude that challenger brands will simply move on to other locations or sell only when they encounter a Gentailers with less aggressive win-back policies.

I can confirm to you that creating a no-fly zone is effective. We already have difficulty persuading a salesperson to follow through if they come across a customer of certain Gentailers. Consistently losing a sale, and thereby cancelling a commission, has a chilling effect. Eventually, even the sales people move on as well.

Finally, it doesn't require the Commerce Commission to confirm basic principles. Consumers are always best served when they have time to evaluate terms and conditions, can switch without cost and when benefits can be easily compared. We know from our research, locked-in deals are undesirable and in the cold light of day, a lock-in deal with a large termination fee would normally be rejected; particularly if the seller takes the time to spell out the consequences. Quickly unwinding a deal through a high pressured win-back call will never serve a consumer's best interests when compared to a process where a proper win-back, based on a soundly good deal, is evaluated at a later date where the "heat of the moment" is removed.

MDAG Committee

Last week we were given another chance to present our arguments to the MDAG committee. Pulse and the other independent retailers presented a consistent view and we felt the presentations were well-received, appreciated and feedback was genuine.

At that meeting we had a fulsome discussion about the MDAG mandate. We expressed a number of concerns regarding the "problem definition" in the mandate. From our point of view, the mandate is

overly focused on information deficits, predatory pricing behaviours or obtaining advantages from customer billing histories. We believe these are minor points, or even red herrings, and miss the core issue. The focus should be to overcome the "last right of refusal" principle. This last right would never be allowed if it was proposed as a standard market rule; so removing it explicitly is by far the most salient point. We reiterated this point with the committee in writing after the meeting as well and we are also confident it was well received.

However, the one point we did not make clear enough in that meeting is the essential discussion you and I have had. What happens if all retailers refine save processes to the same degree as Mercury? We can see this unfolding now. The Gentailers appear to be concluding that 100% recovery of a lost customer is a primary objective; particularly if is also increases the percentage of customers on long term contracts.

For your edification, the proposal the independent retailers have a high degree of consensus for, (as delivered to the MDAG Committee) is as follows:

1. **Mandatory Participation**: We believe it is impossible to improve the industry reputation and protect all consumers without the Scheme being mandatory.

2. **Prohibition**: Marketing activity, of any kind, should be prohibited for a period that at least covers a full billing cycle. To cover all eventualities, the Event Date should include the added clause: "and be a minimum of 60 days". Any notification of a final bill or termination fees should only be allowed in written form. Penalties for violation should be very punitive.

3. **Explicit descriptions of behaviour**: It is necessary to explicitly say that a win-back call on day 61, is treated as an unsolicited sales call under the fair trading rules. There should be no waivers of customer protections implied or assumed simple by virtue of the call coming from the consumer's former supplier. This will ensure the best foot is put forward at that time.

Carl, we need urgent action. MDAG hinted that we might have to wait another year for a revised Scheme; which is far too long. We will be entering year 5 since this was first raised. The build-up of economic loss has expanded as newer retailers are starting to feel the financial impact as well. Furthermore, we still cannot see any added consumer benefit and no-fly zones are growing. Speaking for Pulse, we implore you to act swiftly. Surely the facts only point in one direction by now; a 60-day prohibition period will still allow for competitive counter offers after day 61.

I would be happy to meet with you again to discuss further. In the meantime, please consider all options to implement a plan to engage with MDAG and accelerate the process. In our view, the negative outcomes are accruing on a daily basis.

Best regards,

Gary Holden
CEO Pulse Energy Alliance LP

Cc: Pulse Board of Directors