15 June 2018

James Moulder
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CC: Electricity Price Review Panel

Dear James,

There are substantive incumbency problems which mean a large number of households are missing out on the benefits of competition

As you know, Electric Kiwi welcomed the Electricity Authority's direction to MDAG to undertake a review of "saves and winbacks".

Given the importance of this issue to the successful promotion of retail competition, Electric Kiwi, and other entrant retailers,[1] have proactively engaged with MDAG to assist with the review. We are disappointed our contributions, well ahead of this consultation, don't appear to have been given regard to, or even been addressed, in the Issues Paper.

Our letter to the Electricity Authority and MDAG "Problems with 'saves and winbacks' and Powerswitch", of 27 March 2018, should be treated as part of this submission.

More work is needed on the problem definition, and why the Switch Saving Protection Scheme isn't delivering the benefits that were expected

There are substantial problems which need to be addressed to achieve **the Electricity Authority's statutory objective of promoting competition for the long-term benefit of consumers.**

At best, current arrangements promote (weak) competition for the benefit-only of consumers who are "switchers". A large number of residential consumers ("stayers") are missing out on the benefits of competition. 42% of ICPs have never switched according to the Issues Paper. Add to this a significant additional group of ICPs which have only switched once or twice in the past two decades, perhaps catalysed by a customer moving home rather than a genuine consumer churn event, and the "stayers" part of the market is likely to be a strong majority of all residential consumers. This is a significant monopoly base which incumbent retailers can leverage off.

There is clear evidence incumbent retailers are increasingly only competing in the "switcher" part of the retail market and extracting excess returns from their monopoly "stayer" base. The poor design of the Switch Saving Protection Scheme has allowed this trend to accelerate and means loyal customers

[1] The Alliance of Independent Retailers (TAIR), RE: Enquiry into FPVV vs ASX prices and PIR of save protection scheme, 4 May 2017.

are increasingly getting no benefit from competition. There is a missed opportunity to create downward pressure on market wide prices.

Consumers would be better off across the board if incumbent retailers felt they had to retain all of their customers not just the ones that try to leave.[2]

This problem is particularly concerning given those who suffer from the monopoly pricing are disproportionately on low incomes and elderly. Research shows more than half of New Zealand households cut back on heating their homes in winter due to cost.[3] So it doesn't seem right that the big power companies are ripping off their most loyal customers to fund discounts and payments to people who switch away.[4]

Unfortunately, the MDAG Issues Paper misses the point about the nature of the problem and spends a lot of time 'down the wrong rabbit hole'. This is disappointing given the engagement we have had with MDAG on this topic.

The MDAG Issues Paper doesn't review the Switch Saving Protection Scheme. Rather it steps back to the question the Electricity Authority asked itself when it decided to introduce the Scheme: is there a problem with saves and winbacks?

While the Electricity Authority's saves and winbacks decision paper and Post Implementation Review **recognised problems relating to the current saves and winbacks scheme**, and articulated them well, the MDAG Issues Paper feels like a backward step.

We note MDAG has not been asked to relitigate the rationale for a Saves and WinBacks scheme.

Regrettably, we feel the MDAG Issues Paper opportunistically represents an incumbent-centric perspective and doesn't provide a sound basis for concluding there is or isn't a problem. We are concerned this will result in delay in getting the problem resolved.

We respectfully suggest the conclusion "Evidence suggests the market is functioning as one would expect a competitive market to function"[5] is an assertion based on the MDAG Issues Paper failing to obtain the evidence needed to determine whether there is a problem (and the size of the problem). We detail what is missing in this submission.

Getting the language right is necessary to properly specify the 'retail incumbency' problem

It is difficult for the MDAG Issues Paper to accurately discuss and define the problem, relating to saves and winbacks, while refraining from using the term "incumbent retailer".

The term "incumbent" is only used seven times in the Issues Paper. The Issues Paper instead largely uses imprecise and misleading euphemisms such as "existing retailers", "established retailers" and "some retailers". This is akin to trying to discuss the problem which results in the need for electricity networks to be price controlled without using the term "monopoly" or "natural monopoly".

[2] https://www.stuff.co.nz/business/104230998/loyal-electricity-customers-shortchanged
[3] https://i.stuff.co.nz/business/money/104100512/being-cold-and-rationing-heating-is-now-normal-in-new-zealand
[4] https://www.stuff.co.nz/business/104230998/loyal-electricity-customers-shortchanged
[5] MDAG, Customer Acquisition, Saves and Win-backs – Issues Paper, 22 May 2018, paragraph 6.1.1.

The ‘retail incumbency’ problem that needs to be addressed is **incumbent** retailers have a large pseudo-monopoly (uncompetitive) customer base (stayers) which **incumbent** retailers have been able to exploit and charge excessive (monopoly) prices to. MDAG need to consider what changes are needed so all consumers, including stayers, benefit from competition. The nature of the problem is discussed in more detail below.

Similarly, care is needed, Issues Paper title notwithstanding, not to frame or limit the debate solely around “saves and winbacks”, or even “acquisitions”, or whether saves and winbacks are a good thing or not.

While there is a bright line that retailers should only be allowed to use information from the switching process to facilitate the switch, and it would be a mis-use of the information to use it for saves or earlier than otherwise possible winback, the potential solutions to the ‘retail incumbency’ problem are broader than just allow/not allow saves and winbacks. For example, the ‘retail incumbency’ problem would be much less of an issue if incumbent retailers didn’t have such a large number of customers that have never switched or if there was greater pricing transparency, so consumers better understood the extent to which they are being over-charged.

The ‘retail incumbency’ problem reflects both regulatory and market failures, and it’s all connected to incumbent retailer behaviour

The MDAG Issues Paper makes the obvious point that market or regulatory failures need to be identified to establish there is a problem with saves and winbacks, describing the “key question” as: “Is there a regulatory problem or market failure relating to customer acquisition, including saves and win-backs practices, and the switching process?”[6]

While this question deviates from the Electricity Authority’s Consultation Charter, which specifies that there must be a “Clearly Identified <u>Efficiency Gain or</u> Market or Regulatory Failure” [emphasis added],[7] it should go without saying that market and/or regulatory failures need to be identified to establish there is a problem.

The Electricity Authority has already made it clear saves (and “win-back that takes place almost immediately after a switch has occurred” as “This type of win-back raises similar issues as for saves”[8]) is a barrier to competition, and there is a problem of undue informational advantage (**market failures**):

> Regardless of differences in save rates, the current switching procedures give a losing retailer prior notice of an intended switch (and therefore information to initiate a save). This tilts the playing field between incumbents and prospective gaining retailers. The way in which market arrangements currently work makes it cheaper for an incumbent retailer to save a customer than for any other retailer to acquire the customer. The effect on new retailers appears to be greater, creating a barrier to entry/expansion for those retailers.[9]
>
> … the Authority wishes to prevent the specific situation in which a losing retailer makes a counter-offer during the switch process, or within a short period after the switch. The current process, under which a losing retailer is notified as part of the switching process and can seek to retain the customer based on that information, provides an undue advantage to incumbent retailers. Early win-backs give rise to similar issues.[10]

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[6] MDAG, Customer Acquisition, Saves and Win-backs – Issues Paper, 22 May 2018, paragraph 6.1.1.
[7] Electricity Authority, Consultation Charter, 19 December 2012.
[8] Electricity Authority, Consultation Paper, Proposed Code amendment Saves and early winbacks, 24 June 2014, page 2.
[9] Electricity Authority, Consultation Paper, Proposed Code amendment Saves and early winbacks, 24 June 2014, paragraph 3.6.3.
[10] Electricity Authority, Consultation Paper, Proposed Code amendment Saves and early winbacks, 24 June 2014, paragraph 3.6.3.

Incumbent retailers are the 'elephant in the room'

The 'retail incumbency' problem we are seeing, as an entrant retailer, is:

- The **incumbent** retailers segmenting their customers into competitive and non-competitive (pseudo monopoly) categories. Inadequate competition is a clear and obvious **market failure**;

- A large group of **incumbent** retailer customers (at least 42% of residential ICPs according to the MDAG Issues Paper and probably significantly higher when reflected on a customer basis) are missing out on the benefits of competition (incur monopoly pricing). This likely translates to a strong majority disengaged from the market. The detriments include wealth transfers, functionless rents and inefficient (excessive) pricing. These are all classic incumbent monopoly problems (**a market failure**);

  The closest the paper gets to this problem is the euphemistic reference to "large dependable sources of cashflow … that large and established retailers have, because the[ir] customer bases include large numbers of customers who have never switched";[11]

- An ability to segment the market and price discriminate (including possible predatory pricing/cross-subsidisation) – including through **incumbent** retailer success in customer switch withdrawals (saves and winbacks);

- The monopoly rents **incumbent** retailers obtain from "stayers" could be being used to predatory price or subsidise the prices for "switchers" which, as well as being inefficient, would result in a barrier competition (**a market failure**).

  There have been suggestions this is what is happening in the retail petrol market between competitive and less competitive regional prices. This is also directly analogous to the issues ERANZ and some of the incumbent retailers have raised about electricity networks' using their monopoly advantage to tilt the playing field/subsidise competitive market activity in new technology etc;

- The **incumbent** retailers are also aided by a lack of pricing transparency, which means stayers aren't necessarily aware of the lower prices they could be getting even staying with their retailer or that they are being over-charged (**a market failure**); and

- Information **incumbent** retailers obtain from the switching process is being misused (**a regulatory failure**). As the Electricity Authority has well articulated: "In the retail electricity market the **incumbent** retailer is notified that a customer intends to switch before the process is completed. This notification allows the losing retailer to use the information of a customer's intention to switch as a prompt to contact the customer to discourage them from switching, rather than use the information for its intended purpose, which was to complete the switch process".[12]

[11] MDAG, Customer Acquisition, Saves and Win-backs – Issues Paper, 22 May 2018, paragraph 4.3.2.
[12] Electricity Authority, Final Report, Post implementation review of saves and winbacks, 29 August 2017.

The Electricity Authority has previously commented "it might be thought that saves are a problem because they make it too easy to segment the market – 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 … this would have an adverse effect on the level of competition experienced by the 'rump' of non-price-sensitive customers" (**a market failure**).[13] This is precisely what is happening.

The Electricity Authority erred by dismissing this on the basis "that is unlikely to be a viable strategy for a retailer, because the save rate is too low (at about 10%) … therefore the Authority is not concerned about saves from a price discrimination perspective per se".[14] On a purely factual basis the **incumbent** saves rate is substantially higher than 10% and growing:[15]

The level of incumbent saves and winbacks activity is growing

	1/1/2004 - 31/01/2015	1/2/2015 - 30/4/2018	1/4/2018 – 30/4/2018
Contact Energy	21.7%	28.5%	41.4%
Genesis Energy	26.7%	41.8%	71.4%
Mercury NZ	28.6%	62.8%	70.7%
Meridian Energy	14.3%	21.8%	35.6%
TrustPower	18.8%	26.4%	34.3%

If winbacks are measured as a percentage of trader loses Mercury and Genesis winbacks **exceeded 70% of trader loses** in April 2018. This shows that for the most aggressive incumbents their strategy has already converged to one of near exclusively focussing on the 'switcher' part of the market.

Some level of winbacks may be acceptable or even desirable in a well designed market. But winbacks should be part of a healthy mix of competitive channels, some of which lead to downward pressure on 'stayer' prices. When incumbents are winning back customers at this level we believe it constitutes a **market failure.**

The 5 largest incumbents have all drastically increased their save and win back activity since the Switch Saving Protection Scheme was introduced, with total incumbent activity more than doubling as % of trader switches. We believe this represents a trend towards cynical and low quality competition which leaves a majority of consumers worse off. If the Authority had known that exempting win backs from the scheme would enable an acceleration in save and win backs to this extent it surely would have introduced a save and near term winback moratorium from inception.

Powershop, who as the 100% owned subsidy of Meridian is well placed to understand the extent **incumbent** retailers are price discriminating, noted "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."[16]

[13] Electricity Authority, Consultation Paper, Proposed Code amendment Saves and early winbacks, 24 June 2014, paragraph 3.2.1.
[14] Electricity Authority, Consultation Paper, Proposed Code amendment Saves and early winbacks, 24 June 2014, paragraph 4.1.2.
[15] Source: EMI switching breakdown reports, calculated on a Trader (retail entity)/Trader switch (Switch type) basis. This is more representative of true saves and win backs as a retailer won't save a customer who is moving house but remaining with the same retailer.
[16] Powershop, Saves and early win-backs, 5 August 2014.

Either way, this is something MDAG needs to look into to establish a robust and safe problem definition which can be relied on to determine what regulatory reforms are needed to better promote competition for the long-term benefit of consumers.

The problem isn't just about whether saves and winbacks make it costlier for entrant retailers to compete. The problem also includes that each incumbent retailer is exploiting (monopoly pricing) a large base of residential customers who are missing out on the benefits of competition (**market failure**).

Incumbent retailers are applying discriminatory and predatory customer retention and acquisition strategies

Incumbent retailers have been successfully able to segment the market and price discriminate, in part, without losing large numbers of "switchers", by mis-using information from the switching process, which should be used for the sole purpose of facilitating the switch, to engage in saves or (earlier than otherwise possible) switches.[17]

The response to new entrant retailers gaining market share has been for incumbent retailers to apply increasingly aggressive and discriminatory customer retention and acquisition strategies which focus on "switchers".

The incumbent retailers' strategy on both new customer only pricing, and heavy saves and winback activity, targets the part of the market new entrant retailers are predominantly active in. We believe some of the activity constitutes predatory tactics from incumbents with significant incentive and ability to exercise market power – leveraging off higher prices for "stayers" in order to offer low prices to "switchers".

Based on publicly available information, it is apparent this price discrimination strategy is working and becoming more aggressive. As part of the incumbent retailers' saves and winback strategies, there is an increased prevalence of very sharply priced acquisition offers that are available only to new (and "saved") customers ("switchers") and not existing customers ("stayers").

The increased levels of withdrawals of incumbent retail customers since the Switch Saving Protection Scheme was put in place (see above) is clear evidence of this. **Genesis and Mercury are now winning back over 70 customers for every 100 customers they lose in a competitive switch.**

It would also appear the incumbent retailers' price discrimination strategies are working based on the increasing gap between maximum and minimum (or incumbent and minimum) residential tariffs.

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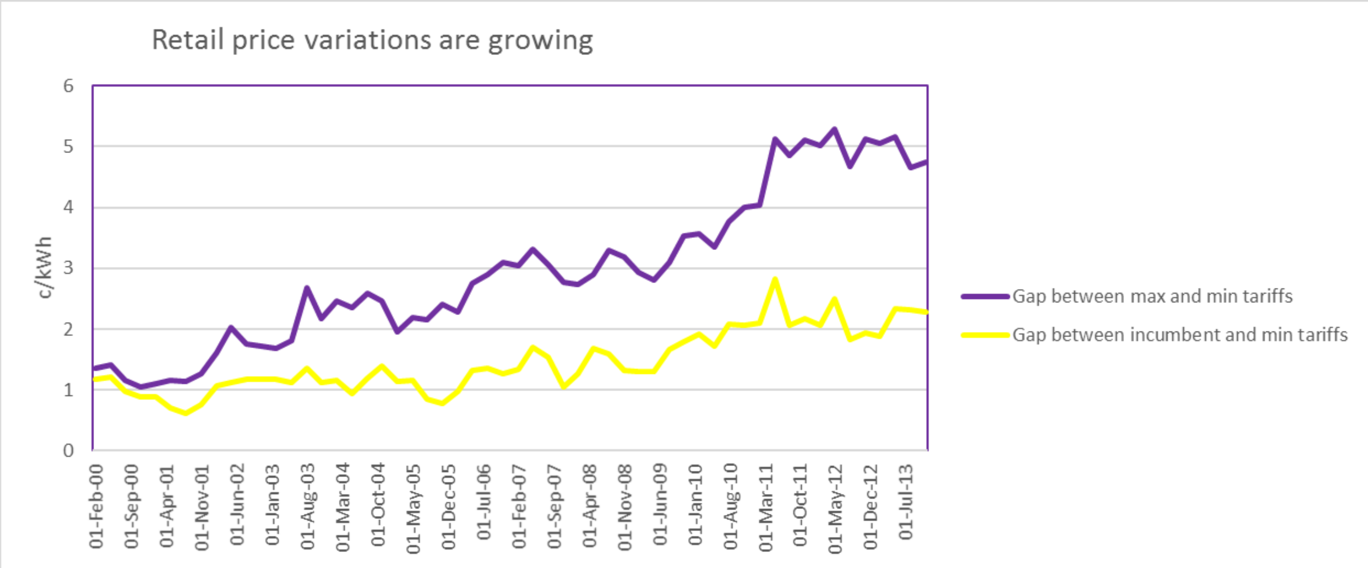
[17] The Electricity Authority's Post Implementation Review helpfully revealed there isn't a bright line between saves and winbacks. Incumbent retailers can use information from the switching process to prepare a quick winback:

> The Authority's Competition effects of saves and win-backs paper separated saves and win-backs and stated that there was no evidence that win-backs were a problem. The evidence … suggests that retailers can substitute win-backs for saves relatively easily. Consequently, we analyse the two together as we do not believe that they are distinguishable in terms of their effect on competition …

As the Electricity Authority notes "The losing retailer is still informed about a switch through the switching process". The consequence is that early winbacks are a close substitute for saves. This begs the obvious question whether the Switch Saving Protection Scheme should be amended to apply restrictions on winbacks. With the benefit of hindsight, the Electricity Authority should have stuck with its draft proposal to include a restriction on winbacks within 10 working days of the switch occurring.

Source: Electricity Authority, Post implementation review of saves and winbacks, Final report, 29 August 2017.

Note: the incumbent tariff information doesn't distinguish between the "stayer" and "switcher" tariffs.[18]



Source: MBIE Quarterly Residential Price Survey 2013.

The situation could be even worse than this.

The MBIE residential pricing surveys ceased to provide information on differences between maximum and minimum pricing etc after November 2013. This is something MDAG could usefully look at.

Similar to what appears to be happening in the retail petrol market in New Zealand, it appears that incumbent retailers are charging stayers more to subsidise competitive (lower) pricing targeted at switchers. This is something MDAG needs to obtain evidence on as part of the establishment of a robust and safe problem definition.

There are asymmetric benefits to incumbent retailers can exploit from saves and winbacks

We challenge the suggestion that the ability of incumbent retailers to use information from the switching process to present the switch "On its own … may not be serious because the advantage it gives is available to all retailers, in some measure".[19]

The statement fails to recognise that saves and winbacks is predominantly an incumbent dominant strategy (even when comparing the incumbent retailers' main and alternative brands):

[18] http://www.mbie.govt.nz/info-services/sectors-industries/energy/energy-data-modelling/statistics/prices/electricity-prices/document-library/Quarterly%20Survey%20of%20Domestic%20Electricity%20Prices%20as%20at%2015%20November%202013.xlsx
[19] MDAG, Customer Acquisition, Saves and Win-backs – Issues Paper, 22 May 2018, page 5.

Source: Electricity Market Information website

The Issues Paper statement fails to recognise the implications of the incumbent retailers having a large pseudo-monopoly customer base.

There is asymmetric benefit for incumbent retailers from misusing this information because they, by definition, have an incumbent retail customer base to preserve, and it helps allow them to price discriminate between "stayers" (subjected to pseudo monopoly pricing) and "switchers" (who receive more competitive prices).

We agree with Meridian's 100% owned subsidiary, Powershop, 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 marking than large companies whose efforts are largely geared at staying steady".[20] We also agree with the Electricity Authority that incumbent retailers have an "undue [informational] advantage".[21]

The MDAG Issues Paper gets it right where it notes: "new entrant retailers may face search costs but not reduced costs of retention, because they have few, or no, customers to save or win-back. If this is the case, it could exacerbate any underlying market failures or regulatory problems",[22] that there is an "undue informational advantage obtained by losing retailers during the switching process" and "To the extent that [saves protection scheme] rules confer advantages to only some retailers, there is a potential regulatory problem".[23] The statements would be more accurate if "losing" and "some" were replaced with the word "incumbent".

[20] Powershop, Saves and early win-backs, 5 August 2014.
[21] Electricity Authority, Consultation Paper, Proposed Code amendment Saves and early winbacks, 24 June 2014, paragraph 4.1.2.
[22] MDAG, Customer Acquisition, Saves and Win-backs – Issues Paper, 22 May 2018, paragraph 2.4.3.
[23] MDAG, Customer Acquisition, Saves and Win-backs – Issues Paper, 22 May 2018, paragraph 2.2.4.

A large number of residential consumers are missing out on the benefits of competition

In a healthy, properly-functioning, competitive market all consumers should expect to benefit from increased competition. There should also be transparency around incumbent retailer pricing, so consumers can have confidence they are on the best available tariffs. In pure commodity markets the level of price differentiation that can be expected is based solely on cost of delivering the product.

Vodafone mobile phone customers have benefited from lower prices/better service quality, following the entry of 2degrees into the retail cellular market. Each time 2degrees offers lower prices/better deals, Vodafone follows and improves its offering to both "stayers" and "switchers". Notably, if you look at telecommunications advertising there is much more direct price comparisons than in electricity.

The same is true in the airline industry, where there is a substantial difference in Air New Zealand's prices where Jetstar competes (e.g. Auckland – Queenstown) compared to destinations where Jetstar does not (e.g. Auckland to Invercargill). All Air New Zealand customers get the benefit of competition on routes where there is choice regardless of whether they fly with the incumbent, Air New Zealand, or Jetstar.

Consistent with this, the MDAG Issues Paper points out "Consumers who switch are both beneficiaries of retail competition and important catalysts for retail competition. Were it not for bargain hunters and a willingness to switch there would be only limited demand-led competition in the retail market".[24]

This is not what we are seeing in the retail electricity market. This indicates there is a problem with competition which extends beyond the obvious issues with an oligopolistic market characterised by high levels of market concentration and incumbent vertical-integration.

The consumers who are being exploited are least able to afford excessive electricity prices.

This issue has been observed in other jurisdictions, such as in the UK, where it has been found those that can least afford their power bills are paying the highest prices.[25] This is consistent with the UMR (2014) survey, the MDAG Issues Paper cites, which found higher income customers are more likely to switch than lower income customers.

This heightens the size of the problem.

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[24] MDAG, Customer Acquisition, Saves and Win-backs – Issues Paper, 22 May 2018, page 5.

[25] Ofgem's retail market report for 2016, for example, made the following observations (https://www.ofgem.gov.uk/publications-and-updates/retail-energy-markets-2016):

> We have seen domestic switching rates in 2015 rise to 12% for electricity and 13% for gas - an increase of one and two percentage points respectively on 2014. We have also seen sustained rates of customers switching tariff with their existing supplier. Evidence suggests that much of this can be accounted for by already engaged consumers, who tend to be heavily motivated by price and are most likely to take advantage of competitive fixed-term tariffs.
>
> … However, survey data suggests that the overall pattern of domestic consumer engagement in 2016 is largely unchanged relative to 2015 and 2014. More than one in five consumers are very disengaged. They are predominantly on expensive standard variable tariffs, less likely to engage with information and more likely to be in vulnerable situations.

The detriment to low-income consumers for each extra dollar they pay in power bills is likely to be greater than the detriment to high-income consumers. Further, if low income or vulnerable consumers are missing out on the benefits of competition, or electricity reforms, the durability of regulatory arrangements could be undermined.

This is highlighted vividly by the need for an Electricity Price Review looking into issues of affordability.

The observation that low income and elderly consumers are most disadvantaged by incumbent retailer behaviour, also puts into question the Issues Paper comment: "price discrimination … can be beneficial for consumers overall if customers who pay lower prices are, on average, more price sensitive than those who pay higher prices".[26]

Given "stayers" are more likely to be low income and elderly consumers it would seem implausable they are less price sensitive. Price sensitivity is likely to manifest itself more in the way electricity is used, than in choice of supplier. The price sensitivity would likely show up in demand behaviour such as curtailing electricity usage/not heating the house during winter etc. This is what ConsumerNZ in its customer survey.[27]

From a purely efficiency perspective, the implication that low income consumers are more likely to be price sensitive, means that charging them more would be inefficient and the opposite of Ramsey Pricing Principles.

For MDAG's assertion to endure MDAG would need to:

- estimate the price elasticity of demand of switchers and stayers; and
- establish, on the basis of Ramsey Pricing Principles, that the price differential can be fully explained by differences in elasticity of demand; and
- establish that the higher prices stayers incur resulted in lower prices for switchers and not higher returns for incumbent retailers.

Without this evidence, MDAG have no basis for the assertion that the price discrimination between stayers and switchers could be "beneficial for consumers overall".[28] The MDAG Issues Paper relies on this claim to justify high prices to stayers.

Quantified and evidence-based analysis is required to measure the size of the 'retail incumbency' problem

MDAG requires information about each of the incumbent retailers' pricing practices to establish the size of the 'retail incumbency' problem.

The following diagram illustrates the information MDAG needs from the incumbent retailer in each regional network area. MDAG needs details of the level of prices for both "stayers" in "switchers",

[26] Market Development Advisory Group, CUSTOMER ACQUISITION, SAVES AND WIN-BACKS – ISSUES PAPER, 22 May 2018, paragraph 4.3.11.
[27] https://www.consumer.org.nz/articles/energy-providers
[28] Market Development Advisory Group, CUSTOMER ACQUISITION, SAVES AND WIN-BACKS – ISSUES PAPER, 22 May 2018, paragraph 4.3.11.

level of demand (kWh) for each customer type, and the number of customers in each category for the incumbent retailer in each regional network market to establish the scale of the problem.

Figure: Incumbent retailer market segmentation and monopoly pricing problem

The larger the red area which represents incumbent retailer' monopoly pricing the larger the size of the problem (detriments to consumers from uncompetitive/monopoly pricing).

Determining the scale of the problem would require details of the level of price discrimination by each incumbent retailer including a breakdown of different "stayer" and "switcher" customer bands, the prices each customer band is on (net of discounts, any one-off payments etc) and the number of customers in each band. It would also be important to get this information on a time-series basis to determine the extent to which (or whether) the problem is getting worse.

Absent assessment of this information the MDAG isn't in a position to determine, or quantify, the size of the 'retail incumbency' problem, or to positively conclude no further electricity reforms are required.

The saves and winbacks review should be considered in the context that the retail market remains strongly oligopolistic

While there has been a lot of prominence given to the growth in number of retailers and retail brands, and this is positive and something we are actively part of, the retail market remains strongly oligopolistic:[29]

- The 5 largest incumbent retailers still have 88.44% market share.

- The incumbent retail market share (including Nova and King Country) is 92.88%. (Nova and King Country tend to get grouped with the small new entrant retailers which makes market share figures look more competitive than they actually are.)

- The incumbent retailers are losing market share very slowly, with 99.22% market share in 2010 and 92.88% in 2018.

- Contact Energy is the only one of the 5 largest incumbent retailers that has lost a material number of retail customers since 2010.

- As yet, there is no such thing as a medium sized retailer. Only three entrant retailers have a market share more than 1% (Pulse, Flick and Electric Kiwi). The total market share of retailers outside the top ten is 1.55%.

Incumbent retailer	Retail market share	
	31 Nov-2010	30 Apr-2018
Genesis Energy	26.54%	24.04%
Contact Energy	24.30%	19.87%
Mercury NZ	20.72%	18.64%
Meridian Energy	13.33%	13.75%
TrustPower	11.27%	12.14%
Nova Energy	2.12%	3.68%
King Country Energy	0.94%	0.76%
Incumbent retailers' market share	99.22%	93.14%

Concluding remarks

Allowing incumbent retailers to only compete after a customer decides to switch is a lost opportunity to create downward pressure on price.

The problem is that incumbent retailers have a large pseudo monopoly (uncompetitive) customer base (stayers) which they have been able to exploit and charge excessive (monopoly) prices to. This is enabled, in part, by incumbent retailers mis-using information from the switching process, which they should only be allowed to use for the sole purpose of facilitating the switch, to engage in saves or (earlier than otherwise possible) switches.

[29] https://www.emi.ea.govt.nz/Retail/Reports/R_MST_C%3F_si=tg%7Cmarket-structure,v%7C3

We agree with Meridian's 100% owned subsidiary, Powershop, that incumbent retailers offer "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 the offer available to a few hundred customers".[30]

This is far removed from what the Electricity Authority envisioned when it suggested its original "proposal will increase the likelihood that any consumer (but especially those belonging to the groups listed above) will receive a more competitive offer from their current retailer".[31]

The Electricity Authority had assumed that the discrimination strategy wouldn't be viable "because the save rate is too low (at about 10%)" but what we are seeing is incumbent save rates (withdrawals as a percentage of losses) now exceeding 70% (Mercury and Genesis). Based on trends since the Switch Saving Protection Scheme was put in place the save rates are likely to increase further.

We recognise MDAG is focussed on problem definition at this stage of the process. Our submission illustrates that unfortunately there is more work, and empirical analysis, required before MDAG safely land the problem definition.

We reiterate Electric Kiwi encourages the Electricity Authority to take urgent action to halt the slide in the quality of competition occurring in the retail electricity market. We believe an urgent introduction of a cooling off period into the Switch Saving Protection Scheme is needed.[32] The Electricity Authority was correct, when it previously stated, "that providing protection against win-backs for a short window after the switch may be beneficial".[33]

The cooling off period could be adopted as a temporary moratorium which could be put in place pending the outcome of the present saves and winbacks review. The competitive market risks of not intervening, if it turns out further intervention is needed, far outweigh the risk such a moratorium turns out not to be needed or there is a better solution to the saves and winbacks problem.

While there has been a regulatory focus on getting people to go to new brands, people shouldn't have to leave their retailer to get a decent rate. Requiring incumbent retailers to publish their rates would also help with this matter.

Yours sincerely,

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[30] Powershop, Saves and early win-backs, 5 August 2014.
[31] Electricity Authority, Consultation Paper, Proposed Code amendment Saves and early winbacks, 24 June 2014, paragraph 5.3.13.
[32] Letter from Luke Blincoe (CEO, Electric Kiwi) to Brent Layton (Chair, Electricity Authority), Problems with 'saves and winbacks' and Powerswitch, 27 March 2018.
[33] Electricity Authority, Consultation Paper, Proposed Code amendment Saves and early winbacks, 24 June 2014, paragraph 3.6.3.