Mercury

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Submissions
Electricity Authority
PO Box 10041
Wellington 6143

Consultation Paper - MDAG issues paper: Saves and win-backs
By email: mdag@ea.govt.nz

Dear James,

Customer Acquisition, Saves and Win-backs – Issues Paper

Mercury welcomes the opportunity to comment on the MDAG "Customer Acquisition, Saves and Win-backs – Issues Paper".

Mercury is an electricity generator and retailer providing energy services to homes, businesses and industrial customers throughout New Zealand. We have a long heritage in renewable electricity generation in New Zealand and we sell energy to about 1-in-5 homes and businesses under the Mercury and other specialty brands. We also have proven capability and technical expertise in smart metering services and solar. Our goal is to be the leading energy brand in New Zealand, inspiring our customers, owners and partners by delivering value, innovation and outstanding experiences.

Mercury supports open and competitive markets as delivering real benefits for consumers. Restricting a retailer's ability to offer a customer a competitive offer ultimately reduces what the electricity market intended to deliver to consumers by reducing multiple suppliers competing on products and pricing.

New Zealand electricity consumers have the significant choice relating to service and product offerings, brand alignment, customer specific interests including charitable donations and prices. Mercury customers are offered a range of features and we believe that in making their assessment of the attractiveness of our offers, price is only one factor considered. Non-price attributes include opportunities for customers to donate to the Starship Children's hospital, access to our innovative Good Energy Monitor and Mercury Go products to understand and track usage, Free Power Days, the ability to earn Air New Zealand Airpoints.

Any decision to switch will likely be made after an assessment of one or two specific attributes related to the new offer, e.g. price. In assessing the benefit of the new offer, a customer may overlook or discount the attributes which they originally valued when signing up to their current arrangement. Because the acquiring retailer does not specify the service offerings that the customer will no longer enjoy, it is important that the losing retailer has the ability to provide this information so that a robust assessment/comparison of the offers is possible. This is also relevant if the customer is subject to an early termination fee on their current contract which is information that may be material to their decision.

Mercury questions whether the introduction of further limitations would benefit consumers, or benefit a retailer attempting to grow and protect its customer base. Mercury suggests the MDAG (and Authority) carefully consider the basis of both the arguments for and against amending the Winback regime where commercial drivers may not be of a similar nature. Mercury has observed two distinct acquisition strategies, one being a longer term view of gaining market share to provide customers with beneficial service offerings over time, and a second strategy to increase customer numbers in order to obtain a higher company valuation where a customer base is expected to be sold in the future. Both strategies rely on a retailer retaining and growing a customer base but for quite different reasons. If the motivation for supporting changes to the current saves and Winbacks arrangements is to boost a retailer's chance of success in delivering on the second strategy this would be an unintended consequence as this does not appear to result in a long-term benefit to consumers.

Mercury is of the view that the catalyst for a customer switching is that they have either shopped around for other offers (and in some cases, are a dedicated bargain hunter) or more likely, have been approached in some manner by another retailer looking to entice the customer to them. Currently customers are receiving offers through low cost advertising mediums which can include social media. These offers are made by all levels of retailers from small start-ups to established retailers which would indicate no retailer has a distinct advantage in offering a prospective customer a competitive offer.

A change to restrict win backs is in effect a restriction on one company's ability to enter into a contractual relationship where one does not currently exist. This would appear to be anti-competitive at its simplest level and, contrary to what some companies are suggesting, could be considered detrimental to retailer competition overall. While this could benefit a retailer looking to grow their customer base, it would not benefit customers' ability to shop around and obtain a competitive offer from all retailers as one has been effectively removed from the market.

The MDAG/Authority has posed the questions: are customer's switching decisions in their best interest, and whether customer's have a price point in their mind (which must be met) for them to agree to switch. An acquiring retailer may claim to meet this price point (or service offering) however this is likely to be based upon asymmetrical information, which in some cases may not be accurate. Mercury would observe a recent decision in Australia where Alinta Energy (as the acquiring retailer) presented incorrect information to customers on potential discounts (https://www.accc.gov.au/media-release/alinta-energy-misled-consumers-on-discounts). By removing a losing retailer's ability to engage with a customer after a switch is initiated there is a risk the customer would make a switching decision that is not in their best interest. If any changes are made to the Saves and Winbacks rules, this sort of conduct could potentially take longer to identify.

Mercury would note that some retailers promote "estimated savings" as a method of enticing consumers and in the small print advise these figures are based on average consumption. Given that not all customers are average consumers, and these offers are generally based upon "headline" offers, there is an immediate potential for a consumer to be misled into thinking they will always benefit from switching providers. By restricting the losing retailer's ability to correct a misleading position that has been created by another retailer, or not allowing competition through further discounts or offerings of specific interest to the customer, may not be in the customers best interests.

Mercury would observe that no retailer is restricted from competing on an even footing, however each retailer makes a strategic decision on what offers they wish to make, what regions they wish to sell electricity in, and the customers they target to align with their business strategy.

If you have any questions on the above submission please Andrew Robertson, Regulatory and Compliance Strategist 09 308 8276 or andrew.robertson@mercury.co.nz

Yours sincerely

Andrew Robertson
Regulatory and Compliance Strategist

Do some retailers have a distinct win-back advantage which others do not have and cannot ever have?

Mercury does not believe an advantage exists. Retailers have different business strategies, value propositions and service offerings and make decisions based upon the objectives they wish to achieve.

What sorts of strategies do acquiring retailers have to defend against winbacks and how cost-effective are they?

Mercury is of the view that education is the greatest defence against winbacks. This includes ensuring customers who have chosen to switch have been provided with all of (and the correct) information regarding their specific needs and of being made aware that the losing retailer is likely to call them up to try to retain their business. In addition to ensuring the most competitive offer has been made to a customer at the outset, messaging must also ensure they understand the non-price benefits of remaining a customer of the acquiring retailer rather than being attracted by a save or winback. In some cases, being the cheapest may not be the determining factor – being able to demonstrate value (e.g. via high quality service, offering free power days, offering Airpoints and being able to financially support Starship Childrens hospital) could be more compelling.

Is there a market or regulatory failure preventing acquiring retailers using contractual terms to counter win-backs, given that some retailers are prepared to enforce contracts when customers leave them before the completion of the contract term?

No. All retailers have the ability to introduce contractual terms to support their business strategy. There may be a subsequent business decision made to not enforce these terms. Mercury would note that this can generally occur where customers have entered into a complaint process.

Does early switch notification give an undue advantage to retailers seeking to win-back customers? Does this exist in other markets (e.g. Telco)

Mercury cannot comment on whether this exists in other industries however there is no advantage in receiving early notification of a switch where it relates to win-back customers as the win back actions take place post switch. However, if a customer has been misled by an acquiring retailer, it is in the customers best interests for a more competitive or "right sized" offer to be made to the customer as soon as possible.

Are consumers frequently prompted into making decisions when they switch or switch back that are not in their best interests?

While we do not believe this activity is widespread, Mercury is aware of cases where retailers have made offers to Mercury customers which have not been in the customers best interests. In some cases, the Commerce Commission has opened investigations into this activity and the Electricity Authority has sought clarity and subsequent changes to these customer offerings.

If consumers make mistakes in the 'heat of the moment', is there a way to tell which was intended and which was the error – the switch or the win-back?

Mercury does not believe so. If a mistake is made, it could be at any stage of the process.
Mercury has observed behaviour where customers have switched retailers and when based upon a broad range of services and price, the customer has chosen to return to Mercury as their needs were not being met. Mercury would also highlight that in the past 12 months several customers have switched to providers who offer spot prices. During the recent dry hydrological period, it was observed that a number of these customers transferred either back to Mercury or to a third retailer as the product offering did not suit their needs, while other customers remained with these providers.

Is there any evidence that retailers have engaged systematically in proscribed marketing behaviours?

> Mercury would suggest that where this behaviour has occurred, the Electricity Authority and the Commerce Commission have taken the appropriate action.

Are there regulatory provisions that treat saves and win-backs in a different manner from other acquisition activity in such a way as to constitute a regulatory failure?

> Mercury does not believe this is the case. Retailers engage in acquisition activities based upon their business objectives and strategy. The regulatory provisions currently in place provide flexibility to allow Retailers to make offers that are in the long-term interests of consumers.

What are the implications (if any) for consumers of saves and win-backs?

> Consumers benefit from a highly competitive electricity market. Mercury would also suggest that doing a basic Cost Benefit Analysis on the change could indicate that an individual customer may benefit by a small amount (circa $20 per annum) compared to the much higher benefit currently provided to the market.

Are there are any further issues related to saves and win-backs that we have not considered?

> Mercury believes the NZ electricity market is highly competitive and no intervention is necessary to the regulatory settings. Over the past few years there has been a large increase in the number of retailers operating in the NZ electricity market and business owners/funders would not have put their capital at risk unless they undoubtedly believed that they could build a profitable business. This would suggest that the current regulatory regime allows for new entrant retailing businesses to operate successfully.