



Genesis Energy Limited  
The Genesis Energy Building  
660 Great South Road  
PO Box 17-188  
Greenlane  
Auckland 1051  
New Zealand

T. 09 580 2094

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Market Development Advisory Group

By email: [mdag@ea.govt.nz](mailto:mdag@ea.govt.nz)

## Customer Acquisition, Saves and Win-backs

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Genesis Energy Limited (**Genesis**) welcomes the opportunity to provide a submission to the Market Development Advisory Group (**MDAG**) on the issues paper “Customer Acquisitions, Saves and Win-backs” dated 22 May 2018 (**issues paper**).

Genesis supports a competitive market that benefits consumers and we will continue to compete aggressively in the market utilising the tools made available to us. While we acknowledge that regulated tools may change over time, those changes should only be undertaken based on actual evidence of barriers to entry, rather than on speculation driven by market noise.

There are multiple ways to actively compete for customers in New Zealand, and with competition from over 30 retailers continuing to drive benefits for consumers, we are naturally seeing individual retailers’ competitive strengths come to the fore. Saves and win-backs is one of the regulated levers that is at the disposal of all retailers, often used in conjunction with other tools as part of a competitive market strategy. Now that the current saves and win-backs process has been in place for a few years, we welcome MDAG’s review and assessment of whether there is any potential failure in this area that is limiting competition, or just a failure by some retailers to use the lever effectively.

### **Competitive marketing is not a compelling case for regulatory change**

Genesis considers that any regulation must first and foremost be fit for purpose, be limited in complexity and not subject to continual ‘tweaks’ that drive inefficient compliance activity and increased costs. It is crucial, therefore, that a regulatory problem or market failure is clearly identified before a solution is defined.

While MDAG has identified some possible barriers to entry from saves and win-backs, and some areas where the regulation in this space varies to what is applied to other acquisition activities, Genesis believes there is nothing of substance limiting competition.

Genesis views win-back as enhancing competition by incentivising acquiring retailers to present their best offer up front, knowing they face a competitive threat from the current retailer, and to ensure that they are not misrepresenting the value of their products to customers to entice a switch. For those retailers who may not like what we would view as competitive scrutiny of their offers, we understand the opposition.

### **Efficient regulation for the benefit of consumers**

Although the MDAG issues paper is aimed at defining the problem, which Genesis agrees is necessary before progressing, we also want to comment on the Electricity Authority's (**the Authority**) previous suggestions around sharing of customer data with the market in the win-back process (e.g. credit history, consumption, shape, tenure and how costly they had been to serve). Individual customers can already access their own data, at any time on request, and share that data with third parties, at the customer's discretion.

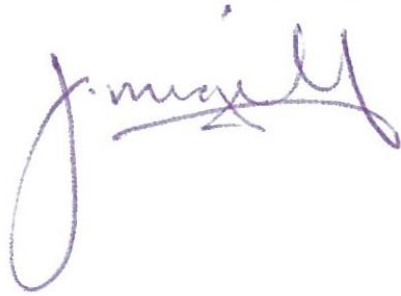
We believe the Authority needs to step back and assess these proposals against their statutory objectives as well as noting the learnings from the post implementation review of the Save Protection Scheme. In doing so, the Authority should share our concern that using customer data in this way could disincentivise investment in innovation, be significantly costly to implement and potentially breach customer privacy rules (unless a customer had expressly permitted this use of their data). Further, we are strongly opposed to rules which add complexity into our interactions with customers, especially when it is unclear how they will stimulate competition.

As always, any type of regulation needs to be carefully considered and thoughtfully implemented. Rules that are not clear, costly to implement or fail to consider the customer experience will have unintended consequences, often to the detriment of the industry and consumers generally. Ultimately, our favoured outcome from the win-back review would be one where regulation permits win-back in its entirety, including reversing the Save Protect rules, or one where the whole activity stopped, potentially through a 'cooling off' period. Endless tweaking is not a preferred option.

Genesis urges the MDAG and the Authority to fully identify their objectives around win-back and be clear what problem needs addressing before progressing to a solution. We trust this is clear in our responses to the consultation questions, included below as Appendix A.

If you would like to discuss any of these matters further, please contact Eleanor Briggs (Group Manager Pricing) by email: [eleanor.briggs@genesisenergy.co.nz](mailto:eleanor.briggs@genesisenergy.co.nz) or by phone: 09 951 9350.

Yours sincerely

A handwritten signature in purple ink, appearing to read 'j. magill', with a large loop on the left side.

James Magill  
Executive General Manager Product Marketing

## Appendix A: Responses to Consultation Questions

| QUESTION   | COMMENT   |
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| <p>Q1: Do some retailers have a distinct win-back advantage which others do not have and cannot ever have?</p> <ul style="list-style-type: none"> <li>i. What sorts of strategies do acquiring retailers have to defend against win-backs and how cost-effective are they?</li> <li>ii. 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?</li> <li>iii. Does early switch notification give an undue advantage to retailers seeking to win-back customers?</li> </ul> | <p>All retailers, irrespective of size, have the opportunity to participate in saves and win-back. As the authors of the issues paper note, the industry data reveals a number of smaller retailers do actively win-back their customers and for the small retailers that don't, this has not limited their ability to grow market share. Genesis believes the best defence against win-back is putting the best offer up-front in the sales process. The best offer may not be solely about price, but about the proposition (e.g. service, access to energy management tools) and how it best meets that individual customer's needs.</p> <p>Further, Genesis considers the technical steps of switching an ICP to be quite separate to the customer's experience when selecting an electricity retailer. A switch notification is sent by the acquiring retailer to initiate a change of ownership of an ICP and the losing retailer processes this switch so that wholesale and network costs can be assigned to the relevant party. A customer can be provided with an offer to stay with their existing retailer irrespective of whether the switch is in progress or completed. Therefore, to a customer save and win-back are the same and any distinction between the two is likely to be nonsensical to them. Consequently, we are unclear as to what is referred to as an "early switch notification" and why this, specifically, would give an advantage to some retailers.</p> |
| <p>Q2: Are consumers frequently prompted into making decisions when they switch or switch back that are not in their best interests?</p>   | <p>The only way to tell if a customer made a mistake in the 'heat of the moment' is to speak directly with the customer, whether this be through win-back or through the acquiring</p>  |

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| <ul style="list-style-type: none"> <li>i. 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?</li> <li>ii. Is there any evidence that retailers have engaged systematically in proscribed marketing behaviours?</li> <li>iii. 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?</li> <li>iv. What are the implications (if any) for consumers of saves and win-backs?</li> </ul> | <p>retailer re-contacting the customer post win-back. Therefore, win-back is providing a key source of discipline on competitive offers and its removal could risk more switching being predicated on incorrect or misleading information to the detriment of customers.</p> <p>In this competitive market, customers benefit from enhanced offers and prices during the win-back process in much the same way as acquisitions. The presence of win-back and save activity therefore ultimately drives a favourable outcome for consumers. Genesis has not seen any evidence of anti-competitive behaviour that would negatively impact customers.</p>   |
| <p>Q3: Are there any further issues related to saves and win-backs that we have not considered?</p>  | <p>Genesis supports the findings of the Post Implementation Review of the Save Protection Scheme that concluded it had largely been ineffective. We further believe that the scheme has added confusion for customers due to the false distinction between save and win-back, which only refers to timings in the ICP switching process and is meaningless to a customer. Consequently, we now have different rules for customers depending on whether they have gas or electricity driving complexity and reducing transparency when we communicate with customers. This can be further complicated if customers also have telecommunications services or bundled consumer electronics with their retailer. Given the findings and our own observations we believe this Scheme should be removed for the benefit of the industry and customers.</p> |