

14th August 2018

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Cross Submission - Customer Acquisition, Saves and Win-backs Issues Paper

Dear James,

1. Vocus welcomes the opportunity to comment on the submissions of other respondents.
2. Despite having considered the submissions of other parties, including those from incumbent retailers, we continue to strongly hold the view that regulatory and market failures do exist, and that a moratorium on all save and win back activity is the best solution to these failures.
3. Vocus would like to reiterate its previous recommendations, as outlined in Sections 24 – 31 of our original submission, which is that:
 - a. The Authority should regulate withdrawal activity
 - b. The Authority should investigate pricing behaviour, with a focus to determine whether there is a high spread in pricing between switchers and non-switchers, resulting in a “legacy incumbent premium” for non-switchers.
 - c. The Authority should regulate early-life win-back activity.
4. We respond to specific commentary from other respondents in the table below

| RESPONDANT(S) | COMMENT | RESPONSE |
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| Genesis Energy | “All retailers, irrespective of size, have the opportunity to participate in saves and win-back.” ¹ | Vocus believes it is important to keep the context of current market distribution in mind when considering the view that all retailers “have the opportunity” to participate in saves and win-backs. |
| Nova | “An early switch notification enables retailers to respond by seeking to retain customers. This facility is available to all participating traders” ² | <u>A small number of incumbent retailers retain 89% of market share,</u> and as such these retailers have an enhanced ability to compete against the small segment of switching customers. |
| Mercury | “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” ³ | New entrant retailers do not have the large “non-switcher” customer bases which provides a financial advantage |

¹ Genesis Energy Submission, Appendix A, Response to Q1, First Paragraph

² Nova Submission, Table Responding to MDAG Questions, Response to Q1.3

³ Mercury Submission, Page 3, First Question and Response

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| | | <p>when competing on the “switching” segment.</p> <p>As such, all retailers do not have the ability to participate equally in saves and win-backs, and some retailers have distinct advantages when engaging in save and win-back activity.</p> |
| Genesis Energy | <p>“... to a customer save and win-back are the same and any distinction between the two is likely to be nonsensical to them.”⁴</p> | <p>We agree, as addressed in our original submission it is not sensible to try and draw a distinction between saves and win-backs</p> |
| Meridian/Powershop | <p>“From Meridian’s/Powershop’s standpoint, win-backs are clearly distinguishable from saves and the Authority’s original reasons for excluding win-backs from the saves protection scheme remain valid”.⁵</p> <p>“... We share the MDAG’s view that the deferred timeframes for win-backs distinguishes these activities from saves and that, as a consequence, there is no apparent advantage for losing retailers”⁶</p> | <p>Vocus disagrees with this view.</p> <p>As noted by Genesis itself above, and as outlined in some detail in Section 15 of our original submission, saves and win-backs are indistinguishable to the customer.</p> <p>Briefly reiterating the points raised in our submission:</p> <ul style="list-style-type: none"> • <u>The switching process is invisible to customers</u> • <u>Switch completion is meaningless to a customer until the first bill is sent</u> • <u>Regulated saves are easily converted to unregulated win-backs</u> |
| Genesis Energy | <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 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”⁷</p> | <p>Vocus disagrees with this view.</p> <p><u>In most markets, the losing retailer would not receive any notification</u> that a customer had changed service provider, and there has been no evidence presented by the retailers presenting these views that markets either having a prohibition on win-backs or no ability to identify customers to win-back are more prone to misleading information being presented to customers.</p> |
| Meridian/Powershop | <p>“Consistent with past submissions, we remain of the view that more permissible arrangements, pre the</p> | <p>Monitoring the sales behaviour of other retailers could also be monitored through other methods,</p> |

⁴ Genesis Energy Submission, Appendix A, Response to Q1, Second Paragraph

⁵ Meridian/Powershop Submission, Paragraph Six Page 1

⁶ Meridian/Powershop Submission, Appendix A, Response to Q1(iii)

⁷ Genesis Energy Submission, Appendix A, Response to Q2, First Paragraph

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| | <p>saves protection scheme, enabled retailers to discuss / clarify alternative offers – providing, in doing so, an important “check” on retailer practices. Consideration of this is needed in assessing consumer impacts overall.”⁸</p> | <p>particularly if one retailer had suspicions of proscribed behaviour being undertaken by another retailer, for example by a process equivalent to “mystery shopping”. Also the Utilities Disputes and the Commerce Commission can act.</p> |
| <p>Genesis Energy</p> | <p>“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...”⁹</p> | <p>Vocus disagrees with this view.</p> <p>As Genesis itself noted in its own commentary, some customers will have non-Gas services such as telecommunication services with their electricity retailer.</p> <p>There are already different rules in relation to saves and win-backs between telecommunications and electricity segments.</p> <p>Additionally, the gas market is significantly smaller than the electricity market, with the gas industry having only 283,227 ICPs¹⁰ compared to the electricity markets 2,122,438 ICPs¹¹</p> <p>We do not agree it is reasonable to rely on a much smaller market to justify a lack of regulation on the larger electricity market.</p> <p>It is worth considering that there is already a range of different regulatory frameworks and rules in different markets, which is a reality any participant accepts and must manage when they choose to operate simultaneously in two or more independent markets and this should not preclude a regulator in one market from addressing issues affecting their market.</p> |
| <p>Mercury</p> | <p>“Mercury cannot comment on whether [early switch notification gives an undue advantage] in other industries however there is no advantage in receiving early notification of a switch where it relates to win-back customers</p> | <p>Vocus disagrees with the view that win-back activity is unrelated to switch notification.</p> <p>This view could only be sustainable in a situation where there was a regulatory prohibition against the use of switching</p> |

⁸ Meridian/Powershop Submission, Appendix A, Response to Q2(iv)

⁹ Genesis Energy Submission, Appendix A, Response to Q3

¹⁰ GIC Statistics – July 18 (<http://gasindustry.co.nz/work-programmes/switching-and-registry/current-arrangements/reports/>)

¹¹ Electricity Registry Statistics – July 18 (www.electricityregistry.co.nz – under Inquiries > Statistics)

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| | <p>as the win back actions take place post switch.”¹²</p> | <p>information at all in business decision making for saves and win-backs.</p> <p>As we addressed in our previous submission (and as noted earlier, as identified by Genesis Energy) there is no clear distinction between a save and win-back.</p> <p>The current regulatory framework <u>allows an incumbent retailer to easily convert a save into a win-back</u> by completing a switch and then withdrawing it. As such, there is no reason to believe the win-backs are predominantly driven by anything other than switching activity.</p> <p>Further, the fact that post-switch withdrawals increased as pre-switch withdrawals decreased only reinforces the view that one was exchanged for the other and both were driven by switching notifications.</p> |
| <p>Entrust</p> | <p>“The Issues Paper asserts the sort of price discrimination we are seeing ‘can be beneficial for consumers overall if customers who pay lower prices are, on average, more price sensitive than those who pay higher prices’.</p> <p>If the Government wanted to downplay problems in the petrol industry it could, similarly, have suggested Kapiti Coast motorists might be more price sensitive than Wellingtonian motorists.</p> <p>Over-representation of low income and elderly consumers in the “stayer” category makes the suggestion “stayers” are less price sensitive implausible. The Issues Paper’s position would basically require a ‘reverse Robin Hood’ and for robbing the poor to give to the rich to be desirable and efficient. The opposite can be reasonably expected.</p> <p>A robust and inquisitorial review would recognise that whether the price discrimination is beneficial or exploitive and inefficient is critical to the problem definition, and test this with quantified evidence.¹³</p> | <p>Vocus strongly agrees with Entrust’s position, which clearly identifies some of the concerns raised by Vocus and others on the direction and potential underlying biases of the original MDAG paper.</p> |

¹² Mercury Submission, Page 3, Fourth Question and Response

¹³ Entrust Submission, Section entitled “The sort of price discrimination we are seeing isn’t efficient or beneficial”

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| Entrust | <p>“Entrust would like to see the next stage of the S&W review answer the following questions:</p> <ul style="list-style-type: none"> • What is the level of price discrimination by incumbent retailers between “stayers” and “switchers”? • What evidence is there about the price elasticity (“sensitivity”) of demand of “stayers” and “switchers” and what does this mean for the “efficient” level (and direction) of price discrimination? How does the make-up of stayers (predominantly low income and elderly) impact on this? • What level of excess returns have incumbent retailers been able to extract from “stayers”? How has this money been used? • Have incumbent retailers’ responses to competition for “switchers” resulted in higher prices to “stayers” to compensate for loss in revenue? • Was the Electricity Authority correct when it stated the switching process gave incumbent retailers an undue informational advantage for saves and early winbacks?”¹⁴ | <p>Vocus agrees with the next steps identified by Entrust, which align with our own recommendations.</p> |
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5. Vocus looks forward to engaging further with MDAG and the Electricity Authority on these matters.

We do however note that the most recent available project milestones from May 2018 do not have any specified end date for final analysis of submissions or suggested next steps to be proposed to the Electricity Authority board.

Given the potentially significant impacts of current market arrangements, we ask that MDAG urgently move to publish a final timeline for completion of this review and that the Authority move to the next stage of consulting on any intended regulatory changes, or further data collection activities, as soon as practical.

Regards,

Johnathan Eele
General Manager Commercial and Regulatory
Vocus Group

¹⁴ Entrust submission, Section entitled “Questions that should be answered to establish the extent of the problem”