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14 August 2018

MDAG Chair
c/- Electricity Authority
P O Box 10041
Wellington 6143

By email: mdag@ea.govt.nz

Dear James,

Re: Cross submission on Customer acquisition, saves and win-backs Draft issues paper

We commend your decision to request cross submissions on MDAG's issues paper considering the question of whether current "win-back" practices are to be considered an issue of market failure or what options retailers have to counter win-backs.

We note that submissions on the MDAG paper are split in exactly the same way as in previous consultations on this topic. Entrust[1] highlight this in their submission:

> *"There is a clear dividing line between incumbent retailers and new entrant retailers on this topic.*
>
> *This is evident from previous Electricity Authority consultation on S&W.*
>
> *All incumbent retailers opposed restrictions on S&W, while all entrant retailers supported restrictions. While these positions reflect vested interests, the interests of entrant retailers, who would benefit from a more competitive market, are most closely aligned with consumers and households."*

Support

Pioneer supports the submissions by Ecotricity, Electric Kiwi, Entrust, Flick, FutureEnergy, Pulse and Vocus Group.

- Entrust is in a unique position – not being a retailer with vested interests but a stakeholder with a pure focus on electricity consumers. Entrust clearly summarise the issue[2]:

  "Incumbent electricity retailers are successfully price discriminating between competitive customers (so called "switchers") and their virtual monopoly customers ("stayers") within each network region they are the incumbent in. The incumbent retailers have been successful at perverting normal workably competitive market outcomes to stop consumers benefiting from competition unless they seek to switch retailer.

  The size of this problem could be very substantial for consumers. The S&W Issues Paper indicates that over 40% of residential consumers have never switched."

[1] https://www.ea.govt.nz/dmsdocument/23819 page 1

[2] Ibid page 2

- Flick's reference to the *'club of incumbent participants'* reflects Pioneer's own observations in its submission about the fixed-price-variable-volume market. Flick's view below of competition through innovative business models is also supported by evidence in the retail market over the last 5 years

  "Effective competition and eliminating barriers to entry needs to be a priority if New Zealand is to take advantage of new technology and changing economics in this sector[3]. This disruption will be led by new entrants with innovative business models, as incumbents simply do not have the incentives to disrupt themselves. The rules of this industry need to evolve beyond the set developed by the club of incumbent participants so that there is a level playing field for those entering and expanding in this market".

- FutureEnergy's submission highlights further retail market evidence, referenced from the Authority's own recent report, that confirms that the total amount available for consumers to save in the New Zealand electricity market has increased in a year by +28%. We agree with FutureEnergy that this increase is not indicative of a competitive market.

- Pulse in its letter of 30 April 2018 also similarly reflects evidence in the retail market that the primary retention strategy from incumbents has been win-backs, not differentiated offers as suggested by Genesis in its submission;

  "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."

- Pioneer also supports the next steps recommended by Pulse in their letter of 27 March 2018:

  "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."

Pioneer supports these submitters as their collective arguments are based on actual evidence in the retail market that win-back behaviours are largely reflective of the market power incumbents currently enjoy. Pioneer's own submission points out evidence of the lack of wholesale market liquidity and of pricing of FPVV contracts below costs[4], where market power is also leading to market failure.

[3] As Transpower recently articulated in the White Paper 'Te Mauri Hiko, Energy Futures' new technology is changing the nature and economics of the electricity industry.

[4] Energy News, 13 August 2018 Contact Energy Quote: C&I prices have trended to ASX and have "no margin".

Do not support

Pioneer disagrees with submissions supporting the status quo (Genesis, Mercury, Trustpower and Nova).

- Mercury has introduced a 'second strategy' for customer acquisitions that in our view is more reflective of their focus on competing with retail start-ups, rather than providing value to all their customers as noted by Flick in its submission – emphasis added below[5].

  "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****."*

  This claim is unsubstantiated speculation not supported by any evidence in Mercury's submission.

- Pioneer disagrees with Mercury and Genesis submissions that winbacks are supported by a range of different retail service offerings. Evidence from a number of smaller retailers support our view that win-backs are for the most part achieved by price discounts and one-off rebate inducements. Flick and others have made the point in their submissions that these same price inducements are not being made to the majority of the incumbents' customers.

However, we do agree with Genesis that the Authority's proposal (in its post implementation review report) to make more information available is not appropriate. We also agree with Genesis' second option in the following extract from their submission[6] (emphasis added). This is equivalent to banning win-backs for a period – 60 days is a common recommendation.

> *"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."*

Suggested further work

A number of submissions have recommended the MDAG (Electricity Authority) undertake further work, including:

- Pioneer, Electric Kiwi and Entrust call for the Authority to use its information gathering powers to:

  - *"measure the extent to which "stayers" are missing out on the benefits of competition by using its information gathering powers to measure the widening gap between the prices for most of the incumbent retailers' respective customer bases (the "stayers" prices) compared to acquisition and saves/win-back prices (the "switchers" prices)"* [7]

[5] https://www.ea.govt.nz/dmsdocument/23821 page 2

[6] https://www.ea.govt.nz/dmsdocument/23822 page 2

[7] https://www.ea.govt.nz/dmsdocument/23832 Electric Kiwi letter 27 March 2018

- assess the impact of non-price attributes to a consumer's decision to be 'won-back' by the losing retailer (raised in the submissions by Mercury and Genesis[8])

- Compare the win-back price offerings with the Authority's prior FPVV contract pricing review findings to ascertain whether both offerings reflect fair pricing against ASX hedge offers and average retail service costs.

- Investigate the report by the OECD report on price discrimination referred to by Entrust[9] which looks insightful.

- Review the conclusions and recommendations of the final report of the ACCC for its Electricity Pricing Inquiry - *Restoring electricity affordability and Australia's competitive advantage*, June 2018. Electric Kiwi's letter of 17 July 2018 includes the following observations:

  "The ACCC report contains information and material directly relevant to the MDAG review, and the specification of the problem definition. The ACCC report also details various internal documents the ACCC obtained from incumbent retailers, as part of its investigation, relevant to the MDAG review. This information would be helpful for ensuring the MDAG review is evidence-based, and could be obtained using the Electricity Authority's information gathering powers.

  The ACCC has recommended the AER continue to explore ways of improving pricing transparency, including increasing the visibility of save and win-back offers, as well as recommending 'losing' retailers NOT be notified in advance of the transfer process being completed."

There is substantial evidence in New Zealand, and from overseas, that this 'last right of refusal' win-back offer from losing retailers is not in the best interests of **all** electricity consumers.

Pioneer submits that the MDAG should in the near term recommend to the Authority that an urgent Code amendment be implemented to place a 60-day prohibition period for the losing retailer to contact a customer that has decided to switch.

We appreciate the opportunity to submit on these important matters for smaller market investors such as Pioneer and its partner retail businesses.

Yours truly

Fraser Jonker
Chief Executive

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8 https://www.ea.govt.nz/dmsdocument/23821 page 1 paragraphs 4 & 5 and https://www.ea.govt.nz/dmsdocument/23822 answer to question 1

9 https://www.ea.govt.nz/dmsdocument/23819