20 August 2018

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cc Miriam R Dean CNZM QC
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Expert Advisory Panel

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Dear James,

All the evidence supports the view that there is a major 'retail incumbency problem' and its costing households nearly $400m per annum

Introduction – submissions are clear – it's time to put an axe to the 'loyalty' tax

Households are paying too much for electricity. The Electricity Authority's own data shows consumers are being penalised for being loyal to incumbent retailers by over $370m in 2017 alone.[1]

The situation is getting worse. The excess or monopoly rents households are paying rose by 28% between 2016 and 2017 alone. This equates to over $80m extra of householders' money going into the pockets of the big retailers.[2]

Electric Kiwi agrees with Energyclubnz "In a highly competitive market absolute savings should be reducing and not increasing" and "urgent action needs to be taken to address a market imbalance of regulation that appears to be protecting the profitability of the bigger players".[3] The monopoly rents incumbent retailers are extracting from consumers wouldn't be sustainable if the retail market was well-functioning.

Genesis wants acquiring retailers to present their best offer up front.[4] What is good for the goose, is good for the gander. Consumers should be able to expect their retailer to make sure they are on the best tariff option available and assist them to move to the most appropriate tariff.

Electric Kiwi thinks it's time to axe the tax.

The only submitters that don't agree are incumbent retailers who would lose out financially. They would earn less excessive profits and this money would no longer be available to bankroll or subsidise their competitive market activities.

[1] Energyclubnz, Consultation: Saves & Win-backs, 28 June 2018.
[2] Energyclubnz, Consultation: Saves & Win-backs, 28 June 2018.
[3] Energyclubnz, Consultation: Saves & Win-backs, 28 June 2018.
[4] Genesis, Customer Acquisition, Saves and Win-backs, 29 June 2018.

Change is needed to ensure all consumers benefit from competition and get the best possible deal on offer from their retailer. This would make electricity more affordable; particularly for low income and elderly consumers.

Meridian has been vocal in Australia that "While retail competition has delivered significant benefits, too few customers are experiencing these benefits" with many customers incurring a "loyalty tax ... At a time of increasing affordability issues, such behaviour is unacceptable in an essential service market"[5] (see Appendix A). Using its Powershop brand, Meridian has complained about other retailers bullying and ripping off their customers.[6] (See Appendix B)

What isn't acceptable in Australia shouldn't be tolerated in New Zealand.

Meridian, as a majority New Zealand and tax-payer owned company, which purports to place importance on social responsibility, should put New Zealanders first. Instead Meridian is advocating for Australian consumers whilst defending the same practises in New Zealand to the detriment of Kiwis.

Summary of Electric Kiwi's cross-submission – finding agreement in the saves and winbacks debate

- **In well-functioning markets competition benefits everyone:** Electric Kiwi agrees with Genesis that competition is enhanced by incentivising retailers to present their best offer up front. What we don't understand is why Genesis referred ONLY to acquiring retailers. In a well-functioning market, consumers are entitled to competitive pricing regardless of whether or not they consider switching suppliers.

- **A clear problem definition is emerging from submissions:** Electric Kiwi agrees with Genesis about the need for "... MDAG and the Authority to ... be clear what problem needs addressing".[7] There is an emerging consensus amongst Electric Kiwi, the other entrant retailers (including Meridian and Powershop in Australia), Entrust and the ACCC on the nature of the 'retail incumbency problem' associated with acquisitions, saves and winbacks.

- **Meridian has articulated the problem well, despite its most recent submission:** Meridian is saying different things depending on whether it is wearing its New Zealand and incumbent hat or Australian and entrant hat.

  Despite these contradictions, Meridian's 100% owned Australian subsidiaries have articulated the problem well.

  Electric Kiwi agrees with Meridian that "While retail competition has delivered significant benefits, too few customers are experiencing these benefits" with many customers incurring a "loyalty tax ... At a time of increasing affordability issues, such behaviour is unacceptable in an essential service market".[8]

[5] Meridian, Submission to the Finkel Review, 2 March 2017. Appendix A
[6] Powershop, Submission to the Panel for the Review of Electricity and Gas Retail Markets in Victoria, 20 February 2017. Appendix B
[7] Genesis, Customer Acquisition, Saves and Win-backs, 29 June 2018.
[8] Meridian, Submission to the Finkel Review, 2 March 2017.

Similarly, Powershop has submitted "The business model of [incumbent] retailers relies [sic] on charging a loyalty tax to customers who fail to switch and utilising the proceeds of this loyalty tax to subsidise their apparently competitive market offers".[9]

Powershop is of the view that incumbent retailers "… have ripping customers off" at the "core" of their business plans: "Most Australian retailers operate a loyalty tax – the most loyal customers get the worst deal" and that "if you've been with a provider for a number of years, it's likely you're paying more than you should".[10]

- **Ensuring regulatory decisions are evidence-based:** Electric Kiwi agrees with Genesis about the need for evidence. A focus of our submissions has been on the information MDAG need to determine the scale of the problem. Entrust (on exploitive price discrimination and partitioning strategies) and Powershop (on calculation of the "loyalty tax") submissions also provide useful guidance on analysis MDAG should undertake.

  The Electricity Authority has the information gathering powers to obtain this information, and replicate the analysis the ACCC has undertaken, to ensure the Saves & Winbacks review is properly evidence-based.

There is a need for entrant retailer concerns to be heard and listened to if retail competition problems are to be addressed

The level of entrant retailer engagement on Saves & Winbacks reflects the importance of this issue to the successful promotion of retail competition. We share Flick's sentiments: "As an independent, new entrant to the market we are particularly interested in the Electricity Authority's work to encourage competition and remove barriers to entry and growth - rules regarding customer acquisition and transfer processes are integral to these aims".[11]

The concern we previously raised, that MDAG hadn't appeared to have given regard to or even acknowledge our views, is a concern shared with other entrant retailers who have attempted to engage with MDAG. MDAG does not need to agree with entrant retailer views, but if the advisory group doesn't it should explain why.

Ecotricity submitted that while they "appreciated the opportunity to meet … MDAG … in March we are disappointed that the issues paper does not acknowledge this discussion or the information Ecotricity and other entrant retailers provided at that meeting or address the issues that we raised".[12] Flick, similarly, "note that the MDAG is dominated by incumbent perspectives and that recent submissions from new entrants have been given limited regard".[13]

We previously expressed concern the MDAG Issues Paper represents a backward step compared to the Electricity Authority's previous thinking, and its Post Implementation Review. This may reflect, as Flick alludes to, "the heavy influence of incumbent players in an area where there is an obvious vested interest in maintaining the status quo".[14]

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[9] Powershop, Submission to the Panel for the Review of Electricity and Gas Retail Markets in Victoria, 20 February 2017.
[10] http://purpose.do/the-power-company-that-encourages-you-to-buy-less-of-what-it-sells/
[11] Flick, Customer acquisitions, saves and win-backs: Issues Paper, 28 June 2018.
[12] Ecotricity, Re: Customer acquisition, saves and win-backs – Draft issues paper, undated, page 1.
[13] Flick, Customer acquisitions, saves, win-backs: Issues Paper, 28 June 2018, page 2.
[14] Flick, Customer acquisitions, saves, win-backs: Issues Paper, 28 June 2018, page 2.

It would not be the first time use of Advisory Groups has been harmed by the makeup of the group. The conclusions of the Transmission Pricing Advisory Group, for example, were clearly divided between South Island generator and consumer interests, with the majority view reflecting that the Group was dominated by South Island generation interests.[15] Flick has suggested the advisory group problems may require the Electricity Authority to take over the review process, limiting MDAG to "technical and operational input".[16]

The retail incumbency problem is taking too long to address

Electric Kiwi agrees with Ecotricity that "Time is of the Essence – this has been a known issue for over 3 YEARS".[17]

We similarly noted "at the current rate it will take two or three years for the EA to get something done, by which point the amount of overpayment will exceed a billion dollars."[18] The cost of delay to consumers needs to be taken into account. It is difficult to see that many of the Electricity Authority's number 1 priorities are costing consumers nearly $400m per annum.[19] We are concerned MDAG is so far off course with its problem definition it will substantially delay the retail incumbency problem being resolved.

Electric Kiwi does not believe the Saves & Winbacks Review is being given the prioritisation it warrants.[20] It should be ranked one of the top priority 1 projects, not a priority 2, and needs a clear project plan and timetable for completion. All the Electricity Authority has committed to is to "Decide response to MDAG recommendations on saves protection scheme" by the end of 2018/19. This isn't good enough. The entire ACCC electricity affordability review, which included saves and winbacks, only took 15 months.

The current cross-submission process is symptomatic of the inefficiency and unnecessary delays in the review process. The Electricity Authority should have included a cross-submission round at the time it issued the MDAG Issues Paper. This is standard (good) regulatory practice. If this had happened the cross-submission process would have been completed prior to the date the Electricity Authority released submissions and called for cross-submissions.

Yes, there is a need for evidence-based decision-making. The evidence presented indicates a major problem

Electric Kiwi agrees with Genesis that there is a need for "… MDAG and the Authority to … be clear what problem needs addressing before progressing to a solution". [21] This has been the focus of our submissions.

The incumbent retailers have the information needed for MDAG and the Electricity Authority to determine the extent to which there is a problem. We would like to understand their justification and,

[15] Vector, Cross-submission to the Electricity Authority on the Transmission Pricing Methodology: Issues and proposals, 28 March 2013, paragraph 49.
[16] Flick, Customer acquisitions, saves, win-backs: Issues Paper, 28 June 2018, page 2.
[17] Ecotricity, Re: Customer acquisition, saves and win-backs – Draft issues paper, undated, page 4.
[18] Kathryn Ryan interview with Luke Blincoe (CEO, Electric Kiwi), Carl Hansen (CEO, Electricity Authority) and Sue Chetwin (CEO, Consumer NZ), Nine to Noon – Early, 26 June 2018.
[19] Energyclubnz, Consultation: Saves & Win-backs, 28 June 2018.
[20] https://www.ea.govt.nz/about-us/corporate-projects/201819-planning-and-reporting/implementation/work-programme/
[21] Genesis, Customer Acquisition, Saves and Win-backs, 29 June 2018.

noting Genesis' comments, evidence in support of their discriminatory conduct and pricing between stayers and switchers. Incumbent retailer submissions have been entirely silent on this point.

Various of the entrant retailer submissions included evidence of a problem or guidance on the nature of the evidence MDAG should be seeking. Energyclubnz, for example, noted "recently released Electricity Authority data (Residential Savings, June 2018) confirms that the total amount available for consumers to save in the New Zealand electricity market has increased in a year by +28%. Effectively these increased potential savings indicate an increased Industry profit pool, versus the previous year, which has seen significant 'hidden' incumbent price increases to their non-contracted customer bases".[22]

Likewise, the Entrust submission helpfully pointed out that the incumbent retailer were engaging in what the OECD has labelled "partitioning strategies" and "exploitation of naïve [loyal or "stayer"] consumers",[23] as well as the OECD guidance on "How to analyse allegations of exploitive price discrimination and partitioning strategies that facilitate it".[24] This would put MDAG and the Electricity Authority on far stronger ground than simply relying on assertions price discrimination could be beneficial.[25] We fully expect evidence of efficient Ramsey Pricing would confirm the opposite.

The majority of submissions, and the ACCC, provide clear direction MDAG got the problem definition wrong

Our supplementary submission detailed that the ACCC's articulation of the problems with customer acquisition, saves and winbacks matches and builds on our submission to the Electricity Authority and MDAG.[26] We detailed the ACCC's key findings from its electricity affordability report and how it matched the problems faced in New Zealand.

The substantive majority of submissions (9 out of 13) in response to the Saves & Winbacks Issues Paper, as well as the ACCC final report on electricity affordability, all confirm and support the problem definition detailed in our submission.

The majority of submissions (seven from entrant retailers[27]) recognised there are serious retail incumbency problems, associated with acquisition, saves and winback activity. While the seven entrant retailers are small in size, with a total of 6.8% retail market share, combined we represent over 90% of the entrant retailer market share[28] and are therefore well placed to comment on retail market problems.

In summary:

- **The electricity retail market is NOT well-functioning:** "In a well-functioning market all consumers benefit from competition regardless of whether they remain loyal to their supplier or switch."

[22] Energyclubnz, Consultation: Saves & Win-backs, 28 June 2018.
[23] Entrust, A large number of households are missing out on the benefits of competition, 29 June 2019.
[24] OECD, Price discrimination, Background note by the Secretariat, 29-30 November 2016, section 4.4.
[25] MDAG, Customer acquisition, saves and win-backs – Issues paper, 22 May 2018, paragraph 4.3.11.
[26] Electric Kiwi, Supplementary submission on the "Customer acquisition, saves and win-backs – Issues Paper": helpful guidance from the ACCC, 17 July 2018.
[27] Excluding Powershop's earlier submissions in New Zealand and Australia (Powershop is an entrant retailer in the Australian retail market).
[28] https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?_si=tg|market-structure,v|3

(Entrust[29]) "The incumbent retailers are suppressing competition as they are only competing in the 9% of the market representing Trader switches." (Energyclubnz[30])

- **There is a major 'retail incumbency problem':** "The ability of incumbents to exploit the current scheme, enabling winback levels unheard of in other industries (up to 40%), and as a result removing the benefit of competitive pressure on incumbents to right rate their existing customers – "pre-emptively offer their existing customers a better deal", a key objective of the saves and winbacks scheme." (Vocus[31])

- **A large group of incumbent retailer customers are missing out on the benefits of competition (incur monopoly pricing):** "In addition to this 42%, there is a group of customers that have switched only once or twice in the past two decades. These 'stayers' are a large part of the residential market and by definition are with the incumbent retailers. This is a significant pseudo-monopoly uncompetitive base which incumbent retailers can leverage off. This monopoly base is not available to entrant retailers. The tariffs paid by stayers are cross subsidising new / bespoke tariffs and the one-off incentive payments offered by incumbent retailers to win-back switchers." (Ecotricity[32])

- **Incumbent retailers have asymmetric advantages:** "The customer transfer process favours incumbents because of this combination of factors: ● A limited proportion of the market is switching - As highlighted in your issues paper about 40% of ICP's have never switched and a further 31% of customer have a less than 0.29 probability of switching annually; ● Search costs are high compared to margin (for pure retail); ● Contract lock-in creates a further barrier to customers switching; ● Incumbent (integrated) players cross- subsidise and price discriminate across their customer base; ● The industry rules create advantages for the outgoing retailer who holds and can use customer information" (Flick[33])

- **The incumbent retailers are able to segment the market into competitive and non-competitive (pseudo monopoly) categories:** "Incumbent retailers are using market partitioning to exploit their virtual monopoly customer bases." (Entrust[34])

- **Incumbent retailers are able to exploit information asymmetries:** "Incumbent retailers are highly incentivised to maximise the number of residential customers that do not switch as these stayers are unaware of any competitive pricing offered by their retailer, or other retailers, and form a significant predictable cashflow." (Ecotricity[35])

- **Incumbent retailers are exploiting their loyal or "stayer" customer bases:** "The Electricity Authority is evidently inappropriately comfortable with high levels of price discrimination in the market. ... Those customers who are currently paying significantly more would obviously be better off by paying less (for the 40% of customers that have never switched this will equate to about $300M annually). There is also plenty of evidence that those that can least afford it are often paying the highest prices and are unable to switch provider." (Flick[36])

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[29] Entrust, A large number of households are missing out on the benefits of competition, 29 June 2019.
[30] Energyclubnz, Consultation: Saves & Win-backs, 28 June 2018.
[31] Vocus Group, Submission on Customer Acquisition, Saves and Win-backs – Draft Issues Paper, 29 June 2018.
[32] Ecotricity, Re: Customer acquisition, saves and win-backs – Draft issues paper, undated.
[33] Flick, Customer acquisitions, saves and win-backs: Issues Paper, 28 June 2018.
[34] Entrust, A large number of households are missing out on the benefits of competition, 29 June 2019.
[35] Ecotricity, Re: Customer acquisition, saves and win-backs – Draft issues paper, undated.
[36] Flick, Customer acquisitions, saves and win-backs: Issues Paper, 28 June 2018.

- **The price discrimination is inefficient and harmful:** "The sort of price discrimination we are seeing isn't efficient or beneficial … Over-representation of low income and elderly consumers in the "stayer" category makes the suggestion "stayers" are less price sensitive implausible." (Entrust[37])

- **There is a risk that monopoly rents which incumbent retailers obtain from "stayers" are being used to predatory price or subsidise the prices for "switchers, just like they are in Australia:** "the current design of the customer transfer process … provides a mechanism to price discriminate and predate competition". (Flick[38]) "... we believe that these win-back rates could actually be 'loss leading', when taking into account the average cost of servicing an electricity customer from the financial reports of the major retailers and could potentially be deemed to be 'Predatory Pricing'." (Energyclubnz[39]) " … many of the on-the-switch "win-back" prices would not fairly reflect Gentailer investment costs and supply risks. This very same issue was raised with the Authority in the FPVV tender market and their investigation showed more than 12% of FPVV term contracts were priced below the prevailing wholesale market hedge prices. As "win-back" prices make up about 12% of all retail market prices, our question is whether these same market pricing behaviours are also happening in the most contestable segment of the mass market?" (Pioneer[40])

- **The 'retail incumbency problem' is getting worse:** "… the recent issue of the 2017 Electricity Authority market 'savings' data … shows that the potential savings for consumers has increased by over $80 million. In a highly competitive market absolute savings should be reducing and not increasing." (Energyclubnz[41])

The incumbent retailers failed to provide any evidence, or sound basis, for concluding there isn't a major problem

None of the four incumbent retailer submissions provided evidence to support MDAG's views, or their own assertions that there isn't a problem to address.

We found it curious Meridian made a 'joint' submission of its two retail brands (Meridian and Powershop) claiming there wasn't a problem. This is certainly inconsistent with Powershop's previous submissions, and both Meridian and Powershop's submissions in Australia.

The comment from Genesis that "… views win-back as enhancing competition by incentivising acquiring retailers to present their best offer up front …"[42] was telling and reflected a lack of self-awareness of the problem they are contributing to. energyclubnz provided an example of where it took a second 'last resort' counter offer before Genesis provided the customer its "best offer". The clear point we made in our submission is that loyal customers or "stayers" are missing out on the benefits of competition because incumbent retailers DO NOT "present their best offer up front". The incumbent retailers instead hold back their best offers until a customer initiates the switch process at which time the incumbent engages in aggressive saves and winback activity at which time the "best offer" if revealed.

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[37] Entrust, A large number of households are missing out on the benefits of competition, 29 June 2019.
[38] Flick, Customer acquisitions, saves and win-backs: Issues Paper, 28 June 2018.
[39] Energyclubnz, Consultation: Saves & Win-backs, 28 June 2018.
[40] Pioneer Energy, Re: Customer acquisition, saves and win-backs – Draft issues paper, 29 June 2018.
[41] Energyclubnz, Consultation: Saves & Win-backs, 28 June 2018.
[42] Genesis, Customer Acquisition, Saves and Win-backs, 29 June 2018.

In responding to incumbent retailer submissions, we have endeavoured to avoid red-herrings and other spurious content. Mercury's claim it "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 ..."[43] is a case in point. Mercury seem to be trying to imply some retailer activity is 'fake' competition but doesn't explain the relevance of, or basis for, the claim. We wonder if Mercury's 'observation' stemmed from its partial privatisation experience?

Most, if not all, of the content of the incumbent retailer submissions can be rejected by reference to the ACCC final report on electricity affordability. The ACCC, for example, provide the evidence of a problem that Genesis is demanding, as well as extensive detail on the nature of the problem and why there isn't a 'level playing field' for entrant retailers.

Incumbent retailer view	Why the incumbents are wrong
Genesis[44]	
"... changes should only be undertaken based on actual evidence of barriers to entry, rather than speculation driven by market noise."	Electric Kiwi agrees with Genesis. One of our major criticisms of the incumbent retailer submissions is lack of evidence, or substantiation of their claims, despite the size of the organisations and their regulatory teams. Electric Kiwi's submission, in contrast, provided evidence to support our views, and directed MDAG to the evidence it would need to obtain to reach conclusions about the nature and scale of the retail incumbency problem. Our supplementary submission also refers to the evidence provided by the ACCC on this topic. We don't think the ACCC findings are "speculation" or "market noise".
"It is crucial ... that a regulatory problem or market failure is clearly identified ..."	Agreed. Refer to the ACCC final report and our submission (including the section "The 'retail incumbency' problem reflects both regulatory and market failures, and it's all connected to incumbent retailer behaviour".
"While MDAG has identified some possible barriers to entry from saves and win-backs ... Genesis believes there is nothing of substance limiting competition."	This is a strawman argument which reinforces our concern that "the MDAG Issues Paper misses the point about the nature of the problem ..."[45]
"Genesis views win-back as enhancing competition by incentivising acquiring retailers to present their best offer up front ..."	The inclusion of the word "acquiring" is a substantial qualification. Competition in the retail market would be well-functioning if ALL retailers were incentivised to present their best offer up front.

[43] Genesis, Customer Acquisition, Saves and Win-backs, 29 June 2018.
[44] Genesis, Customer Acquisition, Saves and Win-backs, 29 June 2018.
[45] Electric Kiwi, there are substantive incumbency problems which mean a large number of households are missing out on the benefits of competition, 15 June 2018.

Incumbent retailer view	Why the incumbents are wrong
	A major problem is that the incumbent retailers' ability to partition the market means that they do not have to offer their best prices upfront, and can set the prices to loyal or "stayer" customers at monopoly levels.
"Genesis supports the findings of the Post Implementation Review of the Saves Protection Scheme that concluded it had largely been ineffective."	The Saves Protection Scheme was put in place to address a retail market problem, associated with acquisitions, saves and winbacks the Electricity Authority had identified. If the Scheme is ineffective then the problem hasn't been resolved. The focus should be on what is needed to resolve the problem, which could be enhancement of the scheme (the Electricity Authority originally proposed to ban early winbacks) or other regulatory options.
Mercury[46]	
"Restricting a retailer's ability to offer a customer a competitive offer ultimately reduces what the electricity market intended to deliver to consumers …"	We agree with the ACCC that "In a well-functioning market, the ACCC considers that retention activity is likely to be pro-competitive. In the market in question, however, the ACCC agrees that there are questions as to whether the activity is in the best interests of consumers as a whole."[47]
"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."	Mercury needs to explain why the electricity retail market is any different from other workably competitive markets while the pre-existing supplier does not necessarily have an ability to provide information to customers shopping with an alternative supplier. The issues Mercury is raising appears to be more about whether its customers value things like Airpoints and whether its marketing to existing customers make clear these benefits. The customer has been experiencing the service offerings and is already well placed to consider them against a new offer.
"… no retailer has a distinct advantage in offering a prospective customer a competitive offer."	The ACCC make a number of observations which indicate Mercury's claim is incorrect. For example, the ACCC state: "Incumbents are able to make very attractive offers to retain customers, effectively through cross-subsidies paid by their inactive customer cohort" and "Retention offers are … generally secret offers … This makes it hard for other players to ascertain the competitive dynamics in a market. For example, a retailer may decide to enter a region based on an assessment of the publicly available prices on offer …, and then discover that their competitors are actually willing to offer significantly lower prices that they cannot match."[48]

[46] Mercury, Customer Acquisition, Saves and Win-backs – Issues Paper, 28 June 2018.
[47] ACCC, Retail Electricity Pricing Inquiry – Final Report, Restoring electricity affordability and Australia's competitive advantage, June 2018, page 143.
[48] ACCC, Retail Electricity Pricing Inquiry – Final Report, Restoring electricity affordability and Australia's competitive advantage, June 2018, page 143.

Incumbent retailer view	Why the incumbents are wrong
"A change to restrict win backs … would appear to be anticompetitive."	Our submission details how current arrangements mean competition is limited to "switchers" and "stayers" are missing out on the benefits of competition. Such arrangements are more accurately labelled "anti-competitive". We agree with the ACCC over Mercury that "This model of competition has not delivered a dynamic and competitive market in which many retailers compete vigorously, driving efficiencies and providing innovative products to attract and retain a broad range of customers" and "In a well-functioning market, the ACCC considers that retention activity is likely to be pro-competitive. In the market in question, however, the ACCC agrees that there are questions as to whether the activity is in the best interests of consumers as a whole".[49]
"A change to restrict win backs … 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."	Mercury has not explained why it disagrees with the MDAG Issues Paper observation that "… if retailers were not able to engage in win-backs, then this would pout broad-based downward pressure on all prices offered by the established retailers, who serve most non-switching customers. If retailers cannot win customers back by offering them better deals, then these retailers would have to offer a lower price to more of their customers".[50]
"Mercury would observe a recent decision in Australia where Alinta Energy (as the acquiring retailer) presented incorrect information to customers …"	If any retailer has concerns that another retailer is engaging in misleading advertising or breaching the Fair Trading Act it should raise these concerns with the Commerce Commission. Use of win-backs is not an appropriate substitute for the Fair Trading Act protections.
"Mercury would observe that no retailer is restricted from competing on an even footing …"	Both our submission and the ACCC final report detail why this statement is incorrect and there isn't a level playing field. The ACCC, for example, found "the big … retailers have significant advantages over smaller retailers which stem from their profitable base of sticky customers":[51] • "In particular, the large customer bases … include inactive customers, who have rarely (if ever) changed retailers or deals. This has given the big players a stable and valuable revenue stream not available to new entrants and smaller retailers. Other advantages include economies of scale and a greater ability to take advantage of vertical integration."[52]

[49] ACCC, Retail Electricity Pricing Inquiry – Final Report, Restoring electricity affordability and Australia's competitive advantage, June 2018, page 143.
[50] MDAG, Customer acquisition, saves and win-backs – Issues paper, 22 May 2018, paragraph 5.3.4.
[51] ACCC, Retail Electricity Pricing Inquiry – Final Report, Restoring electricity affordability and Australia's competitive advantage, June 2018, page 149.
[52] ACCC, Retail Electricity Pricing Inquiry – Final Report, Restoring electricity affordability and Australia's competitive advantage, June 2018, page 134.

Incumbent retailer view	Why the incumbents are wrong
	• "Incumbents are able to make very attractive offers to retain customers, effectively through cross-subsidies paid by their inactive customer cohort." • while all retailers face retention conduct "it obviously has a disproportionate impact on smaller retailers …"[53] The ACCC describes in detail why there isn't an "even footing" or 'level playing field' in the sections of its electricity affordability report on the "Advantages of incumbency", "Impact of incumbency on the market" and "Other advantages of the big three (and other large retailers)".[54] We also requote Powershop, Meridian's 100% owned subsidiary, observation that "Saves impact disproportionately on new retailers …"[55] and the Electricity Authority who explained incumbent retailers have an "undue advantage".[56]
"All retailers have the ability to introduce contractual terms to support their business strategy."	As Electric Kiwi noted in our supplementary submission: "The solution to regulatory problems is in the hands of the regulator, rather than expecting entrant retailers to adopt alternative or sub-optimal acquisition strategies, such as trying to lock customers in to fixed term contracts …"[57]
"… there is no advantage in receiving early notification of a switch where it relates to win-back customers as the win back action take place post switch".	If this is the case, then Mercury and other incumbent retailers should have no objection to a rule being put in place that precludes information obtained from the switching process to be used to initiate a save or winback (effectively requiring Chinese Wall arrangements with the retention team) or the ACCC recommendation that retailers aren't notified of the switch until after it has occurred.
"Mercury believes the NZ electricity market is highly competitive … Over the past few years there has been a large increase in the number of retailers operating in the NZ electricity market … This would suggest that the current regulatory regime allows for new entrant retailing businesses to operate successfully."	Refer to the section of our submission: "The saves and winbacks review should be considered in the context that the retail market remains strongly oligopolistic". Incumbent retailers have 92.88% market share and are losing market share very slowly. Numerous submissions, and the ACCC final report, highlight that the number of retailers is a poor measure of how competitive a market is.

[53] ACCC, Retail Electricity Pricing Inquiry – Final Report, Restoring electricity affordability and Australia's competitive advantage, June 2018, page 142.
[54] ACCC, Retail Electricity Pricing Inquiry – Final Report, Restoring electricity affordability and Australia's competitive advantage, June 2018, sections 6.2.2 and 6.2.3.
[55] Powershop, Saves and early win-backs, 5 August 2014.
[56] Electricity Authority, Consultation Paper, Proposed Code amendment, Saves and early winbacks, 24 June 2014, paragraph 4.1.2.
[57] Electric Kiwi, Supplementary submission on the "Customer acquisition, saves and win-backs – Issues Paper": helpful guidance from the ACCC, 17 July 2018.

Incumbent retailer view	Why the incumbents are wrong
Meridian[58]	
"… the paper presents a continuing picture of no apparent regulatory or market failures in the area of acquisition. "We agree with MDAG's assessment."	These statements reinforce our concern that "the MDAG Issues Paper misses the point about the nature of the problem …"[59] Our submission and the ACCC final report detail that Meridian is incorrect. Powershop, Meridian's 100% owned subsidiary, have also previously explained why Meridian (and MDAG) is correct, including that "Saves impact disproportionately on new retailers …"[60] and "incumbent retailers offer "different tiers of pricing to sticky and price-sensitive customers …" Powershop has been very clear that "The business model of [incumbent] retailers relies [sic] on charging a loyalty tax to customers who fail to switch and utilising the proceeds of this loyalty tax to subsidise their apparently competitive market offers".[61] We are unsure how Powershop's views reconcile with the Meridian/Powershop submission that there is "no apparent regulatory or market failures in the area of acquisition". We doubt it does. The interests of Meridian's Powershop brand are trumped by its incumbency retail brand.
"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."	The Electricity Authority is of the view that winbacks and saves are substitutes and that they are not "distinguishable in terms of their effect on competition".[62] Electric Kiwi agrees with the Electricity Authority: "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".[63] The Electricity Authority was very clear saves and early winbacks are close substitutes, and this has been borne out by experience with the Saves Protection Scheme. What all this serves to highlight is that, with the benefit of hindsight, the Electricity Authority should have stuck with its original proposal to restrict early winbacks.

[58] Meridian, MDAG Acquisitions, Saves and Win-backs Issues Paper – Meridian / Powershop submission, 29 June 2018.
[59] Electric Kiwi, There are substantive incumbency problems which mean a large number of households are missing out on the benefits of competition, 15 June 2018.
[60] Powershop, Saves and early win-backs, 5 August 2014.
[61] Powershop, Submission to the Panel for the Review of Electricity and Gas Retail Markets in Victoria, 20 February 2017.
[62] Electricity Authority, Post implementation review of saves and winbacks, Final report, 29 August 2017.
[63] Electricity Authority, Consultation Paper, Proposed Code amendment, Saves and early winbacks, 24 June 2014, paragraph 3.6.3.

Incumbent retailer view	Why the incumbents are wrong
Nova[64]	
"Nova … feels the level of regulation on offer to retailers wanting to protect their customer acquisitions is sufficient."	Unsubstantiated assertion
"… most customer switchers are still completed successfully."	Electric Kiwi's submission provided evidence the level of saves and win-backs is growing. If win-backs are measured as a percentage of trader losses, Mercury and Genesis win-backs exceeded 70% in April 2018. Nova seem to be implying there is some threshold rate of saves and winbacks (50%) at which they become a problem.
"To be of net benefit overall, eliminating saves and win-backs would need to …"	This is a strawman argument that presupposes a particular solution. We would be concerned if the options under consideration were limited to eliminating/not eliminating saves and win-backs.
"Given the number of retailers that entered the market, the current arrangements do not seem to be a barrier to entry …"	Refer to the section of our submission: "The saves and winbacks review should be considered in the context that the retail market remains strongly oligopolistic". Incumbent retailers have 92.88% market share and are losing market share very slowly. Numerous submissions, and the ACCC final report, highlight that the number of retailers is a poor measure of how competitive a market is.
"The perceived advantages or disadvantages of the status quo are applicable to all trading retailers equally …"	The ACCC pointed out that while all retailers face retention conduct "it obviously has a disproportionate impact on smaller retailers …"[65]. Refer also to the section of our submission "There are asymmetric benefits incumbent retailers can exploit from saves and winbacks".
"Retailers … can charge a cancellation fee to enforce their contract and recover some of the cost to acquire them in the first place."	As Electric Kiwi noted in our supplementary submission: "The solution to regulatory problems is in the hands of the regulator, rather than expecting entrant retailers to adopt alternative or sub-optimal acquisition strategies, such as trying to lock customers in to fixed term contracts, which may be unattractive to potential and active customers. Our retail strategy is to get customers to stay because of good customer service and competitive pricing, not by trying to trap customers into fixed term contracts".[66]

[64] Nova Energy, Re: Customer acquisition, saves and win-backs: issues paper, 26 June 2018.
[65] ACCC, Retail Electricity Pricing Inquiry – Final Report, Restoring electricity affordability and Australia's competitive advantage, June 2018, page 142.
[66] Electric Kiwi, Supplementary submission on the "Customer acquisition, saves and win-backs – Issues Paper": helpful guidance from the ACCC, 17 July 2018.

Incumbent retailer view	Why the incumbents are wrong
	Electric Kiwi agrees with Flick that "Contractual terms are not appropriate for new types of business models/ customer experiences as it will make it harder to acquire customers. As a new entrant one of the most compelling messages we can push is to 'come and try our excellent service, customer experience and new model, if you don't like it you can switch'. We believe that if we required customers to enter into fixed term contracts we would reduce acquisition by more than 50%, so yes, it's absolutely a commercial decision not to". [67]
Trustpower[68]	
"the scheme … simply meant that more customers are "won-back" after the switch occurred"	The Electricity Authority anticipated this when it was developing the scheme. Early winbacks are a close substitute for saves. A restriction on early winbacks would help mitigate this but aren't necessarily the full solution to the problem.
"We have … found that the saves protection scheme provides the indirect benefit of increasing transparency of reported activity around customer acquisitions and switching."	Agreed.
"Win-backs do not rely on early switch notifications."	Given this view, Trustpower should have no objection to a ban on losing retailers using information from the switching scheme to engage in early winback, or the ACCC recommendation the losing retailer isn't advised of the switch until after it has happened.

Closing remarks – if we could move a step closer to a level playing field it would be a big improvement

Electric Kiwi is not looking for a leg-up. We are dismayed at suggestions MDAG has characterised the issue this way.[69]

What we want is a level playing field. The electricity retail market more closely resembles Baldwin Street on an icy winter's morning.

Electric Kiwi agrees with energyclubnz that the market "is currently weighted very much in the favour of the incumbent operators who are fully leveraging their dominant positions at the cost of the majority of hard working kiwi households". If any market participants are given a 'leg-up' it is the incumbent retailers. The illiquid hedge market gives the incumbent retailers a leg-up against stand-alone retailers. The pseudo-monopoly retail customer bases each incumbent retailer has gives them another big leg-up.

It should be no surprise entrant retailers haven't been able to gain the market share entrants have in other markets like broadcasting, telecommunications and, increasingly, the dairy market despite the dominance of Fonterra.

[67] Flick, Customer acquisitions, saves, win-backs: Issues Paper, 28 June 2018, page 2.
[68] TrustPower, TRUSTPOWER SUBMISSION: SAVES AND WIN-BACKS, 19 July 2018.
[69] Letter from Pulse Energy to the Electricity Authority, Re: Saves Protection Scheme – response to your letter, 30 April 2018.

It is now 20 years since retail competition was introduced into the New Zealand electricity sector.

If New Zealand is going to finally get the benefits of retail electricity competition, and lower and more affordable prices, there needs to be recognition the market is not as competitive as the incumbent retailer submissions would have us believe.

With this in mind, Pulse's question is worth contemplating: "What happens if all retailers refine save processes to the same degree as Mercury? We can see this unfolding now. The Gentailers appear to be concluding that 100% recovery of a lost customer is a primary objective; particularly if is also increases the percentage of customers on long term contracts".[70] The evidence we provided in our submission highlights that incumbent retailers are engaging in increasingly aggressive saves and win-backs activity, and the problem is growing.

Publication of cross-submissions

We appreciated the publication of submissions within a week of our request and request the cross-submissions be released in a timely manner (a day or two after they are made).

Yours sincerely,

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[70] Pulse, Re: Saves Protection Scheme Response from Pulse – Saves Protection Scheme, 9 July 2018.

Appendix A

Meridian, Submission to the Finkel Review, 2 March 2017

Meridian Energy Australia Pty Ltd
Level 15, 357 Collins Street
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2 March 2017

To whom it may concern

Submission to the Finkel Review

Meridian Energy Australia Pty Ltd (***Meridian***) and Powershop Australia Pty Ltd (***Powershop***) are pleased to make this submission to the Finkel review.

Meridian is a long standing investor in renewable energy in Australia. Meridian currently owns and operates the Mt Millar wind farm in South Australia, and the Mt Mercer wind farm in Victoria. In addition, Meridian is the AEMO-registered generator for the community-owned Hepburn wind farm in Victoria. Powershop is a relatively new retailer with over 90,000 customers in Victoria, New South Wales and South East Queensland. Powershop has delivered a number of innovations to the Australian market, including the first phone app to give customers information on electricity usage and cost, the first energy retailer to deliver carbon neutral products to the market, the first at scale demonstration of peer to peer solar trading, and so on.

Rather than exhaustively discuss the various issues at play in our electricity market, Meridian and Powershop would like to highlight a number of areas for further consideration by the Finkel Review.

Generation

Australia's generation fleet has the role of providing cost effective and reliable energy for the market. Increasingly and with urgency, this will need to be done at lower carbon intensity. The NEM is described as an 'energy only' market, and while this statement is strictly true, the market participants do have another critical role in making available, directly or indirectly, a number of financial instruments, most notably the $300 Cap product. These products allow retailers such as Powershop to manage wholesale price risk exposure on behalf of their customers. In return, purchasing of these products forms, in effect, a payment for capacity to market generators. The price of these products reflects their locational value and, as such, sends investment signals to the market for further capacity development. A deep market for these products allows retailers to manage risk more effectively, and at lower cost, thus lowering prices for their customers and promoting retail competition. Increased retail competition in turn lowers prices (see retail section below). In addition, these products provide a means of ensuring secure revenue to parties wishing to provide solutions to the market's need for capacity. These include providers of fast response generation and storage who will increasingly form part of our market.

Key take-out: While the NEM is an energy only market, the NEM does have an effective mechanism for payment for capacity. A well-functioning mechanism should lead to lower costs associated with retail risk management, and so lower customer prices. It is the view of Meridian and Powershop that any changes to the NEM should not have the direct or indirect effect of concentrating market power in generation and/or reducing the available market for the $300 Cap product and other financial instruments. Such an indirect consequence would have disastrous consequences for generation investment, retail competition and, potentially, customer prices.

Transmission and Distribution
Australia's transmission and distribution companies have the role of transporting energy from source to end user. The nature of this activity will change in a distributed energy environment, where many end customers are also sources of energy. Due to the monopoly nature of these businesses they are highly regulated, yet this model has delivered significant overinvestment in some cases. The current model, whether due to regulation of otherwise, where network businesses apply the same standard of connection to small distributed energy as is traditionally applied to large centralised generation, is discouraging the adoption of solutions that the market requires for its forth coming transformation.
Key take-out: Greater use of clear, technology-neutral, simple, consistent and appropriate standards, which are safe and non-onerous, would aid the development of this market.

Retail
Australia's retail companies have the role of managing wholesale price risk exposure on behalf of their customers as well as providing billing and customer service functions. Increasingly, retailers have begun to operate in the 'new energy' arena. It is the view of Meridian and Powershop that retail competition has been somewhat effective in the NEM, with many good examples of innovation, customer service improvements and lower prices as a result of competition. However, unfortunately, many customers have not realised these benefits. For example, the AEMC recently showed that, despite the fact that customers could save up to $383 by switching to a better offer, 50% of customers have not switched in the last five years. It is the view of Meridian and Powershop that the practice of 'defined benefit periods' is responsible, at least in part, for this observation. A defined benefit period is an offer with a specific rate (typically with associated discount) that lasts for a specific period (usually 12 months). Beyond this period, the rate that the customer pays increases (typically by reducing the discount to a lower percentage than the original offer, or to zero). It is the view of Meridian and Powershop that many customers are not aware of the true impact of such defined benefit periods. These customers ultimately pay a 'loyalty tax'. The loyalty tax is charged by most, but not all retailers. Analysis conducted by Powershop in 2016 indicates that these practises lead to loyal consumers in the mainland NEM states paying an annual loyalty tax of $1 billion compared to customers benefiting from true competition.
Key take-out: While retail competition has delivered significant benefits, too few customers are experiencing these benefits because of the practice of defined benefit periods. This creates a loyalty tax, costing mainland NEM customers in the region of $1 billion annually. At a time of increasing affordability issues, such behaviour is unacceptable in an essential service market. Requiring better transparency and discouraging business practices which feed on customer inertia may be part of the solution to this issue, In order to benefit customers, this must be done in a way that helps, rather than hinders competition. We are happy to discuss a number of measures further.
Meridian and Powershop look forward to the findings of the Finkel review.
Yours sincerely
Ed McManus
CEO
Meridian Energy Australia Pty Ltd
Powershop Australia Pty Ltd

Appendix B

Powershop, Submission to the Panel for the Review of Electricity and Gas Retail Markets in Victoria, 20 February

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20 February 2017

The Panel
Victorian Government Review
energymarket.review@delwp.vic.gov.au

To The Panel,

Submission to the Panel for the Review of Electricity and Gas Retail Markets in Victoria

Background

Powershop Australia Pty Ltd **(Powershop)** provides the following submission to the Panel conducting the Review of Electricity and Gas Retail Markets in Victoria on behalf of the Victorian Government.

Powershop operates an electricity retailing business with over 90,000 customers in the National Electricity Market, in Victoria, New South Wales and Queensland. Powershop is based in Melbourne and its ultimate parent entity Meridian Energy Limited, is an exclusively renewable generator, and has one of the Australasia's largest renewable-only generation portfolios. In Australia, the Meridian Energy Australia Group owns the Mt Mercer Wind Farm (a 131MW generation facility near Ballarat, Victoria) and Mt Millar Wind Farm (a 70MW generation facility in South Australia), and assists with the operation of the Hepburn Wind Farm (in Daylesford, Victoria).

It is the view of Powershop that retail competition has been somewhat effective in Victoria, with many good examples of innovation, customer service improvements and lower prices as a result of competition. Powershop has delivered a number of innovations to the market, including:

- the first phone app giving customers information on electricity usage and cost;
- the first retailer to deliver carbon neutral products to the market;
- the first at scale demonstration of peer to peer solar trading.

However, at large, unfortunately many customers have not realised the benefits being delivered as a result of retail competition. The reasons are further explored below.

Submission

9. Why do prices remain so dispersed in Victorian electricity and gas markets? Does price dispersion indicate that some consumers are not obtaining the price benefits of competition? Why or why not?
Competitive barriers exist in the retail market due to the prevalence of "defined benefit period" offers from most, but importantly not all, retailers. The use of defined benefit period offers enable retailers to rely on customer apathy or confusion in switching retailers at the end of the defined benefit period when at the 'loyalty cliff'. The business model of these retailers relies on charging a loyalty tax to customers who fail to switch and utilising the proceeds of this loyalty tax to subsidise their apparently competitive market offers. These offers are in fact less valuable to customers over the average period that the customer remains with these retailers. This

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confusion makes it difficult for competitors, who do not base their business models on a defined benefit period, to appear competitive even where their offers are substantially more advantageous over the average tenure of a customer. Analysis conducted by Powershop in 2016, indicates that these practises lead to loyal consumers in the mainland NEM states, paying an annual loyalty tax of around $1billion, compared to customers benefiting from true competition.

16. Are there any features of Victoria's retail electricity and gas markets that restrain competition from delivering benefits to consumers?

Dual fuel retailers with a dominant gas position can sell electricity cheaply and make additional retail margin on gas. These retailers manipulate customer confusion over their rights to select single fuels – and at times force customers on to uncompetitive electricity contracts to enable customers to access to gas. In addition, these retailers rely on the inability of customers to compare duel fuel offers against individual product offers from multiple retailers. This issue is aggravated by aggregators, brokers and comparator services that make additional commission from bundling electricity and gas products, leading to an increase in dual fuel sales rather than single fuel. Historically, barriers to entry in establishing a gas business meant that most new retailers commenced with electricity only offerings, and the behaviour by the larger retailers in shifting margin from electricity to gas is an additional barrier to fair competition in the retail market.

13. What are the key drivers of active consumer participation in retail energy markets? What barriers prevent consumers, or certain groups of consumers (including vulnerable consumers), from engaging in the market and/or selecting a product that best meets their needs?

Many customers do not realise they are paying the loyalty tax referred to above in our response to Question 9. This is because different retailers describe the defined benefit period differently, and more importantly the mechanism to communicate to customers that their defined benefit period has come to an end, and what this means for the customer is not uniform. Further, in many cases, in the view of Powershop, the communications provided by many retailers to customers in this regard are often unclear and confusing.

In respect of embedded network customers, the regulatory and technical complexity involved in dealing with these customers has reduced competition for this large, growing customer segment.

7. Which costs have been introduced or significantly increased as a result of the introduction of retail competition? How much cost has retail competition added to the electricity and gas supply chains?

All of the confusion in the market place noted above makes it more difficult for new, innovative retailers to acquire customers, thereby increasing the cost of acquisition and reducing funds available to be passed through as lower prices for customers.

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21. What potential policy options and measures exist to address any issues with the operation of retail electricity and gas markets? Please explain how these policy options and measures would improve outcomes for consumers and identify any potential risks arising from these options and measures
Powershop recommends that the Panel look at the definition of defined benefit periods and the means by which these, and in particular the impacts on and actions required by customers at the end of these periods, are communicated to customers. There are a number of ways this issue could be improved, and the loyalty tax reduced, and Powershop would be happy to discuss these with the Panel. Powershop recommends that the Panel look at the Victorian Energy Compare website (https://compare.switchon.vic.gov.au/) and investigate the ways in which the value of offers that do not charge the loyalty tax could be more accurately quantified. Powershop would be happy to discuss this further with the Panel.

Yours sincerely,

Dr Ed McManus
Chief Executive Officer
Powershop Australia Pty Ltd & Meridian Energy Australia