

Saves and Win-backs Code Amendment

Consultation paper

Submissions close: 5:00pm 3 December 2019

5 November 2019



Executive summary

“Saves and win-backs” is the term used to describe a retailer winning a customer back shortly after that customer has agreed to move to another retailer. Saves and win-backs have been subject to significant recent debate in the electricity sector, particularly because the switching process for customers gives the losing retailer immediate notice that the customer has agreed to move, ie, it can trigger active attempts to win that customer back. A concern has been expressed that saves and win-backs can effectively be used to stifle small retailers from acquiring customers and discourage potential entrants, thereby reducing competition.

The Authority is proposing to prohibit retailer-initiated win-backs for a period after a switch. The key elements of the proposal are to:

- prohibit the losing retailer from targeted marketing to a previous customer for 180 days after a customer switches to a gaining retailer,
- specify circumstances in which the losing retailer may contact a previous customer,
- prohibit the losing retailer from passing a previous customer’s information on to third parties, and
- require the losing retailer to abide by good conduct provisions.

The Authority considers that on balance a ban, with a post implementation review of the resulting impacts after two years, would best promote competition and the efficient operation of the electricity industry for the long-term benefit of consumers.

The proposed Code amendment aims to: increase competitive pressure; innovation; customer acquisition and consumer search activity; reduce retail margins; and place retailers and their competitors on a more even competitive footing in terms of their knowledge of consumer characteristics. The proposed amendment would make it easier for small and new entrant retailers to expand in size, increasing competitive pressure on incumbent retailers and fostering innovation in business models, processes and product offerings.

In 2015 the Electricity Industry Participation Code was amended with the introduction of a save protection scheme. The scheme was intended to prevent losing retailers from exploiting information about impending customer switches to attempt saves. This scheme prohibits a losing retailer from initiating contact to offer inducements to any of its customers that are being acquired by a ‘protected’ gaining retailer, prior to the completion of the switch. The scheme does not prohibit win-backs after a switch has been completed. Following the introduction of the scheme retailers increased switching speeds, which made it possible to substitute permitted win-backs for prohibited saves. The post implementation review of the save protection scheme suggested that the increase in switching speeds diminished the effectiveness of the scheme in supporting retail competition.

A subsequent review of switching arrangements by the Authority’s Market Design Advisory Group in March 2019 concluded that there was no regulatory or market failure, even though several submissions to the review argued that win-backs were problematic. The recent Electricity Price Review (EPR) considered win-backs. The EPR noted that “[t]he Commerce Commission’s submission considers win-backs could potentially have anti-competitive effects, such as raising rivals’ costs by making it harder for them to attract new customers” and highlighted similar advice from the Australian competition regulator. The EPR Panel subsequently recommended that win-backs should be prohibited as part of a suite of recommendations seeking to improve competition in the electricity markets. In the Government response to the EPR, the Minister of Energy and Resources has confirmed the expectation that the Authority give this work priority. In light of contrasting views, the Electricity Authority is consulting on the proposed amendment to the Code.

The EPR suggested using the Telecommunications Code for Transfer of Telecommunications as a template to guide customer transfer arrangements in the retail electricity industry. The Authority notes that the Telecommunications Customer Transfer Code focuses on saves and there is no explicit window of time during which win-backs are banned.

The proposed amendment bans win-backs for a period of 180 days. A longer protection period diminishes the informational advantages that losing retailers have about customers relative to gaining retailers. However, if a protection period is too long then the informational asymmetry is likely to reverse in favour of the gaining retailer, which is also not in the interests of consumers, noting that the losing retailer's information about the consumer will eventually become obsolete.

The proposal outlined in this consultation document has both costs and benefits, but the Authority considers that the benefits of the proposal out-weigh the costs. The Authority seeks feedback on the proposed Code amendment and the analysis presented in this consultation.

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1 What you need to know to make a submission

What this consultation paper is about

- 1.1 The purpose of this paper is to consult with interested parties on the Authority's proposal to ban retailer-initiated win-backs. The proposal would modify the saves protection scheme in light of changes in participant behaviour.
- 1.2 The proposed Code amendment aims to: restore competitive pressure; reduce retail margins; increase innovation; increase customer acquisition and consumer search; and place retailers and their competitors on a more even competitive footing in terms of their knowledge of consumer characteristics. The proposed amendment increases competition and leads to better-informed consumers and more efficient market outcomes in alignment with the Authority's statutory objective.
- 1.3 The amendment would resolve some of the problems that have arisen with the opt-in saves protection scheme, increasing competitive pressure on incumbent retailers by making it easier for competing retailers to acquire customers. Increased competitive pressure and increased acquisition activity is also expected to reduce information asymmetries both between consumers and retailers, and between competing retailers. These competitive pressures would encourage retailers to provide their best prices to all customers, and would support the growth of retailers with innovative business models, resulting in dynamic efficiency benefits.
- 1.4 Section 39(1)(c) of the Electricity Industry Act 2010 (Act) requires the Authority to consult on any proposed amendment to the Code and corresponding regulatory statement. Section 39(2) provides that the regulatory statement must include a statement of the objectives of the proposed amendment, an evaluation of the costs and benefits of the proposed amendment, and an evaluation of alternative means of achieving the objectives of the proposed amendment. The regulatory statement is set out in part 4 of this paper.

How to make a submission

- 1.5 The Authority's preference is to receive submissions in electronic format (Microsoft Word) in the format shown in Appendix B. Submissions in electronic form should be emailed to winbacks.submission@ea.govt.nz with "Consultation Paper—Saves and win-backs" in the subject line.
- 1.6 If you cannot send your submission electronically, post one hard copy to either of the addresses below, or fax it to 04 460 8879.

Postal address

Win-backs Submissions
Electricity Authority
PO Box 10041
Wellington 6143

Physical address

Win-backs Submissions
Electricity Authority
Level 7, Harbour Tower
2 Hunter Street
Wellington

- 1.7 Please note the Authority wants to publish all submissions it receives. If you consider that we should not publish any part of your submission, please:
 - (a) indicate which part should not be published

- (b) explain why you consider we should not publish that part
 - (c) provide a version of your submission that we can publish (if we agree not to publish your full submission).
- 1.8 If you indicate there is part of your submission that should not be published, we will discuss with you before deciding whether to not publish that part of your submission.
- 1.9 However, please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we did not publish unless good reason existed under the Official Information Act to withhold it. We would normally consult with you before releasing any material that you said should not be published.

When to make a submission

- 1.10 Please deliver your submissions by **5pm** on Tuesday **3 December 2019**.
- 1.11 This four week consultation period is shorter than normal because the broader issues around saves and win-backs have been canvassed and submitted on as part of the Market Design Advisory Group consultation and the Electricity Price Review.
- 1.12 The Authority will acknowledge receipt of all submissions electronically. Please contact the Electricity Authority if you do not receive electronic acknowledgement of your submission within two business days.

2 Issue the Authority would like to address

The existing arrangements

- 2.1 Most electricity consumers have an exclusive arrangement with a single electricity retailer at any given time, with electricity being supplied to a household or business through installation control points (ICPs).
- 2.2 The Authority maintains a registry that uniquely maps ICP identifiers to traders, but does not contain information that uniquely maps ICPs to end consumers. In the retail electricity market, traders are typically the retailers that supply and bill customers for the electricity that is provided. A trader that is gaining a customer (a 'gaining trader') informs the registry that the ICP associated with the customer is being transferred, and the 'losing trader' is then notified that they are losing a customer as part of the registry updating process. When this registry notification process is completed, a switch is said to have occurred.
- 2.3 In some cases, a 'type 2 retailer' provides billing and other customer-facing services to the end consumer, but contracts with a trader who purchases electricity from the clearing manager and updates the registry on the type 2 retailer's behalf. When a type 2 retailer loses a customer to another retailer then in most circumstances an ICP will also be switched from one trader to another.¹
- 2.4 In the retail electricity market, a save occurs when a losing retailer convinces a customer to cancel an incomplete switch to a gaining retailer. A win-back occurs when the switch is completed, but the losing retailer later persuades the switching customer to return.
- 2.5 The opt-in switch save protection scheme introduced by the Electricity Authority in 2015 provides saves protection to the 'protected traders' who are members of the scheme prior to a switch occurring. The save protection scheme does not prevent win-backs after the switch has been completed.
- 2.6 Traders responded to the saves protection scheme by increasing the speed of their switching arrangements, which meant that losing traders could provide counter offers to achieve win-backs shortly after a switch, in place of prohibited saves. Most switches are now completed within a day or so of the switch being notified to the registry manager.

Issues with the existing arrangements

- 2.7 The existing arrangements mean saves and win-backs, in the Authority's view, are reducing retail competition and consumer welfare (well-being). The Authority considers that it is worth consulting on whether changes to the Code are required to address problems with the opt-in switch save protection scheme. The existing arrangements governing consumer switching may not place enough competitive pressure on retailers. As a consequence, customers may be charged inefficiently high prices for electricity, distorting the consumption and production of electricity.
- 2.8 For small and new entrant retailers, saves and early win-backs can represent a barrier to entry and expansion. Incumbent retailers can target switching customers to deliberately impede the growth of competitors. Incumbent retailers' superior knowledge of their customers can also make it easier for them to retain the most profitable customers,

¹ In rare circumstances the trader responsible for the ICP might be the same for the gaining and losing retailers, and under current switching rules no change in the registry would be evident. The Authority is currently reviewing these switching processes.

reducing the benefits that gaining retailers derive from their efforts to acquire new customers. Impeding the growth of new and small retailers reduces competitive pressure on incumbent retailers, and provides greater scope for incumbents to distort market outcomes.

- 2.9 Large incumbent retailers are able to provide discounts to switching customers by increasing the share of costs paid by non-switching customers, who may be less well-informed about offers available in the market or subject to greater transactions costs that prevent them from switching. By blunting the growth of competitors, such actions maintain or increase lifetime profit by large incumbents, at the expense of consumers and introduce inefficient dead-weight losses. The Electricity Price Review cited evidence that suggests that non-switching consumers are also likely to be poorer or more vulnerable than consumers that switch more frequently (referring to this as a ‘two-tier market’).²
- 2.10 The competitiveness of the retail market is driven in large part by retailers' ability to acquire competitors' customers and by the threat of acquisition activity. Prohibiting win-backs is expected to make it easier for small and entrant retailers to acquire customers. The win-back prohibition period provides gaining retailers with a period of time in which they engage with newly acquired customers. Gaining retailers can thus showcase their services and the price of those services to new customers. The proposed Code amendment is expected to make acquisition activity more rewarding, because it would reduce the probability of a customer cancelling a switch.
- 2.11 For markets to operate efficiently, market participants must know what products are offered at what prices. In practice, time and effort is required to acquire information about goods and services and their prices. The rules that govern the acquisition and retention of customers can affect the flow of information between retailers and customers, in turn influencing the consumption of electricity.
- 2.12 Information asymmetries arise when some market participants have better information than other market participants. These asymmetries are a prime cause of market failure, as consumers and producers may not pursue mutually beneficial transactions if they are unaware that such opportunities exist. The proposed Code amendment is expected to increase the incentive for competing retailers to provide information to potential customers, increasing the likelihood that beneficial transactions will be identified and undertaken.
- 2.13 Losing retailers also have access to private information that enables them to selectively target the most profitable customers that are switching. This private information results in an adverse selection problem for the gaining retailer, as the average profitability for retained switching customers is expected to be lower than the average customer overall (assuming that efforts by losing retailers to win-back customers are successful to some degree). The ban on win-backs makes it more difficult for losing retailers to selectively target winning back only their most profitable customers, alleviating this adverse selection problem for gaining retailers.
- 2.14 According to the Market Development Advisory Group (MDAG), payments to induce win-backs reduce the transparency of electricity prices, which can affect consumers'

² See p. 38 of the *Electricity Price Review First Report for Discussion*, <https://www.mbie.govt.nz/assets/5ba1054036/first-report-electricity-price-review.pdf>.

propensity to search for better deals.³ A reduction in searching by consumers is another mechanism by which win-backs adversely affect the flow of information used by consumers.

Why the Authority is addressing these issues now

- 2.15 The save protection scheme was introduced to promote retail competition, to ensure that smaller and new entrant retailers can compete with incumbent retailers on an equal footing and to ensure that there were no barriers to entry and expansion by entrant retailers.⁴ The post implementation review of the saves protection scheme indicated that changes in retailers' behaviour had blunted the impact of saves protection. Increasing switching speeds have made it possible to convert prohibited saves into permitted win-backs. The substitution of saves with win-backs has undermined the intent of the scheme and has prompted the Authority to re-visit the importance of banning win-backs.
- 2.16 Since the post implementation review, saves and win-backs have received considerable attention through the Authority's advisory consultation process and the Electricity Price Review (EPR), which has helped test arguments and propositions with stakeholders.
- 2.17 In December 2017 the Authority arranged for MDAG to investigate market arrangements around saves and win-backs. The Authority asked MDAG to consider whether problems with the customer acquisition process result in a 'uneven playing field' for acquiring retailers, affecting the durability of the retail electricity market.
- 2.18 The underlying objective of the MDAG review of saves and win-backs was to ensure that competition is as robust as possible, in line with the Authority's statutory objective. Under the terms of reference, MDAG solely focused on regulatory problems and market failures.
- 2.19 Following consultation, the MDAG completed its report on saves and win-backs in March 2019. MDAG concluded that there was no strong evidence of regulatory or market failures, but did note that the retail market is highly concentrated and there are recurring concerns that saves and win-backs perpetuate this concentration. They also noted that there does appear to be an upward trend in the use of saves and win-backs. MDAG observed that win-back discounts reduce the transparency of electricity prices, which could be affecting the rates at which consumers shop around. However, they suggested that there was no strong rationale for regulating saves and win-backs to promote greater transparency in retail pricing.
- 2.20 MDAG recommended that the Authority should monitor saves and win-back practices and their implications for prices and consumers. MDAG suggested that consumer perspectives on saves and win-backs were not well understood, and that evidence on consumer impacts was still unfolding.
- 2.21 During 2018-2019, the EPR reviewed win-backs and concluded that they should be prohibited.⁵ As part of the EPR review, an energy hardship expert suggested that saves and win-backs contribute to a two-tier market, between consumers who switch retailers and those who do not, and recommended that win-backs should be prohibited. The EPR

³ See section 4.1.8 of MDAG's review of saves and win-backs. <https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/saves-and-win-backs/development/#c18054>.

⁴ See 3.1.4 of the *Proposed Code amendment – Saves and early win-backs – Consultation Paper*, <https://www.ea.govt.nz/dmsdocument/18175-consultation-paper-proposed-code-amendment-saves-and-early-win-backs>.

⁵ See <https://www.mbie.govt.nz/assets/42ac93a510/electricity-price-review-options-paper.pdf>.

noted that “[t]he Commerce Commission’s submission considers win-backs could potentially have anti-competitive effects, such as raising rivals’ costs by making it harder for them to attract new customers” and noted similar advice from the Australian competition regulator. New retailers were also critical of win-back offers, arguing that win-backs limit competition and make it difficult for new entrant retailers to establish themselves. The Government’s response to the EPR also signalled support for efforts to improve retail competition, including support for imposing a ban on win-backs.

- 2.22 The Authority is now determining how to proceed, taking MDAG’s recommendations and information from the EPR into consideration. The Authority considers that win-backs may be leading to inefficiently low customer acquisition by retailers and therefore insufficient retail competition. In turn, diminished competition may be altering retail electricity prices and affecting the consumption of electricity by retail consumers.
- 2.23 The Authority has decided to consult on a proposal that differs from the recommendations of the MDAG report. We note, however, that MDAG concluded it was difficult to draw robust conclusions about whether there are problems arising from the use of saves and win-backs.⁶ The Authority’s assessment attaches more weight to the adverse implications of information asymmetries in distorting the consumption of electricity by residential and small business consumers. When a consumer does not know the product offers available in the market they may engage a retailer with an inferior offering, adversely impacting the magnitude or timing of electricity consumption.
- 2.24 The Authority also notes that incumbent retailers know more about their customers than competing retailers, and the incumbents can thus compete more vigorously for the customers that are most profitable, putting acquiring retailers at a disadvantage.
- 2.25 In its 2014 decision on the switch save protection scheme, the Authority concluded it was not necessary to ban win-backs because gaining retailers could make use of contractual mechanisms, such as fixed term contracts and early termination payments, to protect themselves against win-backs. However, the earlier consultation document for the save protection scheme indicated that the Authority considered it might be beneficial to provide protection against win-backs for a short window of time after a switch.⁷ Prohibiting win-backs for a period of time makes it easier for gaining retailers to recoup acquisition costs, improving the cost-benefit calculus of customer acquisitions and thereby supporting retail competition.⁸ The Authority has returned to this viewpoint.
- 2.26 If fixed term contracts were effective means of protection, and gaining retailers had used them, then win-back rates should have remained similar before and after the switch save protection scheme. In practice, data from the post implementation review showed that win-back rates as a percentage of switches increased after the save protection scheme was implemented, suggesting that contractual provisions were not effective in blocking win-backs. These data and submissions to the MDAG review and the EPR suggest that contractual provisions are not meaningfully available to small retailers looking to protect

⁶ See 4.1.4 of MDAG’s review of saves and win-backs. <https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/saves-and-win-backs/development/#c18054>

⁷ See p. 16, *Proposed Code amendment – Saves and early win-backs – Consultation Paper*, <https://www.ea.govt.nz/dmsdocument/18175-consultation-paper-proposed-code-amendment-saves-and-early-win-backs>.

⁸ See p. 16, *Proposed Code amendment – saves and early win-backs – Consultation paper*, <https://www.ea.govt.nz/dmsdocument/18175-consultation-paper-proposed-code-amendment-saves-and-early-win-backs>.

themselves from win-backs. Thus, the Authority is consulting on whether it is desirable to prohibit retailer-initiated win-backs for a period of time to support competition in the electricity market.

- 2.27 In summary, the post implementation review of the switch save protection scheme found that the scheme accelerated switches and enabled retailers to win back customers after switches were completed, likely affecting the effectiveness of the scheme. Following the MDAG and EPR processes, public submissions from the Commerce Commission and other entities, and the Government's response to the latter, the Authority considers that it is appropriate to re-examine the market rules governing win-backs in order to promote competition. The Commerce Commission, for example, suggested that win-backs could potentially have anti-competitive effects by raising rivals' costs. The effects of any amendment to the Code would be reviewed two years after implementation.

Q1. Do you agree the issues identified by the Authority are worthy of attention?

3 The proposed amendment

- 3.1 The proposed amendment is contained in Appendix A. Code changes are proposed in relation to the opt-in nature of the switch save protection scheme (including the operational processes to start and cancel protection), the extension of protection to win-backs, and the introduction of good conduct obligations. The proposed Code amendment primarily amends the sections governing the switch save protection scheme (sections 11.15AA – 11.15AD) and inserts some new clauses.

Prevent win-backs to increase competition for customers

- 3.2 The proposed Code amendment would prohibit a losing retailer from initiating a save or a win-back for a given period of time during and after a switch. The proposal is to extend the saves protection scheme to all retailers and extend the horizon of the protection to include win-backs. The prohibition period would start from the date at which an impending ICP switch is first notified to the registry or from the event date of the switch (whichever is earlier).⁹ The proposed amendment targets retailers rather than traders.¹⁰ (Note, of course, that most traders are retailers and vice-versa.) The proposed amendment therefore would apply to retailers that are traders and to 'type 2' retailers that buy electricity from a trader rather than from the clearing manager.
- 3.3 The proposed policy involves trade-offs. The proposed policy would support future competition by helping small and new entrant retailers to acquire customers by reducing the likelihood that a recently acquired customer will switch back to the losing retailer as a result of a win-back. The policy would temporarily inhibit competition initiated by losing retailers for the duration of the 'switch protection period' in the wake of a customer switch.

⁹ See the Electricity Industry Participation Code 2010 for the definition of event date.

¹⁰ As per the Code, a trader means a retailer or a generator or a purchaser who—(a) buys electricity from the clearing manager; or (b) sells electricity to the clearing manager; or (c) enters into an arrangement with another retailer or generator or purchaser to buy or sell contracts (or parts of contracts) for electricity for the purposes of this Code.

Specific exceptions – acceptable contact with switching customers

- 3.4 The proposed amendment would not limit customers from initiating contact with the losing retailer. The proposal thus ensures that consumers can obtain the information they need to make informed decisions. In some circumstances, a customer may choose to re-establish a commercial relationship with a losing retailer.
- 3.5 The proposed amendment also identifies circumstances in which the losing retailer would have legitimate reasons for contacting the switching customer. The proposed amendment aims to curb losing retailers from directly targeting switching customers, while ensuring that operational matters and general marketing activities are still permitted. The Authority does not want generic marketing campaigns – such as television or radio advertising campaigns – to be prevented by the save and win-back ban proposed here. The proposed amendment would provide more equal treatment of customers that exhibit high and low switching propensities, as advertising material and offers would be provided to all customers irrespective of whether they were switching.

Prevent losing retailers from avoiding the switch protection period

- 3.6 Following the introduction of the opt-in saves protection scheme, switching speeds increased, which made it possible for losing retailers to substitute win-backs for prohibited saves. The proposed Code amendment aims to forestall other forms of avoidance by:
- (a) banning losing retailers from initiating win-backs for an explicit ‘switch protected period’
 - (b) prohibiting losing retailers from passing on information to third parties, eg, to forestall others from initiating a switch on behalf of the losing retailer¹¹
 - (c) requiring ‘good conduct’.

(a) Banning retailer-initiated win-backs for an explicit ‘switch protected period’

- 3.7 For the avoidance of doubt, the Authority proposes to add a specific time horizon during which losing retailer-initiated win-backs would be prohibited, during and after a customer switch. We propose a blanket switch protection period applying to all retailers rather than an opt-in protection scheme, for reasons discussed in section 4.34.
- 3.8 As a starting point, the proposed Code amendment suggests retailer-initiated saves and win-backs should be prohibited for 180 calendar days after a customer has switched from one retailer to another. The Authority seeks feedback on the appropriate length of this switch protection period.
- 3.9 The EPR suggested using the Telecommunications Code for Transfer of Telecommunications (“Customer Transfer Code”) as a template to guide customer transfer arrangements in the retail electricity industry. We note that the Telecommunications Customer Transfer Code focuses on saves and there is no explicit window of time during which win-backs are banned.

¹¹ The customer may of course explicitly mandate the retailer to pass on the information.

- 3.10 In the proposed amendment, the period during which saves and win-backs would be prohibited begins either with the receipt of the notice of transfer by the registry manager or with the event date of the transfer, whichever is earlier. In some cases transfer event dates pre-date notices of transfer. For such transfers, a gaining retailer would have billed a consumer from the event date, and would thus have had an opportunity to recoup any acquisition costs. In cases where the event date follows a notice of transfer, beginning the prohibition period from the date at which the notice of transfer is received by the registry manager would ensure that saves are prohibited.
- 3.11 Time horizons of 45 and 60 days were proposed by submitters to the EPR and MDAG processes, aligning with monthly billing cycles. Submissions to the original saves protection consultation commented adversely on win-backs within horizons of: one month (Flick Energy Limited); 35 days (Pulse Energy Limited); three months (Grey Power and Molly Melhuish); three to six months (Electric Kiwi Limited); and twelve months (Opunake Hydro Limited).¹² We have proposed a switch protection period that falls within this range. Some meters (eg, non-advanced infrastructure meters in some rural areas) are only read every three months. Gaining retailers and customers may therefore need at least three months to develop informed opinions about each other.
- 3.12 A longer protection period would diminish the informational advantages that losing retailers have about customers relative to gaining retailers. If a protection period is too long then the informational asymmetry is likely to reverse in favour of the gaining retailer, which is also not in the interests of consumers, noting that the losing retailer's information about the consumer will eventually become obsolete.
- 3.13 Banning win-backs is likely to reduce the incentive to facilitate rapid customer switches. The Authority would rely on existing obligations under the Code to ensure that switching speeds are kept to a suitable standard.

<p>Q2. Do you agree that prohibiting win-backs for a period of time will foster competition? How long should any win-back prohibition period be?</p>

(b) Prohibiting losing retailers from passing on information to third parties

- 3.14 The Authority wants to ensure that a losing retailer would not be able to circumvent the proposal by engaging a third party agent to initiate a win-back on its behalf.¹³ Such behaviour would be inconsistent with the proposed section 11.15AB(2), as drafted (see Appendix A).
- 3.15 The Authority would also aim to ensure that a losing retailer cannot arrange with a related party to target switching customers on behalf of the losing retailer or a party related to the losing retailer. Related parties might include separate 'brands' or companies that are owned by the losing retailer or by the losing retailer's parent company. This aim could be achieved by prohibiting the losing retailer from disseminating information to third parties that would enable them to undertake such actions.
- 3.16 The arrangements proposed here are somewhat broader than provisions contained in the Telecommunications Customer Transfer Code, but accord with obligations that

¹² See p. 15 *Summary of Submissions: Proposed Code amendment – saves and early winbacks consultation paper*, <https://www.ea.govt.nz/dmsdocument/18615-summary-of-submissions>.

¹³ This feature of the proposal is similar to a submission made by Nova Energy Limited in the previous consultation on the switch save protection scheme. (See paragraph 131 of the summary of submissions previously cited.)

telecommunications service providers have under the Telecommunications Information Privacy Code 2003 and with the general provisions of the Privacy Act 1993. Retailers in the electricity market remain subject to obligations under the Privacy Act.

Q3. Do you agree that losing retailers should be prohibited from passing information to third parties? Why or why not?

(c) Requiring good conduct

- 3.17 The proposed amendment includes good conduct obligations for retailers, similar to those that exist in the Telecommunications Customer Transfer Code. The good conduct obligations in the proposed amendment would promote clear expectations of retailers, ensuring that they do not misrepresent or disparage their competitors. The good conduct provisions would ensure that consumers are reliably informed about their options and limit misleading or unethical practice by gaining retailers. The Fair Trading Act 1986 and the complaints process available via 'Utilities Disputes Limited Tautohetohe Whaipainga' provide additional mechanisms for redress.

Q4. Do you agree that good conduct obligations are required? Why or why not?

Implementation issues

Multi-product firms

- 3.18 Retailers providing multi-product offerings, such as gas and electricity or electricity and broadband services, may still retain a relationship with a customer even if the customer switches its electricity services to another gaining retailer. Multi-product service providers would be prohibited from initiating electricity win-backs during the switch protected period, including if they contacted the customer to discuss the other services the losing retailer is providing.

Should the proposed amendment apply to retailers or traders?

- 3.19 As drafted (see Appendix A), the proposed Code amendment would apply to retailers who are traders and also to type 2 retailers who are not. Enforcement of the amendment is more difficult if the proposal applies to retailers rather than traders, because customer switches between type 2 retailers would not have immediate visibility in the registry if the same trader were contracting with the losing and gaining retailers. (The trader would then remain responsible for the ICP in the registry.) However, applying the win-back prohibition to retailers accords better with the intent to foster competition.
- 3.20 Changes to the switching process are being developed for consultation to increase the visibility of customer switches between type 2 retailers. To expedite the current consultation process, operational changes associated with retailer switching may be taken up in the Authority's later work agenda. Retailers would nevertheless be subject to the proposed saves and win-backs amendment, with the proposed Code provisions being enforced by breach notifications.
- 3.21 The Authority prefers to apply the policy to retailers rather than traders, despite enforcement issues associated with type 2 retailers.

Q5. Do you agree that the win-backs prohibition should apply to retailers? Why or why not?

Should a successive switch terminate a switch protection period?

- 3.22 We seek feedback on two methods that could be used to conclude a win-back ban or switch protection period. Suppose customer X switches from retailer A to retailer B.
- 3.23 Option 1
- 3.24 Retailer A is banned from initiating contact to win back customer X for 180 days, irrespective of whom customer X subsequently engages as a retailer.
- 3.25 Option 2
- 3.26 Retailer A might be banned from winning back customer X from retailer B for 180 days. However, if customer X switches to retailer C during the 180 days, then retailer C's switch protection against retailer B would commence, and retailer A's switch protection period would come to an end, so that it could initiate contact with customer X to try to win them back from retailer C, as soon as the switch to retailer C has occurred.
- 3.27 In both cases, customer X could initiate a switch back to retailer A at any time, and retailer A could then re-engage with the customer.
- 3.28 We prefer option (1): If a retailer loses a customer then they are not allowed to initiate contact to attempt a win-back for 180 days, irrespective of whether the customer switches again within the prohibition period.

Q6. Do you agree that a win-back prohibition period should only terminate after a given period of time (eg, 180 days)? Why or why not?

Should the policy prohibit win-backs that occur across different ICPs?

- 3.29 Retailer A could lose customer X at ICP #1 to retailer B. If customer X then moves to ICP #2, should retailer A continue to be prohibited from winning customer X back for the switch protection period or should the prohibition period terminate?
- 3.30 We prefer the win-back prohibition period, with respect to a given customer, to continue even if the consumer moves away from the ICP.

Q7. Do you agree that a losing retailer's win-back prohibition period should not be terminated if the departing customer subsequently shifts to a new ICP? Why or why not?

Should the save/win-back protection scheme apply to large consumers and small businesses?

- 3.31 The Authority is interested in whether it is necessary to apply the proposal to large consumers of electricity (industrial and other large commercial entities). Fixed term contracts predominate for such customers, with contract lengths often between 1 and 3 years. Because electricity is a large input cost for large consumers they are likely to be actively managing their relationship with retailers. Given typical contract lengths for large consumers, gaining retailers, even small and new entrant retailers, are likely to have fixed term contracts that protect their relationship with large consumers for longer periods of time than the switch protection period.
- 3.32 The proposed Code amendment could be explicitly targeted to consumers with category 1 and 2 metering installations, ie residential and small business consumers. Alternatively, ANZSIC codes could be used to apply the proposal to households, though these codes are less accurate than the metering categories. Small business customers

are likely to have similar characteristics to households and retailers might benefit from switch protection being extended to small business customers. The Authority seeks feedback on whether specific consumer groups should be targeted by the proposal.

- 3.33 We prefer targeting the proposal to residential and small business consumers with category 1 and 2 metering installations.

Q8. Should the save/win-back protection scheme apply to all consumers? If not, which consumers should the scheme apply to? And how should such customers be identified (eg, by the meter category at their ICP or by their ANZSIC code)?

Post-implementation review

- 3.34 If the Authority proceeds with the proposed Code amendment, it would expect to conduct a post implementation review of the policy 2 years after implementation. The post implementation review would use the 2017 review of the save protection scheme as a template for evaluation, modified as appropriate for the new initiative. Suggestions to enhance the assessment of the proposed policy are welcome.

Options to support monitoring and enforcement

- 3.35 Changes to the registry are proposed to support monitoring and enforcement of the proposed Code amendment, particularly to track a customer switching to and from the gaining/losing retailer during the switch protection period. The tracking would need to distinguish compliant and non-compliant switches. Examples of compliant return switches include:
- (a) a customer returning to the losing retailer because they were dis-satisfied with the services of the winning retailer
 - (b) a customer returning to avoid penalties associated with fixed term contracts
 - (c) a customer moving into a new residence or place of business and switching to a losing retailer that was previously associated with the ICP at that address.
- 3.36 As the discussion above makes clear, customer switches from gaining retailers back to losing retailers within the switch protection period would be compliant with the policy in some circumstances. Any changes to the registry would need to accommodate the possibility of some switches from a gaining trader back to a losing trader.
- 3.37 We consider five further changes to the registry's operational procedures, that would assist with monitoring and enforcing the proposed Code amendment:
- (a) a reactive compliance regime
 - (b) a proactive report-based regime
 - (c) a proactive Notice of Transfer based regime
 - (d) a proactive new-switch-type regime
 - (e) a mandated switch withdrawal regime.
- 3.38 Registry change (a) would not involve material changes to the registry, but would allow ICPs to be switched back to a losing retailer, either via switch withdrawals or new switches. The Authority would not proactively monitor problematic switching but would reactively deal with compliance breaches when gaining traders draw potential breaches

of the Code to the Authority's attention. Participants would need to adapt their processes to ensure they complied with the proposed amended Code.

- 3.39 Registry change (b) is similar to registry change (a), but the registry manager would develop a new registry report to make it possible for retailers and the Authority to monitor saves or win-backs during switch protection periods. The Authority would need to create a participant identifier relationship table so that it could identify switches back to the same entity when multiple participant identifiers are in use. Participants would need to adapt their processes, to incorporate the information in the new registry reports.
- 3.40 Registry change (c) would involve introducing a new field into the Notice of Transfer (NT file) to make it possible to ascertain how long a customer had been at a particular ICP. This new field would enable the registry manager to produce a monitoring report to calculate whether a save or win-back had occurred. The registry would be configured to produce notifications and/or reports detailing when the NT file did not match a set of business rules (such as a switch back to a losing retailer within a given switch protection period).
- 3.41 Registry change (d) would involve introducing a new switch type. If the switch occurred within the switch protection period, the registry would reject ordinary (TR and MI) switch types in favour of the new switch type.¹⁴ This process could be combined with registry change (c) in which the NT file would also be amended.
- 3.42 Registry change (e) is not preferred. It would require a losing retailer to initiate a switch withdrawal and a gaining trader to confirm the switch. Mandating switch withdrawals would result in complex reconciliation issues that would increase in complexity as the length of the switch protection period increases.
- 3.43 To minimise registry costs, we propose instituting (a) or (b) as transitional arrangements and adopting registry change (c) or (d), or both, in conjunction with other changes to the switch process at a later date. Such an approach would moderate implementation costs.

Q9. What changes to the registry should be made to facilitate monitoring and enforcement of the proposed amendment?
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Enforcement

- 3.44 The provisions of the proposed Code amendment would be enforced through the usual regulatory processes that govern compliance with the Code.

¹⁴ TR switches, 'trader switches', are the standard process in which a consumer changes from a losing retailer to gaining retailer. MI switches are 'move in' switches in which a new consumer has moved into a residence or business associated with a particular ICP.

4 Regulatory Statement for the proposed amendment

Objectives of the proposed amendment

- 4.1 The proposed amendment is intended to increase competition in the retail electricity market, reducing distortions that arise from market concentration. (Five retailers are responsible for 87 percent of the ICPs recorded in the registry.)
- 4.2 The proposed Code amendment would increase the probability that a gaining retailer would retain a switching customer and thus would increase the expected benefit of customer acquisition efforts. Improvements in acquisition benefits should increase the frequency and effort of retailers to acquire customers from competitors. The proposed amendment would make it easier for small and entrant retailers to acquire customers, increasing competitive pressures on large incumbent retailers.
- 4.3 Greater competition is expected to result in dynamic benefits by expanding the supply of electricity retailing services for a given price, reflecting greater innovation. Innovation is expected from small and new entrant retailers, and from large retailers as they respond to increased competitive pressures.
- 4.4 The proposed amendment would make it more difficult for retailers to win-back customers and would increase the incentive to retain customers by providing customers with better deals in the first place.
- 4.5 Retailer efforts to acquire customers result in better-informed consumers, enabling consumers to make better decisions about which retailers they should transact with. Introducing the proposed switch protection period is expected to promote the provision of market information by retailers seeking to acquire new customers and to increase the search for information by consumers.
- 4.6 The proposed switch protection period is also expected to reduce the information asymmetry regarding customer characteristics that exists between gaining and losing retailers, and thus place losing and acquiring retailers on a more even competitive footing.

Q10. Do you agree with the objectives of the proposed amendment? If not, why not?

The benefits of the proposal are expected to outweigh the costs

- 4.7 The Authority's assessment is that the proposal would be of net benefit to consumers. In particular, the proposal addresses the key problem identified in the post implementation review of the switch save protection scheme, namely, that saves are being substituted for win-backs and that therefore the scheme is failing to promote competition as intended.

Benefits

- 4.8 The proposed Code amendment is expected to:
 - (a) increase retail competition, by reducing barriers to entry and expansion
 - (b) reduce retail margins
 - (c) increase innovation
 - (d) increase customer acquisition and consumer search

- (e) reduce information asymmetries between retailers about consumer characteristics.
- 4.9 These benefits are hard to quantify numerically, but we have including indicative numbers against aspects of the benefits to demonstrate the approximate magnitude. On balance, the Authority is of the view that these benefits would outweigh the attendant costs described later.

Increase retail competition, by reducing barriers to entry and expansion

- 4.10 The Authority considers that the proposal would increase retail market competition in aggregate, supporting the efficiency of the market with attendant benefits through time. The proposed changes to the saves and win-back regime should make it easier for small and entrant retailers to increase their presence in the market and should result in lower barriers to market entry.
- 4.11 The proposed amendment is consistent with feedback received from smaller and medium-size retailers operating in the market. The proposed amendment should help maintain confidence that the rules governing the operation of the market support competition and provide a level playing field for all retailers and would-be retailers.
- 4.12 Lower barriers to entry and increased incentives for customer acquisition increase pressure on incumbent retailers to provide their customers with the best possible services at the best possible prices. Under the proposal, incumbent retailers would face stronger incentives to place their best offers in front of customers to avoid losing customers in the first place.
- 4.13 These incentives would be particularly strong for:
- (a) high value customers
 - (b) customers that are not locked into fixed term contracts
 - (c) agile customers who are willing to experiment with new service providers.
- 4.14 Although not an important mechanism for small or new entrant retailers, the proposal could mean that large incumbent retailers increase their use of fixed term retail contracts to retain customers. To the extent that customers are compensated for fixed term contracts – eg, with lower electricity prices or improvements in contract conditions – this development would also improve consumer well-being.

Reduce retail margins

- 4.15 Increased competition is expected to constrain retailers' ability to charge mark-ups over costs. Other things being equal, reductions in price margins should result in an expansion in the consumption of electricity, inducing an expansion in consumer surplus above and beyond any reductions in producer surplus.

Increase innovation

- 4.16 Small and entrant retailers are expected to be an important engine of innovation in the electricity industry, in part because they are not hampered by expensive legacy systems (such as accounting and billing systems) that embody out-dated technology. Fostering the growth of small and new entrant retailers would be expected to provide an important fillip to innovation in the electricity industry, yielding improvements in operational efficiency and improved product offerings.
- 4.17 Innovations in business practices are expected to reduce retailer costs, improving outcomes for consumers. Retail costs to serve consumers have been estimated to be in

the order of \$200 per ICP per year. If competitive pressures from this proposal result in operational efficiencies that reduce these costs-to-serve by 50 cents per residential ICP then, over 1.7 million residential ICPs, the cost saving would be in the order of \$850,000 per year. The equivalent present discounted value of this reduction in costs would be approximately \$9.2 million. If instead the decline in costs was in the order of 5 cents/year, with a maximum of 50 cents/year after 10 years, the present discounted value would still be in the order of \$6.6 million.

- 4.18 Innovations in services may also enable consumers to reduce their peak demand or reallocate demand through time, without materially affecting the benefit that the consumers derive from that consumption. Reallocating electricity demand through time could help consumers to purchase electricity when it is cheaper.

Increase customer acquisition and consumer search

- 4.19 The Authority anticipates that all retailers would face increased benefits from activities to acquire customers as the probability of losing a customer to a win-back in the switch protection period declines. Consequently, retailer investment in customer acquisition is likely to increase. An expansion in acquisition effort may:
- (a) increase the frequency of acquisition campaigns
 - (b) increase the geographical spread of acquisition campaigns
 - (c) increase the range of customers targeted for acquisition.

- 4.20 Consumers could thus have more opportunities to obtain information from retailers about product offerings. Consumers would also have stronger incentives to undertake research to identify product offerings and pricing plans that improve their well-being because information is likely to become cheaper to obtain. (For instance, because retailers are likely to be more willing to provide better offers to existing customers in an effort to retain them.)

Reduce information asymmetries between retailers about consumer characteristics

- 4.21 Submitters to previous consultations and reviews noted concerns that losing retailers have more information about switching customers than do gaining retailers and other competitors, enabling losing retailers to target the most valuable switching customers. This informational advantage would likely dissipate over time, placing all retailers on a more level playing field as a result of the proposed ban on win-backs.
- 4.22 Information asymmetries between competing firms make it more difficult for challenger retailers to price product offerings appropriately. Prohibiting saves and win-backs would be expected to increase customer contact between gaining retailers and customers, enabling gaining retailers to compete vigorously for customers that pay on time and require less customer contact, and enabling them to target higher prices to customers that are worse credit risks.

Costs

- 4.23 The main costs of the proposal would include:
- (a) implementation costs for retailers and the Authority
 - (b) compliance costs for retailers and the Authority
 - (c) an increase in resources invested by retailers to acquire and retain customers

- (d) overhead costs associated with new retailers entering or remaining in the market
- (e) higher costs for consumers no longer able to obtain win-back discounts (although this risk can be mitigated as discussed below).

Implementation costs

- 4.24 Total implementation costs are estimated as being in the range of \$540,000 to \$1.86 million.
- 4.25 Estimated implementation costs for the Authority, depending on the monitoring approach adopted, are between \$140,000 and \$360,000.
- 4.26 Implementation costs for retailers are more difficult to estimate. An indicative order of magnitude estimate, depending on the monitoring approach adopted, would be between \$400,000 (20 retailers, spending \$20,000 each) to \$1.5 million (30 retailers, spending \$50,000 each).

Compliance costs

- 4.27 The impact on Authority auditing and monitoring costs is expected to be relatively small, as processes are already in place to monitor and audit switches. Processes developed for the post implementation review of the switch saves protection scheme could be redeployed to assess the impact of the proposed ban on win-backs.
- 4.28 The proposal would be expected to affect retailer compliance costs. The incremental effect on on-going compliance costs could be comparatively small because retailers already have compliance obligations under the current switch save protection scheme. Furthermore, the proposed blanket or universal ban on saves and win-backs is expected to be simpler than the opt-in saves protection scheme, which applies for some participants and not others.

Higher costs for consumers no longer able to obtain win-back discounts

- 4.29 The Authority acknowledges that the proposed policy would make it more difficult for losing retailers to compete for the customers they are losing. Switching customers may thus be less well-informed about the product offerings of losing retailers under the proposed Code amendment and may face higher electricity costs. Three features of the proposal would mitigate this cost:
 - (a) customer-initiated contact remains admissible, as under the current saves protection scheme and the Telecommunications Customer Transfer Code. A customer can approach the losing retailer to see if they can better the offer of the gaining retailer
 - (b) a retailer can approach a previous customer after 180 days. A losing retailer's approach to a customer is delayed but not indefinitely prohibited
 - (c) both switching and non-switching consumers benefit from enhanced retail competition, and the ban is intended to increase incentives for incumbent retailers to provide customers with their best price to ensure they retain customers.
- 4.30 It is also worth noting that win-back discounts do not affect consumer surplus (a measure of consumer well-being) one-for-one because there would typically be an offsetting cost for non-switching consumers. When a retailer offers a win-back discount in a two tier market, non-switching consumers end up paying high prices, offsetting the gains made by switching consumers.

Q11. Do you agree the benefits of the proposed amendment would outweigh its costs?

The Authority has identified 3 other means of achieving the objectives

- 4.31 The Authority has identified 3 other means of achieving the objectives of the proposal:
- (a) the status quo – continuation of the saves protection scheme, but no change to retailers' ability to pursue win-backs
 - (b) the status quo, plus monitoring switching behaviour, as proposed by the MDAG
 - (c) an extension of the opt-in saves protection scheme, prohibiting win-backs for a period of time.

- 4.32 We explain in turn why the proposed amendment is preferred to these alternatives.

Alternative (a) – The status quo

The status quo does not address the net benefits that are expected to accrue from banning win-backs, and would not achieve the objectives of the proposal.

As noted in the post implementation review of the saves protection scheme, switching speeds increased following the introduction of the saves protection scheme, reducing some of the benefits anticipated from that scheme.

Alternative (b) – Increased monitoring of switching behaviour

- 4.33 Increased monitoring would provide the Authority with a degree of optionality, enabling a Code amendment to be developed later if, for example, market concentration worsens, switching rates decline, retail costs increase for no reason, or in response to other considerations.

Alternative (c) – An extension of the opt-in saves protection scheme

- 4.34 Extending the saves protection scheme would result in higher transactions costs than this proposal. Six submitters to the original switch save protection consultation,¹⁵ including four retailers who were opposed to restrictions on saves and win-backs, argued that a blanket prohibition was simpler and thus preferable to an opt-in scheme. Operationally it is simpler for retailers to apply the same approach to all saves and win-backs rather than having to determine whether win-backs are permissible or not conditional on the identity of the gaining retailer.
- 4.35 The preferred proposal would also apply to retailers rather than to traders, ensuring that traders cannot use retailer-subidiaries to circumvent the proposed policy.

The proposed amendment is preferred to other options

- 4.36 The Authority has evaluated the other means of achieving the objectives and prefers the proposal.
- 4.37 We consider our preferred proposal relative to the alternatives outlined above.
- (a) Banning win-backs for 180 days after a switch would restore benefits that were expected to eventuate from the saves protection scheme that is currently in place. The Authority's proposal is preferred to the status quo in this regard. Furthermore,

¹⁵ See p. 22 of the summary of submissions.

it would also help to ameliorate the adverse selection problem in which losing retailers cherry-pick the most profitable customers to win-back.

- (b) Increased monitoring by itself would increase Authority costs without immediately realising the competitive benefits expected from the preferred policy. Monitoring and the threat of future regulation may support competition, but the incentives for competitive pricing are attenuated by the likely delay in regulation.
- (c) The proposed amendment is expected to be simpler to implement and would result in reduced compliance and operational costs relative to a direct extension of the switch save protection scheme. The proposal would also prevent avoidance through the use of type 2 retailers.

Q12. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority’s statutory objective.

The proposed amendment complies with section 32(1) of the Act

- 4.38 The Authority’s objective under section 15 of the Act is to promote competition in, reliable supply by, and efficient operation of, the electricity industry for the long-term benefit of consumers.
- 4.39 Section 32(1) of the Act says that the Code may contain any provisions that are consistent with the Authority’s objective and is necessary or desirable to promote one or all of the following:

Table 1: How proposal complies with section 32(1) of the Act

(a) competition in the electricity industry	The proposal is expected to facilitate the expansion of small retailers and to increase retail contestability, increasing the likelihood of entry by new retailers.
(b) the reliable supply of electricity to consumers	The proposed amendment would not affect the reliability of supply.
(c) the efficient operation of the electricity industry	The proposed Code amendment is expected to enhance efficiency by increasing competition, promoting innovation in operational processes and product offerings, reducing information asymmetries, and increasing price transparency.
(d) the performance by the Authority of its functions	The proposed amendment would not materially affect the Authority’s performance of its functions.

(e) any other matter specifically referred to in the Act as a matter for inclusion in the Code.	The proposed amendment would not materially affect any other matter specifically referred to in the Act for inclusion in the Code.
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Q13. Do you agree the Authority’s proposed amendment complies with section 32(1) of the Act?

The Authority has given regard to the Code amendment principles

4.40 When considering amendments to the Code, the Authority is required by its Consultation Charter¹⁶ to have regard to the following Code amendment principles, to the extent that the Authority considers they are applicable. Table 2 (below) describes the Authority’s regard for the Code amendment principles in preparing the proposal.

Table 2: Regard for Code amendment principles

Principle	Comment
1. Lawful	The proposal is lawful, and would be consistent with the statutory objective (see sections 2.7-2.13) and with the empowering provisions of the Act.
2. Provides clearly identified efficiency gains or addresses market or regulatory failure	The efficiency gains are set out in the evaluation of the costs and benefits (section 4). The proposal would increase competition, reduce information asymmetries, and would alleviate dead-weight losses arising from too little electricity consumption.
3. Net benefits are quantified	The extent to which the Authority has been able to estimate the efficiency gains is set out in the evaluation of the costs and benefits (section 4). Numeric quantification of the costs and benefits is limited.
4. Preference for small-scale ‘trial and error’ options	Principles 4 to 9 apply only if it is unclear which option is best (refer clause 2.5 of the Consultation Charter). We regard the preferred option as clearly superior to the alternatives.
5. Preference for greater competition	We regard the preferred option as clearly superior to the alternatives.
6. Preference for market solutions	We regard the preferred option as clearly superior to the alternatives.

¹⁶ The consultation charter is one of the Authority’s foundation document and is available at: <http://www.ea.govt.nz/about-us/documents-publications/foundation-documents/>

Principle	Comment
7. Preference for flexibility to allow innovation	We regard the preferred option as clearly superior to the alternatives.
8. Preference for non-prescriptive options	We regard the preferred option as clearly superior to the alternatives.
9. Risk reporting	Principles 4 to 9 apply only if it is unclear which option is best (refer clause 2.5 of the Consultation Charter). We regard the preferred option as clearly superior to the alternatives.

Appendix A Proposed Code amendment

11.1 Contents of this Part

This Part—

- (a) provides for the management of information in the **registry**; and
- (b) prescribes a process for switching **ICPs** between **traders**; and
- (ba) prescribes a period of protection for gaining **retailers** during which a losing **retailer** may not approach a customer to persuade the customer to stay with the losing **retailer** or to switch back to it; and
- (bb) imposes restrictions on the use of customer information held by a losing **retailer** during the customer switch protected period; and
- (c) prescribes a process for a **distributor** to change the record in the **registry** of an **ICP** so that the **ICP** is recorded as being usually connected to an **NSP** in the **distributor’s network**; and
- (d) prescribes a process for switching responsibility for **metering installations** for **ICPs** between **metering equipment providers**; and
- (e) prescribes a process for dealing with **trader events of default**; and
- (f) requires **retailers** to give **consumers** information about their own consumption of **electricity**; and
- (g) requires **retailers** to give information about their **generally available retail tariff plans** to any person on request.

11.15 Process for customer or embedded generator switching

- (1) This clause applies if a **trader** (“the gaining **trader**”) has an arrangement with a customer or **embedded generator** to—
 - (a) commence trading **electricity** with the customer or **embedded generator** at an **ICP** at which another **trader** (“the losing **trader**”) trades **electricity** with the customer or **embedded generator**; or
 - (b) assume responsibility under clause 11.18(1) for such an **ICP**.
- (2) The gaining **trader** and the losing **trader** must comply with Schedule 11.3.

11.15AA Trader may elect to have switch saving protection~~[Revoked]~~

- ~~(1) A **trader** that buys **electricity** from the **clearing manager** may elect to have switch saving protection by giving written notice to the **Authority**.~~

~~(2) The Authority must publish the name of each trader that has elected to have switch saving protection as soon as practicable after receiving the written notice from the trader.~~

~~(3) A trader's switch saving protection comes into effect on the day after the day on which the Authority publishes the trader's election.~~

11.15AB Switch protected period saving protection

(1) This clause applies to a **retailer** ("the losing **retailer**") when a customer of that **retailer** switches to another **retailer** ("the gaining **retailer**") if a **trader** (the "protected **trader**") has switch saving protection.

(2) If a ~~the protected trader~~ gaining retailer enters into an arrangement with a customer of a another trader (the "losing **trader-retailer**") to commence trading **electricity** with the customer, the losing **trader-retailer** must ~~comply with subclause (4)~~ not, by any means, including by using a third party or agent acting on its behalf, initiate contact with the customer to attempt to persuade the customer to terminate the arrangement during the period specified in subclause (5), including by—

(a) making a counter-offer to the customer; or

(b) offering an enticement to the customer.

~~(3) If a trader enters into an arrangement with a customer of a protected trader to commence trading electricity with the customer, the protected trader must comply with subclause (4). [Revoked]~~

~~(4) A losing trader referred to in subclause (2) or a protected trader referred to in subclause (3) must not, by any means, initiate contact with the customer to attempt to persuade the customer to terminate the arrangement referred to in subclause (2) or subclause (3) (as the case may be) during the period specified in subclause (5), including by—~~

~~(a) making a counter offer to the customer; or~~

~~(b) offering an enticement to the customer. [Revoked]~~

(5) The switch protected period—

(a) starts on the earlier of—

(i) the day on which the **trader retailer** receives notice of the switch request under clause 22(a) of Schedule 11.3; and

(ii) the **event date** for the switch; and

(b) ends on the earlier of—

- (i) the date that is 180 days after the **event date** for the switch; and
- (ii) the date on which the losing **retailer** receives a notice from the **Authority** under clause 4A(1) of Schedule 11.5 that the **gaining retailer** has failed to remedy an **event of default**; and
- (iii) if the **gaining retailer** makes a withdrawal request, the date on which the **losing retailer** receives notice of that withdrawal request under clause 22(b) of Schedule 11.3.

11.15AC ~~Trader~~ Retailer may communicate with customers for certain purposes

(1) Clause 11.15AB(4~~2~~) does not prohibit a ~~trader~~ losing retailer from—

- (a) contacting a customer to advise the customer of any termination fees that the customer is required to pay as a result of the customer ceasing to trade with the ~~trader~~ retailer; or
- (b) contacting a customer regarding administrative matters, including—
 - (i) any fees the customer owes the ~~trader~~ retailer;
 - (ii) the customer's final meter reading;
 - (iii) how the ~~trader~~ retailer will return any keys it holds on the customer's behalf;
 - (iv) the effect of the customer ceasing to buy **electricity** from the ~~trader~~ retailer on other contracts between the customer and the ~~trader~~ retailer, for example, for the supply of gas; or
- (c) providing a factual response to a question asked by a customer; or
- (d) making a counter-offer or offering an enticement to a customer who has ~~prompted~~ invited the ~~trader~~ retailer to attempt to persuade the customer to terminate the arrangement referred to in clause 11.15AB(2) ~~or (3)~~; or
- (e) offering an enticement to a customer as part of a general marketing campaign; or
- (f) contacting the customer to address network fault issues or to follow up customer complaints.

(2) During a switch protected period defined in 11.15AB(5), a **retailer** (whether a **gaining retailer** or a **losing retailer**) must not—

- (a) make any statement or representation to a customer that is—
 - (i) inaccurate, misleading, or deceptive; or
 - (ii) likely to mislead or deceive; or

- (b) harass or coerce a customer; or
- (c) make any false statement, or communicate any opinion, about any other **retailer** that would be, or may be, likely to bring that other **retailer's** reputation into disrepute.

11.15AD Cancellation of switch saving protection [*Revoked*]

- (1) ~~A **trader** that has elected to have switch saving protection may cancel its switch saving protection by giving written notice to the **Authority**.~~
- (2) ~~However,~~
 - (a) ~~a **trader** may not cancel its switch saving protection earlier than 12 months after the date on which the switch saving protection came into effect; and~~
 - (b) ~~a **trader** that has cancelled its switch saving protection may not elect to have switch saving protection earlier than 12 months after the date on which the **trader** cancelled its switch saving protection.~~

11.15AE Restrictions on use of customer information by retailer during switch protected period

- (1) A losing **retailer** must not use information relating to a customer that it obtained prior to the switch protected period, including information that may be used to contact the customer, during the period specified in clause 11.15AB(5) to do any of the following:
 - (a) contact the customer for any purpose other than the purposes specified in 11.15AC(1):
 - (b) include the customer in direct marketing activities:
 - (c) include the customer in a targeted marketing campaign:
 - (d) enable any other **retailer**, except the gaining **retailer**, to contact the customer.
- (2) This clause does not limit any other requirement to maintain the confidentiality of any information relating to a customer that is imposed by—
 - (a) the contract entered into between the **retailer** and the customer; or
 - (b) any law.

Q14. Do you have any comments on the drafting of the proposed amendment?

Appendix B Format for submissions

Submitter	
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Question	Comment
Q1. Do you agree the issues identified by the Authority are worthy of attention?	
Q2. Do you agree that prohibiting win-backs for a period of time will foster competition? How long should any win-back prohibition period be?	
Q3. Do you agree that losing retailers should be prohibited from passing information to third parties? Why or why not?	
Q4. Do you agree that good conduct obligations are required? Why or why not?	
Q5. Do you agree that the win-backs prohibition should apply to retailers? Why or why not?	
Q6. Do you agree that a win-back prohibition period should only terminate after a given period of time (eg, 180 days)? Why or why not?	
Q7. Do you agree that a losing retailer's win-back prohibition period should not be terminated if the departing customer subsequently shifts to a new ICP? Why or why not?	
Q8. Should the save/win-back protection scheme apply to all consumers? If not, which consumers should the scheme apply to? And how should such customers be identified (eg, by the meter category at their ICP or by their ANZSIC code)?	
Q9. What changes to the registry should be made to facilitate monitoring and enforcement of the proposed amendment?	
Q10. Do you agree with the objectives of the proposed amendment? If not, why not?	
Q11. Do you agree the benefits of the proposed amendment would outweigh its costs?	
Q12. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective.	
Q13. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	
Q14. Do you have any comments on the drafting of the proposed amendment?	

Glossary of abbreviations and terms

Authority	Electricity Authority
Act	Electricity Industry Act 2010
Code	Electricity Industry Participation Code 2010
Type 2 retailer	A retailer that has a supply contract with the customer at an ICP, but who is not the trader recorded in the registry as being responsible for the ICP.