



10/12/2019

Submissions
Electricity Authority
Level 7, ASB Bank Tower
2 Hunter Street
P O Box 10041
WELLINGTON

Trustpower Limited
Head Office
108 Durham Street
Tauranga
Postal Address:
Private Bag 12023
Tauranga Mail Centre
Tauranga 3143
F 0800 32 93 02
Offices in
Auckland
Wellington
Christchurch
Oamaru
Freephone
0800 87 87 87
trustpower.co.nz

By email: winbacks.submission@ea.govt.nz

TRUSTPOWER SUBMISSION: SAVES AND WIN-BACKS CODE AMENDMENT

1. Background

1.1.1 The Electricity Price Review (**EPR**) Panel's recent review highlighted concerns about the development of a two-tier market in which consumers who actively shop around receive discounts and those who do not pay higher prices. In the Government response to the EPR, the Minister of Energy and Resources confirmed the expectation that the Electricity Authority (**the Authority**) should impose, as a high priority, a:

"ban or moratorium on win backs¹ followed by a full evaluation of the impacts on consumers."

- 1.1.2 In parallel to the EPR process, the Authority has been considering whether saves and win-backs can effectively be used to stifle small retailers from acquiring customers and discourage potential entrants, thereby reducing competition. The Authority's work programme included a review of switching arrangements by the Authority's Market Development Advisory Group's (**the MDAG**) which in March 2019 concluded that there was no regulatory or market failure.
- 1.1.3 Given the contrasting views around saves and win-backs, the Authority has now published a request for submissions on its *Saves and Win-backs Code Amendment* consultation paper (**the Consultation Paper**).
- 1.1.4 In the Consultation paper the Authority is proposing to amend the Electricity Industry Participation Code 2010 (**the Code**) to prohibit saves and win-backs in the wake of a customer switch, thereby temporarily inhibiting competition initiated by a losing retailer for the duration of a 'switch protection' period.
- 1.1.5 Trustpower welcomes the opportunity to submit on this matter.

¹ A save occurs when a retailer persuades a customer to cancel an incomplete switch to another retailer. A win-back occurs when the switch is complete, but the losing retailer later encourages the switching customer to return.

2. Trustpower's view

Decision-making should be robust and evidence-based

- 2.1.1 As the Authority is aware, Trustpower strongly supports evidence-based decision making and robust consultation processes.
- 2.1.2 We outlined in our submission to the EPR that there is no evidence to suggest saves and win-backs hinder small and new entrant retailer's ability to expand in size. Following review of the EPR submissions on this matter we retain that view. We also note the recent advice of the MDAG that there was no evidence of a market or regulatory failure relating to the switching arrangements in the electricity market.
- 2.1.3 Patterns of win-back activity are consistent with increasing competitive pressure as retailers need to pay attention to costs and to price levels to avoid losing customers to counter-offers.²
- 2.1.4 We acknowledge there are barriers to some consumers switching and gaining the benefits of such a switch, but we have not seen evidence that the existence of win-back offers creates such a barrier.
- 2.1.5 Instead, we consider that the adoption of the package of reforms to increase consumer engagement that were recommended by the EPR Panel, and supported by the Government, will deliver the best outcomes for consumers by ensuring that the benefits of competition will be distributed more evenly across consumers. This aligns with the recent findings of the Australian Competition & Consumer Commission (ACCC).³

Risk of unintended consequences

- 2.1.6 We note that all interventions carry the risk of unintended consequences, including that the original aim of the intervention is not achieved. In Trustpower's view it is not clear the current proposal to prohibit saves and win-backs for 180 days will yield the expected benefits particularly with regards to improving retail competition.
- 2.1.7 During the EPR process we sought advice from The Lantau Group (TLG) regarding what constitutes effective retail competition in the context of the New Zealand electricity market.⁴
- 2.1.8 As TLG explain:

.... there is a limit to what can be achieved via competition, just as there are limits to what can be achieved via regulation or fiat. You can have any system you want, but it is unlikely to be perfect.

Often, we can make a system better in some or many ways, but rarely can we do so without incurring costs or risking unintended consequences or complex value transfers (winners and losers).

The question "what are the benefits of potential improvements" must eventually meet the question "what are the costs and risks of making those improvements."⁵

- 2.1.9 We consider that this advice from TLG is entirely relevant when considering the proposed

² Market Development Advisory Group (MDAG), 2019 Saves and win-backs recommendation paper. pg. 7

³ The ACCC explain in their 2018 Electricity Pricing Inquiry "that increasing the ability of consumers to compare prices in the electricity market and increasing the transparency of offers available to consumers will assist consumers, including some of these inactive consumers, to engage with the market. Doing so should lessen the efficacy of the retention-focused strategies of the big three and share the benefits of competition more evenly across all customers." Pg.144 available from https://www.accc.gov.au/system/files/Retail%20Electricity%20Pricing%20Inquiry%E2%80%94Final%20Report%20June%202018_0.pdf

⁴ The Lantau Group, *Retail Competition Effectiveness*, 2018.

⁵ Ibid. p.2

prohibition on saves and winbacks, that is, the proposal may result in significant unintended consequences. In particular, we note that previous interventions in this space did not result in the expected benefits.

Relevant experience from the introduction of the save protection scheme

2.1.10 In 2014 the Authority explored the benefits of a ‘save protection’ scheme. The 2014 *Save and Win-backs Consultation (the 2014 Consultation)* proposed to allow retailers to elect to be protected from other retailers making counter-offers to prevent the switching process from being completed.

2.1.11 The Authority said in 2014 they expected that while some consumers would no longer be able to receive save offers, this would be outweighed by broader competitive effects which included: ⁶

... increased marketing activity by acquiring retailers, making it more likely that a customer would receive an improved offer from another retailer

.... increased retention activity prior to any switch being initiated, making it more likely that a customer would receive an improved offer from their current retailer

... lowering of barriers to entry and expansion for smaller/new entrant retailers, which will have an important role in driving competition and innovation.

2.1.12 Based on these expected benefits, the save protection scheme was introduced in 2015.

2.1.13 A post-implementation review in 2017 of the outcomes from the reforms associated with the 2014 Consultation found however, that the expected benefits were not achieved.⁷ The scheme neither improved nor harmed retail competition while as the Authority notes, “respondents to our survey [indicated that] the cost to acquire customers has increased since the Authority introduced the scheme...”⁸

2.1.14 The Code changes proposed in this Consultation are expected to close some of the perceived gaps identified in the 2017 post-implementation review.⁹ We encourage the Authority to bear in mind the risk of additional unintended consequences which may arise from this proposal.

2.1.15 Nonetheless, we acknowledge Government expressed during the EPR that saves and win backs should be prohibited for a time so that its impact on consumers can be properly evaluated.

Improvements are needed to the current proposal

2.1.16 We support the Authority in considering improvements to their current proposal. We outline three improvements below and include answers to the specific questions posed in the Consultation Paper as **Appendix A**.

2.1.17 In our view:

- a) the 180 day prohibition period may exacerbate unintended consequences and should be reconsidered;
- b) the prohibition on saves and win-backs should be incorporated as a sunset provision into the Code, with an ability to extend the prohibition based on the outcomes of a mandatory review of the arrangements after 2 years;

⁶ Electricity Authority, *Proposed Code amendment - Saves and early win-backs*, 2014, pg. D-E.

⁷ Electricity Authority, *Post implementation review of saves and winbacks*, 2017.

⁸ *Ibid.* p. ii.

⁹ These gaps include perceived information asymmetry between gaining and losing retailers, the period of the scheme was too short etc.

- c) the timing for implementation should be further considered as it will potentially affect the overall costs to the industry.

2.1.18 We address the matters outlined in 2.1.17 in the rest of this submission.

3. The 180 day prohibition period may exacerbate unintended consequences

- 3.1.1 The Authority is proposing to have a prohibition period of 180 days. We understand the Authority considered a 35 day, a 3 month, a 6 month and a 12 month prohibition period and is recommending 180 days because it is “a switch protection period that falls within this range”.¹⁰
- 3.1.2 It is uncertain what exactly has led the Authority to propose a 180 day prohibition period, rather than a 45 day or 90 day or even 100 day period as all of these can be considered to fall “within the range” of the periods proposed in the submissions received during the EPR process.
- 3.1.3 The Authority acknowledges that “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”.¹¹
- 3.1.4 There may be an element of subjectivity required by the Authority in determining an appropriate length of time for the prohibition. However, in our view 180 days period is too long and may magnify unintended consequences such as reversing the informational asymmetry in favour of the gaining retailer.
- 3.1.5 Some meters might only be read every 3 months but these form a very small subset of the market. We therefore believe that a 30 to 90 day prohibition period would be suitable for most customers to develop informed opinions about their new retailer while also limiting potential unintended consequences. We also note that the majority of smaller retailers, who are largely the focus of this Code change, promoted something within this range.
- 3.1.6 We support the Authority further considering the length of the prohibition period and undertaking a more thorough assessment of the likely costs and benefits associated with alternative timeframes being adopted.

4. The prohibition should be incorporated as a sunset provision

- 4.1.1 In our view, the proposed prohibition on saves and win-backs should be incorporated as a sunset provision which can only be extended based on the outcomes of a mandatory post-implementation review undertaken 2 years after the implementation date. The post-implementation review should assess whether the procompetitive features of supporting new entrants outweigh the anticompetitive features of banning saves and win-backs.
- 4.1.2 We suggest that incorporating the prohibition into the Code in this manner will enable the prohibition to be trialled for a period of time, as was supported by the Government.
- 4.1.3 It will also provide an easy and low cost option for removing the prohibition, with few long-term consequences for the market, if the post-implementation review determines that the impact of the arrangements on competition has not been in the long-term interest of consumers.

5. Timing for implementation should be considered

- 5.1.1 The Authority’s Consultation Paper acknowledges that retailers’ costs are difficult to estimate.

Implementation costs for retailers are more difficult to estimate. An indicative order of magnitude estimate, depending on the monitoring approach adopted, would be between

¹⁰ Electricity Authority *Saves and Win-backs Code Amendment*, 2019, p. 13 paragraph 3.11.

¹¹ *Ibid.* paragraph 3.12.

\$400,000 (20 retailers, spending \$20,000 each) to \$1.5 million (30 retailers, spending \$50,000 each).

- 5.1.2 It is unclear how the Authority has reached this cost structure and further details on this would be welcome.
- 5.1.3 Implementation costs will be largely dependent on when the proposed changes to the Code will commence and Trustpower is unclear as to when the implementation date is expected to be at this stage.
- 5.1.4 If there is a short implementation lead-up period, this is likely to significantly increase costs for retailers. Retailers will have to carry out system changes and, most importantly, train all front-line staff regarding the new processes so it is clear where the boundaries lie.
- 5.1.5 It can be easy to overlook the broader implications of a series of regulatory interventions on participants and outcomes for customers. All participants large and small have some limit on their ability to deliver change. Trustpower notes that regulatory interventions that do not have clearly quantified benefits have the potential to displace or delay customer focused initiatives and innovation as participants are required to reprioritise resources.
- 5.1.6 The cost of the Authority's proposal is likely to be significant, particularly if there is a short implementation period. The increased costs as a result of the government intervention in saves and win-backs was a key concern for the ACCC.
- 5.1.7 The ACCC also considered that any efforts to specifically regulate retailer behaviour around save and win-back activity would add regulatory burden and complexity, which would have cost impacts on consumers, and would be difficult to enforce.
- 5.1.8 The ACCC noted that "based on the work of the Inquiry, we do not think regulatory intervention of this type is appropriate."¹² We agree with the ACCC.
- 5.1.9 If the Authority determines to proceed with implementing a prohibition on saves and winbacks, we support the Authority in considering whether a compliance amnesty period may be appropriate, particularly in the event there is a short time period between the Authority's decision and the implementation date (i.e. only 2-3 months).
- 5.1.10 For any questions relating to the material in this submission, please contact Claudia Vianello, Advisor – Strategy & Regulation, on 021 681 206

Regards,



Craig Neustroski
General Manager - Markets

¹² The ACCC 2018 Report is available from <https://www.accc.gov.au/system/files/Retail%20Electricity%20Pricing%20Inquiry%E2%80%94Final%20Report%20June%202018%200.pdf>

Appendix A: Responses to consultation questions

Question	Response
<p>Q.1. Do you agree the issues identified by the Authority are worthy of attention?</p>	<p>1.1 Trustpower does not agree with the view that saves and win-backs reduce retail competition and represent a barrier to expansion for new entrants.</p> <p>1.2 The Authority found in the 2017 post-implementation review of the saves protection scheme that:</p> <p style="text-align: center;"><i>We can see no effect of the scheme on competition—which has continued a long-term trend of increased intensity. Survey results suggest that acquisition costs have increased, and that the scheme has been largely ineffective.</i></p> <p>1.3 We expect similar outcomes from the proposed prohibition on saves and win-backs will be identified during the post-implementation review.</p>
<p>Q.2. 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>	<p>2.1 As explained in the cover letter, we remain unconvinced there is sufficient evidence to support the introduction of a prohibition on saves and win-backs, particularly for such a long period as the Authority is currently proposing.</p> <p>2.2 There appear to be no compelling reasons for selecting 180 days. If the Authority chooses to advance its proposal, Trustpower believes the prohibition period should be no longer than 90 days to mitigate any unintended consequences.</p> <p>2.3 In our view, somewhere between 30-90 days gives customers’ the opportunity to experience their new retailer and form a reasonable view around the suitability of their new retailer.</p>
<p>Q.3. Do you agree that losing retailers should be prohibited from passing information to third parties? Why or why not?</p>	<p>3.1 Some of obligations and contracts might involve retailers passing information to third parties. For example, retailers can be asked to provide a customer’s consumption data to a third party following a customer request and the retailer might have existing contracts for services such as those relating to debt collection.</p> <p>3.2 The proposed amendment to clause 11.15E appears to accommodate for these situations as well as other ones that may arise, but further clarity by the Authority on these matters is welcomed.</p>



<p>Q.4. Do you agree that good conduct obligations are required? Why or why not?</p>	<p>4.1 Good conduct requirements are already in place as a result of the provisions of the Fair Trading Act 1987 whereby retailers cannot make unsubstantiated representations about a good or service. Retailers must have reasonable grounds for making any claim.</p> <p>4.2 Furthermore, Commerce and Consumer Affairs Minister, Kris Faafoi, announced in September new measures to better protect businesses and consumers from unfair commercial practices.¹³</p> <p>4.3 Consumer protections are also included in the Consumer Guarantees Act 1993, as well as in the Authority’s Final Principles and Minimum Terms and Conditions for Domestic Contracts for Delivered Electricity (Interposed).¹⁴</p> <p>4.4 MDAG also found in their 2019 report that they “do not see any evidence that existing market structures or regulatory settings provide any additional incentive for making misleading claims”.¹⁵</p> <p>4.5 In light of this regulatory environment, Trustpower does not support the proposal to have additional good conduct obligations prescribed in the Code. We consider that the existing arrangements are sufficient for ensuring the right outcomes for consumers.</p>
<p>Q.5. Do you agree that the win-backs prohibition should apply to retailers? Why or why not?</p>	<p>5.1 We agree that the provisions should apply to “Retailers”.</p>
<p>Q.6. 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?</p>	<p>6.1 As explained in our cover letter, while we agree that the prohibition should clearly terminate after a defined period of time, we do not agree with the proposed 180 day prohibition period.</p> <p>6.2 It seems excessive and likely to increase costs and negatively impact on customer experience. For example, normal marketing activity may cause retailers to contact lost customers, but the new retailer may feel that this is a winback, and the number of complaints may arise.</p> <p>6.3 In our view, the longer the period that the prohibition would apply for, the more likely unforeseen issues will surface.</p>

¹³ Available from <https://www.beehive.govt.nz/release/government-strengthen-law-against-unfair-commercial-practices>

¹⁴ Available from <https://www.ea.govt.nz/operations/retail/retailers/retailer-obligations/>

¹⁵ MDAG, 2019 Saves and win-backs recommendation paper. pg. 6



<p>Q.7. 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?</p>	<p>7.1 Trustpower does not support a win-back prohibition period that continues after the consumer moves away from an ICP.</p> <p>7.2 First, a consumer might move to a different region for a variety of reasons. The customer's new location might have different services available that were not offered at the previous location, or different serviced by a different distributor with different pricing structures. There is no evidence that a prohibition period should continue after a customer moves away from an ICP.</p> <p>7.3 Second, if the prohibition is at the customer level rather than ICP level, there may be an unintentional breach in the event the customer changes name. Currently, there are no systems that would allow us to comply with this requirement.</p> <p>7.4 Even if the customer maintains the same name, a retailer is likely to pick them up in marketing campaigns and be completely unaware that it is the same customer, but the existing retailer may feel it is a win-back and may contest the switch. The longer the prohibition period, there higher the instances these situations may occur, adding costs to the industry.</p>
<p>Q.8. 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)?</p>	<p>8.1 It would be simpler to implement if covered all consumers.</p>
<p>Q.9. What changes to the registry should be made to facilitate monitoring and enforcement of the proposed amendment?</p>	<p>9.1 No comment.</p>
<p>Q.10. Do you agree with the objectives of the proposed amendment? If not, why not?</p>	<p>10.1 Please refer to our cover letter.</p>



<p>Q.11. Do you agree the benefits of the proposed amendment would outweigh its costs?</p>	<p>11.1 Please refer to our cover letter.</p>
<p>Q.12. 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.</p>	<p>12.1 Trustpower considers that MDAG's proposal to retain the status quo, plus monitoring switching behaviour, would better achieve the statutory objectives than the prohibition that has been proposed by the Authority.</p> <p>12.2 The MDAG proposal for 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.</p> <p>12.3 Increased monitoring by itself may increase some of the Authority's implementation costs but it would be less than costly than current proposal. It would also give the Authority the option to shine a light on the market without the risk of unintended consequences. In our view, monitoring and the threat of future regulation would support the Authority's objective.</p>
<p>Q.13. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?</p>	<p>13.1 No comment.</p>
<p>Q.14. Do you have any comments on the drafting of the proposed amendment?</p>	<p>14.1 The new clause 11.15AE states a losing retailer may not use information relating to a customer that it obtained prior to the switch and include them in direct marketing activities. This will be difficult to comply with and enforce.</p> <p>14.2 Planning and executing marketing plans take a considerable amount of preparation time and coordination. The proposed drafting 11.15EA will not only increase complexity and compliance costs and be difficult to monitor, but the implementation date needs to consider any pre-planned marketing activities and the cost to retailers to amend these marketing activities as a result of the Code changes.</p> <p>14.3 We have no additional comments on the proposed drafting at this time.</p>