



3 December 2019

C/- Win-backs Submissions
Electricity Authority
P O Box 10041
Wellington 6143
By email: winbacks.submission@ea.govt.nz

Dear Rob

Re: Consultation Paper – Saves and win-backs

Flick appreciates the opportunity to submit on the Electricity Authority's proposals to ban saves and win-backs.

We note that Ecotricity, Electric Kiwi, Energyclubnz, Pulse and Vocus have submitted individually on this topic and we support these submissions. As we have already informed the Board, banning saves and win-backs is a high priority for our group.¹

It is unclear why the Authority decided not to implement an urgent Code amendment, given the weight of support for a ban expressed during the Electricity Price Review (EPR) process. Substantial evidence and information was provided in a range of submissions. While this information may not have been presented in the context of the Electricity Authority's statutory objective it was, in our view, sufficiently thorough to give the Board confidence to implement an urgent Code amendment followed by consultation.²

However, given the process we are now in, we strongly submit the Board should take leadership and make a decision on banning saves and win-backs before Christmas and gazette a Code amendment as soon as practicable thereafter. To be blunt the Authority's inaction is costing consumers at least \$40 million per month due to the prevailing two-tier structure of the retail market.

Good conduct obligations

We note the Authority is proposing good conduct obligations on retailers so that they do not misrepresent or disparage their competitors.

We submit the Authority must apply these same principles in its comments about participants in consultation papers. It is highly inappropriate for the Authority to describe customers that choose to buy electricity from new service providers as participating in an experiment.³

¹ This is especially so when you consider the Authority informed the EPR Panel "*Just as we were completing this [the EPR Final report dated 21 May 2019], the Electricity Authority advised us it intended proposing a code change to ban win-backs – and promptly.*"

² We note that the Authority's consultation paper essentially has no reference to this valuable information or the highly relevant assessment of the impact on New Zealand consumers of our two-tier market.

³ Paragraph 4.13(c) of the consultation paper

Permanent ban on win-backs

Flick believes a 180 day ban is an absolute minimum and that the principles of the Privacy Act 1993 support a total ban on win-backs. These principles state that personal information should only be used for the purpose for which it was given. A customer gives information to a retailer for the purposes of services from that retailer while they are a customer. Once they switch away, the retailer is no longer providing that person with a service so the losing retailer should be destroying the customer specific information and certainly not using the information to win that customer back.

Technical aspects of the proposed Code

We note that Electric Kiwi provided the Authority with simpler Code provisions to effect a ban and support that draft Code. If the Authority prefers its draft Code, Flick agrees:

- the Code should apply to Retailers
- third party service providers or agents are also covered
- the Code applies to all types of consumers and to individuals not ICPs
- the ban cannot be circumvented by ringing a previous customer about a different product that is bundled with electricity to talk about electricity
- with the circumstances when a losing retailer may communicate with a customer. What is classed as a 'general marketing campaign' needs to be monitored as well as contact with individual customers during that campaign ((11.15AC(1)(d)).

Compliance with win-back ban

Flick submits the Code be amended to include a requirement that directors of electricity retailers sign off on compliance with the saves and win-backs ban and Code provisions. This could be timed to be delivered at the same time as company Directors are signing out compliance with the stress testing regime.

Post implementation review

The Authority's proposal to review the impact of the ban on saves and win-backs in two years is equivalent to the Authority taking a beat both ways:

- the previous post implementation review (PIR) found the save protection scheme to be ineffective and yet it has taken the Authority over two years to consult on any Code change
- price competition has flourished for consumers in the telecommunications sector despite a ban on saves and win-backs
- the Minister expects a review of the government's decision to ban win-backs in three years. Is the Authority's PIR in addition to the government's review or instead of it?

Flick agrees with Vocus' submission that the recent CMA investigation provides useful guidance on the matters which should be tested as part of any review – some of which requires analysis to commence immediately to establish the counter-factual.

Concluding remarks

Flick request the Authority demonstrate a commitment to the government's decision to ban saves and win-backs by making a decision before Christmas and gazetting a Code amendment as soon as practicable thereafter.

We welcome the opportunity to discuss this submission with you in more detail.

Yours

Steve O'Connor
Chief Executive