



3 December 2019

Submissions
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Dear Authority,

Saves and win-backs Code amendment consultation paper 2019

Genesis Energy welcomes the opportunity to submit on the *Saves and win-backs Code amendment consultation paper 2019*.

Genesis believes a competitive market will deliver the best outcomes for consumers. Accordingly, we support regulatory interventions that promote competition and are based on sound evidence.

We remain opposed to a ban on win-backs, because we have not seen compelling evidence to suggest a ban on win-backs will benefit consumers. However, if a strong case can be made for change there are some adjustments to the proposal that would make a moratorium simpler, cheaper, and easier to observe.

The proposed prohibition period is too long

The Authority has suggested a 180-day period in which a 'losing' retailer would be prohibited from attempting to win back a customer. The rationale for this period is unclear.

Genesis considers that 90 days would be a more sensible timeframe. This provides enough time for a customer to become familiar with the gaining retailer's service offering and receive at least one bill.

A 180-day period reverses the information asymmetry issue the moratorium is trying to address.

The prohibition should lift in the event of a subsequent switch, whether transfer or move in. Prohibiting win-backs for a period of time only would result in multiple bans with differing time periods applying to a single ICP. If the ban is lifted with a subsequent switch then only the latest losing trader is restricted from approaching the customer.



Robust process for evaluating complaints

We consider there is a high risk some participants will allege breaches whenever a customer switches back to a losing retailer within the prohibition period, without evidence the switch resulted from prohibited win-back behaviour. We can envision a number of scenarios in which customers may change their decision to switch without any breach on the losing retailer's part.

With the volume of switching that is taking place in what is a vigorously competitive market, if a small proportion of switches gave rise to complaints the Authority could face a very high administrative burden. This would impact participants in the event the complaints are escalated to investigations.

The costs of complying with these investigations are high. No benefit arises when the complaint proves to be without merit.

We would like to see the industry and Authority work together to introduce an appropriate framework for breach allegations and escalation.

Clarity and next steps

As always, any type of regulation needs to be carefully considered and thoughtfully implemented. Rules that are not clear, costly to implement or fail to consider the customer experience will have unintended consequences, often to the detriment of the industry and consumers generally.

We want to ensure the conversations we have with customers are completely compliant. Accordingly, we would welcome the opportunity to engage with the Authority to discuss exactly where the 'line' is in relation to win-backs. Particularly concerning multi-product customers, who will often be contacting us on matters unrelated to their electricity supply.

Clarity around the timeframe for implementing any moratorium would also be welcome. While the process for a Code change is clear, implementing a moratorium would require changes to systems and processes at all retailers, both technically and in terms of policies and staff training.

We would welcome clarity on the Authority's expectations for how much lead time would be allowed before the regulations take effect.

If you wish to discuss any of these comments further please contact me by email: matt.ritchie@genesisenergy.co.nz, or by phone: 027 704 3864.

Yours sincerely,

Matt Ritchie
Senior Advisor - Regulatory Affairs and Government Relations

Question	Response	Comment
<p>Q1. Do you agree the issues identified by the Authority are worthy of attention?</p>	<p>Disagree</p>	<p>Genesis disagrees that win-back activity reduces competition. In fact, we argue consumer outcomes are improved by the ability for customers to secure better deals than those offered by ‘gaining’ retailers, on balance.</p> <p>Genesis views win-backs as enhancing competition by incentivising acquiring retailers to present their best offer up front, knowing they face a competitive threat from the current retailer, and to ensure that they are not misrepresenting the value of their products to customers to entice a switch. For those retailers who may not like what we would view as competitive scrutiny of their offers, we understand the opposition.</p> <p>Genesis agrees with the Market Development Advisory Group’s conclusion that there is no strong evidence of regulatory or market failures in relation to saves and win-backs. While it is true that win-backs have downsides, in particular around information asymmetry and increasing the cost of acquisition, we do not consider these to outweigh the consumer benefit that arises from win-back activity.</p> <p>Generally, we have not been able to establish what has materially changed between delivery of the MDAG’s report in March – which found no case for intervention on win-backs – and the November release of this consultation paper.</p>

<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>	<p>Disagree, 90 days</p>	<p>As above, Genesis does not agree that, on balance, prohibiting win-backs for a period of time will foster competition.</p> <p>If there is to be a ban on win-backs, 180 days is too long. The Authority notes submitters to the Electricity Price Review and MDAG commonly proposed prohibition periods of 45 and 60 days - with a minority advocating longer periods of six months to a year.</p> <p>Genesis considers that 90 days is a sensible timeframe for prohibiting win-backs, if such a measure is to be imposed.</p> <p>Removing 'win-backs' as a reason for a switch withdrawal is an administratively simple way of banning the practice within the two-month maximum period for withdrawal under the current regulations. Ninety days aligns with the time frame for reading some legacy rural meters. Even in these cases, we believe it would be a very small minority of ICPs currently subject to meter reads every 90 days.</p> <p>Genesis submits that 90 days is a fair timeframe for a gaining retailer to form a relationship with a new customer, as the retailer will have billed at least once and the customer has had time to become familiar with the retailer's offering and quality of service. The Authority notes that an overlong win-back prohibition period merely shifts the information asymmetry from the losing retailer to the gaining retailer, and in our view, this is the case with a prohibition period of 180 days. Further, the Authority has not presented any evidence or cost benefit analysis which supports 180 days as a reasonable period.</p>
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<p>Q3. Do you agree that losing retailers should be prohibited from passing information to third parties? Why or why not?</p>	<p>Agree</p>	<p>Genesis agrees that losing retailers should be prohibited from passing information to third parties for the purposes of win-backs if the practice is banned. However, it is important the regulations make clear the circumstances under which data can be passed on, such as under instruction from customers or for the purposes of generic marketing activity.</p>
<p>Q4. Do you agree that good conduct obligations are required? Why or why not?</p>	<p>Disagree</p>	<p>No evidence has been presented by the Authority to justify imposing the proposed “good conduct” obligations for retailers (whether a gaining retailer or losing retailer) over and above their obligations under the Fair Trading Act or at law generally. Further, the proposed obligations raise a number of concerns including ambiguity, uncertainty and regulatory jurisdiction (for example, the substantive effect of the proposed changes is that the Authority and the Commerce Commission would both be regulating misleading and deceptive conduct). As the Authority is aware given the well-publicised issues with the “High Standard of Trading Conduct” provisions in Part 13 of the Code, poorly designed conduct provisions result in considerable uncertainty for both participants and the Authority. If, following the Authority’s post-implementation review, there is evidence of misconduct, the Authority should then consult on the appropriate regulatory measures to address this.</p>

<p>Q5. Do you agree that the win-backs prohibition should apply to retailers? Why or why not?</p>	<p>Agree</p>	<p>Genesis agrees with the Authority's conclusion that applying the win-back prohibition to retailers aligns with the intention to foster competition, to the extent the proposed Code change would achieve this.</p>
<p>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?</p>	<p>Disagree</p>	<p>The period should be 'the earlier of 90 days or a subsequent switch' (whether transfer or move in).</p> <p>Prohibiting win-backs for a period of time only would result in multiple bans with differing time periods applying to a single ICP. If the ban is lifted with a subsequent switch then only the latest losing trader is restricted from approaching the customer. This aligns with the registry's treatment of a switch as a change in ownership on an ICP, and is administratively simpler.</p>
<p>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?</p>	<p>Disagree</p>	<p>As above. Also, the new ICP is a new proposition with possible new pricing/service options. This potentially represents a material change in the customer's circumstances from which the customer should be able to maximise the benefit. A new residence and the potential range of fuel options and requirements that accompany it also substantially reduce the level of asymmetry that may have existed following the earlier switch.</p>
<p>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)?</p>	<p>Mass market domestic consumers only</p>	<p>Large commercial and industrial consumers are typically on fixed contracts, often awarded following tender processes that have extensively compared price and service level. The Authority is right that small businesses share some attributes with residential consumers. However, the issue lies in</p>

		<p>distinguishing between a mass market small business and a C&I business in the registry data. The distinction is customer attribute - which could even vary between retailers - not metering. For example, about half of our C&I customers have either Cat 1 or Cat 2 metering.</p> <p>Mass market domestic customers can be easily identified by ANZSIC code as they are all '000000'.</p>
<p>Q9. What changes to the registry should be made to facilitate monitoring and enforcement of the proposed amendment?</p>	<p>Introduce a reactive compliance regime</p>	<p>Genesis supports a reactive compliance regime; option (a) in the consultation paper. This change, which would involve removal of the win-back/save withdrawal code, would be the easiest for the industry to introduce. Monitoring withdrawals against compliant reasons for customers returning would be straightforward, as compliant returns are already distinguished in the withdrawal codes. Retailers already monitor for unexpected switch behaviour, including outside of the switch withdrawal period. Genesis expects there would be an increased level of industry scrutiny on switching behaviour under a moratorium on win-backs. Indeed, as we set out elsewhere in this submission, we consider incorrect breach notifications to be a potential issue rather than failure to detect non-compliance.</p>
<p>Q10. Do you agree with the objectives of the proposed amendment? If not, why not?</p>	<p>Agree</p>	<p>Genesis agrees with the objectives of increasing competition, fostering innovation, and improving the level of information available to consumers. However, prohibiting win-backs will not necessarily deliver these outcomes and will, on balance, reduce the benefit customers receive from competition.</p>

<p>Q11. Do you agree the benefits of the proposed amendment would outweigh its costs?</p>	<p>Unclear</p>	<p>The Authority is right that it is difficult to quantify the benefits or otherwise of the proposal. However, Genesis considers the compliance costs of the proposal could be significantly underestimated.</p> <p>The Authority’s paper does not provide an estimate of the expected costs associated with investigating alleged breaches (the Authority), or cooperating with investigations (retailers). Genesis is concerned by the potential for a high volume of complaints to arise in cases where there has been no breach, but a customer has changed their mind or been won back legitimately within the switch prohibition period.</p> <p>A balance must be struck between ensuring retailers are compliant, and minimising the administrative burden that an excessive number of investigations would create.</p> <p>We would welcome the opportunity to work with the Authority and other participants on designing a monitoring regime in which the ‘burden of proof’ that accompanies a breach allegation is sufficiently high as to prevent frivolous and/or vexatious complaints.</p> <p>A shorter (90-day) prohibition period would also help manage this risk.</p>
<p>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.</p>	<p>Disagree</p>	<p>Genesis prefers option (b):</p>

		<p><i>The status quo, plus monitoring switching behaviour, as proposed by MDAG</i></p> <p>Monitoring, with action to follow in the event market failure is detected, would ensure the competitive benefits of the current regime are not lost. This is consistent with the Authority's statutory obligation to promote competition in the electricity industry. Alternative (b), as the Authority notes, offers the opportunity to make changes that would promote competition should a clear problem be identified.</p>
Q13. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	Unclear	The extent to which the proposed amendment complies with section 32(1)(a) and/or 32(1)(c) is unclear, but will be established over time.
Q14. Do you have any comments on the drafting of the proposed amendment?	Change	<p>Genesis suggests the following changes:</p> <p>11.15AB</p> <p>The switch protected period—</p> <p>(a) starts on—</p> <p>(i) the day on which the registry receives notice of the switch request under clause 2 or clause 9 of Schedule 11.3; and</p>

		<p>(b) ends on the earlier of—</p> <p>(i) the date that is 90 days after the event date for the switch; and</p> <p>(ii) the day on which the registry receives a subsequent notice of a switch request under clause 22(a) of Schedule 11.3; and</p> <p>(iii) 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</p> <p>(iv) the date on which the registry receives notice of that withdrawal request under clause 17 of Schedule 11.3.</p> <p>11.15AE(1) – delete clauses (b) and (c). Without defining “direct marketing activities” and “targeted marketing campaign”, these provisions cause considerable uncertainty. For example, a marketing campaign directed at a particular suburb, city or region, is a targeted campaign and can be executed through direct or indirect marketing. Clauses 11.15AE(1)(a) and (d) provide gaining retailers with the protection, and losing retailers with the certainty, they require.</p>
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