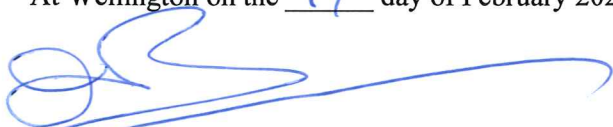


Electricity Industry Participation Code Amendment (Prohibition of Save  
and Win-Back Approaches by Losing Retailers During a Switch Protected  
Period) 2020

Under section 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, I make the following amendments to the Electricity Industry Participation Code 2010.

At Wellington on the 17<sup>th</sup> day of February 2020



Dr Thomas Brent Layton  
Chair  
Electricity Authority

Certified in order for signature:



Thomas Hannah  
Senior Legal Counsel  
Electricity Authority



Nick Crang  
Partner  
Duncan Cotterill

14 February 2020

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## Amendment

### 1 Title

This is the Electricity Industry Participation Code Amendment (Prohibition of Save and Win-Back Approaches by Losing Retailers During a Switch Protected Period) 2020.

### 2 Commencement

This amendment comes into force on 31 March 2020.

### 3 Code amended

This amendment amends the Electricity Industry Participation Code 2010.

### 4 Clause 1.1 amended (Interpretation)

In clause 1.1(1) insert in their appropriate alphabetical order:

“**gaining retailer** means a **retailer** who has entered into an arrangement to supply **electricity** to a person where, at the time the arrangement is entered into, the person is a customer of another **retailer** (being a **losing retailer**)

“**losing retailer** is defined as set out in the definition of **gaining retailer**

“**switch** means the process of a customer of a **losing retailer** changing from receiving the supply of **electricity** from the **losing retailer** to receiving the supply of **electricity** from a **gaining retailer**, and the term **switching** has a corresponding meaning

“**switch protected period** means the period that:

(a) starts on the earlier of –

- (i) the day on which a **losing retailer** receives notice or otherwise becomes aware that a customer is switching to a **gaining retailer**; or
- (ii) the day on which a **gaining retailer** assumes responsibility for billing a customer of a **losing retailer** for **electricity**; and

(b) ends on the earlier of –

- (i) the date that is 180 days after the relevant date specified in paragraph (a); or
- (ii) the date on which the **losing retailer** receives a notice under clause 4A(1) of Schedule 11.5 from the **Authority** or otherwise becomes aware that the customer is switching from the **gaining retailer** back to the **losing retailer** due to an **event of default**; or
- (iii) if the **gaining retailer** is a **trader** and makes a withdrawal request, the date on which the **losing retailer** (if a **trader**) receives notice of that withdrawal request under clause 22(b) of Schedule 11.3; or
- (iv) if the **trader** for the **losing retailer** and **gaining retailer** (neither of whom is a **trader**) is the same, the date on which the **trader** receives advice from the **gaining retailer** withdrawing the switch request from the **losing retailer**.”

**5 Clause 11.1 amended (Contents of this Part)**

In clause 11.1:

(a) after “clause 11.1(b)” insert the following new subclauses:

- “(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 the **losing retailer**; and
- “(bb) imposes restrictions on the use of customer information held by a **losing retailer** during a **switch protected period**; and”

**6 Clause 11.2 amended (Requirement to provide complete and accurate information)**

In clause 11.2(1) after “to any person under this Part” insert the words “(including customers)”

**7 Clause 11.15AA replaced (Trader may elect to have switch saving protection)**

Replace clause 11.15AA (Trader may elect to have switch saving protection) with:

**“11.15AA Restrictions during switch protected period**

“A **losing retailer** must not, by any means, including by using a third party or agent acting on its behalf, contact any customer who is switching from the **losing retailer** to a **gaining retailer** to attempt to persuade the customer to terminate the arrangement with the **gaining retailer** during the **switch protected period**, including by –

- (a) making a counter-offer to the customer; or
- (b) offering an enticement to the customer.”

**8 Clause 11.15AB replaced (Switch saving protection)**

Replace clause 11.15AB (Switch saving protection) with:

**“11.15AB Retailer may communicate with customers for certain purposes**

“(1) Despite clause 11.15AA, a **losing retailer** may contact a customer who is switching to a **gaining retailer** for any or all of the following purposes -

- “(a) to contact the 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 **losing retailer**; or
- “(b) to contact a customer regarding administrative matters, including –
  - (i) any fees the customer owes the **losing retailer**;
  - (ii) the customer’s final meter reading;
  - (iii) how the **losing retailer** will return any keys it holds on the customer’s behalf;
  - (iv) the effect of the customer ceasing to buy **electricity** from the **losing retailer** on other contracts between the customer and the **losing retailer**, for example, for the supply of gas; or
- “(c) to provide a factual response to a question asked by a customer; or
- “(d) to make a counter-offer or offer an enticement to a customer where the customer has:
  - (i) contacted the **losing retailer** without the **losing retailer** having first prompted the customer to do so; and
  - (ii) invited the **losing retailer** to attempt to persuade the customer not to complete the **switch** to the **gaining retailer** but to remain with or return to the **losing retailer** instead; or
- “(e) to offer an enticement to a customer as part of a general marketing campaign; or
- “(f) to contact the customer to address network fault issues or to follow up customer complaints.

- “(2) If a **losing retailer** contacts a customer under subclause (1), the **losing retailer** must not communicate with the customer for any other purpose other than a purpose specified in subclause (1).
- “(3) Without limiting any of its other obligations, a **retailer** (whether a **gaining retailer** or a **losing retailer**) must not harass or coerce a customer.”

**9 Clause 11.15AC replaced (Trader may communicate with customers for certain purposes)**

Replace clause 11.15AC (Trader may communicate with customers for certain purposes) with:

**“11.15AC Restrictions on use of customer information by retailer prior to or during switch protected period**

- “(1) A **losing retailer** must not use information relating to a customer that it obtained prior to or during the **switch protected period**, including information that may be used to contact the customer, during the **switch protected period** to do any of the following:
- “(a) contact the customer for any purpose other than a purpose specified in clause 11.15AB;
  - “(b) include the customer in a marketing campaign other than a general marketing campaign;
  - or
  - “(c) 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 the contract entered into between the **losing retailer** and the customer or otherwise by law.”

**10 Clause 15.AD revoked (Cancellation of switch saving protection)**

Revoke clause 15.AD.

**Explanatory Note**

*This note is not part of the amendment, but is intended to indicate its general effect.*

This amendment to the Electricity Industry Participation Code 2010 (Code) comes into force on **31 March 2020**.

This amendment amends the Code to ban retailer-initiated saves and win-backs by a losing retailer until 180 days have elapsed after a customer has switched to a gaining retailer. The amendments are designed to:

- (a) restore competitive pressure;
- (b) reduce retail margins;
- (c) increase innovation;
- (d) increase customer acquisition and consumer search; and
- (e) place retailers on a level competitive playing field.

This amendment amends Parts 1 and 11 of the Code. The changes include:

- (a) establishing a period (a switch protected period) prohibiting a losing retailer from contacting a previous customer to persuade them to terminate an arrangement with a gaining retailer;
- (b) limiting the circumstances in which a losing retailer may contact a previous customer during a switch protected period; and
- (c) restricting the use of customer information by a losing retailer during a switch protected period.

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Date of notification in the *Gazette*:

20 February 2020