

Guidelines on saves and win-backs

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1 Purpose

- 1.1 These 'saves and win-backs' guidelines (the guidelines) are intended to assist retailers by providing an overview and summary of the key obligations relating to the saves and win-backs restrictions in Part 11 of the Electricity Industry Participation Code 2010 (Code).
- 1.2 Within the switch protected period, retailers need to ensure that they do not prompt, or otherwise initiate a save or win-back of a customer who is switching to another retailer.
- 1.3 These guidelines are provided for general information only, and not as legal advice. These guidelines do not establish any legal obligations in themselves.
- 1.4 While these guidelines are provided to assist retailers to understand and comply with the Code, they are not a substitute for, nor do they form part of, the Code.
- 1.5 If there is any inconsistency between the content of these Guidelines and the Code, the Code takes precedence.

2 All retailers must comply with the saves and win-backs Code requirements

- 2.1 A 'save' is when a customer is switching to a new retailer ('the gaining retailer'), but their current retailer ('the losing retailer') persuades them to stay before the switch happens.
- 2.2 A 'win-back' is when a customer switches retailers, and the losing retailer persuades them to return after the switch happens.
- 2.3 The Code clauses that apply to retailers in relation to customers who switch from a losing retailer to a gaining retailer are:
 - (a) 11.15AA Restrictions during switch protection period
 - (b) 11.15AB Retailers may communicate with customers for certain purposes; and
 - (c) 11.15AC Restrictions on use of customer information by retailer prior to or during switch protection period.

3 Background

- 3.1 When a customer switches retailers, the losing retailer is notified either by a registry update or direct communication from the customer (possibly through a trader).
- 3.2 The receipt of this notification may trigger attempts by the losing retailer to win that customer back, including by using information that the gaining retailer did not have access to when making an offer to the customer.
- 3.3 The Authority considers that saves and win-backs can effectively be used to make it difficult for retailers to acquire new customers and discourage potential new entrants to the market, thereby reducing competition.
- 3.4 The saves and win backs rules in the Code seek to promote efficient competition by ensuring all retailers have an equal opportunity to compete for customers.
- 3.5 The Code does not restrict customers from initiating contact with the losing retailer or any other retailer. The Code focuses on the actions of the losing retailer.
- 3.6 Customers should talk to their retailer and can also use the electricity plan comparison website to determine whether they are on the best or most well-suited available electricity plan and pricing.
- 3.7 Further information on the Code amendments that brought the rules into force can be found on our website.¹

4 Specific saves and win-backs obligations in the Code

- 4.1 The Code provisions apply specifically to retailers. It is important to note that:
 - (a) it is customers and not ICPs (installation control points) that are the subject of the saves and win-backs Code obligations. Some customers have multiple ICPs and retailers should be able to identify those customers that have multiple ICPs and, when contacting a customer, ensure that the Code requirements are met.
 - (b) the Code provides obligations on all electricity retailers. Note that this includes any retailer that can lose a customer at an ICP.

There is a switch protection period

- 4.2 Gaining and losing retailers must be aware of the switch protection period for each customer², which starts from the earlier of:
 - (a) the losing retailer receiving notice or becoming aware of the customer switching away. This could be through the registry or otherwise becoming aware that a customer is switching to a gaining retailer; or
 - (b) the day the gaining retailer assumes responsibility for billing a customer of a losing retailer for electricity.
- 4.3 The switch protection period applies to a losing retailer and can continue for a period of 180 days (calendar not business days). The period can end earlier where:

¹ <https://www.ea.govt.nz/projects/all/saves-and-win-backs>

² The switch protection period is defined in Part 1 of the Code.

- (a) the switch back to the losing retailer is due to an event of default.³
- (b) the gaining retailer is a trader and makes a withdrawal request. The switch protection period will end once the losing retailer receives written notice of the withdrawal from the registry manager.
- (c) 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.

Retailers are restricted in their use of customer information

- 4.4 During the switch protection period, losing retailers have restrictions on the use of customer information gathered before or during the switch protection period.⁴ These restrictions are discussed in the sections below.
- 4.5 A losing retailer may not pass information to another retailer or use a third party or agent acting on its behalf to contact the customer to attempt to persuade the customer to return to the losing retailer.

Certain activities are permitted by the Code

- 4.6 A losing retailer may contact a customer within the switch protection period for certain activities as set out in clause 11.15AB.
- 4.7 Permitted customer contact from a losing retailer includes:
- (a) advising the customer of any termination fees as a result of the customer ceasing to trade with the losing retailer
 - (b) contacting the customer regarding any fees owed to the losing retailer
 - (c) arranging a final meter reading
 - (d) how the losing retailer will return any keys it holds on the customer's behalf
 - (e) to discuss the effect of ceasing to provide electricity on other services (eg, where electricity, gas or broadband are bundled). This contact is only permitted if the losing retailer contact focuses only upon the other services
 - (f) to provide a factual response to a question from the customer
 - (g) to make a counter-offer when the customer has invited or initiated the losing retailer to invite it to attempt to persuade the customer not to switch
 - (h) to offer an enticement to the customer as part of a general marketing campaign
 - (i) to address network fault issues or to follow up customer complaints.
- 4.8 In all these permitted administrative contacts, retailers need to ensure that they do not exploit the customer contact to initiate offers to supply electricity during switch protected periods.

³ An event of default is defined in clause 14.41 of the Code

⁴ See clause 11.15AC of Part 11 of the Code.

Multi-product and multi-location customer contact is permitted subject to caveats

- 4.9 Retailers may continue to contact customers receiving other goods or services, such as gas or telecommunications, but such contact should not be used to initiate offers to supply electricity during switch protected periods.
- 4.10 Retailers that continue to supply electricity to multi-ICP customers may contact their customer, but such contact must not be used to initiate offers to supply electricity during switch protected periods for any ICPs of that customer that were lost by the retailer.

Certain activities are not permitted by the Code

- 4.11 The following list indicates activities that the Authority considers are not permitted by the Code:
- (a) a losing retailer, or its agent or third party, must not contact a customer during the switch protected period where, as a result of the customer switch, the losing retailer wants to ascertain the reason that the customer switched away
 - (b) surveys and other communications seeking customer feedback
 - (c) incorporating a counteroffer or prompting a request for a counteroffer for electricity as part of the terms for providing other services (this may also be in breach of clause 11.15AB(1)(b))
 - (d) making any offers to supply electricity to multi-ICP customers for any ICPs of that customer that have switched away from the retailer within the switch protection period. Retailers should carry out their own checks and ascertain from multi-ICP customers whether they have recently switched any ICPs to another retailer (to try to ascertain whether switch protection periods might currently apply), before making an offer to the customer
 - (e) offering cash incentives or a beneficial price plan to resolve a dispute where a customer has either expressed an intention to switch retailer or has actually switched retailer
 - (f) the inclusion of terms in any contract for the supply of electricity requiring that the customer seek a counteroffer in the event of switching.
- 4.12 This list is not exhaustive, and retailers should get their own legal advice where they are unsure to take individual circumstances into account.
- 4.13 To ensure compliance with the Code, the Authority recommends that market research to ascertain why a customer switched away should be conducted after the conclusion of the switch protected period.

5 Further updates to guidelines

- 5.1 We acknowledge that there may be other instances we have not discussed. If there are any additional circumstances requiring clarification please advise the Authority, as this will also enable us to update this guideline.

6 Guideline guidance review

- 6.1 The Authority will review this document every three years.