

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 17th day of February 2020



Dr Thomas Brent Layton
Chair
Electricity Authority

Certified in order for signature:



Thomas Hannah
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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.

Date of notification in the *Gazette*:

20 February 2020