

EA Submissions
Electricity Authority
By email: winbacks.submission@ea.govt.nz

2 December 2019

Consultation Paper – Saves and Win-backs Code Amendment

Thank you for the opportunity to provide a submission on the Saves and Win-backs Code Amendment consultation paper (“paper”).

Mercury commends the speed with which the Authority has responded to the Government’s recommendations on the Electricity Price Review Final Report to provide this consultation on saves and win-backs.

The Government in its recommendations acknowledged that there are arguments for and against the practice of winning back customers but was concerned that such practices create a two-tier market. We appreciate that the Authority has been mindful of these contrasting views and has proposed a prohibition period that will enable the impacts to be assessed without unnecessarily inhibiting the flow of customers between retailers.

Mercury strongly supports the exemption of any customer-initiated contact from the provisions that will apply during a switch protected period. This will incentivise retailers to attract customers through generic marketing campaigns and will give all customers the ability to make informed decisions on which retailer will meet their needs.

The Government supported a ban on win-backs “for a period” to be followed by “a full evaluation of the impacts on consumers”.¹ Mercury agrees that this evaluation will be important, and Mercury is assuming the Authority will review the ban and resulting impacts at the end of a two-year period.²

Mercury outlines our responses to the Authority’s questions are attached as an appendix to this letter. Please don’t hesitate to contact Jo Christie on 0212882276 or jo.christie@mercury.co.nz if you would like any further information.

Yours sincerely



Nick Wilson
Manager, Regulatory and Government Affairs



Jo Christie
Regulatory Strategist

¹ Paragraphs 85-87, Cabinet Paper - Electricity Price review: Government Response to Final Report, 3 October 2019.

² Page ii, Executive summary, Saves and Win-backs Code Amendment Consultation Paper 5 November 2019

Appendix – Mercury submission

Question	Comment
<p>Q1. Do you agree the issues identified by the Authority are worthy of attention?</p>	<p>Mercury agrees with the EA that the competitive implications around saves and win back activity have been subject to significant debate both through the EA’s MDAG and in Australia. Mercury’s view to the EPR was that the evidence provided to MDAG suggested that it wasn’t clear there were specific impacts for new entrant retailers. Most of the impacts were largely confined to activity between the larger retailers.³ We also note MDAG’s advice that the consumer perspectives on saves and win-backs are not well understood.⁴</p> <p>We therefore urge the Authority to monitor the impact of any prohibition on consumers very closely and will look forward to the Authority’s comprehensive review of the impacts at the end of the two-year period.</p>
<p>Q2. Do you agree that prohibiting win-backs for a period of time will foster competition?</p> <p>How long should any win-back period be?</p>	<p>We agree that a prohibition on saves and win-backs could potentially foster competition amongst retailers. Currently significant costs are incurred across the sector on saves and win back activity. Mercury has increasingly moved toward rewarding loyalty and sees this as an important focus for competition in the future which a prohibition could encourage.</p> <p>However, prohibiting saves and win back activity will have the effect of reducing competition for those customers who are actively engaged in seeking a better deal in the market. It was for this reason removing win backs was not favoured in Australia. Given the competition effects during the switch prohibition period are unknown, the Authority will need to closely monitor the consumer impacts and outcomes to ensure they are consistent with their statutory objective.</p> <p>Mercury submits that a 90-day switch protection period would be more appropriate than the 180-days currently proposed. We understand that the rationale behind the length of the ban is to give a customer enough time with a gaining retailer to:</p> <ul style="list-style-type: none"> a) Experience the retailer’s full range of retail services; and b) Allow the retailer to recover acquisition costs. <p>We see no reason why these goals cannot be achieved within a 90-day period. This timeframe should allow for two to three complete billing cycles and would be in line with the views expressed by the smaller retailers in their submissions to the original Saves protection consultation in 2014.⁵ Further, the Authority acknowledges that there is a trade-off is between assisting smaller retailers to acquire customers and temporarily inhibiting competition for a losing retailer during a switch protection period.⁶ The significant customer gains some new entrant retailers have been experiencing against Mercury and other larger retailers recently suggests saves and win back activity is not a material barrier to retaining customers.</p> <p>We therefore submit that if the goals of the switch protection period can be achieved within a shorter timeframe this would be preferable to prolonging the temporary inhibition on competition for the losing retailer.</p>

³ Page 53, Mercury Submission on Electricity Price Review First Report, October 2018

⁴ Section 4.2.2 of MDAG’s Saves and Win-backs – Recommendations Paper, March 2019

⁵ Page 15, Summary of Submissions: Proposed Code amendment – saves and early win-backs consultation paper, October 2014

⁶ Page 11, Saves and Win-backs Code Amendment Consultation Paper 5 November 2019.



<p>Q3. Do you agree that losing retailers should be prohibited from passing information to third parties? Why or why not?</p>	<p>Mercury agrees that retailers should be prohibited from passing information to third parties. To allow this would effectively give retailers a way to circumvent the prohibition and would therefore defeat the purpose of the amendments.</p>
<p>Q4. Do you agree that good conduct obligations are required? Why or why not?</p>	<p>Mercury agrees that good conduct obligations are desirable and notes that many retailers will already have codes of conduct in place. These provisions represent good industry practice. For those retailers that do not have existing codes of conduct, this will provide an excellent opportunity to bring their internal practices in line with industry.</p>
<p>Q5. Do you agree that the win-backs prohibition should apply to retailers? Why or why not?</p>	<p>Mercury agrees that the saves and win-backs prohibition should apply to all retailers, including type 2 retailers rather than traders. This is logical given that it is the customer facing supply side of the market that engages in saves and win-backs not traders.</p> <p>The Authority has however raised the issue of the difficulties in monitoring switches between type 2 retailers because type 2 retailers are not recorded in the registry as the owner of the ICP. We understand that as an intermediary solution the Authority proposes to monitor switches between type 2 retailers through additional audit requirements. We note that this would not be cost effective or efficient on a long-term basis and may not adequately incentivise type 2 retailers to comply with the ban. We encourage the Authority as part of the current Switch Process Review to investigate how to improve visibility in the registry for switches between type 2 retailers.</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>Mercury agrees with Option 1. If a retailer loses a customer, they may not attempt a win-back within the switch protection period irrespective of whether the customer switches again to another retailer within the prohibition period.</p> <p>Customers who switch on a regular basis are high maintenance from a cost and administration perspective. Mercury would not be inclined to attempt to win-back these customers, irrespective of when the switch protection terminates.</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>Mercury does not agree with the Authority's proposal that the switch prohibition period should continue even if the departing customer subsequently shifts to a new ICP.</p> <p>A switch is determined at ICP level and there is no code to differentiate between an ICP switch or a customer switch. This means that in practice, we don't treat an old customer returning to Mercury on a different ICP any differently to a new customer joining Mercury on a switched out ICP. Neither of these scenarios is viewed as a win-back.</p> <p>Mercury therefore submits that a losing retailer's win-back prohibition period should be terminated if the departing customer subsequently shifts to a new ICP.</p>
<p>Q8. Should the save/win-back protection scheme apply to all customers? If not, which customers should the scheme apply to? And how should such customers be identified (eg by the meter category at their ICP or by their</p>	<p>We agree with the Authority that the saves and win-backs protection scheme should apply to residential and small consumers only. The paper correctly identifies that most large consumers will be on fixed term contracts with a retailer that will protect their relationship for longer than a switch prohibition period.</p> <p>We also prefer the Authority's proposal to target consumers with category 1 and 2 metering installations at their ICP rather than using the ANZSIC code. This is the simplest way to capture residential and small business customers.</p>



ANZSIC code)?	
Q9. What changes to the registry should be made to facilitate monitoring and enforcement of the proposed amendment?	Mercury agrees with the Authority's the proposal to adopt arrangements (a) or (b) as an interim measure having either a reactive or proactive regime to monitor and enforce the amendment at the Registry end. Neither of these options would require any changes to the way Mercury works today and would allow for ICPs to be switched between retailers and for Mercury to act on any customer-initiated withdrawals. Mercury further agrees that changes (c) or (d) should be considered later, in perhaps 6 months' time, based on the success or otherwise of the low-cost transitional arrangements (a) and (b).
Q10. Do you agree with the objectives of the proposed amendment? If not, why not?	Mercury agrees with the objectives of the proposed amendment.
Q11. Do you agree the benefits of the proposed amendment would outweigh its costs?	Mercury is uncertain whether the benefits of the proposed amendment outweigh its costs. Whilst we agree in principle with the benefits, it is difficult to estimate the precise costs to any of the parties. This uncertainty arises not so much in relation to implementation and compliance costs but rather in relation to the potential costs to retailers and consumers due to any unforeseen negative impacts on competition. We are pleased that the trial will be reviewed after two years when the Authority will have evidence enabling it to reassess and accurately quantify costs and benefits and determine if the changes are achieving the stated objectives of avoiding a two-tier market.
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.	Mercury agrees that the proposed amendment is the preferred option to achieve the objectives set out in this consultation paper.
Q13. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	Mercury agrees that the Authority's proposed amendment complies with section 32(1) of the Act.
Q14. Do you have any comments on the drafting of the proposed amendment?	Mercury has no comments to make on the drafting of the proposed amendment.

