



3 December 2019

Dr. Brent Layton  
Chair  
c/o Win-backs Submissions  
Electricity Authority

By e-mail: [winbacks.submission@ea.govt.nz](mailto:winbacks.submission@ea.govt.nz)

Dear Brent,

## Electric Kiwi welcomes saves and winback ban

Electric Kiwi welcomes the relatively quick move to consult on implementation of a ban on saves and winbacks, after the Minister's announcements. We also appreciate the Authority's indication it is going to consider whether it can implement the ban before Christmas as we recommended.<sup>1</sup>

Our letter to the Electricity Authority of 10 October 2019 on winbacks is included as part of our submission.<sup>2</sup> The 10 October 2019 letter included:

- An alternative, simpler, Code change to ban saves and winbacks.
- The type of analysis that would be useful for the Post Implementation Review of the saves and winbacks ban.
- Examples of information and evidence from submissions to the Electricity Price Review which are directly relevant to and support the ban on saves and winbacks.<sup>3</sup>
- Reasons why the Authority is correct to put aside the MDAG report and problem assessment. The MDAG Recommendations Paper is hopelessly flawed and has no probative value. It is clear MDAG was inappropriately constrained by the terms of the review and direction provided by the previous Electricity Authority CEO. MDAG also didn't access the information and data needed to undertake a review of the two-tier retail market/saves and winbacks problem.<sup>4</sup>

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<sup>1</sup> Letter from James Stevenson-Wallace (Chief Executive, Electricity Authority), RE: Follow-up on discussion at 14 November Board meeting, 2 December 2019.

<sup>2</sup> Our submissions to, and correspondence with, MDAG should also be treated as part of our submission, as well as our submissions to the Electricity Price Review. Electric Kiwi and Haast Energy Tradings's submission in response to the first Electricity Price Review addresses the two-tier retail market/saves and winbacks problem in the most detail, and builds on the previous submissions to MDAG. The submission is available at <https://www.mbie.govt.nz/dmsdocument/4163-electric-kiwi-and-haast-energy-trading-electricity-price-review-first-report-submission>

<sup>3</sup> This was provided in response to MDAG's factually incorrect claim that "none of [the EPR submissions] were [sic], in our view, differed substantially from information provided directly to MDAG". We found this claim by MDAG quite extraordinary. 25 stakeholders submitted in support of a ban on winbacks that had not submitted to MDAG, all of which supported a ban on winbacks. It is a matter of factual observation that submissions to the EPR included new and substantive information and evidence.

<sup>4</sup> Electric Kiwi and others have also raised issues about the make-up of the Advisory Group, including over-representation of incumbent retailer interests.



### Summary of Electric Kiwi's recommendations

- Electric Kiwi considers that, consistent with the EPR Final Report, the Authority should restrict mis-use of switch process information and private customer contact data by the losing retailer. We have provided specific Code amendment drafting to achieve this.
- Our proposed prohibition on mis-use of information could either be used instead of the Authority's proposal or combined as part of a 'belts and braces' approach to ban saves and winbacks.
- We support "The proposal ... to extend the saves protection scheme to all retailers and extend the horizon of the protection to include win-backs".
- The proposal to prohibit winbacks for 180 days should be treated as a minimum.
- We support application of the 180 day ban to situations where the customer has (again) switched retailer and/or moved house.
- We support the proposal that the ban apply to retailers who are traders and also to type 2 retailers who are not, and the prohibition on losing retailers from passing on information to third parties.
- We support the proposal that "Multi-product service providers would be prohibited from initiating electricity win-backs during the switch protected period, including if they contacted the customer to discuss the other services the losing retailer is providing".
- We do not see any problem with extending the saves and winbacks ban to all consumers.
- The "switch protected period" provision (clause 5(b)(i)) should be amended to read "starts on the earlier of— (i) the date on which the registry manager, under clause 22(d) of Schedule 11.3, makes written notice of switch completion information available to the gaining retailer; and (ii) the event date for the switch".
- Retailer directors should sign off on compliance with the saves and winbacks ban.
- The Authority should consider speeding up minimum switch times.
- We do not support adoption of the the Retailer Conduct provisions as currently drafted.



## **Opportunity to show commitment to the Government's electricity reforms**

As we previously noted, "The Government's announcement that there will be a ban on winbacks presents an opportunity for the Authority to 'hit the ground running' and can be the 'first cab off the rank'."

We remain of the view that introduction of a ban before Christmas is eminently achievable.

Given consumers are paying circa \$500m per annum in loyalty taxes, every month of further delay in adopting the ban potentially costs consumers over \$40m. We note NERA's comment, on behalf of Meridian, that a delay to implementation of reforms can simply result in a delay in the benefits.<sup>5</sup>

## **We challenge the Authority to prove it can do better**

If the Authority commits to fully and robustly implementing the Government's electricity reforms in a timely manner, the backstop legislation could become redundant and unnecessary before it is even implemented into legislation.

## **The Government EPR announcement makes the Authority's decision-making more straightforward**

We have previously detailed the type of analysis that could be undertaken to assess the extent to which there is a two-tier retail market/saves and winbacks problem. Given the Government has made a decision that winbacks will be banned we consider this analysis to be unnecessary at this time. The Authority is now assessing its proposals against a counterfactual that win-backs will otherwise be banned through legislation. The Authority is right to prioritise timely and expedient consultation and implementation. The analysis we suggested of the two-tier retail market could be undertaken to help assess the effectiveness of the ban as part of the Post Implementation Review.

## **The types of changes needed to implement an effective ban on winbacks are clear and straightforward**

Electric Kiwi considers that the Code amendment we recommended to implement a ban on saves and winbacks is superior to the option presented in the consultation paper. We consider our proposed option to be simpler and addresses the underlying issue that incumbent retailers can mis-use private customer information. Our Code amendment proposal mirrors the Expert Advisory Panel specifications for a winback ban, including restrictions on customer information usage which the Authority's alternative does not:

### **11.15AA Switch saving and winback protection [replaces clauses 11.15AA – AD]**

- (1) If a trader enters into an arrangement with a customer of another trader (the "losing trader") to commence trading electricity with the customer, the losing trader must comply with clause 11.15AA.
- (2) A losing trader referred to in subclause (1) must not use any information obtained from a notice of the switch request under clause 22(a) of Schedule 11.3 for any other purpose than to facilitate the switch of the customer.
- (3) A losing trader referred to in subclause (1) must not use any private information or contact details it holds on a customer that has switched to another trader, or for whom the losing trader has received notice of the switch request under clause 22(a) of Schedule 11.3, for any other purpose than:

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<sup>5</sup> NERA, 2019 transmission pricing review of certain economic reports, 31 October 2019, paragraph 61.



- (a) contacting a 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 trader; or
- (b) contacting a customer regarding administrative matters, including—
  - (i) any fees the customer owes the trader:
  - (ii) the customer's final meter reading:
  - (iii) how the trader will return any keys it holds on the customer's behalf:
  - (iv) the effect of the customer ceasing to buy electricity from the trader on other contracts between the customer and the trader, for example, for the supply of gas.

### **The Authority's proposed winback ban is sound but doesn't deal with mis-use of customer and switching information**

The Authority's proposal and our submitted option can be treated as alternative options, or treated as complementary under a 'belts and braces' type approach where our drafting is used to explicitly ensure there is a prohibition on mis-use of switching and private customer information, with the Authority's drafting more explicitly prohibiting saves and winbacks.

Subject to our preference for our proposed restriction on mis-use of customer information, we are supportive of the the Authority's proposal with the exception of elements of the proposed conduct provisions. We have the following specific comments:

- We support "The proposal ... to extend the saves protection scheme to all retailers and extend the horizon of the protection to include win-backs".
- 180 days is more likely to provide a reasonable amount of time for the winning retailer to demonstrate to their new customer(s) that they offer superior service and value than shorter alternative options. Electric Kiwi is confident about how our pricing and service stacks up against our competitors, as long as we are operating on a level playing field.
- We support application of the 180 day ban to situations where the customer has (again) switched retailer and/or moved house. If the losing retailer is complying with the ban it would not be aware of the change in order to attempt a winback anyway.
- We support the proposal that the ban apply to retailers who are traders and also to type 2 retailers who are not, and the prohibition on losing retailers from passing on information to third parties. The ban will not be effective if, for example, a parent company like Meridian loses a customer and then uses its retail brand Powershop to winback the customer.
- We support the proposal that "Multi-product service providers would be prohibited from initiating electricity win-backs during the switch protected period, including if they contacted the customer to discuss the other services the losing retailer is providing".
- We do not see any problem with extending the saves and winbacks ban to all consumers. The mis-use of information issues we have raised in submissions is not specific to residential consumers. The greatest benefits from a saves and winbacks ban are likely to for smaller consumers.



- The “switch protected period” provision (clause 5(b)(i)) should be amended to read “starts on the earlier of— (i) the date on which the registry manager, under clause 22(d) of Schedule 11.3, makes written notice of switch completion information available to the gaining retailer; and (ii) the event date for the switch”. It will be important to ensure that the drafting eliminates the current loophole which enables incumbent retailers to get around the current ban on saves. The incumbent retailer can get around the current saves ban by backdating switches to before the completion date (using the event date rather than the notification date).<sup>6</sup>
- We agree that the customer is ‘sovereign’. If a customer elects to invite their existing or incumbent retailer to offer a lower price, on threat of retailer switch, that is their prerogative, but losing retailers should not be allowed to prompt a customer for this invite. What the ban on saves and winbacks will do is help ensure all consumers receive the benefits of (lower prices) competition regardless of whether they actively attempt to switch or not.
- **Retailer directors should sign off on compliance:** An additional requirement the Authority should consider (for both its proposal and our own alternative) is to require each retailer to provide annual director sign-off that the winback ban requirements have been adhered to in full. The Commerce Commission provides precedent for such requirements e.g. in relation to its Information Disclosure Director certification requirements.

#### **It is unnecessary to duplicate the Fair Trading Act**

We agree retailers should not “make any statement or representation to a customer that is— (i) inaccurate, misleading, or deceptive; or (ii) likely to mislead or deceive; or (b) harass or coerce a customer; or (c) make any false statement”. No changes to the Code are needed, apart from perhaps the “harass” and “coerce” provision, as these matters are already covered by the Fair Trading Act. As the Expert Advisory Panel noted: “Some submitters said a ban might lead to more misleading and/or aggressive door-to-door sales tactics. A ban would not alter consumers’ rights under the Fair Trading Act 1986, including the protection of the five-day cooling-off period, and we encourage the Commerce Commission to closely watch retailers’ sales practices and strictly enforce any breaches” [footnote removed].

#### **Element of the proposals which is not supported as it could limit, or be used to attempt to limit, comparative advertising and whistle-blowing activity**

The proposed provision that retailers be precluded from “communicat[ing] any opinion, about any other retailer that would be, or may be, likely to bring that other retailer’s reputation into disrepute” is not appropriate.<sup>7</sup>

Electric Kiwi has no qualms about pointing out, for example, that Meridian likes to virtue signal with its greenwashing and the fact it was given renewable generation only at the time of the ECNZ split,

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<sup>6</sup> Refer to the letter from Peter Wakefield (Senior Investigator, Electricity Authority) to Andrew Maseyk (Regulatory & Revenue Manager, Genesis Energy), Alleged breach of the Electricity Industry Participation Code File reference: 1908GENE1, 14 October 2019.

<sup>7</sup> We note the concerns we and Haast Energy have raised in relation to attempt to gag ‘free and frank’ public discussion by MDAG members. Refer to the letter from Luke Blincoe (Electric Kiwi) to James Stevenson-Wallace (Electricity Authority) and Tony Baldwin (MDAG Chair), Electric Kiwi’s concerns about the membership of MDAG, 4 October 2019, and the e-mail from Phill Anderson (Haast) to James Stevenson-Wallace (Electricity Authority), Gagging advisory groups, 10 September 2019.



while its swaption arrangement with Genesis and trading strategy results in higher coal and fossil fuel generation.

We have previously pointed out Meridian's hypocrisy in raising concerns about loyalty taxes in Australia while defending the same practice in New Zealand.<sup>8</sup> Meridian would be likely to argue this brings them into disrepute and they would be right. It is just that it is Meridian's own actions that are bringing it into disrepute. We are acting as whistleblower.

Similarly, we are more than happy to call out Meridian for rank hypocrisy with its claim that the recent "[TPM] submissions do not present a compelling analysis, and they instead reflect each submitter's private interests". Meridian's submissions throughout the entire TPM review have lacked compelling or credible analysis<sup>9</sup> and have been driven entirely by self-interest. Meridian has spent the last decade 'rent seeking' with its attempts to get Kiwi consumers to subsidise the shipping of its South Island generation to the North Island.

The Authority should not attempt to prevent whistle-blowing or censure electricity retailers for expressing opinions which are not misleading etc but deservedly harm a competitor's reputation. We are particularly concerned that the incumbent retailers could attempt to use the proposed Code provisions to try and stop us from using comparative marketing etc.<sup>10</sup> The reality is that the incumbent retailers conduct provides ample legitimate basis to disparage them and bring them into disrepute.

#### Other matters

- **The Authority should consider speeding up minimum switch times:** The Authority commented "Banning win-backs is likely to reduce the incentive to facilitate rapid customer switches. The Authority would rely on existing obligations under the Code to ensure that switching speeds are kept to a suitable standard." We agree. The Authority can and should use analysis of current switching speeds to revise the maximum switch time downward.
- **We support exclusion of the winback 'trial' option that the Authority previously floated:** The analysis in the Winback Ban consultation paper provides ample basis for why a trial would not be appropriate. The delay in addressing the cost to consumers of \$500m per annum in loyal taxes would mean any such trial which be extremely and intolerably expensive for consumers.
- **Winbacks can occur for years after the switch:** The consultation paper states "'Saves and win-backs" is the term used to describe a retailer winning a customer back shortly after that customer has agreed to move to another retailer" [emphasis added]. This is incorrect. As long as the losing retailer is able to hold onto and use their ex-customer's contact details winbacks are not time bound.

Electric Kiwi increasingly sees incumbent retailers directly approaching our customers that have a tenure of over 180 days with Electric Kiwi (sometimes several years). Incumbents increasingly

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<sup>8</sup> Refer to Appendix 1: Examples of Media Releases incumbent retailers could try and have banned under the proposed Conduct provisions. Refer also to our comments about Meridian in the submission to the Electricity Authority, All the evidence supports the view that there is a major 'retail incumbency problem' and its costing households nearly \$400m per annum, 20 August 2018.

<sup>9</sup> We note, for example, the criticisms of both Meridian and NERA in the 2019 TPM Issues Paper cross-submissions.

<sup>10</sup> Examples are provided in Appendix 2: Examples of advertising incumbent retailers could try and have banned under the proposed Conduct provisions.



appear to be using historic data held on previous customers to launch direct campaigns when it suits their respective contracting positions. We believe these retailers may be using their terms and conditions to contract out of their obligations under the Privacy Act. While we don't believe this constitutes informed consent, this issue as it pertains to the electricity market is more easily addressed in the Electricity Industry Participation Code rather than under Privacy Law. The Electricity Authority should consider Electric Kiwi's draft Code in order to prevent this long dated mis-use of customer data.

- **A ban on saves and winbacks coupled with mandatory market-making are highly complementary and will maximise long-term consumer benefits from promotion of competition:** Hedge market reform will enable entrant retailers to substantially grow their retail market share, and raise growth well above the current woeful rate of 1% per annum in aggregate. This will mean it will be increasingly non-viable for the incumbent retailers to persevere with high prices for 'loyal' or sticky customers.
- **Ban on saves and winbacks will ensure everyone gets lower prices:** The Authority has commented, in its assessment on a winback ban, that there could be "Higher costs for consumers no longer able to obtain win-back discounts" and "the proposed policy would make it more difficult for losing retailers to compete for the customers they are losing". The ban on saves and winbacks would simply change the point of competitive interaction from after a customer initiates a switch (with the incumbent retailer's response targeted at the switching customer) to the entire retail market, with considerable uncertainty about who may switch and who won't.
- **The Electricity Authority's own loyalty tax statistics showed the size of the loyalty tax is growing substantially:** The Authority stopped updating its loyalty tax (residential savings) calculation after 2017 but there is no reason to expect the size of the taxes hasn't continued to grow in 2018 and 2019.
- **Information asymmetries:** One of the reasons the Authority gave for reaching different conclusions from MDAG was that "The Authority's assessment attaches more weight to the adverse implications of information asymmetries". It was probably unhelpful that the previous Authority CEO directed MDAG to "focus [less] on information asymmetry" and more on other forms of "regulatory and market failures".<sup>11</sup>
- **Fixed term contracts:** We welcome that the Authority has resiled from the previous Authority CEO's view that the "retailer could sign a customer up to a fixed-term contract and/or enforce a contractual break fee" to prevent winbacks,<sup>12,13</sup> and instead acknowledges "data and submissions to the MDAG review and the EPR suggest that contractual provisions are not meaningfully available to small retailers looking to protect themselves from win-backs".

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<sup>11</sup> Letter from Carl Hansen (CEO, Electricity Authority) to James Moulder (Chair, MDAG), Authority Board feedback on the MDAG's Saves and win-backs issues paper, 9 May 2018.

<sup>12</sup> Letter from Carl Hansen (CEO, Electricity Authority) to James Moulder (Chair, MDAG), Authority Board feedback on the MDAG's Saves and win-backs issues paper, 9 May 2018.

<sup>13</sup> Carl Hansen (CEO, Electricity Authority) was critical of Electric Kiwi's commercial strategy for not requiring fixed term contracts in an interview on RNZ on 26 June 2018:

<https://www.rnz.co.nz/national/programmes/ninetoon/audio/2018650930/power-struggles-unfair-sweeteners-to-switch-back>



- **Timing of the Post Implementation Review:** We agree with the Electricity Price Review that a Post Implementation Review should be conducted in 3 years time. In the meantime, the Authority should monitor the size of loyalty taxes,<sup>14</sup> and details of the retail market tiers on an annual basis.

### Concluding remarks

We support the ban saves and winbacks, but don't support elements of the retailer conduct proposals which could be mis-used in an attempt to censure legitimate marketing activity, particularly comparative market activity. The Authority's proposals would be substantially improved by our proposed option to amend the Code to preclude information from the switching process and private customer contact information from being mis-used by the losing retailer.

We do not support the, presumably unintended, impact of the proposals which could preclude Electric Kiwi from damaging the reputation of our incumbent retailer competitors, by banning the use of accurate and factual information against them or which might otherwise serve to limit our ability to engage in comparative marketing. Electric Kiwi considers that retailers have sufficient protection in the Fair Trading Act 1986 and require no further protection.

The Authority has made a positive start to implementation of the Government's electricity reforms with its proposed Code drafting for a ban on saves and winbacks. The only regret is the Authority didn't adopt a ban earlier and waited for the Government to direct it to do so. The risk of unintended consequences from inaction should not be understated. Electric Kiwi, for example, urged the Authority to adopt a ban on saves and winbacks in March 2018.<sup>15</sup> If a full ban had been introduced at this time it could have saved consumers a billion dollars in loyalty taxes. The MDAG review has substantially delayed progress on the review and replacement of the current Saves Protection Scheme, just as TPAG delayed initial progress on the TPM review.

We challenge the Authority to adopt a pre-Christmas ban on saves and winbacks. This would provide a clear and unambiguous statement of intent that the Authority will implement the Government's electricity reforms with urgency. Given the saves and winback problem is costing consumers over \$40m per month in excessive charges or 'loyalty taxes', which the Authority euphemistically describes as the incumbents' "lifetime profits", the changes can't happen fast enough. The Expert Advisory Panel has indicated this equates to about \$240 per household per year. Based on UK and NZ<sup>16</sup> surveys the consumers who are paying too much are over-represented by low income households and the elderly, who can least afford high electricity prices.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'MBA', located below the closing text.

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<sup>14</sup> We note the Authority has not updated its 'residential savings' calculations since 2017. The residential savings calculations showed that there was an upward trend in the size of loyalty taxes with a significant jump between 2016 and 2017.

<sup>15</sup> Letter from Electric Kiwi, Problems with 'saves and winbacks' and Powerswitch, 27 March 2018.

<sup>16</sup> Consumer NZ, Energy providers survey, 7 June 2018.





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Appendix 1: Examples of Media Releases incumbent retailers could try and have banned under the proposed Conduct provisions

## Meridian Energy Caught Out

Monday, 20 August 2018, 11:14 am

Press Release: [Electric Kiwi](#)

20 August 2018

News release

Meridian Energy Caught Out Telling Aussies One Thing And Kiwis the Opposite

State-owned Meridian Energy has been caught out defending the rights of Australian power consumers over their own Kiwi customers.

In a submission to the Finkel electricity industry review in Australia, the company and its subsidiary Powershop have highlighted practices they say should be unacceptable in Australia. The irony is they consider those same practices to be perfectly acceptable in New Zealand.

The “hypocrisy” has been called out here by NZ’s fastest growing power retailer, Electric Kiwi, famous for its daily free “hour of power”.

“Meridian and its 100% owned subsidiary, Powershop, have been vocal in Australia that large retailers are guilty of ‘bullying’ and ‘ripping customers off,’” says Electric Kiwi chief executive Luke Blincoe “We find this astonishing, given Meridian is defending the exact same thing in New Zealand.

“In Australia, they have told the review they are concerned about large incumbent retailers ‘charging a loyalty tax to customers who fail to switch and utilising the proceeds of this loyalty tax to subsidise their apparently



competitive market offers'. They say 'At a time of increasing affordability issues, such behaviour is unacceptable in an essential service market'.

"Their submission across the ditch goes on to say 'better transparency and discouraging business practices which feed on customer inertia may be part of this solution to this issue. In order to benefit customers, this must be done a way that helps, rather than hinders, competition'.

Here in NZ Meridian has told the Electricity Authority there is 'no apparent regulatory or market failures in the area of acquisition'," says Blincoe.

Furthermore, he says the evidence suggests the problem of consumers being ripped off by the big five retailers could be worse in New Zealand than Australia.

"Electricity Authority statistics show households that don't switch retailer are being overcharged by a total of \$370 million per annum, a figure which is growing at 30% each year."

The Meridian revelation comes as the NZ Government's Electricity Price Review swings into action, with a mandate to ensure the New Zealand electricity market delivers efficient, fair and equitable prices.

Blincoe says: "As a largely state-owned business, and custodian of New Zealand's generation assets, we'd expect a greater level of patriotism from Meridian. Disingenuous activities like this from Meridian and the other big gentailers are hurting Kiwi families, to the tune of hundreds of millions of dollars a year. These guys only offer their best rates to people switching away, and we think that's not what Kiwis expect."

ENDS

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## Appendix 2: Examples of advertising incumbent retailers could try and have banned under the proposed Conduct provisions

By way of illustration, we would be concerned if incumbent retailers could attempt to use the proposed Code provisions to preclude marketing such as the following facebook post.



Likewise, we note that Mercury complained directly to us about the following marketing on facebook:





We responded to Mercury's objection with the following facebook post. Advertising of this nature can help consumers to make an informed choice about their electricity retailer and challenge Mercury as the incumbent retailer in Auckland to focus on matching offers in the market with consistent transparent offers to all of its customers.



The exchange of letters between Mercury and Electric Kiwi on this matter is provided bel



CONFIDENTIAL

Luke Blincoe  
CEO  
Electric Kiwi  
luke@electrickiwi.co.nz

3 October 2017

Dear Luke

**Electric Kiwi – Mercury Comparison**

- a) We refer to recent targeted advertising for Electric Kiwi, which details that customers switching to Electric Kiwi from Mercury save \$230 a year on average (the *Advertisement*).
- b) The fine print included in the *Advertisement* states that the *Advertisement* is based on all customers who switched to Electric Kiwi from Mercury in the 12 months to 30 August 2017 who provided a comparable bill, and assumes an annual usage of 7041 kWh and Hour of Power saving of 9.9% (together with the *Advertisement*, the *Mercury Comparison*).
- c) The *Mercury Comparison* is an unfair comparison. It does not compare like for like products to allow consumers to make informed choices. In particular, the *Mercury Comparison*:
  - a. refers to Electric Kiwi's Hour of Power offering, but omits reference to Mercury's free power day. These terms and conditions are available at <https://www.mercury.co.nz/Terms-Conditions/Residential/Free-Power-Day.aspx>; and
  - b. does not clearly identify what Electric Kiwi products are being compared against Mercury products (for example, whether the *Mercury Comparison* is based on fixed term contracts or includes prompt payment discounts).
- d) As such, Electric Kiwi is engaging in conduct which may mislead and deceive consumers contrary to the provisions of the Fair Trading Act 1986, and to Principle 1 of the Advertising Standards Authority's Code for Comparative Advertising and Ethics. Mercury is of the view that, as written, the *Mercury Comparison* is incapable of substantiation.
- e) Please confirm by **6 October 2017** that all advertising containing the *Mercury Comparison* has been removed or amended to provide a direct and clear comparison of key features of each of Electric Kiwi and Mercury's comparable offering, to enable consumers to make an informed choice.
- f) Mercury reserves its rights in full.

Yours sincerely

Julia Jack  
Chief Marketing Officer



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ELECTRIC  
KIWI.CO.NZ

Julia Jack  
Chief Marketing Officer  
Mercury Energy  
julia.jack@mercury.co.nz

4 October 2017

Dear Julia

**Electric Kiwi – Mercury Comparison**

In response to your letter dated 3<sup>rd</sup> October 2017 regarding recent Electric Kiwi advertising, we can confirm that:

- a) Electric Kiwi has determined and reflected annual savings inclusive of the Mercury free power day. Therefore, the comparison is in fact like for like and fair.
- b) The advertisement comparison is based on all customers who switched to Electric Kiwi in the 12 months to 30/08/17 who provided a comparable bill. In order to calculate this comparison, Electric Kiwi has compared the specific rates charged by Mercury (after any prompt payment discounts) directly with the equivalent rate charged by Electric Kiwi. The comparison was substantiated with calculations at the time it was made, and we stand by the calculations.
- c) As a result, a number of different price plans are being compared, however these are all directly comparable. In essence, the comparison represents the difference between what the average customer would pay Mercury versus what the customer would pay at Electric Kiwi. The advertisement clearly stated it was "on average".
- d) Electric Kiwi is confident that the advertisement is not misleading, nor in breach of any legislation, advertising standards, or industry best practice.

Coincidentally the campaign is no longer active, but not as a result of your correspondence.

Therefore, Electric Kiwi does not plan on making any specific changes to the advertisement as a result of the concerns raised by Mercury. If we elect to run similar material in future we will consider your feedback.

We feel that the advertisement helps consumers to make an informed choice about their electricity retailer and challenge Mercury as the incumbent retailer in Auckland to focus on matching offers in the market with consistent transparent offers to all of its customers.

Electric Kiwi often has concerns around the accuracy of Mercury's advertising, but we prefer to engage in the market place and compete robustly for customers.

Yours sincerely

Luke Blincoe

ELECTRIC KIWI LIMITED | NZBN # 9429041132524 | ADDRESS: LEVEL 3, WEST PLAZA, 1-3 ALBERT STREET, AUCKLAND 1010 | POSTAL ADDRESS: PO BOX 106165, AUCKLAND 1143, NEW ZEALAND





10 October 2019

Brent Layton  
Chair  
Electricity Authority

cc James Stevenson-Wallace, Chief Executive, Electricity Authority

By e-mail: [brent.layton@xtra.co.nz](mailto:brent.layton@xtra.co.nz), [james.stevenson-wallace@ea.govt.nz](mailto:james.stevenson-wallace@ea.govt.nz)

Dear Brent,

## **Electric Kiwi urges winback ban before Christmas**

Electric Kiwi welcomes the Electricity Authority's support of the Government's electricity reforms, and its commitment to "move at pace" and act "in the best interests of New Zealand electricity consumers". We are committed to assisting the Authority to implement the electricity reforms efficiently and expeditiously.

The winbacks problem alone means consumers are paying circa \$500m per annum in loyalty taxes. This dwarfs the opportunities in the remainder of the Authority's work programme in terms of promoting the long-term interests of consumers.

The Government's announcement that there will be a ban on winbacks presents an opportunity for the Authority to 'hit the ground running' and can be the 'first cab off the rank'.

Implementing a ban on winbacks is a straight-forward reform and there is no reason why it couldn't be done prior to Christmas. The Expert Advisory Panel's final advice was that "the necessary change to the Electricity Industry Participation Code could be put into effect within three months, given we have already undertaken extensive stakeholder engagement on win-backs and only limited consultation should be needed".

### **The changes needed to implement an effective ban on winbacks are clear and straightforward**

The Expert Advisory Panel's Final Report provided useful elaboration and direction on the nature of the changes needed to implement an effective ban on winbacks.

We agree with the Expert Advisory Panel that the ban should be "much like the one in the telecommunications sector" and should "go one step further and also prevent a retailer from acting on any private information it held on former customers for marketing purposes". This is consistent with submissions to the Authority on saves and winbacks which recommended adopting a rule that information obtained from the switching process cannot be used for saves and winbacks.

We suggest the Authority adopt the following Code amendment to implement the ban, and seek feedback on the drafting:





#### **11.15AA Switch saving and winback protection [replaces clauses 11.15AA – AD]**

- (1) If a trader enters into an arrangement with a customer of another trader (the "losing trader") to commence trading electricity with the customer, the losing trader must comply with clause 11.15AA.
- (2) A losing trader referred to in subclause (1) must not use any information obtained from a notice of the switch request under clause 22(a) of Schedule 11.3 for any other purpose than to facilitate the switch of the customer.
- (3) A losing trader referred to in subclause (1) must not use any private information or contact details it holds on a customer that has switched, to another trader, or for whom the losing trader has received notice of the switch request under clause 22(a) of Schedule 11.3, for any other purpose than:
  - (a) contacting a 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 trader; or
  - (b) contacting a customer regarding administrative matters, including—
    - (i) any fees the customer owes the trader;
    - (ii) the customer's final meter reading;
    - (iii) how the trader will return any keys it holds on the customer's behalf;
    - (iv) the effect of the customer ceasing to buy electricity from the trader on other contracts between the customer and the trader, for example, for the supply of gas.

#### **The Expert Advisory Panel Final Report means the Authority can safely reject the advice it received from MDAG**

The Authority submitted to the Expert Advisory Panel that, while it "understands the concerns raised by the panel and some submitters about win-backs stifling retail competition and having adverse consumer impacts", it "also ... received advice from our Market Development Advisory Group (MDAG) that there is no evidence of a market or regulatory failure associated with win-backs".

With respect to the advice the Authority has received on winbacks, Electric Kiwi considers the MDAG Recommendations Paper is hopelessly flawed and has no probative value.<sup>1</sup> The Expert Advisory Panel had the opportunity to consider the MDAG Recommendations Paper before it submitted its Final Report to the Minister, and reached the following conclusions:

The ... big retailers and the BusinessNZ Energy Council (with a dissenting view from one member) opposed a ban. Mercury and Trustpower said the Electricity Authority's Market Development Advisory Group had reviewed the matter extensively and found no evidence winbacks were harming competition. However, that review did not weigh wider fairness considerations. Nor were its findings categorical. It said "there is no strong evidence of regulatory problems or market failures" but added that "evidence that there are problems arising from the use of saves and win-backs, or not, are relatively thin such that no robust conclusions can be drawn one way or the other". By contrast, we found convincing evidence win-backs restrict retail competition by raising costs for rivals of the vertically integrated companies. [emphasis added]

The Expert Advisory Panel had sound basis for determining a ban on winbacks would be to the long-term benefit of consumers. Electric Kiwi endorses the Panel's statement that "We place significant weight on the fact submissions from consumers and new retailers overwhelmingly supported a ban. We also know a ban is no leap in the dark because the telecommunications sector has applied a similar ban for years". We also note equivalent investigations by the ACCC in Australia and CMA in the UK reached similar conclusions that there were substantial 'loyalty taxes' (consumers paying too much), these disadvantaged those most in need, and policy changes were needed to address the problem.

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<sup>1</sup> Our assessment of the MDAG Recommendations Paper is appended to this letter.



## Concluding remarks

Adopting a pre-Christmas ban on winbacks would provide a clear and unambiguous statement of intent that the Authority will implement the Government's electricity reforms with urgency. Given the winback problem is costing consumers over \$40m per month in excessive charges or 'loyalty taxes' the changes can't happen fast enough. The Expert Advisory Panel has indicated this equates to about \$240 per household per year. Based on UK and NZ<sup>2</sup> surveys the consumers who are paying too much are over-represented by low income households and the elderly, who can least afford high electricity prices. The next step for the Authority should be to implement Code amendments with urgency which mirror the Expert Advisory Panel specifications for a winback ban, including restrictions on customer information usage. We also consider that the Authority should take ownership of the reforms and the matter should not be handed back to MDAG.<sup>3</sup>

I would be happy to discuss Electric Kiwi's views further, including in relation to the pathway to efficiently and expeditiously implement the Government's electricity reforms.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'L. Blincoe', with a long horizontal flourish extending to the right.

Luke Blincoe  
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+64 27 601 3142

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<sup>2</sup> Consumer NZ, Energy providers survey, 7 June 2018.

<sup>3</sup> Electric Kiwi has written separately to the Electricity Authority about our concerns with MDAG.



## Appendix: The problems with the MDAG advice on saves and winbacks

With respect, the MDAG Saves and Winbacks Recommendations Paper represented a retrograde contribution to the saves and winbacks/two-tier retail market issue and has little to say relevant to the extent to which there is a problem, or what regulatory changes are needed to address this problem.

The MDAG Recommendations Paper has no probative value. It contains little or no relevant quantitative analysis or evidence and relies on subjective and qualitative dismissal of arguments that weren't raised in submissions and aren't relevant to whether there is a two-tier market/saves and winbacks problem. MDAG were explicit they considered the actual two-tier retail market/saves and winbacks problem (whether prices are higher than they otherwise would be) to outside of the scope of their review, rendering the MDAG review largely irrelevant.

What MDAG needed to do was investigate whether saves and winbacks resulted in or contributed to a market in which there are retail 'tiers' of customers (effectively a monopoly customer base) that is charged excessive or monopoly prices. As Vocus has noted:<sup>4</sup>

A simple test to determine whether win-backs are to the long-term benefit of consumers is to ask whether they result in higher or lower average residential prices. The UK CMA asked itself this question, looking at a broad range of industries, and concluded win-backs resulted in higher overall prices. MDAG has ignored such matters in its consideration of win-backs which has meant it has ignored the main two-tier retail market problem a ban on win-backs would help address. [footnote removed]

This is the approach that was undertaken in equivalent Australian and UK investigations.<sup>5</sup> MDAG not only did not do this, but they actively ignored evidence of excessive pricing, including from the Electricity Price Review (EPR) and the Electricity Authority's own data.<sup>6</sup>

The saves and winbacks/the two-tier retail market is one of the most substantive retail competition issues the EPR identified (with detriments to consumers in excess of half-billion dollars per annum). There is a broad agreement amongst consumer representatives, independent retailers, and electricity networks (and their trust-owners) that this is a problem. The MDAG position aligns exclusively with the position of the majority of incumbent retailers.

While MDAG has noted that "The Electricity Price Review panel has put forward an option of prohibiting saves and winbacks" and "their assessment takes into account wider fairness considerations" the EPR Panel conclusions do not hinge on fairness issues, as these simply reinforced the consumer benefits from prohibiting saves and winbacks.

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<sup>4</sup> Vocus, Submission on Electricity Price Review Options Paper, 22 March 2019.

<sup>5</sup> Electric Kiwi, Supplementary submission on "Customer acquisition, saves and win-backs – Issues Paper": helpful guidance from the ACCC, 17 July 2018.

<sup>6</sup> It is notable that the Electricity Authority ceased undertaking its assessment of the benefits of switching (the 'loyalty tax') after the information was used in submissions in response to MDAG. The latest update was for 2017, which indicated the size of the loyalty taxes was growing substantially.



## Summary of the problems with MDAG's Recommendations Paper

- We agree with Vocus that “The Electricity Authority Advisory Group’s, MDAG, position that saves and winbacks isn’t a problem is out of step with not only the [Expert Advisory] Panel, but also the ACCC and the UK Competition and Markets Authority (CMA)”.<sup>7</sup>
- The MDAG Recommendations Paper has no probative value. It contains little or no relevant quantitative analysis or evidence and relies on subjective and qualitative dismissal of arguments that weren’t raised in submissions and aren’t relevant to whether there is a two-tier market problem.
- MDAG concluded correctly that “There does appear to be an upward trend in the use of saves and win-backs” but went on to claim “evidence that there are problems arising from the use of saves and winbacks, or not, are relatively thin such that no robust conclusions can be drawn one way or the other”. The reason the evidence in the MDAG report is “thin” is simply because the report ignored the actual two-tier retail market/saves and winbacks problem and did not consider whether saves and winbacks resulted in or contributed to a market in which there are retail ‘tiers’ of customers (effectively a monopoly customer base) that are charged excessive or monopoly prices.
- The MDAG review needed to consider whether saves and winbacks resulted in or contributed to a market in which there are retail ‘tiers’ of customers (effectively a monopoly customer base) that is charged excessive or monopoly prices. The MDAG review did not do this. MDAG instead asserted “Our evaluation is not concerned with direct examination or diagnosis of problems relating to market performance – such as high average prices or distributional concerns”.
- The MDAG review also excluded key components of the two-tier retail market/saves and winbacks problem from the scope of the review, including: the information advantage the losing retailer has over gaining retailers, matters relating to affordability and price discrimination, lack of consumer engagement and matters regarding price transparency. It is not clear why these were all excluded. The Electricity Authority only directed MDAG that the information advantage the losing retailer has was out of scope.<sup>8</sup> The other exclusions weren’t mentioned in the project scope or the MDAG consultation and were mentioned for the first time in the MDAG Recommendations Report.
- MDAG established a series of ‘strawman’ or ‘Aunt Sally’ arguments that it could readily dismiss. For example, MDAG asked itself: “Is the market trending towards increased occurrence of market dominance?” even though there is no apparent or obvious reason why the two-tier retail market/saves and winbacks problem would result in or increase market dominance. This is the equivalent of rejecting cancer drugs because they failed to cure the common cold.
- The MDAG review effectively assumed the saves and winbacks problem away.

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<sup>7</sup> Vocus, Submission on Electricity Price Review Options Paper, 22 March 2019.

<sup>8</sup> Letter from Carl Hansen (CEO, Electricity Authority) to James Moulder (Chair, MDAG), Market Development Advisory Group work plan – response to expression of interest in additional projects, 18 December 2017. MDAG, Customer acquisition, saves and win-backs – Issues Paper, 22 May 2018, Footnote 7.



- We also find it problematic that MDAG dismissed submissions to the EPR on the factually incorrect basis that “none of these were [sic], in our view, differed substantially from information provided directly to MDAG”. We find this comment quite extraordinary. 25 stakeholders submitted in support of a ban on winbacks that had not submitted to MDAG, all of which supported a ban on winbacks.
- It is a matter of factual observation that submissions to the EPR included new and substantive information. For example, Entrust’s submission included quantitative evidence from a UMR survey that provided clear evidence the conditions for a two-tier retail market existed, including that large numbers of consumers thought they were getting a good deal even when they could make substantial savings by switching retailer, and consumers who had never switched thought switching was much more difficult and risky than it actually is. This creates a ‘perfect storm’ for a two-tier retail market/successful saves and winbacks strategy for incumbent retailers.

### **MDAG reviewed winbacks/two-tier retail market issues while treating the central two-tier retail market problem (higher prices) as out-of-scope**

To determine whether winbacks are to the long-term benefit of consumers or not, MDAG needed to investigate whether winbacks enable incumbent retailers to retain higher average prices than otherwise. MDAG (correctly) noted that:

“Two categories of concern were expressed. One was that prices are, on average, higher than they should be (would otherwise be) and that this is due to market structure (“monopoly” pricing) and conduct including, but not limited to, saves and win-backs behaviour. The other, related, concern was about the distributional consequences of prices being higher than they should be. The concern is that prices are highest for those that are least able to afford those higher prices. While some consumers are benefitting from lower prices submitters say that these benefits are not available to all consumers (Entrust) and are least likely to accrue to poorer households (Ecotricity, Electric Kiwi).

“The other, related, concern was about the distributional consequences of prices being higher than they should be. The concern is that prices are highest for those that are least able to afford those higher prices. While some consumers are benefitting from lower prices submitters say that these benefits are not available to all consumers (Entrust) and are least likely to accrue to poorer households (Ecotricity, Electric Kiwi).”

MDAG did not do the work it needed to on whether “prices are, on average, higher than they should be”. MDAG side-stepped consideration of these substantive concerns about winbacks, by asserting:

“Our evaluation is not concerned with direct examination or diagnosis of problems relating to market performance – such as high average prices or distributional concerns.”

“Customer segmentation and non-uniform pricing, for example, are not market failures or regulatory problems and thus not considered directly in our evaluation.”

It is difficult to see what the point of the MDAG review was, given it excluded consideration of the actual two-tier retail market/saves and winbacks problem. Any competition policy review which ignores evidence of monopoly pricing (no mention is made in the report of the two-tier market or loyalty taxes) and what the OECD describes as “exploitative discrimination” is without any merit. The MDAG approach is equivalent to the Commerce Commission undertaking an investigation into whether a supplier should be price controlled without considering whether they are earning, or could earn, excessive returns. Or, put another way, MDAG’s approach is equivalent to the Authority reviewing RCPD charges while treating whether they are inefficiently high or not as out of scope.



## **The MDAG draft Saves and Winbacks Recommendations Paper provides no useful contribution to the saves and winbacks/two-tier market issue**

MDAG reached the conclusion “There is no strong evidence of regulatory problems or market failures related to customer acquisition and switching processes, including saves and win-backs practices”, by avoiding the main issues that: (i) winbacks is a key enabler of the two-tier market; and (ii) the outcome is that incumbent retailers are able to maintain average retail prices at higher levels than they otherwise would be able to (the “loyalty tax”).

Instead of investigating whether there was a two-tier retail market, MDAG occupied itself with several alternative, and largely irrelevant, strawman or ‘Aunt Sally’ arguments which it could readily dismiss, and use to support its case that there isn’t a problem. MDAG avoided engaging with actual submissions and actual arguments included in the submissions e.g.:

- Instead of considering whether there are market power or concentration issues, MDAG asked: “Is market dominance a problem in the retail market?” No submitter argued this that we are aware of. The two-tier market problems do not require market dominance.
- MDAG asked itself: “Is the market trending towards increased occurrence of market dominance?” No submitter argued this that we are aware of. It is not obvious why MDAG would consider this was something that needed to be tested, beyond that it is an easy (made up) argument to shoot down.
- MDAG asked itself: “Have saves and win-backs reduced consumer engagement?” No submitter argued this that we are aware of. Issues of low levels of consumer engagement, amongst certain groups of customers, is one of the enablers or causes of the two-tier retail market, not something that is increased by saves and winbacks. MDAG have confused cause with outcome.

MDAG also considered peripheral issues such as whether winbacks were part of anti-competitive behaviour (possible but not necessary for winback to be successful or a problem) or part of misleading conduct. MDAG also relied on spurious or irrelevant information such as the comment “The fact that win-backs are most prevalent between larger retailers is significant evidence of this”. What is relevant and significant evidence is the extent to which the incumbent retailer is successfully engaging in winbacks. The fact that winbacks are most prevalent amongst larger retailers tells us no more than that the large retailers have a larger market share than smaller retailers. The statement of fact MDAG considered “significant” was nothing more than a tautological observation.

## **MDAG failed to consider the three pillars which enable a two-tier retail market**

The MDAG paper made reference to the fact Electric Kiwi and other submitters raised the issue of price discrimination and how this could result in excessively high prices and a “two-tier” market “where customers that do not switch or do not receive win-back discounts are not benefitting from competition”. MDAG didn’t comment on the merits of these arguments, and the two-tier market problem wasn’t mentioned again (it was only referred to once in the paper). The exclusions from the scope of the project effectively assumed the two-tier retail market/saves and winbacks problem away.

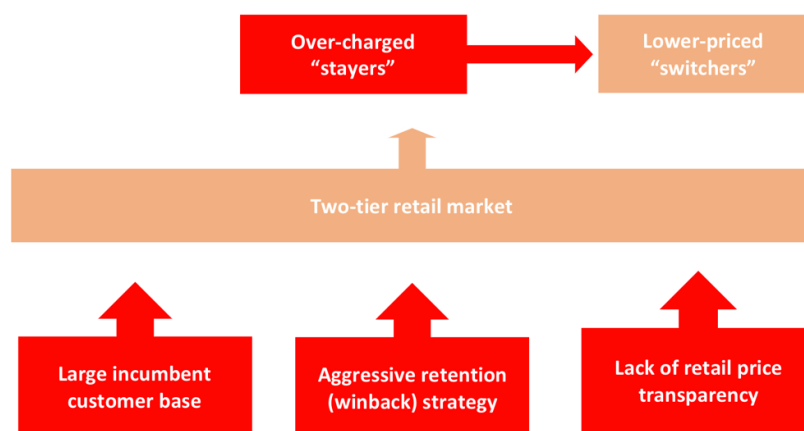
These are important elements of the three pillars which enable a two-tier retail market, which were detailed in various of the submissions to both MDAG and the EPR:



Three pillars which enable a two-tier retail market	Exclusions from MDAG scope <sup>9</sup>
1. The incumbent retailers have a high number of stayers or customers that have never switched (the monopoly customer base) – MDAG has loosely referred to this as “consumer inertia” and “a high degree of concentration in the retail market”, <sup>10</sup>	“... matters considered outside scope for this review are: ... lack of consumer engagement leading to inequitable outcomes”
2. The incumbent retailers can exploit the stayer customer base by engaging in price discrimination (which the OECD defines as “undue discrimination”), and	“... matters considered outside scope for this review are: ... matters relating to affordability and price discrimination”
3. Information asymmetries and winbacks <sup>11</sup> help enable the incumbent retailers to retain price discrimination without losing larger numbers of customers.	<p>“A losing retailer’s informational advantage is one issue specifically outside the scope of the terms of reference for the MDAG’s review.”</p> <p>“... matters considered outside scope for this review are: ... matters regarding price transparency”</p>

The three pillars that enable two-tier retail markets is illustrated by Figure 1.

Figure 1: Saves & Winbacks is one of the pillars enabling two-tier retail markets



### The type of two-tier retail market/saves and winbacks analysis MDAG should have undertaken

The central part of the MDAG investigation should have been to establish the number of tiers in the retail market, and the size of the ‘loyalty taxes’. The Expert Advisory Panel undertook this type of analysis as part of its review.

<sup>9</sup> It is unclear what the origin of these exclusions from the project scope is. They are only first mentioned in the MDAG Recommendations Report.

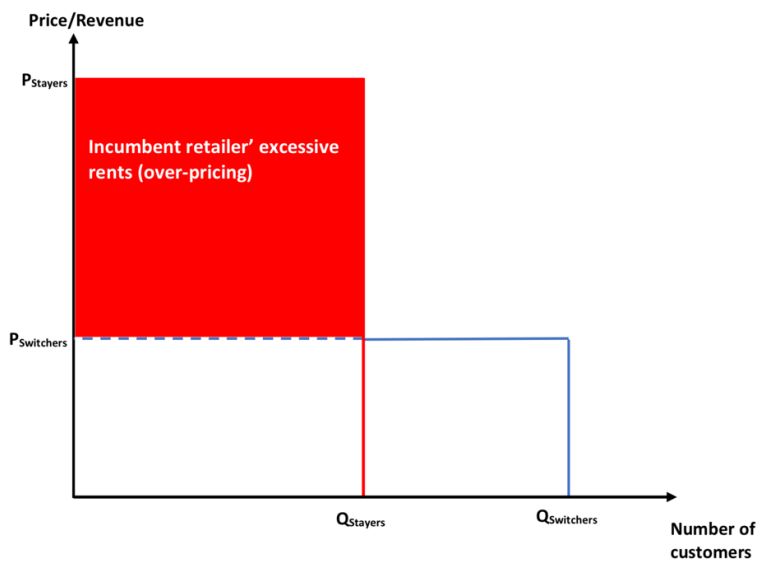
<sup>10</sup> MDAG cited the 88% market share of the 5 largest retailers, but what is actually relevant is the market share of the incumbent retailer.

<sup>11</sup> MDAG have noted that “retailers that lose customers have access to information about customers that enables them to offer departing customers a discount to win them back”.



The Electric Kiwi submission to MDAG on Saves & Winbacks included the following stylised diagram (Figure 2). For simplicity the stylised diagram only included two-tiers, but the reality is there are multiple tiers.

Figure 2: Incumbent retailer market segmentation and monopoly pricing problem



MDAG could have replicated the diagram using actual pricing data for each network reporting region, including establishment of the number of tiers. The ACCC provided this information on the tiers (see Figures 3 and 4 below).

Figure 3: Multiple tier retail market

Figure 1.8: Average effective price outcomes (c/kWh) and average proportion of customers by offer category, Victorian residential non-solar customers, 2017-18 est., real \$2016-17, excluding GST

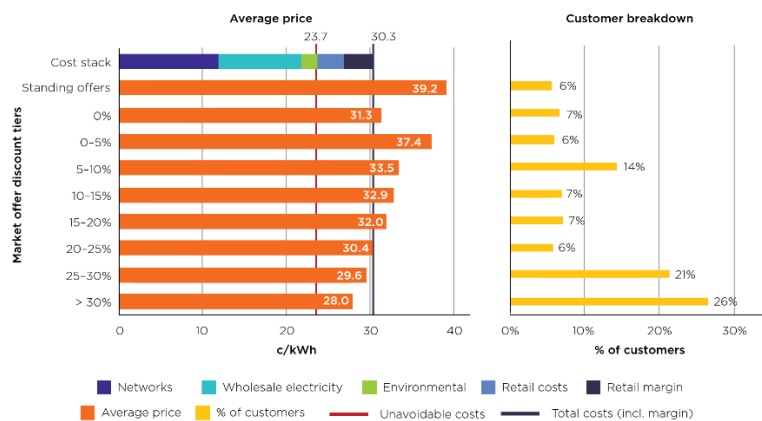




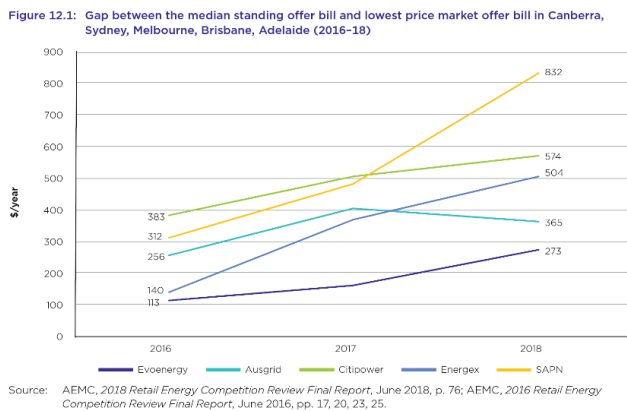


Figure 4: Multiple tier retail market by region



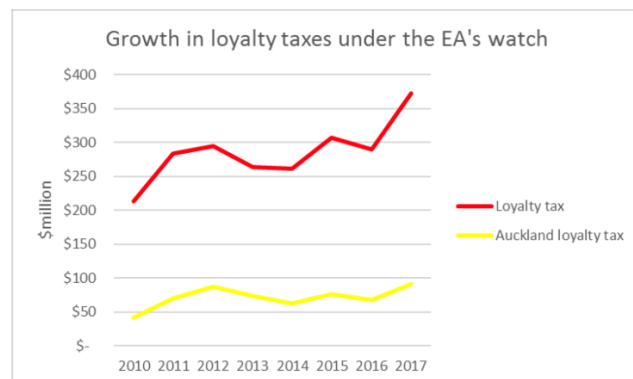
MDAG could have also undertaken a time-series analysis to show how the size the tiers have changed over time (as per Figure 5 below).

Figure 5: Growth in the gap between the tiers



Entrust undertook this analysis based on EMI data for Auckland and New Zealand.

Figure 6: Entrust calculation of the size and trend in "loyalty tax" based on EMI data



Source: EMI residential savings league table [understates the size of the loyalty tax]



### Analysis of incumbent retailer retention strategies

The following two graphs are updated versions of graphs we submitted to the EPR. It could have been useful for MDAG to have replicated this analysis for the incumbent retailers in each network reporting area and assessed whether there was a relationship between the level of incumbent retention (saves and winbacks) and the size of the loyalty tax.

Figure 7: Mercury's residential customer retention in Auckland

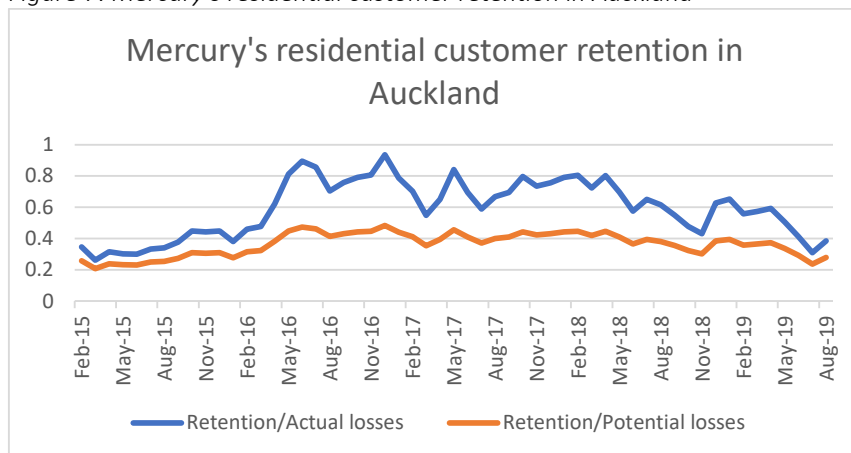
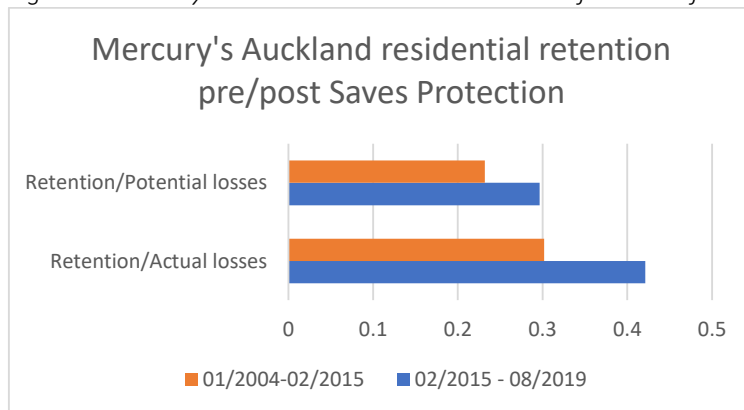


Figure 8: Mercury's Auckland residential retention before and after Saves Protection



### Additional information from EPR submissions

The MDAG Recommendations Paper claimed “Many of the submissions to the report of the Electricity Price Review’s Expert Advisory Panel did raise matters of relevance to MDAG’s review” but then (incorrectly) claimed “none of these were [sic], in our view, differed substantially from information provided directly to MDAG”. We find this comment quite extraordinary. 25 stakeholders submitted in support of a ban on winbacks that had not submitted to MDAG. It is a matter of factual observation that submissions to the EPR included new and substantive information.

We detail some of the additional information from the EPR submissions below.



We consider it is relevant that:

- A substantially larger number of stakeholders were prepared to engage on the saves and winbacks/two-tier retail market issue in response to the EPR consultation than the MDAG consultation. 33 submissions supported a ban on winbacks compared to 8 submissions to MDAG.
- There is clear and substantial majority support for a ban on winbacks.
- All independent retailers and consumer groups support ban on winbacks.
- All electricity distributors, and Shareholding Trusts, with the exception of Aurora and Orion supported ban on winbacks. Aurora and Orion were undecided or silent.
- The only stakeholders that do not favour a ban are 5 of the 6 incumbent retailers (Contact being the notable exception).

Ban winbacks	Do not favour ban	Undecided/other
Buller Electricity	Genesis*	Aurora
Community Power	Mercury*	Business NZ
Consumer NZ	Meridian*	Commerce Commission
Contact	Nova*	Electricity Authority
Counties Power	Trustpower*	MEUG
Counties Power Consumer Trust		Orion
Ecotricity*		Winstone Pulp
Electric Kiwi*		
Entrust*		
energyclubnz*		
ETNZ		
Expert Advisory Panel		
ENA		
Federated Farmers		
Flick*		
Grey Power		
Joint Independent Retailers		
The Lines Company		
Lines Trust South Canterbury		
Network Waitaki		
NorthPower		
Pioneer Energy*		
Pulse*		
PwC Distribution Group		
Refining NZ		
Salvation Army		
Saveawatt & One Big Switch New Zealand		
Sustainability Trust		
Top Energy		



Ban winbacks	Do not favour ban	Undecided/other
Utilities Disputes		
Vector		
Vocus*		
Wellington Electricity		
* Stakeholders that submitted to MDAG		

### **Entrust's EPR submission UMR survey included substantive new evidence that was not considered by MDAG**

The submissions to the EPR also contained substantial new and additional information that had not been in front of MDAG. Entrust's submission to the EPR provided extensive factual evidence from a UMR study they commissioned, directly relevant to the two-tier retail market/saves and winbacks issue. The study highlighted that:

Despite the fact large numbers of loyal customers are being overcharged and not on the right or best deal, the perception of most our beneficiaries, and other Auckland consumers, is that they are on the right deal for their household. 74% of consumers were confident they are on the right deal.

27% of consumers thought it was difficult to compare prices (versus 39% who didn't).

40% of consumers worried something would go wrong if they switched, which was higher amongst those that have never switched (46%).

Just over 35% thought switching electricity retailers is difficult and can take too long (41% of consumers who had never switched).

... Among those that had not switched only 42% thought it would be easy, versus 23% thought it would be difficult.<sup>12</sup>

What Entrust presented was a 'perfect storm' which, to mix metaphors, supports the three pillars of the two-tier market:

... the UMR survey results highlight is consumers who remain loyal to the big-5 retailers don't know the true extent to which they are being overcharged, or that they would be better off switching supplier. The information gap helps keep consumers who haven't switched loyal to their retailer. The incumbent retailers will be well aware of this and will have much more segmented data than we have obtained through the UMR survey. They will be well aware of the magnitude to which they can exploit their most loyal customers.

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<sup>12</sup> UMR, Consumer research on electricity usage and supply issues, October 2018.