SAVES AND WINBACKS CODE AMENDMENT – CONSULTATION PAPER

ECOTRICITY SUBMISSION

November 27, 2019

ecotricity

20th November 2019

To: Win-backs Submissions
Electricity Authority
P O Box 10041
Wellington 6143

By e-mail: winbacks.submission@ea.govt.nz

RE: Ecotricity – Saves and Winbacks Code Amendment – Consultation Paper

We would like to express our gratitude for the opportunity to consult with the Electricity Authority (EA) on the Saves and Winbacks Code Amendment.

We, along with other independent retailers, challenge the EA to adopt a pre-Christmas ban on Saves and Winbacks. This is one of the highest priorities the Minister has announced resulting from the Electricity Price Review (EPR), the EA now needs to deliver on the EPR findings and the Ministers direction.

The EPR estimated Winbacks is costing consumers over $240m per annum in 'loyalty taxes'. Further, based on UK and NZ 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.

Change needs to, and can, happen quickly to the benefit of the consumer.

Our specific feedback based on the Consultation paper is as follows.

Term of Saves and Winbacks – Complete Ban

We do not agree with the term of 180 days.

We support a complete ban on Saves and Winbacks for the following reasons;

- This suggestion is based on the Privacy Act 1993 principles, where personal information should only be used for the purpose with which it was given. A customer gives information to a retailer for the purposes of services from that retailer. Once they switch away, their information should no longer be used to win that customer back.

- Customers can still initiate a switch out, or switch back, from the new retailer if they consider the price they are currently paying is too much, therefore they are not trapped from dealing with the previous or any other retailer.

- Where there is any opportunity for Gentailers to game any rules, we expect they will, until such time as those rules are tightened. The EA delay in closing those loopholes has cost consumers $240 million

per annum, approximately $700 million over the last 3 years. We therefore recommend all loopholes are therefore closed permanently in the interests of increasing competition and to the benefit of the consumer.

- Wholesale hedging arrangements that retailers tend to use are three years in length. Therefore if a customer is switched in for only 180 days, and the retailer has entered into hedges of three years to support that customer, this may put retailers in an over hedged position. This is particularly relevant for commercial customers that involve larger volumes to be hedged.

- Further, until such time as all retailers have access to the same wholesale costs through Mandatory Marketing Making and /or the banning of transfer prices, we do not believe any form of Saves and Winbacks should be allowed as:

    - There is a substantial unfair advantage for Gentailers who have access to lower transfer prices. Further, current Gentailer transfer prices appear to be risk free, and less likely to include prudential costs;

      and

    - Gentailers, including Mercury, are starting to offer 5 year residential terms which are not currently available on the ASX and may attract more affordable wholesale rates not available to independent retailers.

Retailer Board Accountability

We request that the Saves and Winbacks Code amendment includes the requirement for board members of retailers to be accountable for compliance of Saves and Winback Code. This can be done concurrently, for instance, when Stress Test documentation is provided to the EA by all retailers.

As noted earlier, we have seen with a number of proposals or market tests put in place by the EA. However some gentailers have taken every opportunity to circumvent the intent of rule changes or sought to expose any loopholes. The current Saves and Winbacks scheme is an example of this behavior.

For that reason we recommend accountability is held by all retailers at Board level to recognize the intent and importance of the Saves and Winback Code amendment.

Which customer should be included in the ban?

We agree that all customers should be covered in any Saves and Winback bans.

Ecotricity supplies commercial and residential customers and has experienced Winbacks in both segments. It is particularly concerning in the commercial market where volumes are substantially greater and therefore carry a greater hedging risk if a customer decides to switch out after a short time, even when contracted.

Ecotricity has put a number of complaints to the Electricity Authority and more recently the Commerce Commission where we have experienced what we believe to be a targeted campaign from retailers including in particular, but not limited to, Meridian where they have offered prices to NHH commercial ICPs below their transfer price and costs to run a retail business.

This targeted behavior is anti-competitive, a ban on Saves and Winbacks would address this.

Customer Moves

We support the application of the ban to situations where the customer has (again) switched retailer and/or moved address. We are suspicious of some move out requests from customers which we suspect have been suggested by losing retailers in order to exit supply from Ecotricity to avoid penalties and the current Saves and Winback scheme.

We therefore support address moves be included in the proposed Saves and Winback ban.

Further, if the losing retailer is complying with the ban it should not be aware of the move in order to attempt a winback unless the customer contacts the losing retailer.

Multi product service providers

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".

All agents and third parties should be included in the ban

We agree that all agents or third party service providers of retailers should be banned from approaching customers switching out.

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 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"

This therefore should not restrict retailers from providing publicly available facts to customers about other retailers.

Urgency

It is with urgency that the Code Amendment be put in place immediately. We see no reason for this not to be done before Christmas.

Best regards
Al Yates

Ecotricity
CEO