

3 December 2019

*Win-backs Submissions*

Electricity Authority

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To Whom It May Concern

**Saves and Win-backs Code Amendment**

1. This letter sets out Vector's submission on the Electricity Authority's (the Authority's) consultation on the proposed Saves and Win-backs Code Amendment. Our key points are summarised below and discussed in more detail in the body of the submission.

**Summary**

- Vector strongly supports the proposed Code amendment and considers it is long overdue.
- New Zealand suffers from a two-tier retail electricity market with 'active' switchers obtaining the best deals while 'sticky' customers are charged higher prices – effectively a loyalty tax.
- The aggressive use of win-backs is a key strategy used by incumbent retailers to maintain the two-tier pricing structure. This weakens competition by creating barriers to entry and expansion for smaller independent retailers.
- The proposed design of the Code amendment appears sensible. A 180-day prohibition on win-back activity strikes the right balance between limiting opportunities for aggressive price discrimination while also ensuring that all customers retain access to the best available deals in the retail market.

**The retail market is currently not delivering for customers**

2. As we highlighted in our submissions on the Electricity Price Review (EPR), New Zealand clearly has a two-tier electricity retail market which warrants policy intervention. The price difference between the incumbent and lowest price supplier is high and has been increasing over time (by around 50% since 2002, according to the EPR Final Report). This pattern is the opposite of what would be expected in a competitive market.
3. A two-tier market structure means that new entrants and smaller retailers are vying primarily for the 'active' customer segment which, by definition, is likely to be especially price sensitive and offer only relatively low margins. Attracting the disengaged customers of incumbent retailers is far more difficult, which serves to insulate incumbents from genuine competition across their full customer base.

4. The two-tier market represents a significant barrier to expansion by independent retailers and means that many consumers miss out on lower prices. Evidence indicates that around 40% of customers have never switched retailer and are potentially paying hundreds of dollars over and above a competitive market price for their energy. This problem is particularly concerning given that vulnerable customers are over-represented among non-switchers.<sup>1</sup>

#### **Win-backs assist incumbent retailers to maintain the two-tier market**

5. The use of aggressive 'win-back' discounts appears to be one of the main tools used by incumbent retailers to maintain the two-tier market structure. Electric Kiwi's 2018 submission to the Market Development Advisory Group (MDAG) on win-backs noted that:

*"If winbacks are measured as a percentage of trader losses Mercury and Genesis winbacks exceeded 70% of trader losses in April 2018. This shows that for the most aggressive incumbents their strategy has already converged to one of near exclusively focussing on the 'switcher' part of the market."*

6. Similarly, Pulse noted in its submission to the EPR that win-backs penalise independent retailers, and that it had lost more than 30,000 customers within 10 days of acquiring them because of win-backs. Flick also said that win-backs were one of the main reasons that the market share of incumbent retailers has declined so slowly since the introduction of retail competition.
7. It is telling that the large generator-retailers are the only stakeholder group who have consistently opposed regulation of win-back activity. This strongly suggests that they are financially benefiting from the use of win-backs. By contrast, independent retailers and consumer groups overwhelmingly support a ban on win-backs.
8. The EPR Final Report concluded that win-backs were problematic on both fairness and competition grounds. We agree. Moreover, we are not convinced by the argument that 'switchers' could be adversely impacted by a ban on win-back activity, since they would miss out on cheaper deals offered by losing retailers. As the Authority notes in its consultation paper, both switching and non-switching consumers benefit from enhanced retail competition in a well-functioning market. A ban on win-backs will increase the incentives on incumbent retailers to provide all customers with their best price. It will also reduce barriers to entry and expansion for independent retailers, leading to greater competition and choice over time.

#### **The proposed amendment is appropriate for addressing the problem**

9. The design of the proposed code amendment appears sensible. A 180-day prohibition on win-back activity strikes the right balance between limiting opportunities for aggressive price discrimination while also ensuring that all customers retain access to the best available deals in the retail market.

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<sup>1</sup> EPR First Report, p38.

10. We also support other elements of the proposed code amendment, including:

- Applying a 'blanket ban' on win-backs rather than an opt-in scheme (as currently exists under the saves protection arrangements)
- Applying the regulations to retailers rather than to traders to ensure that traders cannot use retailer-subidiaries to circumvent the regulations
- Allowing contact between losing retailers and customers in specific circumstances, such as if the contact is customer-initiated or if it is part of a generic marketing campaign
- Including 'good conduct' obligations within the regulations, and
- Targeting the proposal to residential and small business customers with category 1 and 2 metering installations.

11. We note that the Authority is proposing to conduct a post-implementation review of the policy two years after implementation, whereas the EPR Final Report stated that the ban should remain in place for at least three years before it is reviewed. Unless there are strong reasons to undertake a review after two years, we consider that the EPR's proposed timeframe should be followed in order to allow sufficient time for the impacts of the win-back ban to fully flow through to the retail market.

### **Concluding remarks**

12. We welcome the Authority's proposal to move forward with regulating win-backs for the benefit of consumers and competition. The code amendment is clearly aligned with the Authority's statutory objective.

13. Although banning win-backs would be an important step forward, further measures are also needed to improve competition in both the retail and wholesale markets. These include the introduction of compulsory market-making in the hedge market, the removal of 'prompt payment discounts', more aggressive monitoring and enforcement of wholesale market manipulation, and greater transparency around the accounts of the vertically integrated generator-retailers. We hope that the Authority will move rapidly to address these other issues, in line with the recommendations of the EPR.

Yours sincerely



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