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Sent: Thursday, 29 March 2018 3:23 PM
To: Avi Singh
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luke.blincoe@electrickiwi.co.nz; alyates@ecotricity.co.nz
Subject: Saves and Win-backs Problem Definition Proposed Revision
Attachments: Saves and win-backs project plan (draft version).docx

Avi,

Thanks for the opportunity to engage with MDAG on the issue, as agreed at the end of the meeting we collectively said we had concerns with the draft project plan and agreed to collectively suggest changes.

The attached word document suggest a revised 'problem definition' which we feel better represents the most significant problem and highlights relevant parts of the 2017 Post Implementation review. The revised problem definition read in conjunction with the project scope better reflects the intent.

By way of context for the proposed revision a summary of some of the key points made through the presentations on the schemes short comings were as follows:

- The Scheme's primary objective was to create a meaningful distinction between a "save" and a "win-back" and has failed to do so.
- This means a switch notification and the win-back call from a losing service provider is, for all intents and purposes, a simultaneous event.
- The simultaneous nature of these two events provides an opportunity for a marketing pitch to combine with unique "heat of the moment" pressure that can be unfairly used to leverage the losing service provider's marketing pitch.
- This leverage can imply a "last right of refusal" and an ability to unwind the winning service provider's arrangement without consequences.
- This also may allow the losing service provider to coerce a customer into a longer term contract with a higher termination fee (under the guise of a credit).

In addition, the Scheme had many weaknesses with respect to enforcement. For example:

- The losing service provider can easily convert allowable conversations under the scheme to marketing pitches through the characterisation of a last right of refusal.
- Customers are leveraged into new contracts without the protections under the act afforded to them regarding unsolicited offers.
- Specific, negative innuendo about the winning service provider can enhance leverage which is not otherwise possible without blatant disregard for fair trading principles.

The Scheme was designed to enable customer benefits and provide fairness to the winning service provider. It is not clear that this has occurred (or will occur) for the following reasons:

- With the added pressure, customers may re-sign with a losing service provider with only a matching of price.
- With the added pressure, customers are signing up to longer term contracts when they otherwise would not do so.
- If the losing retailer has a proposition that adds greater benefit; it will be available to be offered at later when the "heat of the moment" advantage is removed and a billing relationship has been established with the winning service provider.

Finally, we do not believe the switch process would ever have been accepted as a legal framework if it included a last right of refusal for the losing service provider. Without clear prohibitions, the rules sanction this material advantage by default.

This document is on behalf of

- Ecotricity
- Electric Kiwi
- Pulse
- Vocus

We were pleased to see the EA encourage input from smaller retailers [Post Implementation Review Aug 2017: 13.9 “Further analysis of how the scheme affected smaller entrant retailers could also help inform the regulatory design”] and would be happy to discuss further.

Kind regards,

Johnathan

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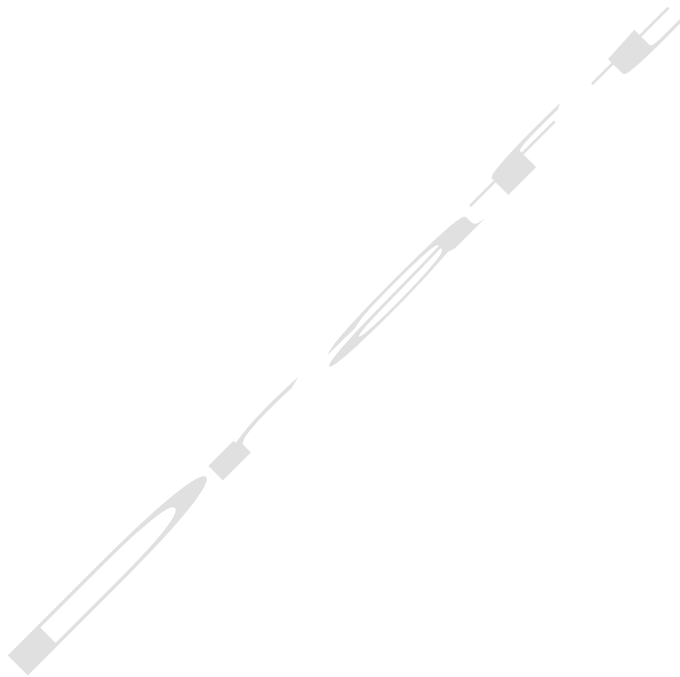
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Saves and win-backs

Project Plan



Prepared by: Sense Partners Ltd, Secretariat
Project number: B4
Date: 1 February 2018
Version: 1.1

Document information

Approvals

Project Plan

Craig Evans
Manager Retail and Networks
Markets

Project Sponsor

Elly Kappatos

Project Manager

Signature

Date

Signature

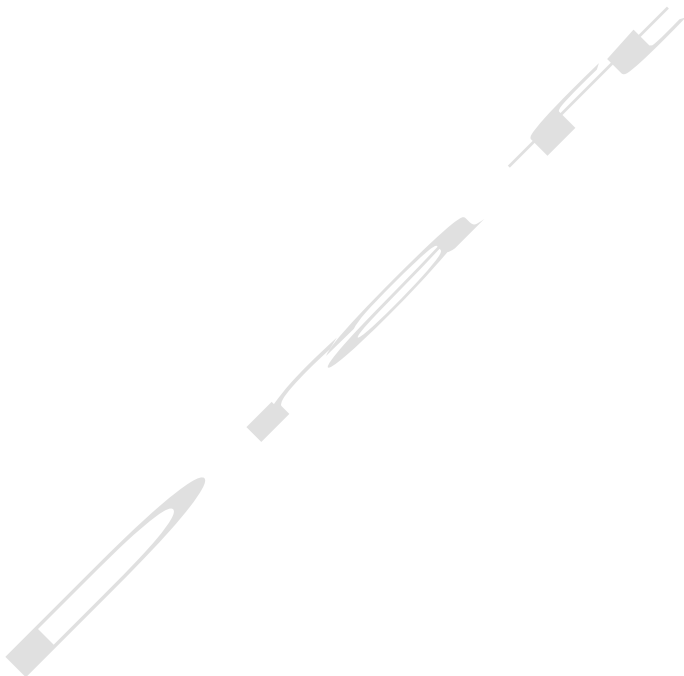
Date

Version control panel

Date	Version	Author	Comments and/or description of changes
01/02/2018	1.1	Sense Partners Ltd, Secretariat	Prepared for the MDAG

Glossary of abbreviations and terms

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Contents

Document information	A
Approvals	A
Version control panel	A
Glossary of abbreviations and terms	B
1. Executive summary	5
2. Introduction and purpose	6
2.2 Purpose	6
2.3 Background	6
3. Project definition	7
3.1 Project objectives	7
3.2 Problem definition	7
3.3 Benefits sought	9
3.4 Scope	10
3.5 Key Milestones and Deliverables	13
3.6 Project dependencies	14
3.7 Project Constraints and Assumptions	14
3.8 Project Risks	14
4. Project Management	15
4.1 Project structure	15
4.2 Users and interested parties	16
4.3 Communications	16
4.4 Quality assurance	17
4.5 Project Change management	17
4.6 Project reporting	18

1. Executive summary

What

- Project to identify any regulatory or market problems related to retail customer acquisition, including saves and win-backs.

Why

- The post-implementation evaluation of the saves protection scheme found that the scheme had no effect on retail competition and that win-backs were substituted for saves with no overall change in switching activity. The question is whether there are problems with the customer acquisition process that result in a non-level playing field for acquiring retailers, including new retailers, so affecting competition and the long term durability of the electricity retail market.

When

- Finalisation of issues paper by 10 April 2018
- Other dates TBC

How

- Review past work on customer acquisition issues, and identify preliminary problem definition for issue paper
- Undertake additional analysis of customer search costs and switching rates to identify whether there is empirical support for entrant retailers having difficulty acquiring and retaining customers and the implications for long term market outcomes, taking account of customer profiles and relevant differences between retailers
- Develop an issues paper to seek input from interested parties, to inform recommendations to the Electricity Authority on whether and what interventions may be required to promote competition for the long-term benefit of consumers.

Who

- Project Governance - MDAG
- Project Sponsor - Craig Evans
- Project Manager - Elly Kappatos
- Lead Subject Matter Expert - Alistair Dixon
- Project Team - Sense Partners Ltd, Doug Watt, Ron Beatty, Anthea Jiang

2. Introduction and purpose

- 2.1.1 This document sets out the project plan for the “Customer acquisition, saves and win-backs review” project.

2.2 Purpose

- 2.2.1 The purpose of this project is to promote competition and efficiency by identifying any regulatory problems or market failures related to retail customer acquisition – including saves and win-backs – and taking steps to address any problems or failures if it is to the long term benefit of consumer.

2.3 Background

- 2.3.1 The project is number B4 and is priority 2 in the Authority's 2017/18 work programme.

- 2.3.2 Guiding questions for this project are:

- (a) are there problems with the customer acquisition process that result in a ‘non-level playing field’ for acquiring retailers, including new entrant retailers?
- (b) to what extent do perceptions around a potential ‘non-level playing field’ affect the durability of the retail electricity market and, if so, would this warrant regulatory intervention on customer acquisition, including saves and win-backs?

- 2.3.3 Subsequent work would consider if the saves protection scheme should be amended and, if so, how, and whether there are other regulatory mechanisms that should be considered.

- 2.3.4 The current opt-in saves protection scheme was implemented in January 2015 following an analysis and consultation process in 2014. A post implementation evaluation completed in August 2017 concluded there was no evidence that the scheme had improved or harmed retail competition, and that win-backs were substituted for saves. This leaves opposing interpretations about whether it shows retailers competing for customers or undermining competition.

- 2.3.5 The background and issues are explored in a background paper prepared for the MDAG's 8 February 2018 meeting.

3. Project definition

3.1 Project objectives

3.1.1 The objectives of this project are to:

- (a) determine if there are any problems with customer acquisition that result in a non-level playing field for acquiring retailers, including new entrants
- (b) determine the extent to which perceptions around a potential non-level playing field affect the durability of the retail electricity market
- (c) consider whether:
 - (i) regulatory intervention is warranted on customer acquisition, including saves and win-backs
 - (ii) the saves protection scheme should be amended and, if so, how
 - (iii) there are other regulatory mechanisms that should be considered.

3.2 Problem definition

3.2.1 The review of the scheme in 2017 concluded that: -

“the scheme changed retail behavior to accelerate save protected switches; this allowed retailers to avoid the prohibition on saves and to subsequently win customers back after the switch was completed. This behavior change is likely to have affected the effectiveness of the scheme” (Post Implementation Review Aug 2017: Executive Summary para 5 emphasis added)

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3.2.2 The scheme has not achieved the original intended benefits (EA Decisions & reasons 21 Oct 2014) which included:-

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- (a) Increased acquisition activity by save-protected retailers – protection from saves and early win-backs will make acquisition activity more cost-effective
- (b) Lower barriers to entry and expansion for small and new entrant retailers – new entrants will be confident that incumbent retailers will not be able to leverage the switching system as a way of retaining their customers
- (c) Encourage retailers to pre-emptively offer their existing customers a better deal
- (d) Support innovation in the retail market
- (e) Drive reductions in retail cost-to-serve
- (f) Enhance customers' ability to find a deal that suits their individual needs

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3.2.3 In addition the EA post implementation review concluded that:-

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- (a) “Survey results suggest that acquisition costs have increased and the scheme has been largely ineffective” (13.1). “As retailers can substitute between saves and

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winbacks relatively easily, we consider that saves and winbacks need to be considered in total rather than separately in any future development of this scheme”(13.4 emphasis added)

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(b) Information asymmetry may be an issue

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(i) “We recommend that the scheme be reviewed and consideration be given to options that would put both retailers on a similar information footing”

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(ii) The report “hypothesized that the losing retailer is likely to have information advantage over the gaining retailer”

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(c) Smaller entrant retailers need to input to the design

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(i) “Further analysis of how the scheme affected smaller entrant retailers could also help inform the regulatory design” (13.9 emphasis added)

3.2.4 Smaller entrant retailer’s position is that:-

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(a) The extremely high level of ‘early winbacks’ is creating a significant barrier to acquisition activity and acquisition costs. This rate is up to 40% for some incumbents, a level largely unheard of in other industries.

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(b) The high level of ‘early winbacks’ is removing the competitive pressure for existing retailers to “pre-emptively offer their existing customers a better deal”. The switching process enables incumbents to ‘pick-off’ switchers almost immediately with early winbacks before the small entrant can establish a relationship with the customer.

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(c) Information asymmetry is a secondary issue. By removing the competitive pressure to proactively offer a better deal to the broad base of customers the scheme continues to allow a cross-subsidy between customers on legacy pricing and switchers receiving winback offers. It is not a level playing field. In a perfect auction, with no information asymmetry, small entrants can’t sustainably ‘out-bid’ incumbents who enjoy legacy margin.

(d) Losing service providers have an unfair advantage in the unsolicited save/winback call:-

(i) The losing provider positions the call, effectively, as a ‘last right of refusal’ and represent that the deal can be unwound “without the customer having to do anything” – leveraging the ease of switching back prior to any invoice being issued.

(ii) They simply match the offer of the smaller entrant with a small incentive – so the switching customer is not significantly better off. This is not as simple as a case of ‘predatory pricing’ under the commerce act, which in itself implicitly has a very difficult burden of proof and cost of engagement.

(iii) The losing provider uses the ‘heat of the moment’ to pressure customers – “this is only available on this phone call”. However in practical terms these

winback offers would still be available should an early winback 'cooling off' period be introduced.

(e) Contracting is not a viable solution as it creates significant barriers to acquisition for a small entrant. This is accentuated by the fact that the consumers who switch are those most adverse to contracts, particularly with less known small entrants. The reluctance to contract is evidenced by the fact that, in the main, small entrants do not contract despite the high save/winback rate.

~~3.2.1 Incumbent retail providers are notified when their customers intend to switch. This informational advantage allows incumbents to induce customers to cancel the switch ('saving' them). This could reduce the return on acquisition activity and competition. The saves protection scheme was intended to address this, though there is no evidence it improved, or harmed, retail competition.~~

~~3.2.2 There are three ways in which problems can occur, or at least where it is in the consumers' interest that these potential problems are monitored and managed:~~

~~(a) abuse of market power through e.g. predatory pricing (discounting below cost to limit growth in a competitor's market share or as a barrier to entry)~~

~~(b) misleading claims~~

~~(c) information asymmetries which cause prices to be higher than they 'need' to be because:~~

~~(i) some retailers cannot accurately identify costs of serving consumers~~

~~(ii) some retailers, with an informational advantage, can profit from that information.~~

~~3.2.3 Informational advantages or deficiencies and uncertainty are at the heart of potential problems with customer acquisition strategies.~~

~~3.2.4 The other two potential problems are already subject to regulation under the Commerce Act 1986 and Fair Trading Act 1986. As such, they are not considered in any further detail, except to the extent that the Authority can undertake initiatives to promote competition and mitigate market power.~~

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3.3 Benefits sought

3.3.1 The desired outcomes from this project are:

- (a) promotion of competition in the retail market, by supporting switching and reducing barriers to entry or expansion for the long-term benefit of consumers
- (b) confidence in and durability of the retail electricity market, by identifying and addressing matters that create an un-even playing field.

- 3.3.2 The business rationale for the project is to consider the findings of the saves and win-backs review and identify whether there are problems with customer acquisition, including in relation to saves and win-backs, that would require further intervention.

3.4 Scope

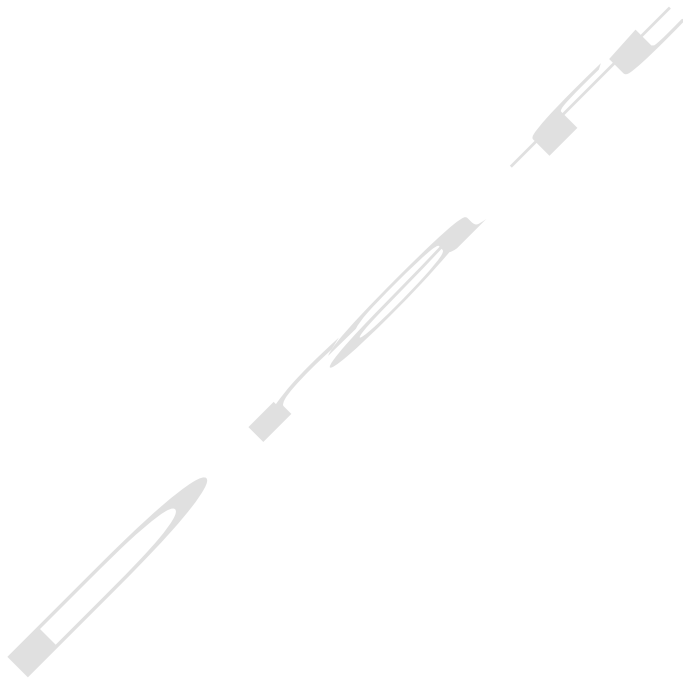
- 3.4.1 The following table outlines the processes and areas that are covered by project:

Included in the Scope: (We will do this)	Excluded from Scope: (We won't do this)
a) Is there a regulatory problem or market failure relating to customer acquisition, including saves and win-backs practices, and the switching process? b) In relation to the point above, the following questions should be considered: i) Are there problems with the customer acquisition process that result in a 'non-level playing field' for acquiring retailers, including new entrant retailers? ii) To what extent do perceptions around a potential 'non-level playing field' for acquiring retailers, including new entrant retailers, affect the durability of the retail electricity market and, if so, would this warrant regulatory intervention around consumer acquisition, including in relation to saves and win-backs? c) If the answer to the above questions suggests further regulatory intervention is warranted: i) Should the saves protection scheme be amended and, if so, how? d) Are there other regulatory mechanisms that should be considered/adopted?	Access to customer data in general, as opposed to access to data acquired through customer acquisition and switching

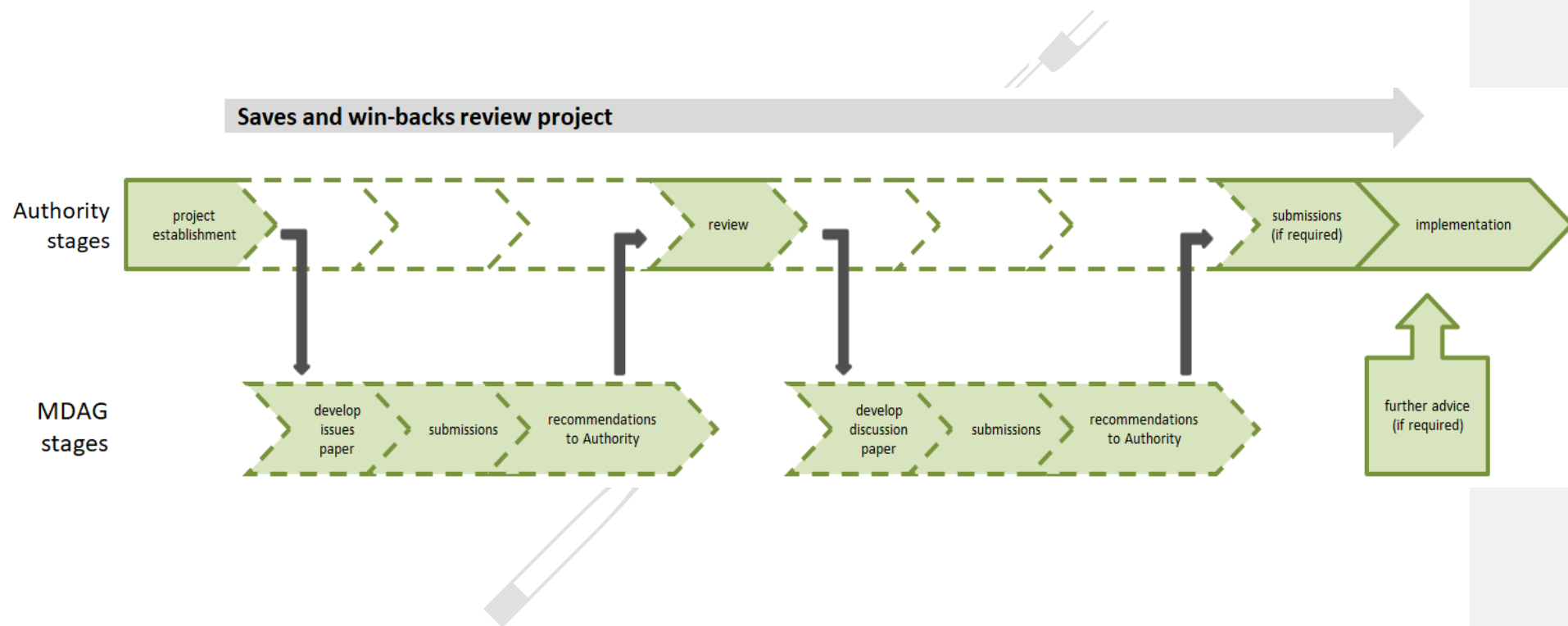
- 3.4.2 To investigate the issues, contextual analysis will be needed which:
- i) reviews and updates information on the range retailer customer acquisition and retention strategies and related search costs
 - ii) assesses market-wide switching rates and customer profiles to determine:
 - the extent to which consumers can be divided into categories according to their propensity to switch and their respective desirability of acquisitions
 - whether there is empirical support for entrant retailers having difficulty acquiring and retaining customers, compared to incumbents
 - typical customer turnover rates

- iii) tests the implications of customer acquisition strategies, customer profiles and variable search and retention costs on short and long-term market outcomes, such as market shares and profitability of new entrants¹
- iv) examines evidence for market separation of any kind, e.g. disconnections being more highly concentrated in some sector
- v) takes account of relevant differences between retailers.

3.4.3 The figure on the following page summarises all the potential stages of the review project:



¹ Via simulation modelling using data on customer switching behaviour and estimates of active and passive acquisition and retention costs.



3.5 Key Milestones and Deliverables

Activity	Dates	Status
Initiation		
MDAG agrees to include project in work plan	28 November 2017 (1 st MDAG meeting)	Completed
MDAG considers draft project plan	8 February 2018	
MDAG considers and agrees preliminary problem definition	8 February 2018	
Draft issues paper circulated to MDAG	8 March 2018	
MDAG considers and advises on draft issues paper	15 March 2018	
MDAG finalises draft issues paper	10 April 2018	
Authority Board provides feedback on draft issues paper	2 May 2018	
MDAG finalises issues paper for release	3 May 2018	
Issues paper released	No later than 15 May	
Submissions close	No later than 30 June	
Summary and analysis of submissions	Tbd	
MDAG agrees suggested next steps and submits to EA Board	Tbd	
Board considers suggested next steps	Tbd	

Saves and win-backs

3.6 Project dependencies

3.6.1 Dependencies will be recorded and escalated in the dependency register. Project managers will consult when developing and monitoring project schedules to ensure that all dependencies are considered and managed.

3.6.2 Current dependencies known for this project are:

Dependency	Possible Impact
Review of the switching process	Considers option where gaining retailer can initiate and confirm a switch. The losing retailer would not be alerted of the intention to switch. Win-backs are not addressed.
Multiple trading relationships	Future phases may consider the issue of access to data, to address information asymmetry between losing and gaining retailers
What's my number	Aims to increase customer awareness and propensity to check and switch retailers; in future could consider issues relevant to switching, such as engaging passive customers (non switchers).
Default use-of-system agreements	Depending on the problems identified, this could have implications for the content of default use-of-system agreements.

3.7 Project Constraints and Assumptions

Constraint / Assumption	Source
Access to privately held information about retailers' acquisition strategies and the costs of these strategies and search costs	Retailers MDAG may be able to assist?
Access to data on switching, held by EA, is available in the form required for analysis	EA

3.8 Project Risks

3.8.1 The risk management approach for this project will be to identify, assess and control and risks using the process contained in the project 'risks, issues and lessons learned template'.

3.8.2 The current high level risks identified are:

Item	Risk Description	Description of Consequence	Risk treatment / response
1	Parties that may be affected by review consider they are excluded	Could undermine acceptance of process or results	Open process, ensure potentially affected parties have opportunities for input

2	Retailers perceive that their practices are unfairly scrutinised or singled out	Impartiality or judgment of the MDAG and Authority is called into question	Factual and neutral/open stance in presenting material and discussing the review
3	Nascent retail pricing review by MBIE may consider customer acquisition issues	Confusion about processes and intent (on different timeframes) could slow progress and distract	Discuss approach and communication with MBIE; keep in touch
4	Complexity of issues identified may mean milestone is not achieved	Potential delay in addressing any problems identified	Close monitoring of progress towards milestone, and contingency for additional MDAG meetings to ensure milestone is achieved

4. Project Management

The project management approach addresses the processes and engagements required including:

- (a) project structure (roles and responsibilities)
- (b) the users and other known interested parties
- (c) communications
- (d) quality management
- (e) change management.

4.1 Project structure

4.1.1 Roles and responsibilities

Name	Title	Role
MDAG		Advisory group
John Rampton	General Manager Market Design	Authority representative to MDAG
Craig Evans	Manager Retail and Network Markets	Project sponsor
Avi Singh	Administrator Market Design	MDAG co-ordinator
Alistair Dixon	Principal Adviser	Lead subject matter expert
Elly Kappatos	Personal Assistant to General Manager Market Design	Project manager

Saves and win-backs

Doug Watt	Manager Market Monitoring	Subject matter expert
Ron Beatty	Principal Adviser	Subject matter expert (switching review)
John Stephenson	Partner, Sense Partners	Analysis, advice, drafting issues paper
Jean-Pierre de Raad	Partner, Sense Partners	Quality assurance

4.2 Users and interested parties

4.2.1 The following table captures the users, interested parties and industry participants and the nature of their interest

User / interested party	Nature of their involvement and/or interest
Retailers	Potentially affected by the review
Consumer representatives	Will wish to ensure review identifies, and, as appropriate, addresses, problems preventing consumers from accessing competitive offers
Other regulatory bodies	Potential implications of review for regulation they administer

4.3 Communications

4.3.1 The communications activities to be undertaken for this project are listed in the table below:

Stakeholder/audience	Communication activities	Person responsible	Timeframe
Stakeholders not members of MDAG affected by the review	MDAG meetings with such parties	Chair / Secretariat	TBD
Interested parties	Consultation	Chair / MDAG / Secretariat	TBD

4.4 Quality assurance

4.4.1 To ensure the project deliverables are fit for purpose the following quality management process will be implemented:

- (a) Subject matter experts will provide input and advice as required
- (b) Work completed by the consultant will be subject to internal review before submission to the MDAG or EA
- (c) Drafts will be reviewed by the project manager and lead subject matter expert, who will seek input from other interests in the EA, and ensure subject matter experts have been consulted.

4.4.2 The table below sets out the quality assessment criteria for each deliverable:

Deliverable	Assessment criteria	Sign-off responsibility
Issues paper	Issues paper is consistent with consultation charter and Code Amendment principles, provides a robust consideration of the issues under review, and is written in plain English	MDAG, Authority MDAG representative, project sponsor
Recommendation to Board	Sound recommendations based on robust analysis of submissions and issues identified through the consultation process	MDAG, Authority MDAG representative, project sponsor

4.5 Project Change management

4.5.1 Changes from this plan during the project will be appropriately managed to ensure their impact on time, cost, quality and resources are controlled.

4.5.2 This will be via the following process, which will ensure that all issues and changes are identified, assessed and either approved, rejected or deferred.

Capture	Examine	Propose	Decide	Implement
•Change type •Determine severity/impact •Log in register	•Assess impact on project objectives •Assess impact on time/cost /quality and resources	•Identify options •Evaluate options •Recommend options	•Escalate if beyond delegated authority •Approve, reject or defer recommended option	•Take corrective action •Update records and plans •Use version control (within filesite)

4.5.3 Any changes agreed will be identified in the project reports and recorded in the change register.

4.6 Project reporting

4.6.1 MDAG will receive project updates at each meeting. The updates will capture:

- (a) current MDAG position on key matters
- (b) actions since last meeting
- (c) relevant correspondence.

4.6.2 Project sponsor will receive monthly update reports as set in the Authority's Project Management Policy.

