

9 May 2018

James Moulder
Chair
Market Development Advisory Group (MDAG)
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By Email

Dear James

Authority Board feedback on the MDAG's *Saves and win-backs* issues paper

The Authority Board (Board) thanks the MDAG for meeting with it on Thursday, 3 May to discuss the Board's feedback on the MDAG's draft *Saves and win-backs* issues paper.

The Board also thanks the group for its work so far on *Saves and win-backs* and the *Review of spot market trading conduct provisions*. The Board values your expertise in considering these difficult issues.

The Board was therefore very appreciative of the MDAG's efforts in preparing the draft issues paper in a tight timeframe, particularly the strong numerical analysis contained in section five of the paper. However, as the Board discussed with you, there are some issues that could be addressed to improve the paper. These are detailed below.

The paper takes the approach of discussing several issues only to dismiss them, such as the information gathered by retailers in the course of serving a customer. The Board understands the MDAG's approach, particularly given the group's conversations with various parties, but considered this has on occasion departed from the project scope set out in the 18 December 2017 letter from the Authority's Chief Executive (Authority's letter). In the Board's view, information asymmetry can be an efficient outcome of a competitive process and it would be very unfortunate if market participants formed the view that they should not seek a competitive information advantage.

Rather than focus on information asymmetry, the Board suggests the group align the paper more closely with the project scope by focussing on regulatory and market failures. Focussing on market and regulatory failures is important for the Authority, because it means the Authority's actions are consistent with its interpretation of its statutory objective and within its legal powers. As you will be aware, the Authority is legally unable to take matters of fairness and equity into account in its decision-making process.

The paper would also benefit from a discussion about whether there is a market or regulatory failure preventing winning retailers from taking protective action to ensure customer retention. While there is a question related to this issue, this question could be reframed and supported by additional discussion in the paper so there is a stronger focus on the identification of a market or regulatory failure.

It would then be useful to strengthen the paper with specific examples of market or regulatory failures, and place this issue in that context. For example, a retailer could sign a customer up to a fixed-term contract and/or enforce a contractual break fee. The paper should consider whether there are problems with the regulatory framework making these options unviable.

The issue of 'cherry-picking' could be given less prominence as it stems from informational advantages, so is also outside the project scope. As the Authority's letter notes, informational advantage is being considered in other projects where it may have more relevance.

The Board also encourages the MDAG to remove speculative content from the paper, such as:

- section 5.4 (on market segmentation)—this is because it is not presented alongside any supporting evidence, and there is no guide about what to make of the points being made (such as the discussion about price discrimination)
- commentary on whether low-income consumers may be paying the highest prices—this relates to fairness and equity issues, which the Authority cannot legally take into account.

I would also draw your attention to the Authority's deliberations when it decided to introduce the saves protection scheme in 2014 and ask that you consider these closely where similar issues are raised in your group's paper. The examples I have in mind are price discrimination, where the Authority explained why it thought price discrimination is not necessarily anti-competitive, and the undesirable use of withdrawals to effect win-backs instead of switches.

The Board also considers that while the paper can present a wide range of views, it would be best to avoid raising the 60-day moratorium option. Focussing on problems avoids the group being seen as promoting any one particular option.¹ Similarly, it would be wise to avoid drawing strong conclusions where possible.

The Board appreciates the feedback outlined above will mean additional work, but we would be grateful if you would consider these issues.

Thank you once again for your work to date and the Board looks forward to the paper being released for consultation shortly.

Yours sincerely

A handwritten signature in black ink, reading 'Carl Hansen' in a cursive script.

Carl Hansen
Chief Executive

¹ The Authority's letter noted the 'issues paper should only cover the problem definition, not any description or assessment of potential options'.