

**SUBMISSION TO THE
Public Utilities Office
IN RESPONSE TO ITS REVIEW OF

Electricity Industry
Customer Transfer Code 2004**

April 2014

Executive Summary

Matter	<p>The Department of Finance’s Public Utilities Office (Office) is reviewing the Electricity Industry Customer Transfer Code 2004 (Code) on behalf of the Minister for Energy. The Office has published an Issues Paper¹ seeking public comments on the efficiency and effectiveness of the current Code.</p> <p>Synergy’s submission provides comments on the key matters detailed in the Issues Paper and includes additional suggestions for amendments to the Code.</p>
Context	<p>The Office recently concluded its review of the Electricity Industry Metering Code 2005, which resulted in the 2005 metering code being repealed and replaced by the Electricity Industry Metering Code 2012 (Metering Code).</p> <p>Therefore, consequential amendments to the Customer Transfer Code are required to ensure it remains consistent with the new 2012 metering code. In addition, the Office is considering the potential for other amendments to be made to the Code to improve the Code’s effectiveness.</p>
Scope	<p>The review is focused on addressing:</p> <ul style="list-style-type: none">• inconsistencies of the Code with the Metering Code;• industry proposed amendments; and• the suitability of the Code to meet its objectives.
Key issues	<p>Synergy has highlighted issues and potential amendments to the Code in the following key areas:</p> <ul style="list-style-type: none">• Avoiding regulatory duplication• Initiatives to promote retail competition• Balancing the interests of the contestable customer, retailer and network operator
Recommendations	<p>Synergy has proposed several key recommendations focused on improving consistency, reducing administrative burden and promoting effective retail competition in the industry. In addition Synergy has also recommended that consideration is also given for the Code to allow retailers to object to a transfer under prescribed circumstances.</p>

¹Public Utilities Office, Review of the Electricity Industry Customer Transfer Code 2004, Issues Paper, April 2014.

INTRODUCTION

Thank you for providing Synergy with the opportunity to comment on the review of the Code. It is important to recognise that the Code does not just manage the transfer of customers. It also, very importantly, manages the transfer of connection points under an *access contract* and the Application and Queuing Policy (**AQP**) approved by the Economic Regulation Authority (**Authority**). The Code is referenced and has legal effect in these two instruments and in Synergy's view this important role needs to be reflected in the Code objectives because it will determine what a *retailer* is liable for under the access regime.

We understand that the objectives of this review are to address:

- inconsistencies of the Code with the Metering Code;
- industry proposed amendments; and
- the suitability of the Code to meet its objectives.

Synergy, in providing its comments, notes that the Code objectives currently aim to:

2.1 Objectives

(1) The objectives of this *Code* are to—

- (a) set out rules for the provision of information relating to *contestable customers* and the process for *transferring contestable customers* from one *retailer* to another *retailer* in order to promote retail competition; and
- (b) protect the interests of *contestable customers* by ensuring that a *contestable customer's verifiable consent* is obtained before—
 - (i) a *retailer* may request the *contestable customer's historical consumption data*; or
 - (ii) a *transfer* of that *contestable customer* may proceed;and
- (c) specify the responsibilities and obligations of *retailers* and *network operators* in processing and implementing the *transfer* of a *contestable customer*.

(2) A *retailer*, a *network operator* and, if applicable, the *independent market operator* must have regard to the objectives of this *Code* when acting under this *Code*, whether or not the provision under which they are acting refers expressly to the objectives of this *Code*.

Further, a key objective of the Metering Code, under clause 2.1(1) (c), is to facilitate the operation of the Code. Therefore, Synergy believes that when discussing potential amendments to the Code, it is important to delineate between regulating the process for transferring a customer's supply from the function of delivering monopoly metering services, in order to avoid regulatory duplication. However, in defining the transfer process it is important to give regard to limitations in the *network operator's* service delivery capabilities and ensure that there are suitable and practical incentives in place to promote retail competition and protect the interests of *contestable customer*.

Synergy also considers this review is an important prerequisite to the Authority's review and approval of any proposed changes to the Model Service Level Agreement under the Metering Code. This is because the Model Service Level agreement, under clause 6.6(1) of the Metering Code, must at least specify the metering services that this Code requires the *network operator* to provide.

Synergy notes the Code and the associated objectives only apply to *customers* who remove electricity from the *network* for the purpose of consumption. It is not intended to deal or regulate parties or consumers who generate electricity and transfer it into the *network* for the purposes of sale or trade. Therefore, Synergy believes the Code objectives continue to be relevant and underpin the comments we have made below.

Synergy also notes that certain obligations of the Code are subject to a *retailer's* and *network operator* license condition and subject to audit by the Authority. Therefore, in these circumstances Synergy believes there should not be an overregulation or duplication of key functions, under the Code, that creates additional costs and administrative burdens for all participants.

In addition to the issues already identified by the Office, Synergy would like to provide the following comments for consideration. Unless otherwise specified, words in italics in this submission have the same meaning as in the Code.

Part 1 – Preliminary

Application

Synergy supports an amendment to expand clause 1.2 to make it clear that the Code must apply to a person who has been provided a licence exemption which contains a condition that they comply with the Code. In Synergy's view such an amendment is necessary for regulatory certainty and to give effect to the Code objectives. In particular, protect the interests of *contestable customers*.

Code definitions

Access Contract

Synergy supports an amendment to the definition of "access contract" in order to align it with definition in Metering Code and the Network Access Code².

Contestable

Synergy supports amending the Code in order to make reference to the Electricity Corporations (Prescribed Customers) Order 2007. However, Synergy considers it is also important for the Office to consider how contestability assessments are conducted under the AQP and whether the Code also needs to specify who conducts such assessments and the criterion that should be applied to determining whether a person or a connection point is *contestable*. In Synergy's view the Code, subject to a *CTR*, provides for the transfer of *contestable* connection points. Further, in Synergy's view, if there is an inconsistency between the Code and AQP in this matter then the Code should make it clear that the Code prevails.

² Electricity Industry, Network Access Code 2004 (Network Access Code).

Exit Point / Bidirectional Point

In Synergy's view the Code and the associated objectives only apply to *customers* who remove electricity from the *network*, at *contestable* connection points, for the purpose of consumption. It is not intended to deal or regulate parties or consumers who generate electricity and transfer it into the *network* for the purposes of sale or trade.

However, Synergy recognises the relevant issues detailed in the Issues Paper and the need for regulatory certainty when transferring *contestable customers* including how the *access contracts* of the affected retailers are amended following a transfer. Further, Synergy also notes that clause 9.1 of Western Power's AQP also contemplates that only an exit point may be transferred under the Code.

Therefore, Synergy recommends that the most appropriate way for the Code to deal with this issue is for the Code to make reference to *contestable* connection points where electricity is removed from the *network*. Synergy would also support the introduction of a bidirectional concept in the Code providing the scope of the Code does not change. That is, the Code continues to only regulate the transfer of *customers* who remove electricity from the *network* for the purpose of consumption.

Metropolitan Area

Synergy supports a changing the definition of "metropolitan area" in order to align it with the definition in the Metering Code and Code of Conduct.

Trading Day

Synergy understands that currently, following a transfer, the network operator's system provides each of the affected incoming and outgoing *retailer* with interval energy data from 12 am on the nominated transfer date. This means, contrary to the Metering Code and the Code, the network operator's systems will be disclosing some energy data (12 am to 8 am) to a *retailer* who is not entitled to receive that data.

Synergy notes that despite the Code being in effect since December 2004, this system and compliance issue appears not to have been addressed, or highlighted in any of the network operator's independent license audits.

In order to avoid this potential non-compliance by the network operator it has been proposed the definition of "trading day" in the Code could be amended to align with the definition of "day" in the Metering Code. However, this would very likely create significant system change costs to other market participants and cause issues with the operation of the Market Rules, including how the Independent Market Operator (**IMO**) would allocate the interval energy data to the respective retailers following a transfer. Further, clause 5.6 of the Metering Code requires the network operator to disclose the same interval energy data to the retailer and the IMO. Therefore, Synergy is not clear how, since the Code came into effect, this allocation of energy between affected retailers occurs following a customer transfer.

Synergy understands that all *contestable customers*, eligible to be transferred under the Code, must have an interval meter. Hence the necessary validation, substitution and estimation of the interval energy data must be applied for each half hour interval. Consequently, it is possible for these customers to be transferred at 8 am on the nominated transfer date in accordance with the current definition of the "trading day". However, the network operator may be required to make changes to its systems to bring it in line with the operation of the Metering Code and the Code.

An alternative approach, similar to customer transfers under the gas regime, would be to effect the transfer at the time the meter is read. However, Synergy understands that the network operator's system may not accommodate this approach without a system change.

In Synergy's view, the key issue here is who should bear the cost of compliance. That is, the cost of effecting the network operator's system change versus the cost to market participants and regulatory uncertainty that may be created under the Market Rules if the definition of "trading day" is changed under the Code.

Therefore, Synergy would not support such a change because of the cost it would impose on other market participants and the significant regulatory uncertainty that would be created under the Market Rules.

In the interest of regulatory certainty Synergy believes the best option would be for the network operator to change its system to comply with the current definition of "trading day" under the Code and Market Rules. Synergy understands this change should have reasonably been implemented by the network operator when the Code came into effect in December 2004 (approximately 10 years ago).

UMI

Synergy supports replacing "UMI" with "NMI" in order to align it with the Metering Code, Market Rules and AQP.

Verifiable Consent

Changing the definition of "verifiable consent" in the Code will mean that it will no longer be aligned with the definition in the Metering Code. There will essentially be two different consent requirements for obtaining a *customer's* metering data. This could potentially create some regulatory uncertainty when requesting the same data under the Metering Code and the Code.

The current requirement under the Code to obtain a written *verifiable consent* is inflexible and does create delays in the transfer process. Therefore, Synergy supports changing the definition of "verifiable consent" to allow for a customer's consent for a transfer or historical consumption data to be given in writing, verbally or electronically. In Synergy's view this change would still protect the interests of *contestable customers* and is also in line with how a customer's consent may be provided under the Code of Conduct.

Synergy notes that in order to reduce delays in the end-to-end transfer process there needs to be a change to both the verifiable consent process and the daily data and transfer request limits imposed by the Code.

Synergy also notes that the AQP refers to and adopts the Code's definition of *verifiable consent*. Therefore, if the definition is changes it may also change the application of verifiable consent under the AQP.

Publish

Synergy supports amending the definition of "publish" to align it with the Metering Code in order to ensure published material continue to be maintained on the *network operator's* website.

Part 2 – Objectives and arm’s length treatment

Network operator must treat retailers at arm’s length

Synergy supports amending clause 2.2 of the Code to align it with the Metering Code to:

1. Make it clear that the arm’s length provision does not apply to network operators who only have one retailer on their network.
2. To replace “section 31A of the Electricity Corporations Act 1994” with “section 62 of the Electricity Corporations Act 2005”.

Part 3 – Information provision

Submitting a data request (Transaction Caps and Data Requests)

The Code provides for the following transactions caps:

- Standing data requests – 20 in a business day.
- Historical consumption data request – 20 in a business day.
- Customer transfer requests – 20 in a business day.

Therefore, in Synergy’s view the end-to-end process under the Code assumes that a *customer* being transferred is only transferring a single connection point and site from one *retailer* to another. However, in reality this is not always the case and it is not uncommon for a single *customer* to request the transfer of several sites (or *contestable* connection points).

Despite these caps the Code does allow a certain level of flexibility in order to meet the interests of *contestable customers* and permits the *network operator* and *retailer* to agree different limits on the transactions above. However, this creates an administrative burden for the *retailer* and *network operator* to negotiate and record these agreements.

Synergy has had to, several times, arrange the transfer of a *customer* with multiple sites and connections points. Some of these *customers* can have up to 300 sites and connection points. These *customers*, reasonably, require all their sites to be transferred and commence their supply with the new *incoming retailer* on the same day.

Despite the ability to negotiate certain transaction volumes with the *network operator*, the Code does not facilitate this type³ of bulk transfer and the current transaction caps⁴ frustrate the quotation process and contractual arrangements between the *customer* and the *retailer*.

Therefore, in Synergy’s views the Code objectives to promote retail competition would be better served if, subject to the *network operator’s* capability, the transaction caps were higher. Synergy notes the Issues Paper is proposing a change to how verifiable consent is recorded in order to facilitate a more effective transfer process. Consequently, in order to support this objective it is sensible that the associated transaction caps are also raised, providing there is no additional costs imposed on participants.

Synergy also believes that there needs to be a discussion on why the transaction caps were introduced into the Code and whether regulated transaction caps are still applicable under the current environment and the role transaction caps play in protecting the interests of *contestable customers*. It is important to note that a *retailer* will still need to obtain the *customer’s verifiable consent* before requesting data or a transfer. Therefore, raising or potentially removing the transaction caps will not reduce the protection

³ Multiple connection point under one customer.

⁴ Under clauses 3.4 and 4.5 of the Code.

contestable customers receive under the Code and should not financially impact these customers if there are no additional costs directly or indirectly imposed on the *retailer*.

These transaction caps would not be practical under full retail contestability however, Synergy believes it is now time to discuss the validity of the transaction cap limits, the cost of raising the transaction limits including the network operator's minimum capacity to process data and transfer requests.

Verifiable consent required for historical consumption data

As mentioned above Synergy notes that the same metering data for a customer can be obtained under the Metering Code and the Code with the *customer's verifiable consent*.

However, Synergy does not support the proposal to submit the *contestable customer's* verifiable consent with a request for *historical consumption data* because the technical difficulty, costs and potential process delays would far outweigh the small additional extra protection for *contestable customers*. The process could prove to be particularly challenging where verifiable consents have been obtained and recorded verbally.

In addition, the implementation costs would need to be passed on to all *customers* and such a proposal would not promote the efficient transfer of *contestable customer's* between *retailers*.

In Synergy's view there is no need for additional regulation in this area and it is expected that *customer's* would not be happy to pay the extra cost. The current independent license audit process, conducted by the Authority, is sufficient to ensure compliance with the Code's requirements for verifiable consent. Further, in Synergy's view, under full retail contestability it is envisaged that metering data would need to be freely available to all parties in order to promote effective competition and innovation.

The Communication rules and providing data to a retailer

A key objective of the Metering Code is to facilitate the operation of the Code including, under clause 6.7, how data and information communication should be implemented between metering code participants.

Therefore, Synergy believes it is sensible and in the interest of regulatory certainty that the communication rules requirements under the Code be amended to make reference to or align it with the Metering Code.

Charges for standing data and historical consumption data

It is important to note that under the current Model Service Level Agreement the provision of Historical Interval Energy Data for *contestable customers* is a standard metering service. This means the *network operator* already recovers the charges for this service under the Access Arrangement reference tariffs. This charge is incorporated into the network price list⁵ and *retailers* are required to pay this charge under their *access contract*.

This is an example of how regulatory duplication can be problematic and has the potential of creating provisions that are not aligned with the regulatory objectives. Therefore, it is important to delineate between regulating the process for transferring a customer's supply from the function of delivering monopoly metering services, in order to avoid regulatory duplication.

⁵ Approved by the Authority each pricing year.

In Synergy's view, the Code should not be prescribing matters that are already dealt with under Metering Code, Model Service Level Agreement and Access Arrangement unless it is to specifically address an issue or better achieve the Code objectives.

Further, a review of metering services and charges should be conducted more holistically and should include consideration of the service standards that apply to the service and charges (price and quality). The Model Service Level Agreement review should also consider whether the *network operator*, in providing the service, is efficiently minimising cost⁶.

Synergy understands that the Authority will be conducting a detailed review of the Model Service Level Agreement. This review should, relevantly under clause 2.1(c) and 6.6 of the Metering Code, deal with services and charges the network operator must provide to support the operation of the Code. In Synergy's view this detailed review is necessary in order to determine the reasonable costs incurred by the *network operator* in order to effect a transfer under the Code.

In addition, under the current regime the incoming and outgoing *retailers* must have an *access contract* in order to give effect to a transfer under the Code. Therefore, given the charge for Historical Interval Energy Data is recovered under the references tariff structure⁷ it is not clear how the Code or *retailers* can ensure the charge never exceeds \$45. The fixed and variable charges for standard metering services under the Access Arrangement do not permit this transparency.

Part 4 – Transfer of contestable customers

Submitting a customer transfer request (CTR Caps)

Synergy's views on transactions caps for CTR is detailed above.

Retailer's representation and warranties in relations to a transfer request

Synergy supports the proposal to clarify clause 4.6(1)(b) in order to make it clear the responsibilities of the *retailer* and *network operator* when implementing a meter change, under the Metering Code, to enable the transfer of a customer. It can be problematic when there is regulatory duplication on how metering services are provided. There should be a clear delineation between a request for metering services and a request to transfer a *contestable* connection point to an *access contract*. In Synergy's view, in the interest of regulatory certainty, all metering services should be requested and carried out in accordance with a service level agreement approved under the Metering Code.

Nominated transfer date

It is important to separate the eligibility for transfer to the process of transferring a customer on a particular date. This separation is necessary for regulatory certainty. For example, a customer is not eligible to use a *network* service unless they first meet the metering eligibility criteria for that service. Therefore, it would be reasonable that where a *contestable customer's* action no longer makes them eligible to use a *network* service then that *customer* should not be eligible to be transferred under the Code.

⁶ However, the charge for Historical Interval Energy Data will not be reviewed under the Model Service Level Agreement because it is a network access charge.

⁷ Fixed and variable charges.

In Synergy's view, under clause 3.17 of the Metering Code, a *contestable customer* is not eligible to be transferred and a *CTR* cannot be effected unless an appropriate interval meter has already been installed at the metering point. Similarly, a *contestable customer* should not be eligible to be transferred if they do not comply with the Technical Rules for using the *network* and it would not be reasonable for the *incoming retailer*, under clause 4.6(1)(a) of the Code, to take on the liability for the breach of the Technical Rules.

Therefore, Synergy's interpretation of the Code is that an interval meter is a pre-requisite to the *network operator* processing a *CTR* and giving effect to the nominated *transfer date*. In Synergy's view clause 4.10(b) does not link the timeframe for changing a meter to the nominated *transfer date*. Its effect is to make sure that, operationally, there is no inconsistency between clause 3.17 of the Metering Code and Code.

Therefore, Synergy does not believe it is necessary to amend or link the timeframes in clauses 4.7 and 4.10 with the Model Service Level Agreement service levels. However, Synergy would support an amendment that makes it clear that a *contestable customer* must have the necessary meter, prescribe under clause 3.16 of the Metering Code, before they are eligible to be transferred under the Code. This may require a change to the definition of *contestable*.

Network operator's obligations following receipt of a valid transfer request

Clause 4.9 and 4.10 provides some flexibility for a *retailer* and *network operator* to agree on a *nominated transfer date*. The Code also provides for the *network operator* to provide sufficient notice to the *retailer* and the *customer* if it cannot meet the agreed transfer timetable.

However, once agreed and if the *network operator* does not notify the parties otherwise under the Code, it is reasonable for the *customer* and the *retailer* to rely on the *network operator* to meet the agreed date and give effect to the contract between the *customer* and *incoming retailer*.

The Code does not contemplate the *network operator* may, from time to time, not comply with the provisions in Clause 4.10 and therefore it does not define the remedies that need to be put in place when that occurs. That is, the Code does not contemplate the circumstance where the *network operator*, after the fact, advises the *customer* and *retailer* that it has transferred the *customer* on a date that is different to and after the *nominated transfer date*.

In this circumstance the *incoming retailer* loses revenue. However, more significantly, the customer may be liable to pay the outgoing *retailer* penalty charges as a result of the *network operator's* actions or omissions. Synergy also notes the dispute process under the Code does not cater for a dispute between the *customer* and the *network operator*⁸. It is also arguable that even if the Code provided for such disputes whether the process may take too long and be too costly for the customer to pursue. In addition, not all *customers* transferred under the Code are protected under Electricity Ombudsman scheme.

In Synergy's view the Code in this circumstance does not adequately protect the interests of the *contestable customer* and the transfer arrangements between the *customer*, *retailer* and *network operator*. This is because the Code does not provide a strong incentive for the *network operator* to comply with the agreed transfer date or use all reasonable endeavours to effect a transfer.

Synergy notes that clause 4.15 specifies some key principle in respect to protecting the rights of the customer. In Synergy's views these principles should be applied more

⁸ This would also be the situation in the case of an *erroneous transfer* where the *network operator* has made a mistake and transferred a customer in error.

broadly in the Code and give effect to a customer and retailer relying on the *network operator* to act reasonably and also comply with the Code.

Synergy notes that the Issues Paper proposes that matters of financial compensation relating to breaches of statutory obligations could be addressed in contractual arrangements, such as *access contracts* and metering service level agreements. Such an approach would be reasonable in a fully contestable market. However, it is not easy or possible for *retailers* to negotiate or enforce these types of terms against a monopoly network service provider.

Therefore, in Synergy's view the *network operator* should be liable for *retailer* and *contestable customer* losses caused by an act or omission by the *network operator* that results in the *contestable customer* transferring after the agreed *nominated transfer date*. Alternatively, the Code should create a strong incentive for the *network operator* to meet the agreed transfer date or use all reasonable endeavours to effect a transfer. At the very least reasonably notify the *incoming retailer*, under clause 4.10, that it cannot meet the *nominated transfer date*.

The transfer – actual readings

Synergy notes that clause 4.15 specifies some key principles in respect to protecting the *customer* and notes that clause 4.11 specifies the requirements for reading the meter prior to effecting the transfer. In Synergy's view this clause needs to be aligned with the Metering Code and key terms like "actual read" need to be defined in the Code. In addition, it is important to recognise that some interval meters are read remotely and does not require the *network operator* to attend the site to read the meter.

Synergy understands that in some cases the *network operator* may validate⁹ and provide validated energy data to the outgoing and incoming *retailer* after the nominated transfer date. Therefore, if this is true, it is not clear what happens if validation occurs after the *nominated transfer date* and the energy data fails validation due to a faulty meter. In Synergy's view, if this occurs, then the network operator must use a "deemed actual value" as specified in the Metering Code.

In the interest of regulatory certainty Synergy supports clause 4.11(1) being aligned with the Metering Code 2012 by defining the term "actual value" in relation to meter readings.

Effect of a transfer on an access contract

Clause 4.6(1)(a) specifies that when a retailer submits a *CTR* it represents and warrants that it will assume the rights and obligations regarding the supply of electricity to the contestable customer, that is the subject of the *CTR*, from the transfer time. However, this supply arrangement can only occur subject to all parties, including the customer, complying with AQP and Technical Rules.

Therefore, it is also important to recognise that the Code does not just manage the transfer of customers. It also, very importantly, manages the transfer of connection points and liability under an *access contract*. The Code is referenced and has legal effect in these two instruments and in Synergy's view this important role needs to be reflected in the Code objectives because it will determine what a *retailer* is liable for under the access regime. For example, clause 4.12 specifies how the *access contract* is amended and which *retailer* becomes liable for the connection point.

⁹ Under the Metering Code.

Synergy does not accept that negotiations under clause 4.12(3) are subordinate to the *exit point* automatically moving between *access contracts* under clause 4.12(1). This is because a *retailer* may not, subsequent to submitting a *CTR*, accept the connection point under its *access contract* if the *customer* has breached its “connection contract” with the *network operator* prior to the transfer. In addition, a *customer* cannot be automatically supplied under an *access contract* if the terms of the *access contract* do not support the *customer’s* use of the *network*. In this situation, prior to effecting the transfer, the process under the AQP needs be followed in order to ensure that the customer is eligible to use the *network* service and it is important that the Code does not operate contrary to the requirements of the AQP. It is not reasonable for an *incoming retailer* to take on the cost and liability of rectifying a compliance issue that was caused prior to the transfer.

It is also important to note that *retailers* are not privy to a connection contract between a *contestable customer* and *network operator*. Therefore, it is reasonable that the *network operator*, if it is reasonably aware of the issue, do something to address the compliance matter prior to effecting the transfer under the Code.

It is important that the Code does not provide a means for *contestable customers* to churn from one retailer to another as a means of avoiding its technical obligations for using the connection point and the *network*. In Synergy's view the Code needs to make it clear that the customer must do all things necessary to comply with its obligations under the AQP, Technical Rules and connection contract with the network operator before the *incoming retailer* is obliged to take on the network liability, under its *access contract*, to supply the customer at the connection point. Therefore, where this has not occurred it is reasonable that the *customer* is not (or cannot be) supplied while the negotiation or dispute in respect of the *access contract*, connection contract or AQP is being addressed.

Network Operator Performance Report

Synergy recognises that the a key objective of the Code is to protect the interests of *contestable customers* in order to promote retail competition. However, in pursuing this objective it is important that the Code does not inadvertently expose *retailers* to commercial risk. In Synergy's view such outcome would not support effective retail competition.

Synergy submits for effective retail competition it is necessary for the Code to balance the interests of *contestable customers*, *retailers* and the monopoly *network operator*. Therefore, it is equally important that the Code also protects the interest of retailers in order to promote retail competition

The Code objectives require that a *retailer*, *network operator* and *independent market operator* must have regard to the code objectives when acting under the Code. However, Synergy notes there is no express obligation to apply the Code objectives and the Code does give a degree of discretion to the *retailer* and *network operator* on how to perform an obligation or function under the Code. In Synergy's view this flexibility is necessary when catering for the range of *customers* that may be subject to a transfer under the Code.

However, Synergy considers that it is necessary to discuss whether the scope of the customer protection objective should be broader¹⁰ and whether the interests of *contestable customers* and *retailers* should also be protected under the Code by providing for independent assessment by the Authority as to whether the Code objectives are being delivered. Especially, when obligations in the Code have not been complied with by the *network operator* and a *customer* or *retailer* suffers financial loss. In Synergy's view the implementation of performance reporting will go a long way to ensuring that the Code objectives and functions are effectively being delivered.

In addition, the process of customer transfers is a significant function in the operation of an effective market especially in promoting retail competition. Both the Metering Code and Code of Conduct provide for *network operator* performance monitoring in relation to specific *network* services. Therefore, consistent with the requirements in the Metering Code, Synergy supports the requirement for *network operators* to report annually on the metering services they provide, which include the services required as part of a transfer and whether transfer requests have been processed and *customers* have been transferred in accordance with prescribed timeframes under the Code.

Supplier of last resort

In the interest of regulatory certainty the Code should make it clear that it does not apply to *contestable customers* subject to a supplier of last resort (SoLR) event. Such an event is clearly outside of the Code's objectives. In addition, there are many provisions in the Code and the communications rules which may not apply or be practical to implement in a SoLR event. Therefore, *contestable customers* affected by a SoLR event should, relevantly, be managed under the approved SoLR regulations and plan.

Consistency with the customer code

In Synergy's view the Code needs to give regard to its interaction with the Code of Conduct. It is Synergy's experience that a significant number of customers transferred under the Code are also subject to the protections of the Code of Conduct (i.e. small use *contestable customers*). Therefore, delays in the transfer process or rectification of an erroneous transfer may cause a retailer to breach its obligations under the Code of Conduct for example clause 4.14 which relates to a customer's request for a final bill.

Therefore, consideration should be given to whether the Code contains an express obligation¹¹ that requires the *network operator* to provide data and ensure its internal processes do not cause a *retailer* to breach its obligations under Code of Conduct. Synergy notes that the Metering Code contains a similar obligation under clause 5.8.

At the very least Synergy believes consideration needs to be given to whether the Code objectives should be broadened to specify that this Code must, where applicable, support the operations of the Code of Conduct or ensure that functions performed by persons under this Code are not implemented in a manner that would be contrary to the Code of Conduct.

¹⁰ For example, clause 4.6(1)(a) is not clear on the rights and obligations the retailer must assume. It could be argued this clause refers to the rights and obligations that is the subject of a contract between a *customer* and *retailer*. However, the Code places no obligation on either party to negotiate or enter into a contract prior to effecting a transfer.

¹¹ Similar to clause 5.8 of the Metering Code.

Debt restrictions to churn

A key objective of the Code is to promote retail competition and ensure *contestable customers* have consented to the transfer. However, effective retail competition also requires *retailers* to have a business incentive to acquire and supply new customers in an environment where commercial risk can be reasonably managed and apportioned.

In Synergy's view customers who have unpaid energy debt are a significant commercial risk and a disincentive to competition. *Retailers* incur significant costs pursuing *contestable customers* in order to recover debt. Therefore, *retailers* will choose not to supply certain customers based on their credit history and such an outcome does not support effective retail competition. Further, increasing the commercial risk to *retailers* will also force other customers in the industry to pay more for their electricity to compensate for unrecovered debt. Higher risk means *retailers* will also be forced to seek higher returns.

The Code should contemplate reducing risk and protecting the interest of *retailers* in order to promote effective retail completion. It is important that the Code does not provide a means for *contestable customers* to churn from one retailer to another as a means of avoiding debt and thus increasing electricity costs to customers who do pay. Currently, under the Code, outstanding debt to a retailer is not a barrier to a customer churning; it also does not permit a retailer to object to the transfer. The Code currently makes it easy for some *contestable customers* to avoid paying their debt and also makes it more difficult for the retailer to pursue these *contestable customers* after they have churned as the risk of disconnection no longer exists.

In order to avoid this situation Synergy understands that process under the National Electricity Market (NEM) provides for parties to object¹² to a transfer and allows a period of time for the objection to be resolved before the transfer request is cancelled. Further, Synergy also understands that in Victoria and Queensland a retailer can object to a transfer based on outstanding debt in prescribed circumstances.

Therefore, in Synergy's view, in order to better promote retail competition, the Code should provide a mechanism similar to relevant NEM states that allows a *retailer* to object to a transfer on certain grounds. This will reduce risk to *retailers*, promote effective completion in the industry and ensure that electricity prices are not increased to those customers who do pay in order to recover outstanding debt from those who don't. In Synergy's view, before a transfer can be effected, the customer must do all things necessary to comply with its obligations under its supply contract¹³ including the AQP, Technical Rules and connection contract with the *network operator*.

¹² Under certain grounds.

¹³ To pay any outstanding charges.

Part 5 – Communication Rules

In the interest of regulatory certainty the development and ongoing management of the Communication Rules should not be regulated under two separate statutory instruments. Therefore, Synergy supports the removal or amendment of Part 5 of the Transfer Code in order to align it or make reference to Part 6 of the Metering Code.

Part 6 – Notices

Synergy recommends that clause 6.1 should be amended, in order to align it with clause 7.1 under the Metering Code, to permit a notice or other communication to also be given electronically in accordance with the communication rules.

Part 7 - Dispute Resolution

A key objective of the standard metering services provided under the Metering Code is to support the operation of the Code. Therefore, in light of the interaction between the Code, the Metering Code and *access contracts*¹⁴ Synergy believes there is merit in having consistency within the regulatory regime for managing disputes and agrees that replacing the Authority with the Energy Arbitrator would enhance consistency in how disputes are resolved.

¹⁴ Made under the Network Access Code.