

16 February 2015

Australian Energy Market Commission
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Submission to the 2015 Retail Competition Review Approach Paper (RPR0003)

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide input into the approach to the Australian Energy Market Commission (**Commission**) 2015 Retail Competition Review. Effective competition is critical for energy consumers to the extent that it can drive lower prices and respond to the consumers' needs to provide more useful and appropriate products.

Consumer Action continues to support the principles behind the review and the need for ongoing monitoring of retail competition.

Consumer Action welcomes the Commission's feedback on the issues we previously raised in relation to the Issues Paper. We provide additional comments below in response to the current consultation paper and recent discussions with the Commission.

Market definition

We think that it is essential for the Commission to continue to build upon its understanding of the growing complexity of the energy market as a means to accurately represent the state of competition in each market, and its effectiveness. It is critical to acknowledge and include some analysis of the expanded market, as such we believe that the continued focus on gas and electricity markets alone, is rather at odds with the Commission's goal of determining whether competition is effective, thereby working for consumers.

Incorporation of evolving services in the review is necessary to uncover the way in which competition is manifesting in this new environment, as well as informing the Commission's approach to its consumer research. It will also ensure a fuller, more accurate picture of competitive (de-regulated) markets for those markets which are still to de-regulate, providing the Commission with a more reliable reference point.

As we commented in our response to the 2014 Competition Review, the 'sub-markets', which already exist in the market, created by a range of market participants (including those exempted from the retail framework) work with consumers who have different types of retail contract needs and ultimately reflect the changing nature of the market. It is at this time impossible to ignore the one million + solar households operating within the energy market, and the myriad of contract arrangements these households have with various businesses. We reiterate, that as consumers engage more with third

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parties, for example those offering demand aggregation products, the products available across the market may change and it is essential that the Commission is abreast of the impacts of these on competition as they evolve. We have included as an appendix to this document four case studies that we previously submitted to the Australian Energy Regulator's (AER) *Alternative Energy Sellers Issue Paper* in November 2013, as an example of the type of issues that can arise and the need for an understanding of how this impacts upon the existing market structure. We note we are also currently responding to the AER's current Issues paper on this issue (Regulating innovative energy selling business models under the National Energy Retail Law).

We understand the difficulties the Commission may face in building upon the review to the extent necessary, due to resource limitations and the growing complexity of the market, however believe that the Commission needs to plan to incorporate a broader analysis of the competitive market in its approach to the 2016 review. Failure to do so means that the Commission is not keeping up to date with developments in those markets that are evolving more quickly than others, which in turn means that any relevant regulations such as consumer protections are not effective in those markets.

We appreciate that the Commission is undertaking other work that is looking at the technology overlay on the energy market, and urge the Commission to commence work to incorporate this into future reviews.

Information gathering powers

We understand that the Commission no longer seeks to investigate retailer margins, which it found were much higher in Victoria than in other jurisdictions. However, we do think that there is an expectation by the public that this work is being undertaken and thereby encourage the Commission to pursue this.

We also acknowledge that the information gathering powers of the Commission are limited, and therefore could prohibit effective investigation, but consider that there is a key opportunity for the Commission to work with state governments to more definitely monitor the effectiveness of competition in de-regulated markets. We note that the previous Victorian government's energy policy from October 2014¹ was particularly focused on a review of competition including an understanding of retailer margins.

We encourage the Commission to consider what powers it will need in the evolving energy markets and to seek these in the upcoming COAG governance review.

Customer Research

We support the Commission's focus on assessing whether 'outcomes in retail market in NEM jurisdictions are consistent with effective competition' and the indicators that are proposed for the assessment. We remain concerned however that the true outcome of the market goes beyond those indicators proposed, and 'customer satisfaction with market outcomes' does not necessarily provide

¹ Department of State Development, Business, and Innovation, **Victoria's Energy Statement** 2014, <http://www.aemc.gov.au/getattachment/3fccbed6-ebf8-4edb-86c9-71ff22eced08/Final-report.aspx> Accessed 16 February 2015

evidence of an outcome of effective competition. Consumer satisfaction is often measured as a proxy for a good outcome, but there are many reasons why this may not be the case. While consumer satisfaction surveys may provide a record of consumers' experiences and perceptions, such surveys are unlikely to encapsulate whether a consumer has an optimum outcome, as the consumer may not know what this entails.

While we are disappointed the Commission has chosen not to adopt our proposed indicator, focusing on **consumer engagement, education and trust**, we do support the Commission ensuring the issues raised in our earlier submission, and listed below, are being incorporated within the existing market indicators and tested in the 2015 consumer research.

These include:

- Level of trust in energy retailers;
- Consumers' ability to find and understand market information;
- An evaluation of consumer decision making during their product choice process and the information that they access and is useful to them in making energy market choices; and
- An assessment of what products consumers believe they have signed up for compared to what they are actually receiving.

We note that the consumer research completed as part of the 2014 Competition Review assessed consumer experience in markets across the NEM provided a good insight into the way in which consumers understand the market, or in actual fact, miss-understand the market.

Unfortunately it also demonstrated:

a *lack of knowledge*:

In Victoria, unlike in most other jurisdictions, however, the majority knew that electricity was measured in kilowatt hours (kWh),²

the level of ***misinformation*** that exists;

When asked how they thought electricity prices were set and whether or not they were regulated, most people didn't really know and assumed that the government had some kind of role in regulating or capping prices.³

and *likely reasons for disengagement*,

By the end of the forums the level of interest had grown in Ballarat as a result of learning more through the AEMC's presentation. Meanwhile, interest decreased slightly in Melbourne, reflecting a heightened sense that despite there being lots of energy companies competing for customers, there didn't seem to be much difference between them in terms of what customers were paying. As such, some participants felt there was not as much incentive to look into the different offers as they had previously thought there might be⁴.

² Australian Energy Market Commission, ***Consumer Research for Nationwide Review of Competition in Retail Energy Markets Qualitative and Quantitative Research Report***, June 2014 <http://www.aemc.gov.au/getattachment/736bde30-3ded-4343-8bf5-0e7511801b24/Consumer-Research-for-Nationwide-Review-of-Com-%281%29.aspx> Accessed, 16 February 2015, Pg 22.

³ Ibid, Pg 23

⁴ Ibid, Pg 20

That there are low levels of education and engagement amongst consumers does indicate concerns for the effectiveness of competition. While the fact that energy is a low engagement product is well documented, this must be further understood in the context of increasing consumer complaints and increasing prices driving increased public interest in energy. Low engagement may also be due to the increasing complexity of the current marketplace. Ongoing development of the Commission's consumer research will facilitate this. We strongly support the Commission undertaking more detailed qualitative research in Victoria to more fully understand the way in which, in particular, Victorian consumers are interacting with energy and the market. We are particularly concerned with the ongoing assumption that gas in Victoria is competitive, whereas in reality, rural areas, for example Horsham, are limited to offers from only one gas retailer.

It is essential that the Commission's focus is on addressing these issues and making engagement easier for consumers

Product standardisation

One such approach to enhancing consumer engagement is the prospect of product standardisation. We welcome the proposal that the Commission may further explore the role of limited product standardisation with the goal of providing simple and fair choices for consumers.

When we refer to product standardisation, we do not mean that all products must be the same. We welcome different products that suit different customer segments. But there are aspects of products, for example descriptions of fees, tariffs, contractual attributes, that diverge—impeding comparison.

We believe that exploration and adoption (whether short or long term) of this relatively simple initiative will be pivotal in providing a foundation for further and ongoing consumer engagement in the energy market as well as market reform underway. We are currently participating in the AER's review of Retail Pricing Information Guidelines and believe this is an important initiative to provide a baseline for future market developments.

Additional comments

We support the proposal that the Commission expands its examination of the rate at which customers are moving contracts without leaving their retailer. This reflects an approach taken by retailers to respond to customer calls for better rates, or to offer existing customers with better products, which should enhance their retention of customers⁵. We encourage also, the AEMC to investigate "win back" practices, and the issue of repeated contact.

We have received complaints of pressure, badgering, even misleading conduct, in "win back" activity. That is, after someone has switched and before the cooling off period expires, the initial retailer engages in repeat contact with a focus on retaining the customer.

In relation to independent rivalry and 'switching between retailers' we think it important that the Commission include analysis of the way in which customers experiencing financial difficulty move between retailers. We see a definitive move by smaller retailers to push customers experiencing

⁵ Australian Energy Market Commission, Final Report 2014, Retail Competition Review

financial difficulty to other retailers, via various means. Increasingly there is a risk that those customers who are unable to meet payment obligations for basic consumption are being avoided or dumped by retailers and therefore at risk of being excluded from the market. This may suggest certain retailers are leaving other retailers to manage this customer profile which is a concern for an increasing number of consumers. We believe there is a case for making it mandatory for businesses to stop transfers when there is a debt (above a certain level). This would mean that the existing retailer must offer support and means that it is less likely that the debt will be passed off to a debt collector or for legal action.

We look forward to a robust analysis of consumer experience in the market, and subsequent insight into outcomes of effective competition.

We would welcome an opportunity to further discuss this submission with you. Please contact Janine Rayner on 03 8554 6943 or janine@consumeraction.org.au.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Janine Rayner". The signature is written in a cursive, flowing style.

Janine Rayner
Senior Policy Officer

Appendix

Case studies from Consumer Action Law Centre focused on emerging issues of increased solar penetration in the Victorian market.

Case study 1 (151545)

Client X had solar panels and an inverter installed in May 2012 by company Solar Mega Mart (SMM), for the cost of approximately \$8,000. The company the solar panels were purchased from subsequently underwent an ownership change (Illuminate Pty Ltd) followed by liquidation (Tech Energy). In November 2012 Client X's inverter was not working, and they tried to get them repaired. The Client replaced the inverter however the Client was then told by Tech Energy that it too was unsafe and was switched off.

Working with the client, Consumer Action advised about a potential claim for damages under the Australian Consumer Law against the seller, but as they were under external administration this could be problematic.

Further advice was that the client approach the manufacturer with one last opportunity to replace with a functioning inverter, but that if the problem still persisted that the client would reclaim purchase price and or damages suffered with advice to go to VCAT if they refuse to pay.

Case study 2 (151329)

Client Y entered into an agreement to acquire solar panels with company Unleash Solar. They subsequently closed down/went into insolvency.

Our client found that the way that the solar system was installed was problematic; the feed in tariff allocated was not correct, the watts in the system were higher than that required, and that the installation was not approved.

Further, our client had issues with a meter installed by SP Ausnet but which the solar system was not connected to.

Our client continued to pay for the solar system via the finance company, but is concerned that they are doing so without alterations or certifications for approval.

Case study 3 (162593)

Client Z entered into an agreement to acquire solar panels with company Unleash in September 2012. They subsequently closed down/went into insolvency.

The inverters however were not working, ie producing enough solar power. In June/July 2013 our client had an independent meter installed (\$400 brand new from wholesaler) to check whether the smart meter was correct or the inverter. The independent meter agreed with the smart meter which further demonstrated the inverter was not working (it stated it would produce 50kw a day, however it produced 25kw a day).

Our client had paid for a 10 year warranty on the inverter, however Unleash Solar did not forward this to the manufacturer (JFY Son Twins) in China. The

manufacturer has a five year guarantee.

The client had the inverter upgraded, so now all devices align and confirm 50kw produced per day. However over that time, with the inverter stating it produced 8000kw, and the smart meter recording 4000kw, our client was out of pocket for \$1000 of the shortfall in energy produced.

Seeking refund for the consequential loss of acquiring the independent meter, a refund for the electricity rebate lost, we discussed whether the ACL would apply, re section 55 in relation to 'fitness for purpose', but the issue was whether there was anyone in Australia who was solvent to pursue for the loss. There was found to be no company to take action against.

Case study 4 (146211)

Client W entered into an agreement with company Sunburst Solar in 2011, however while their retailer was Simply Energy, our client was not getting the offset they thought they would get due to failed application to apply the correct feed in tariff, combined with a faulty inverter which was not feeding energy into the grid.

The client tried to resolve the dispute with Simply Energy, who claimed they didn't know any thing about it. The client then got their own electrician to look at the inverter who confirmed it wasn't working.

The Client raised the dispute with Sunburst Solar who claimed the issue was the fault of the manufacturer.

At time of contract the lock in the rate was 60ckw feed in tariff which the client was eligible for. That opportunity passed, and the feed in tariff is much lower at 21.3ckw. However as the inverter was not working, it was difficult to claim initial rate as no energy was being fed into grid at this point.

The client suggested to Sunburst that if they fixed the inverter by a certain date they would forego the loss suffered. They have done this, but then the client received a demand for \$900 for payment of travel costs associated with fixing the inverter, who later filed against the client in VCAT for these costs.

Consumer Action provided extended advice to Loddon Campaspe Community Legal Centre throughout this process.

Outcome, settled with Sunburst Solar, Simply Energy continued to be unresolved.