

22 January 2016

Australian Energy Market Commission  
PO Box A2449  
Sydney South  
NSW 1235

Dear Commissioners

**Submission to the 2016 Retail Competition Review Approach Paper (RPR0004)**

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide input into the approach to the Australian Energy Market Commission (**AEMC**) 2016 Retail Competition Review (the **Review**).

Consumer Action strongly supports the ongoing monitoring of retail competition with the view of ensuring it is effective. Victoria continues to be at the forefront of the competitive energy retail market and increasingly is adopting new product and services. On this basis, the Victorian market can provide a good insight into the development of effective competition, particularly when drawn from the consumer experience.

Consumer Action recently made recommendations in our report, *FIX IT! How to fix the energy market rule making process to improve competition and consumer outcomes*, designed to enhance the way evidence is considered by the AEMC. In particular, we advocated for the strengthening of AEMC's information gathering powers in order to investigate market issues, as well as having a thorough understanding of the various retail markets. We also made these recommendations to the COAG Energy Council following the recommendation of the Governance Review Panel that the AEMC should provide strategic advice to the Standing Committee of Officials and the Energy Council. We consider that the AEMC should have the resources necessary to provide this advice, with a strong understanding of consumer outcomes in the market. We believe that increased information gathering powers are necessary for developing this advice and for its task of assessing the effectiveness of competition.

In the Approach Paper, the AEMC states that without information gathering powers, it would be difficult and costly for the AEMC to assess some aspects of the effectiveness of competition, such as net retail margins. We would go further and suggest it is nigh on impossible for AEMC to determine the effectiveness of competition, particularly for different customer segments, without better insights into consumer outcomes in the market.

Despite this, we provide the following comments on the Approach Paper that we hope will provide the AEMC additional guidance to maximise the benefit of this Review.

**Consumer Action Law Centre**

Level 7, 459 Little Collins Street  
Melbourne Victoria 3000

Telephone 03 9670 5088  
Facsimile 03 9629 6898

info@consumeraction.org.au  
www.consumeraction.org.au

## Approach

### Purpose of Review

The AEMC notes in the Approach Paper that all jurisdictions have committed to remove retail energy price regulation where effective competition can be demonstrated, and that the AEMC is required to undertake competition reviews to provide advice to governments to support this commitment. We note, however, that the Australian Energy Market Agreement also considers the possibility that regulation will be reintroduced where competition is not effective.<sup>1</sup> We would encourage the AEMC to use the Review to consider what measures may improve competition, and not merely as a tool to remove price regulation.

### Use of case studies to demonstrate competition issues

The Approach Paper states that the AEMC will consider case studies as evidencing issues raised. We strongly support this approach and agree that case studies can often provide strong evidence to support claims of energy market outcomes for consumers. In undertaking the Review, the AEMC should recognise that consumer advocacy organisations have limited ability to collate more market-wide data, so we are pleased to see some focus being placed on case studies.

Consumer Action works directly with clients through our provision of financial counselling and legal advice services, and it is through these avenues that we understand consumer outcomes and, in particular, where the market may be working or failing. A case study often highlights the personal impact of such failure and the level of detriment experienced by individuals or households.

#### **Case study 1**

Simon was having trouble paying his electricity bill for his single bedroom flat, which had very poor insulation and relied on electric heating. Simon had lost his job earlier this year due to mental health issues, and was spending a lot of time at home. He had switched to a new electricity provider 9 months previous on the basis of a discounted offer. Since switching, Simon has not paid on time due to his financial position but has made payments at different times. This has meant that Simon has not benefited from discounts offered, because they were contingent upon being paid on time. The discounts lost were around 30 per cent of his total bill – for the winter bill, this amounted to around \$120.

The above case study is not uncommon in our experience. Many consumers who struggle to make payments on time can miss out on discounts, meaning that they are penalised, exacerbating their financial situation. We believe the AEMC should investigate with all retailers the extent to which consumers that are on pay on time discounts have not received the benefit of those discounts. This would inform the AEMC about consumer outcomes in the energy market.

### Proactive analysis

The AEMC could conduct analysis of market activity, such as the customer outcomes of discounting practices, that identifies issues early to avoid consumer detriment. Through our own networks, we are seeking broader evidence that might consider whether this issue is persistent. The AEMC could similarly conduct its own assessment of product differentiation, including the products being offered, for example

---

<sup>1</sup> Australian Energy Market Agreement, December 2013 <http://www.scer.gov.au/files/2014/01/Final-Amended-AEMA-Dec-2013-signed.pdf> Clause 14.12 "The AEMC will assess the effectiveness of competition in accordance with guidance issued by the MCE for the purpose of decisions on the retention, removal or reintroduction of retail energy price controls".

whether retailers are offering truly 'fixed' products and the types of customers that are accessing these products (and whether they are offering them benefits).

This level of analysis will support and enable an outcomes based assessment of markets. Such enhanced approaches may also help the AEMC understand current and emerging issues and will enable the AEMC to forecast necessary regulatory responses and to inform policy.

### Switching rates

We agree that switching rates cannot be relied upon alone as a measure of competition. We support the AEMC asking questions through its survey and in other fora that interrogate a customer's understanding of the switching experience, the customer's motivation to switch, and whether they achieved a beneficial outcome from switching. We also support the need for separate analysis between regional and metro areas, particularly given there are still some areas in regional Victoria (for example, Horsham) where there is no competition in gas.

### **Competitive market indicators**

We continue to support the ongoing use of the consumer survey as an input into the Review. The survey provides a valuable benchmark and insight into energy markets. In particular, we support the inclusion of questions in the 2016 survey that specifically seek to identify the issues of vulnerable consumers. This is an important cohort of consumers and with 42 per cent<sup>2</sup> of consumers particularly vulnerable to financial difficulty at any time, it is a necessary inclusion to inform a greater understanding of consumer outcomes. We consider that there is an opportunity for the AEMC to conduct an additional phase of research into this group to further understand what sort of contracts they have, and what prices they have paid over a period of time.

The scope of the Review needs to be continually revised and expanded. We consider that a more detailed analysis of the most advanced market in terms of technology, products and services is also necessary to ensure the scope is sufficient and maintains currency in an emerging market.

We appreciate that the AEMC has refined the criteria in the terms of reference to focus the assessment of whether outcomes in retail markets in NEM jurisdictions are consistent with effective competition. However, we question the indicator that assesses "whether retail energy prices are consistent with a competitive market" given that the AEMC proposes not consider retail margins in any depth. We query on what basis the AEMC will consider prices to be consistent with a competitive market. We reference the paper authored by Ron Ben-David<sup>3</sup> earlier this year, which proposes looking at retail margins, price shocks, and tariff structures to determine whether prices are consistent with a competitive market. This is something that we encourage the AEMC to consider further.

We also encourage the AEMC to consider the market outcomes for those customers that either do not shop around or do not seek a new contract following the lapsing of benefits or discounts. It is this group that is most impacted by very high market prices, and are not benefiting from the competitive market. We note that the UK Competition & Markets Authority recently recommended, in response to this

---

<sup>2</sup> Smart Water Fund, Supporting Vulnerable customers, Report July 2013

<sup>3</sup> Ben-David, Ron, *If the retail energy market is competitive then is Lara Bingle a Russian cosmonaut?* June 2015 Sourced: <http://www.esc.vic.gov.au/getattachment/fc947897-7d4f-4772-97c9-959e3baad0db/If-the-retail-energy-market-is-competitive-then-is.pdf>

problem, the introduction of a maximum price level for default tariffs for customers that do not shop around.<sup>4</sup> The AEMC should investigate this response and consider whether it would improve competitive market outcomes in relevant jurisdictions.

### **Key issues for this year's Review**

We support the expansion of the AEMC's work to consider the current and potential impact of new products and services, as compared to previous years. A key aspect of this work should be for the AEMC to recognise that, while there may not be barriers to entry for suppliers to these products and services, there is likely to be considerable barriers to entry for consumers, such as capital costs, rental difficulties and the complexity of market arrangements. We consider that it is important to assess the 'aggregate impact of new products and services', and emphasise that this should include assessing what this means for those that are unable to access these products and services. The findings of this research should underpin future work programs.

We disagree with the AEMC's decision not to consider alternative energy sellers as part of the market definition for the Review. The presence of solar panels on the roofs of Australian homes suggests that while alternative energy sellers represent only a small proportion of businesses that have products competing with traditional retail energy business models, they are effective at penetrating the market. An analysis of just some of those energy sellers and their business models, would provide a sufficient insight into the practices of those businesses, their products and how consumers are interacting with these. Further, it is important that the consumer survey and subsequent research conducted by the AEMC assesses the level of customer understanding of the more complex products, i.e. PPAs, leases etc. Publicly available information should provide this insight and enable the AEMC to develop a foundation of knowledge. Delaying the accumulation of this knowledge does little to assist consumers who are already grappling with these complex products and services. The issue of dispute resolution and access to justice is already a problem for consumers who engage with these products and services. We encourage the AEMC to consult with fair trading agencies regarding complaints to further understand this, and how it may impact on energy markets, and to commence an assessment of current market activity in this space.

The case study below demonstrates a current failure of the emerging market, where a customer has adopted the technology to enhance their energy capability, but instead experiences poor consumer outcomes, with a complex path to resolution.

#### **Case study 2**

A telemarketer contacted our clients in January 2014, when they purchased a solar system that they believed would save them money. However, promises made at the point of sale were broken; they discovered their German-made panels were in fact made in China, and a smaller 4.3 kW inverter was installed rather than the 5 kW agreed to and paid for. Further, the smaller inverter cost them additional money due the reduced electricity fed back into the grid.

---

<sup>4</sup> Competition & Markets Authority, Energy Market Investigation—Notice of Possible Remedies, 7 July 2015, available at: <https://www.gov.uk/cma-cases/energy-market-investigation>

The misleading and deceptive practices of the sales organisation fall largely under the Australian Consumer Law in relation to poor quality goods or services – regardless of the relationship of these products to their energy consumption and production. This meant that despite having a well-functioning Ombudsman scheme in Victoria for consumers with energy-related complaints, our clients were required to take their complaint to VCAT. This is because the Energy and Water Ombudsman Victoria (EWOV) has no jurisdiction to hear complaints in relation to new markets such as solar panels.

With more Victorians than ever engaging in the energy market in different ways, it is time for ombudsman schemes to evolve with the market and hear complaints of this nature.

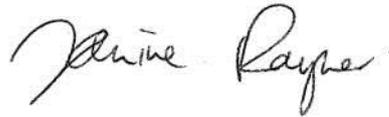
We look forward to ongoing discussions with the AEMC and a robust analysis of consumer experience in the market, and subsequent insight into outcomes of effective competition.

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](mailto:janine@consumeraction.org.au).

**Yours sincerely**  
**CONSUMER ACTION LAW CENTRE**



**Gerard Brody**  
Chief Executive Officer



**Janine Rayner**  
Senior Policy Officer