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Electricity Division – Wholesale and Retail Markets
Department of Industry, Science, Energy and Resources

Via email: electricitycode@industry.gov.au

Re: Directions paper consultation – Electricity Retail Code review

Thank you for the opportunity to comment on your directions consultation paper (directions paper) for the review of the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019 (Code)*.

The Australian Competition and Consumer Commission (ACCC) is Australia's competition and consumer regulator. The ACCC's purpose is to make markets work for consumers. We have an active role in the Australian energy sector, undertaking a long-running inquiry into the National Electricity Market (NEM) and enforcing the Code. We monitor compliance and enforce the *Competition and Consumer Act 2010 (CCA)*, which includes specific electricity market misconduct provisions.

This is the ACCC's second submission to the current review. Our previous submission included a detailed presentation of the current operation of the Code.¹

The ACCC supports all 5 directions proposed in the directions paper while recommending additional action. This submission provides more substantive comments regarding a number of the directions as outlined below.

Direction 1 – Improving the efficacy of the Reference Price

Direction 1 is intended to improve the efficacy of the Reference Price² through clearer communication to aid consumer understanding.

The direction proposes that retailers use the phrase 'Comparison price set by government' instead of the phrase 'Reference Price' when advertising offers. Our previous submission recommended the new phrase³ based on the results of research (jointly commissioned by the ACCC and AER in 2019) from the Behavioural Insights Team (BIT).⁴ BIT's key recommendations focussed on simplicity and comprehension of Code comparison information. The BIT research found that descriptors referencing the government having set

¹ ACCC submission to Australian Government Electricity Retail Code review, <https://www.accc.gov.au/about-us/consultations-submissions/acc-submissions#energy>.

² As defined in clause 5 of the Code.

³ Recommendation 2 of the ACCC submission to Australian Government Electricity Retail Code review.

⁴ The Behavioural Insights Team, [Testing the presentation of energy price information – Final Report](#), 2019.

the price (and not the retailer) engendered more trust in the offer. The BIT research evidences consumers' increased comprehension of the Reference Price, and level of trust for the Reference Price, when using such descriptors.

We continue to strongly support this proposed amendment, which has a clear benefit to consumers and should be implemented as a matter of priority.

Further improvements to Reference Price efficacy

The ACCC considers that reducing the amount of information retailers are required to present under the Code would result in further improvements to consumer comprehension of the Reference Price.

In our previous submission, we recommended removing the requirement for retailers to display the average annual price in dollars, referred to as the '*lowest possible price*' under clause 12(3)(c) of the Code.⁵ This recommendation has not been proposed in the directions paper.

The recommendation followed BIT research commissioned by the Essential Services Commission of Victoria. As detailed in our earlier submission, the research found that that a headline that expressed the difference between the unconditional cost of the plan and the Reference Price as a percentage discount was most effective in enabling consumers to correctly choose the cheapest plan.⁶

Additionally, BIT hypothesised that consumers would be encouraged to read the details of an offer if presented with a headline percentage because it implies that conditions will be attached and/or that the cost of the plan will vary. Considering this evidence, we maintain our view that consumers risk making quick and incorrect assumptions that the *lowest possible price* is the amount they will be billed or represents a price cap or floor.

To reduce the risk of electricity plan information being misleading and to reduce confusion, we recommend removing the requirement that electricity retailers state the lowest possible price when advertising offers.

Directions 2 and 4 – further consultation to progress reforms that support product innovation and embedded network customers

Directions 2 and 4 propose further consultation with stakeholders regarding two important issues for consumers. We support further development of both issues through stakeholder consultation. Our previous submission outlined in detail our support for extending the DMO price cap to offers for embedded network customers (direction 4). Here we detail our views on the issue of applying the Reference Price to non-standard offers (direction 2).

The directions paper notes stakeholder feedback that while the Reference Price may be well suited to comparing traditional retail offers, it is more challenging to apply in respect to more complex offer types. The ACCC considers that retail product innovation is an important market feature and we are aware of several products where attempts to apply the Code's communication requirements have presented difficulties. Current examples include products like subscription type plans and wholesale cost pass through offers. In enforcing the Code, we balance consumers' general interests in price transparency with their ability to benefit

⁵ Recommendation 3 of the ACCC submission to Australian Government Electricity Retail Code review.

⁶ BIT, [Testing the presentation of energy price information – Final Report](#), 10 December 2019, pp. 2, 12.

from retailer innovation. We encourage retailers who plan to offer new products to contact us to discuss the communication of new offer types.⁷

Further exploration of this issue could consider options such as a formal exemption mechanism from Code communication requirements for specific complex offer types. We consider this work should be progressed as a matter of priority to ensure consistency for retailers, certainty for consumers, and to encourage innovation.

Please contact Tanja Warre on the details above should you wish to discuss any of the matters raised in this letter.

Yours sincerely



Anna Brakey
Commissioner

⁷ The 'FAQ for energy retailers' on the ACCC's website contains more information: <https://www.accc.gov.au/business/industry-codes/electricity-retail-code/faq-for-electricity-retailers>.