

NOTICE OF FILING

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Details of Filing

Document Lodged:	Concise Statement
File Number:	VID370/2019
File Title:	AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v ISELECT LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 12/04/2019 1:43:18 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Concise Statement



No.

Federal Court of Australia

District Registry: Victoria

Division: General Division

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

ISELECT LIMITED

Respondent

IMPORTANT FACTS GIVING RISE TO THE CLAIM

- 1 This is a claim against the Respondent (**iSelect**), the operator of a commercial price comparator service, for misleading or deceptive conduct, conduct liable to mislead, and making false representations towards consumers in connection with the promotion and 'comparison' of energy services offered by certain retail suppliers in breach of the *Australian Consumer Law (ACL)*. The Applicant (**ACCC**) alleges that iSelect represented to consumers that it would compare all of the plans available from its partner retailers in a consumer's area and that it would recommend the most suitable plan to the consumer, and provide its comparison service in an objective, impartial and transparent manner, when in fact the plans it recommended to consumers were influenced by the commercial relationships between iSelect and its partner retailers, did not involve a comparison of all of the plans available from its partner retailers and were not necessarily the most competitive plans available.
- 2 From at least 13 November 2016, iSelect, in trade or commerce, has:
 - (a) conducted a business which claims to assist consumers to select an electricity service in South East Queensland, New South Wales, the Australian Capital Territory, Victoria and South Australia (**energy service**) by comparing the services offered by electricity retailers identified on the iSelect website (**partner retailers**),

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- recommending a service offered by a partner retailer and facilitating the sale of the service to the consumer (**Comparison Service**);
- (b) maintained a website at <https://www.iselect.com.au> (**iSelect website**) and operated a call centre to promote and provide the Comparison Service; and
 - (c) advertised its Comparison Service on television, radio and online.
- 3 Consumers who visited the iSelect website were prompted to use iSelect's Comparison Service to "Compare Electricity and Gas" by:
- (a) entering their postcode and, if they wished, uploading an energy bill;
 - (b) entering information about the energy services to be compared and the relevant property, their current plan for energy services (if available) and/or their typical usage;
 - (c) accepting iSelect's terms and conditions; and
 - (d) entering their name, telephone and email address contact information.
- 4 The iSelect website then displayed details of offers for energy services. The offers were sorted by price (with the cheapest offer displayed first, after sponsored listings), or in accordance with other preferences selected by the consumer. Consumers could then apply for one of the offers by clicking on an "APPLY NOW" icon or by telephoning iSelect's call centre.
- 5 iSelect's Comparison Service was facilitated by two components:
- (a) a database which contains details of plans for energy services provided by partner retailers for comparison by the Comparison Tool (**Database**); and
 - (b) a technology platform called "iConnect" or "the Comparison Tool", which houses and administers the algorithms used to determine which plans for energy services from partner retailers on the Database are recommended to consumers, having regard to variables input by consumers (**Comparison Tool**).
- 6 iSelect generated revenue through commercial arrangements with its partner retailers by which iSelect received payment from a partner retailer for each sale of the partner retailer's energy service through its Comparison Service. iSelect offered a "Preferred Partner Program" which provided partner retailers who participated in the program with "silver", "gold" or "platinum" status (**Preferred Partners**) with additional benefits set out in paragraphs 7 and 8 below.
- 7 iSelect permitted partner retailers to include on the Database two products for online comparison in each of three "segments" ("gas", "electricity" and "gas and electricity bundles") for each area. Preferred Partners, depending on their status, were permitted to include up to five additional products on the Database for online comparison. iSelect also

- permitted certain Preferred Partners to make 'below the line' offers, which iSelect did not display on the iSelect website, but which iSelect's call centre staff could offer to consumers.
- 8 iSelect permitted Preferred Partners with "gold" or "platinum" status to impose criteria on the offers made available by iSelect through the Comparison Service. For example, gold and platinum Preferred Partners could request iSelect to:
- (a) exclude energy services from being offered to certain consumers, such as low volume or low value consumers, renters, movers and / or customers with particular postcodes; and
 - (b) make targeted offers for energy services to certain consumers, such as high value or high usage consumers, home owners, customers seeking to switch one of their plans to another supplier and/or customers with particular postcodes.
- 9 Between at least 13 November 2016 and 10 April 2019, the iSelect website displayed a number statements relating to its Comparison Service on its "Compare Electricity and Gas" webpage and other webpages as set out in **Annexure A** to this Concise Statement.
- 10 Between at least 13 November 2016 and 10 April 2019, iSelect did not disclose to consumers the terms of its commercial arrangements with partner retailers, the existence of its Preferred Partner Program, the identity of Preferred Partners, the matters set out in paragraph 8 above, or that it received higher commissions for selling certain categories of Preferred Partners' energy services.
- 11 iSelect represented to consumers visiting its website that through its Comparison Service it would:
- (a) compare all of the plans available from its partner retailers in the consumer's area and recommend the most suitable plan to the consumer – by making some or all of the statements set out in items 1, 2, 3, 5, 6 and 8 of **Annexure A** between at least 13 November 2016 and 10 April 2019 (**All Plans Representation**); and
 - (b) recommend the most competitive plan from its partner retailers in the consumer's area – by making the statement set out in item 8 of **Annexure A** between 2 March 2018 and 21 January 2019 (**Most Competitive Plan Representation**).
- 12 Contrary to the All Plans Representation and the Most Competitive Plans Representation:
- (a) iSelect did not compare all of the plans available from its partner retailers in the consumer's area, but rather limited its online comparison to the number of plans for energy services that each partner retailer was permitted to include on the Database

(which differed depending on the Preferred Partner status of the partner retailer) as alleged in paragraph 7 above;

- (b) iSelect permitted certain partner retailers to exclude plans from, and to target offers to, certain consumers, as alleged in paragraph 8 above;
- (c) iSelect made certain 'below the line' offers via its call centre to consumers from partner retailers that were cheaper than offers on the online Comparison Service, as alleged in paragraph 7 above; and
- (d) the recommended plan was not necessarily the most competitive plan because partner retailers offered cheaper plans in the consumer's area, which were not available through the iSelect Comparison Service.

13 Further, iSelect did not and could not know whether a recommended plan would be the most competitive plan for a consumer available from a partner retailer in the consumer's area because partner retailers offered cheaper plans in the consumer's area that were more competitive and which were not available through the iSelect Comparison Service.

14 Between at least 13 November 2016 and 10 April 2019, by making some or all of the statements set out in **Annexure A** in respect of its Comparison Service in the circumstances referred to in paragraph 10, iSelect engaged in conduct that led or was likely to lead consumers to believe that its Comparison Service provided an impartial, objective and transparent comparison of all available energy services that would assist them to assess and select an energy service plan that best suited their current needs, when in fact, by reason of the matters referred to in paragraphs 6 to 8 above, iSelect's Comparison Service did not provide an impartial, objective and transparent comparison of all available energy services (**Energy Plan Comparison Conduct**).

SUMMARY OF RELIEF SOUGHT FROM THE COURT

15 The ACCC seeks the relief set out in the accompanying Originating Application.

PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

16 The All Plans Representation and the Most Competitive Plan Representation were false, misleading or deceptive and/or liable to mislead consumers for the reasons set out in paragraphs 12 and 1 above.

17 Insofar as the Most Competitive Plan Representation was a representation as to future matters, the ACCC relies upon s 4 of the ACL and alleges that iSelect did not have reasonable grounds for making the Most Competitive Plan Representation.

18 By making the All Plans Representation and the Most Competitive Plan Representation, iSelect in connection with the supply or possible supply, or the promotion of the supply, of its Comparison Service, made false or misleading representations that its Comparison

Service had performance characteristics, uses or benefits that it did not have, in contravention of ss 18, 29(1)(g) and 34 of the ACL.

- 19 The Energy Plan Comparison Conduct was misleading or deceptive and/or liable to mislead the public as to the nature, the characteristics and the suitability for purpose of the iSelect Comparison Service. By engaging in the Energy Plan Comparison Conduct, iSelect has engaged in conduct that is misleading or deceptive in contravention of s 18 of the ACL and/or liable to mislead the public, in contravention of s 34 of the ACL.

ALLEGED HARM



- 20 Australia is facing its most challenging time in electricity markets. High prices and bills have placed enormous strain on household budgets. Consumers are increasingly shopping around to compare prices. Comparing price and other features of energy services can be complex, confusing and time-consuming for consumers. By misleading consumers about the benefits of using its comparison service and the impartiality of those services, iSelect defeated or diminished genuine consumer choice and undermined competition. iSelect's conduct may have caused some consumers to commit to plans for electricity services when a cheaper plan was available, and may have resulted in some comparators and retailers losing customers they would otherwise have obtained or retained had consumers not been misled.

Date 11 April 2019

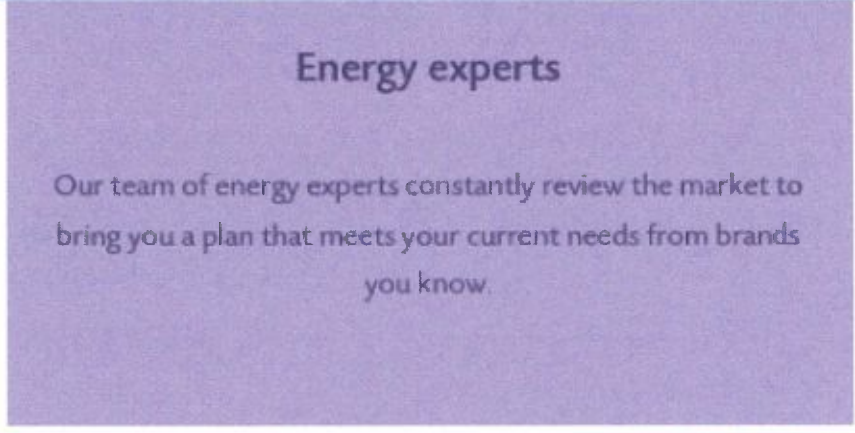
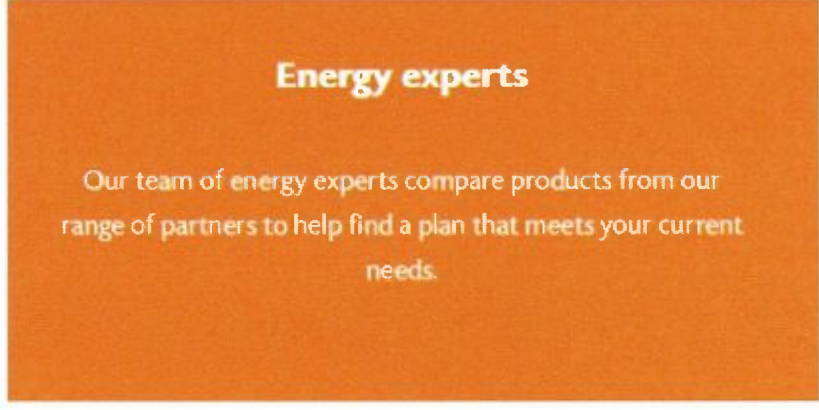
A handwritten signature in blue ink, appearing to read 'D. Marquet', is written over a horizontal dotted line.

Signed by Daniel John Marquet
Lawyer for the Applicant

Annexure A

Item / Time Period	Statement	Example of Statement on iSelect Website
"Compare Electricity and Gas page" (https://www.iselect.com.au/energy)		
1. From about 13 November 2016 to 10 April 2019	"compare rates from some of Australia's leading energy providers"	
From about 28 June 2017 to 10 April 2019	"Find the right energy plan to suit your needs" or "Find an energy plan to suit your needs"	
At least 30 April 2018 to 10 April 2019	"Compare policy benefits side by side" or "Compare plan benefits side by side"	
At least 30 April 2018 to 10 April 2019	"Customise your energy plan, ensure it fits your lifestyle" or "Customise your energy plan to fit your lifestyle"	
2. From about 1 May 2016 to 10 April 2019	"We compare some of Australia's biggest brands"	
3. From about 7 June 2017 to 15 January 2019	"Save yourself time and upload your energy bill. Let us decipher your complicated energy needs"	

Item / Time Period	Statement	Example of Statement on iSelect Website
	and see what you could save. One of our energy experts will analyse your bill and compare from our range of energy providers to help you find a better deal to suit your usage needs"	<p>Save yourself time and upload your energy bill</p> <p>Let us decipher your complicated energy bills and see what you could save. One of our energy experts will analyse your bill and compare from our range of energy providers to help you find a better deal to suit your usage needs.</p> <p>UPLOAD YOUR BILL</p>
From 15 January 2019 to 10 April 2019	"Save yourself time and upload your energy bill. Let us decipher your complicated energy bills and see what you could save. One of our energy experts will analyse your bill and compare from our range of energy providers to help you find a better deal to suit your usage needs"	
4. From at least 16 April 2016 to 10 April 2019	"we've provided over a million energy comparisons in Australia and we're still counting, so we know to look beyond the discount and into what really matters"	<p>Millionaires (sort of)</p> <p>We've provided over a million energy comparisons in Australia and we're still counting, so we know to look beyond the discount and into what really matters.</p>

Item / Time Period	Statement	Example of Statement on iSelect Website
5. From about 8 August 2016 to 17 May 2018	"our team of energy experts constantly review the market to bring you a plan that meets your current needs from brands you know"	
6. From 17 May 2018 to 10 April 2019	"Our team of energy experts compare products from our range of partners to help find a plan that meets your current needs"	
7. From at least 14 July 2016 to 15 January 2019	"Customise your energy plan and ensure it fits your lifestyle so you know you're making the right choice"	<p data-bbox="958 1082 1258 1120">Step 2. Get fitted</p> <p data-bbox="810 1158 1406 1235">Customise your <u>energy plan</u> and ensure it fits your lifestyle so you know you're making the right choice.</p> <div data-bbox="994 1311 1218 1404"> <p data-bbox="1021 1343 1191 1372">GET STARTED</p> </div>
From 15 January 2019 to 10 April 2019	"Customise your energy plan and ensure it fits your lifestyle so you know you're making a choice that suits your needs and budget"	

Item / Time Period	Statement	Example of Statement on iSelect Website
On other pages on the iSelect Website		
8. From about 2 March 2018 to 21 January 2019	"find the most competitive rates from our range of electricity providers in your area"	<p>Had enough of sky-high electricity bills?</p> <p>It might be time to start looking around for a better offer. Find the most competitive rates from our range of electricity providers in your area.</p> <p>COMPARE ELECTRICITY NOW</p>
9. From at least 30 April 2018 to 10 April 2019	"[iSelect's commission arrangements are] completely confidential - even from our advisers - so you can be confident that our advice and recommendations are based only on your individual needs"	In fact, the adviser you speak with does not know how much iSelect is paid by the company that owns the product they are recommending. We keep our commission arrangements completely confidential - even from our advisers - so you can be confident that our advice and recommendations are based only on your individual needs.