

19 December 2018

By email: ElectricityMonitoring@acc.gov.au

Michael Drake and Saraj Bhullar
Australian Competition and Consumer Commission

Dear Mr Drake and Mr Bhullar

ACCC monitoring of the electricity supply in the National Energy Market discussion paper

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) monitoring of electricity supply in the National Energy Market (**NEM**) discussion paper (**the discussion paper**).

We welcome the ACCC's ongoing inquiry into the prices, profits and margins in the supply of electricity in the NEM. A plethora of reports¹ have established that the electricity market is not operating in the interests of all consumers. The ACCC has unique powers to gather information that can inform and enhance policy design to achieve better outcomes for consumers in the energy market, and we welcome the opportunity to provide feedback in this submission on the approach the ACCC should take in monitoring the electricity market.

Consumers must feel there is transparency around industry's practices in the NEM and that industry is acting in their interest if trust and confidence in the energy market is to be improved. The ACCC's work following the discussion paper should be undertaken with this goal front of mind.

Energy is an essential service needed for health, wellbeing and social participation. The ACCC must ensure that it prioritises gathering and publicising information that can lead to improved market outcomes and market participant behaviour. We consider that the ACCC should pay particular attention to the interests of households in Australia who are at most at risk of losing access to essential electricity supply.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy

¹ See for example; ACCC, 2018. *Restoring electricity affordability and Australia's competitive advantage*; Retail Electricity Pricing Inquiry-Final Report, Faulkner, Mulder and Thwaites, 2017. *Independent Review into the Electricity & Gas Retail Markets in Victoria*, AEMC, 2018. *2018 Retail Energy Competition Review, Final Report*.



work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

Retail electricity prices

We provide the following general comments in response to the discussion paper.

The NEM should be analysed on its ability to perform in the interests of all households

A distributional or equity framework is the most relevant approach as the energy market should be assessed against its ability to provide access to affordable energy for all households. This is imperative as access to energy supply is essential in order to experience a good quality of life through better physical health, mental wellbeing and the opportunity to socially participate in society.

Legal frameworks and market failure frameworks are also relevant. It is important that regulators are informed of breaches of rules and laws in relation to energy so that they can take enforcement action to prevent ongoing noncompliance. It is also important that decision makers are informed and recognise when the theoretical basis for good outcomes in markets is not being reflected in reality. Focusing primarily on a distributional and equity framework while also drawing on the other two approaches would see decision makers better informed when designing solutions to ensure markets deliver outcomes in line with their purpose.

Upcoming monitoring should be focused on changes that are likely to significantly impact households

The ACCC should focus on monitoring:

- The transitioning energy market and the impact of increased complexity or transfer of risk that consumers will face.
- The interventions by Government and regulators to regulate prices and what cohorts of customers are advantaged or disadvantaged by these changes (it should be specifically noted that the Government intervention to deregulate prices highly disadvantaged disengaged consumers).
- The introduction of the payment difficulty framework in Victoria and whether this improves outcomes for Victorian households experiencing payment difficulty
- The introduction of standard statements by retailers on hardship policies by the AER and whether this is sufficient in overcoming issues identified with energy retailer's assistance for people in payment difficulty or hardship.
- The introduction of regulations around marketing, reference prices and discounting practices in National Energy Customer Framework (**NECF**) and Victorian laws and regulations and the impact on different cohorts of customers.

Avoid duplication and expand the information available other agencies

Where possible the duplication of data requests should be avoided. We strongly support effective information sharing arrangements between regulators. The Essential Services Commission in Victoria would benefit from access to additional data from the ACCC's monitoring efforts.

Price dispersion amongst household cohorts and excessive industry profit

As stated in our submission to the ACCC Retail Electricity Pricing Inquiry (**REPI**):



"[A] lack of detailed information about retail pricing has meant it has been difficult for consumers and regulators to understand retailers' costs and margins, whether these are reasonable, and the extent to which they may be profiting from particular categories of consumer."²

There needs to be an ongoing detailed examination of this issue following the REPI.

Retailers hold a lot of data on what consumers are actually paying and this should be available for analysis by regulators and consumers. We encourage the ACCC to seek retailer data on:

- Alternative measurements of competition's effectiveness by factors other than switching activity:
 - whether customers are experiencing benefits of a competitive market;
 - whether there is information failure; and
 - the extent to which behavioural biases may be affecting consumer decision making.
- The proportion and distribution of consumers not receiving a "bad deal."
- The extent retailers are maximising profits from disengaged customers to subsidise discounts and special offers from others.
- Numbers and types of customer complaints, as a key measure focusing on after-sales service not merely the buying or switching experience.
- Ongoing examination of the cost stack for prices including more granular, business by business information about costs that escalate in the competitive energy market like Customer Acquisition and Retention Costs.
- Cross subsidies between customers with or without air conditioners, swimming pools, solar technology or other technology that has a considerable impact on their import or export profile.
- Ongoing information about cross subsidies that have resulted from the premium feed in tariff or feed in tariff schemes and the impact of this on customers without the ability to access solar.
- Levels of comprehension with respect to key market information and whether this information assists people to make effective choices in the energy market.

The priority in essential services markets should not be simply maximising profits. The supply of energy has a social purpose, and as such the ACCC should focus on gathering and reporting information that improves market outcomes and market participant behaviour, particularly in relation to vulnerable or disadvantaged households.

Increasing transparency would create opportunities to lower prices when independent regulators step in to regulate pricing in the market. This could improve outcomes for households in Australia and help to restore trust and confidence in the NEM.

Emerging business models, 'innovation' and transitions to new technology

There is the potential for increased dispersion in pricing and risk sharing as the emergence of new services and technology enable a more complex energy market. It is important that the ACCC monitors the appropriateness of new developments to ensure regulators, government, consumers and industry are aware of emerging issues that need addressing.

Consumer Action encourages the ACCC to monitor and gather:

- Retailer profits moved to generation profits in vertically integrated businesses.

² Consumer Action Law Centre, 2017. *Submission in response to ACCC Retail Electricity Pricing Inquiry: Preliminary Report*. Available at: <https://policy.consumeraction.org.au/2017/11/21/submission-in-response-to-the-accr-retail-electricity-pricing-inquiry-preliminary-report/>



- Any information indicating that consumers are accessing credit facilities to pay for energy supply or products such as pay day loans and buy now pay later products like Certegy ezi-pay or deferit.
- Any innovation within tariff offerings that move away from the traditional structure and impacts on customers (for example, demand tariffs).
- Any bundling of energy with other services and the impact on customers.
- Any bundling with new energy technology like electric vehicles or services like the co-ordination of DER energy dispatch.
- Any records of households being excluded from feeding DER generated electricity into the grid because of capacity constraints.
- Any information on excessive profit and price dispersion in access to new energy technology for households such as the solar PV market.

Also, as stated in our submission to the REPI:

*'Retailers have argued that attempts to introduce more innovative offers have not been successful because customers have not taken them up, but it is unclear how actively they have marketed such offers. We encourage the ACCC to test these claims by finding out from retailers they have spent marketing non-discount offers.'*³

Embedded networks

Embedded network pricing and provider conduct should be monitored across the NEM. Many households in embedded networks need greater protections as they are often effectively in a monopoly situation.

The ACCC should gather information and monitor:

- The costs and margins charged by third party agents who manage billing in embedded networks and for whom facilitating the sale of energy is core business.
- The payment difficulty assistance offered by these businesses.
- The cost of electricity for embedded network households in comparison to other households.
- New business models emerging that avoid regulation.
- The costs or practicalities of leaving embedded networks.

Assistance for customers in payment difficulty and general affordability

As above, the ACCC must ensure that it prioritises gathering and publicising that can be used to improve outcomes for households in Australia who are at most at risk of losing access to essential electricity supply.

The ACCC should collect information on:

- Retailers' hardship assistance systems.
- Data on the underconsumption of energy (using less than is safe to keep their home at a comfortable temperature for health purposes or going without cooking, refrigeration or other essential energy use).
- The number of customers who are accessing hardship programs or payment difficulty assistance but are not on the best priced offer.
- The number of customers accessing concessions or other government support payments for energy who are not on the best priced offer.

³ Consumer Action Law Centre, 2017. *Submission in response to ACCC Retail Electricity Pricing Inquiry: Preliminary Report*. Available at: <https://policy.consumeraction.org.au/2017/11/21/submission-in-response-to-the-accr-retail-electricity-pricing-inquiry-preliminary-report/>



- Whether savings in another part of the supply chain are being passed on to all customers on an equitable basis.
- The cost of;
 - Victoria or other states not being in the NECF.
 - Derogations from the NECF.
 - How these costs compare to the value of derogations creating additional protection to consumers.
 - How these costs compare to excessive retail margins.

Marketing and acquisition

Complexity is a common reason for consumers to not engage or lack trust in the energy system. Many customers do not engage regularly with the energy retail market, nor should they have to for an essential service to get a fair price. What happens to those who are not engaging? Marketing and acquisition costs have added to the overall cost of energy supply and mean that many consumers are not paying a fair price for energy.

The ACCC should gather information and monitor:

- Businesses' discounting practices and the outcomes for customers on discounts in comparison to the optimal market offer for their household.
- The rates customers on standing or newer default offers are paying.
- How many standing or newer default offer customers are receiving concessions and/or have other indicators of vulnerability, such as receiving hardship assistance or past disconnections.
- How many customers are on contracts where benefits have lapsed, and what they are paying.
- How many of these customers have indicators of vulnerability?
- How much customers who have not switched for five years or more are paying.
- Any customers receiving offers through unsolicited sales, sales created by lead generation and where these customer's offers sit in relation to the optimal price for that household in the market.
- 'Win back' and 'Save' practices of businesses and where these customer's offers sit in relation to the optimal price for that household in the market.
- Costs paid to switching services for acquisition, and how the offers of these customers compare to the best offer available to them.

Metrics that may assist the ACCC's measurements during monitoring

Please see the below table from our submission to the Energy Security Board in relation to metrics:⁴

Outcome: affordable energy and satisfied consumers	
<i>Objectives</i>	<i>Proposed metrics</i>
Energy is increasingly affordable for all consumers, supported by adequate consumer protections and access to dispute resolution	<ul style="list-style-type: none"> • No consumers disconnected because of an inability to pay for energy • Reduced complaints to ombudsman services about inappropriate assistance or no assistance being offered in response to payment difficulty⁵ • Reduced complaints to ombudsman services about high billing⁶

⁴ Consumer Action Law Centre, 2018. *Energy Security Board Strategic Energy Plan consultation on proposed metrics*. Available at: <https://policy.consumeraction.org.au/2018/11/28/energy-security-board-strategic-energy-plan-consultation-on-proposed-metrics/>

⁵ For example; the Energy and Water Ombudsman Victoria reports regularly on trends in "credit issues" and billing issues see: <https://www.ewov.com.au/reports>

⁶ Ibid



	<ul style="list-style-type: none"> Reduction in consumers using credit facilities, including buy now pay later services such as Deferlt, to pay energy bills.
Consumers are empowered to manage their demand and can access distributed energy and energy resources	<ul style="list-style-type: none"> No Australian reports going without heating, cooling or other essential energy usage because energy is unaffordable No hospital admissions are attributed to poor energy efficiency in a patient's housing All Australian housing stock achieves a 7-star energy efficiency rating
Consumers are able to easily identify and secure the best deal for their circumstances	<ul style="list-style-type: none"> No household is in payment difficulty due to paying high rates on an energy plan with an expired benefit period
Vulnerable consumers are on suitable pricing plans, receiving concessions when needed, and can benefit from distributed energy and energy efficiency schemes	<ul style="list-style-type: none"> Full coverage of concession and emergency payments (such as the Utility Relief Grant in Victoria⁷) for all consumers who are experiencing payment difficulty No consumers denied or involuntarily exited from energy retailer assistance or hardship assistance programs⁸
Outcome: effective development of open and competitive markets (where appropriate)	
<i>Objectives</i>	<i>Proposed metrics</i>
Retail markets are competitive and deliver efficient and fair outcomes for consumers (emphasis added)	<ul style="list-style-type: none"> The proportion and distribution of customers receiving a bad deal is reduced (the primary metric). Levels of comprehension with respect to key market information is enhanced (aimed to ensure that people who have the capacity have the opportunities to make effective choices). Levels and types of customer complaints are monitored for trends and issues – a key measure focusing on after-sales service not merely the buying or switching experience.

Investigation of industry claims or avoidance during the development or implementation of policy or in response to information requests

The ACCC's powers should be utilised to better understand how businesses implement new policy from Government or regulators. This should include monitoring whether policy objectives are being achieved in the real world and ensuring that the relevant decision makers get timely information about the need for further reform.

The ACCC should gather information and monitor information about:

- Internal efforts to ensure compliance or circumvent new regulations by businesses.
- Internal communications in relation to business responses to regulator actions like enforcement or wrongful disconnection payments and how these costs are allocated within businesses
- Information on the actual cost of IT system changes that result from changes in regulation and:
 - Independent opinions on whether these changes are financially inefficient.
 - Measuring these against savings to consumers directly on energy costs or resulting from better outcomes because their access to an essential service is protected.

⁷ See: <https://services.dhhs.vic.gov.au/utility-relief-grant-scheme> and reporting in the Essential Services Commission annual Victoria Energy Market Reports (currently unpublished due to AGL reporting issues).

⁸ This information is also collected and reported by reporting in the Essential Services Commission annual Victoria Energy Market Reports (currently unpublished due to AGL reporting issues)



Where industry claims that information is difficult to access and provide in a timely way from the perspective of policy makers, the ACCC should gather information as to whether this representation from industry was accurate.

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Yours Sincerely,

CONSUMER ACTION LAW CENTRE

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[Redacted name]
Chief Executive Officer

