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 26 June 2017

Australian Competition and Consumer Commission  
 Email: [retailelectricityinquiry@acc.gov.au](mailto:retailelectricityinquiry@acc.gov.au)

Dear Sir/Madam

### **Re Inquiry into retail electricity supply and pricing – Issues Paper May 2017**

I write in relation to the above inquiry by the Australian Competition and Consumer Commission (ACCC) and provide the following comments and observations in response to several matters in the ACCC's May 2017 Issues Paper.

#### Issue 1 – Prices, costs and profits

That there is a problem with the energy market in Australia is not in doubt. A senior Minister in the South Australian Government recently stated that the energy market *"is broken ... because it serves its own interest, not ours [i.e., the public]"*.<sup>1</sup> Consumer surveys have revealed that this sentiment is also shared by customers.<sup>2</sup> Research by the Grattan Institute has found that competition in the retail electricity market has failed to deliver lower prices for consumers.<sup>3</sup> The Prime Minister has acknowledged that while *"... competition in retail electricity markets should mean lower prices for residential and business consumers, retail electricity markets don't appear to be operating as effectively as they could"*.<sup>4</sup> The deficiencies in the energy market, whether real or perceived, have led to the ACCC being required to conduct this inquiry.<sup>5</sup>

The ACCC's Issues Paper points out that retailer costs and margins comprise a significant proportion of an average electricity bill, even more than the environmental costs component (pp. 8, 9). Indeed, the Grattan Institute has found that almost 43 per cent of household (standing offer) power bills is comprised of retailer costs and profits.<sup>6</sup> Electricity is widely regarded as an essential community service.<sup>7</sup> More than that, as the Grattan Institute has observed, electricity *"... is an essential service without substitutes"*.<sup>8</sup> Yet for the average household consumer it is difficult to understand why, if it is such an essential service, the retail price of electricity is allowed to be determined by, and be subject to, market forces such as occurs under deregulation. What does the average household consumer really get out of such an arrangement? How does paying more to electricity retailers actually benefit consumers? As pointed out in the following passage, this is entirely questionable:

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<sup>1</sup> <<http://www.abc.net.au/news/2017-03-14/sa-government-to-announce-power-intervention-strategy/8350878>>

<sup>2</sup> <<http://www.smh.com.au/business/open-energy-markets-failing-households-20170205-gu65tk.html>>

<sup>3</sup> <<http://www.abc.net.au/news/2017-03-13/competition-in-energy-retailing-has-failed-grattan-institute/8349602>>;  
 <<https://grattan.edu.au/report/price-shock/>>

<sup>4</sup> <<https://www.pm.gov.au/media/2017-03-27/acc-review-electricity-prices>>

<sup>5</sup> Ibid

<sup>6</sup> <<http://www.theage.com.au/victoria/households-being-lured-into-misleading-electricity-and-gas-deals-energy-watchdog-20170415-gvlgyw.html>>

Page 16, <<https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf>>

<sup>7</sup> Despite recommending that retail electricity deregulation should proceed in South-East Queensland, the QPC still recognised that, *"The essential nature of electricity distinguishes the retail electricity market from most other consumer markets and, arguably, necessitates a level of consumer protection that may be considered unnecessary for non-essential services"* (QPC, 2016, Final Report, Electricity Pricing Inquiry, p. 217).

<sup>8</sup> Page 3, <<https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf>>

... in electricity, under directives of Australia's National Competition Policy, in most markets there are competing 'retailers', separated off from the natural monopoly distributors. It's an Orwellian contortion of language to call them retailers, for they don't handle the product. Whoever 'sells' you electricity, it is exactly the same product from the same sources – not just similar but the very same. These 'retailers' are simply brokers who handle billing services. In most markets there are real benefits from competition. But it also comes with a cost: it is unwise, therefore, to assume that increasing competition will always deliver net benefits. The benefits of competition are most likely to be found in product innovation, or in process innovations that reduce costs and therefore price. But who wants product innovation in electricity? While many people care how electricity is generated, as evidenced by their willingness to pay for 'green' energy, even the most environmentally conscientious customer still wants 240 vanilla volts delivered at a monotonous 50 cycles. Variety is the last thing customers want in this situation. But, in the name of 'competition', Australians have to support an industry of 'retailers' who add no value to the product. This enforced competition is estimated to add at least \$50 a year to householders' electricity bills.<sup>9</sup>

Similarly, it has been noted:

*Making markets or analogues of them where they do not really exist requires some intellectual acrobatics from regulators. An interesting example is found in gas and electricity supply. It is difficult for domestic customers to see themselves as being in a market here. Whichever supplier they have, the same gas and electrical power come to their pipes and cables. There is no variety of product or quality that enables consumers to exercise the kind of choice they have in normal markets. They also sign up to contracts lasting at least a year, and often of unlimited term, so these markets are not very active. Suppliers compete with each other by trying to develop better forward purchasing strategies and superior advertisements. While a few small suppliers may gain some market entry, an illusion of diversity is produced by third-party firms – typically well-known supermarket brands – doing deals for their customers by buying energy from the primary suppliers, badging it, and selling it on. Given the inelastic nature of consumers' behaviour and dominance of the market by a small number of suppliers, energy firms have little incentive to pass on any benefits of their purchasing strategies to consumers. Regulators therefore try to stimulate more consumer elasticity by persuading firms to make reduced price offers to customers who switch to them. At the end of this introductory contract period the price typically increases considerably. The regulators then urge customers to keep switching contracts so that they are always getting the best introductory offers. In this way regulators hope to generate the mass of transactions that a true market needs, creating artificial differences between identical products in order to do so. Such a market brings gains to both (some) consumers and producers only if large numbers of consumers remain inelastic, paying the higher prices of supplies that are not part of introductory offers. Meanwhile, transaction costs rise: for consumers, who have to keep looking out for new introductory offers and making arrangements to change their suppliers; and for suppliers, who have to keep developing and marketing new introductory offers.<sup>10</sup>*

The above two passages challenge the merit and wisdom of forcing an essential community service such as electricity, which has no substitutes, to fit within a market-driven, deregulated framework. Practical experience with deregulation has also shown that the cost of electricity for consumers has not decreased but has increased, with a significant proportion of such costs being comprised of

<sup>9</sup> McAuley, I. & Lyons, M., 2015, *Governomics: Can We Afford Small Government?*, Melbourne University Press, p. 165

<sup>10</sup> Crouch, C. 2016, "The Paradoxes of Privatisation and Public Service Outsourcing" in *Rethinking Capitalism, Economics and Policy for Sustainable and Inclusive Growth*, M. Jacobs & M. Mazzucato eds, Wiley-Blackwell, pp. 159-160

retailer costs and margins (as also noted by the Issues Paper and the Grattan Institute). For instance, in Victoria deregulation has seen prices increase over recent years by more than 200 per cent.<sup>11</sup> Concerns have been expressed that “retailers are making large profits and vulnerable households are paying the highest prices”.<sup>12</sup> The Grattan Institute found that the profit margins of electricity retailers in Victoria are “much larger” than in other industries.<sup>13</sup> One study found that households in States that retained some price controls may be better off than those in Victoria.<sup>14</sup> In South Australia, deregulation has also seen high electricity prices and high rates of disconnections for failing to pay bills on time.<sup>15</sup> Indeed, it has recently been reported that Victoria and South Australia were the “... two worst states for retail costs”.<sup>16</sup> In New South Wales, there are concerns that some electricity retailers have been engaging in “price gouging”.<sup>17</sup> A more recent study of retail electricity price deregulation in Australia has confirmed that “... Once deregulation occurs, prices rise substantially”.<sup>18</sup> This is because, as Dr Roger Dargaville of the Melbourne Energy Institute has explained, “Once you have a deregulated electricity market, companies will be operating with profit margins in mind. In theory a free market operates more efficiently and should provide lower prices, but you lose control of the dynamics”.<sup>19</sup> In other places around the world where electricity price deregulation has occurred the experience has similarly been less than positive for consumers.<sup>20</sup> The Queensland Productivity Commission (QPC) has also conceded that “... there is no guarantee that all customers will benefit from price deregulation”.<sup>21</sup> Indeed, during its recent inquiry the QPC received considerable evidence about the potential adverse impact of electricity price deregulation on consumers.<sup>22</sup> Furthermore, the chief executive of the Australia Energy Council, the peak body for electricity retailers, has acknowledged that, “Competition cannot guarantee the lowest possible price for every customer at any point in time, nor can it guarantee that prices will not rise overall”.<sup>23</sup> The practical demonstration of this is that electricity prices are again going to increase as from 1 July 2017.<sup>24</sup> Yet, this is contrary to the clear expectation, indeed the promise, of deregulation that it would put “downward pressure” on electricity prices.<sup>25</sup>

<sup>11</sup> <<http://www.businessspectator.com.au/article/2015/7/8/energy-markets/how-consumers-pay-more-under-our-deregulated-retail-electricity>>;  
<<http://www.theage.com.au/comment/electricity-charges-for-some-victorian-households-up-to-800-more-than-they-need-to-be-20150319-1m2qtd.html>>;  
<<https://grattan.edu.au/news/electricity-charges-for-some-victorian-households-up-to-800-more-than-they-need-to-be/>>;  
<<http://www.brisbanetimes.com.au/business/sunday-explainer-why-is-electricity-so-expensive-20150925-gjvdrrj.html>>;  
<<http://www.smh.com.au/environment/energy-smart/triple-trouble-big-three-electricity-retailers-charging-twice-the-rate-of-act-20160815-gqsn2i.html>>;  
<<http://www.theaustralian.com.au/business/business-spectator/how-consumers-pay-more-under-our-deregulated-retail-electricity-market/news-story/7fa821677a8758d6a793d04042bba66>>  
<sup>12</sup> <<http://www.theage.com.au/victoria/households-being-lured-into-misleading-electricity-and-gas-deals-energy-watchdog-20170415-gvlgyw.html>>  
<sup>13</sup> Page 17, <<https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf>>  
<sup>14</sup> <<http://www.smh.com.au/business/energy-deregulation-no-benefit-to-power-consumers-study-finds-20140202-31v11.html>>  
<sup>15</sup> Page i,  
<[https://www.sacoss.org.au/sites/default/files/public/documents/Reports/140516\\_State%20of%20the%20South%20Australian%20Retail%20Energy%20Market%202013.pdf](https://www.sacoss.org.au/sites/default/files/public/documents/Reports/140516_State%20of%20the%20South%20Australian%20Retail%20Energy%20Market%202013.pdf)>;  
<<http://www.abc.net.au/news/2016-06-18/energy-australia-announces-price-hike-for-sa/7522616>>  
<sup>16</sup> <<http://www.abc.net.au/news/2016-12-20/which-state-is-paying-the-most-for-power/8133214>>  
<sup>17</sup> <<http://www.dailytelegraph.com.au/news/nsw/nsw-families-brace-for-electricity-price-shock/news-story/6c5c63b47d37c13d997b266882c74f6e>>  
<sup>18</sup> <<http://www.smh.com.au/environment/energy-smart/triple-trouble-big-three-electricity-retailers-charging-twice-the-rate-of-act-20160815-gqsn2i.html>>  
<sup>19</sup> <<http://www.news.com.au/finance/business/cold-hard-economic-reality-of-power-supply-in-australia/news-story/e9518d5f8532b812881ba0f21c7511e5>>  
<sup>20</sup> <<http://arena.org.au/a-world-gone-mad-marketisation-and-deregulation-of-electricity/>>  
<sup>21</sup> QPC, 2016, Final Report, Electricity Pricing Inquiry, p. 203  
<sup>22</sup> Ibid, pp. 202, 203, 204  
<sup>23</sup> <<http://www.brisbanetimes.com.au/federal-politics/political-news/energy-retailers-say-turnbull-inquiry-will-bust-pricegouging-myth-20170327-gv79lo.html>>  
<sup>24</sup> <<http://www.abc.net.au/news/2017-06-16/origin-follows-agl-in-announcing-energy-price-hike/8624348>>;  
<<http://www.abc.net.au/news/2017-06-09/energy-prices-set-to-jump-next-month/8605662>>;

Given this experience with retail electricity price deregulation it is not surprising that consumers are seeking greater protection and calls are increasingly being made for Governments across Australia to take remedial action.<sup>26</sup> For example, Victoria's Essential Services Commissioner recently suggested that "... *perhaps energy markets need some 'regulatory shock therapy'. Without a regulatory spur, the retail energy markets can soon settle into fairly cosy equilibrium once prices have been deregulated ... Such cosy arrangements are unlikely to be in the long-term interests of consumers*".<sup>27</sup> In Queensland, the State Government has taken steps to mitigate the adverse impact of electricity deregulation on "vulnerable consumers" living in South-East Queensland.<sup>28</sup> However, with some 64% of Australian households now experiencing some degree of financial stress,<sup>29</sup> electricity deregulation could readily be seen as having the potential to adversely impact not only vulnerable consumers but many other people as well.

The view of prominent economics commentator, Ross Gittins, is that, "*So whether [electricity] businesses are publicly or privately owned, the prices they charge have to be regulated to prevent them overcharging*".<sup>30</sup> Another expert, Professor Sharon Beder from the University of Wollongong, has examined the conditions leading to electricity price increases in Australia over recent years and concluded that, "... *Further privatisation or deregulation is therefore a solution likely to exacerbate the problem rather solve it*".<sup>31</sup> Therefore, the issue that needs to be addressed is not whether deregulation of the retail price of electricity has been beneficial for customers (because the evidence for this is moot), but whether an alternative model to deregulation may now be more appropriate, even necessary.

## Issue 2 – Market structure and nature of competition

The ACCC's Issues Paper states that "... *effective competition between retailers is essential to ensuring that customers are delivered positive outcomes in terms of price and service standards*" (p. 11). The implicit assumption in this statement is that competition and deregulation in the retail electricity market is the best way for ensuring beneficial outcomes for customers. Certainly, this is

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<<http://www.abc.net.au/news/2017-06-15/energyaustralia-electricity-price-hikes-across-country-after-agl/8621204>>

<sup>25</sup> E.g., <[http://www.resourcesandenergy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/580777/More-downward-pressure-on-energy-prices.pdf](http://www.resourcesandenergy.nsw.gov.au/__data/assets/pdf_file/0007/580777/More-downward-pressure-on-energy-prices.pdf)>;

<<http://www.theaustralian.com.au/business/business-spectator/sa-to-deregulate-power-prices-from-feb/news-story/da504924c049220ca34e1508c96236a8>>

<sup>26</sup> <<http://www.smh.com.au/business/push-to-reregulate-energy-retailing-gathers-pace-20170412-gvjtwj.html>>;

<<http://www.theage.com.au/victoria/households-being-lured-into-misleading-electricity-and-gas-deals-energy-watchdog-20170415-gvgyw.html>>;

<<http://www.smh.com.au/business/household-ripoffs-trigger-call-to-reregulate-electricity-20170312-guwzmz.html>>;

<<http://www.smh.com.au/business/energy/households-abandoning-the-grid-have-lost-faith-20170316-gv07mz.html>>;

<<http://www.abc.net.au/news/2017-03-14/sa-government-to-announce-power-intervention-strategy/8350878>>;

<<http://www.abc.net.au/news/2017-03-13/competition-in-energy-retailing-has-failed-grattan-institute/8349602>>;

<<http://www.smh.com.au/business/open-energy-markets-failing-households-20170205-gu65tk.html>>;

Courier Mail, 7 November 2016, *Electricity prices a shocker – Deregulation has left customers worse off*, p. 15;

Courier Mail, 28 November 2016, *Shock price for paying bills late*, p. 9

<sup>27</sup> <<http://www.smh.com.au/business/open-energy-markets-failing-households-20170205-gu65tk.html>>

<sup>28</sup> <<http://statements.qld.gov.au/Statement/2016/7/1/deregulation-brings-competitive-electricity-pricing-to-southeast-queensland>>;

<<http://statements.qld.gov.au/Statement/2016/7/11/palaszczuk-government-increases-funding-for-vulnerable-energy-consumer-education>>;

<<http://statements.qld.gov.au/Statement/2016/11/30/power-price-stability-key-focus-of-response-to-qpc-report>>;

<<http://statements.qld.gov.au/Statement/2017/6/20/reducing-cost-of-living-p pressures-for-vulnerable-consumers>>

<sup>29</sup> <<http://www.brisbanetimes.com.au/queensland/rising-power-bills-force-qld-families-to-switch-to-candles-cold-water-welfare-expert-20170620-gwulcd.html>>

<sup>30</sup> <<http://www.brisbanetimes.com.au/business/why-electricity-prices-continue-to-shock-people-20140613-3a2va.html>>

<sup>31</sup> Beder, S., *The Real Cause of Electricity Price Rises*, <<https://www.uow.edu.au/~sharonb/pricing.html>>

what the retail electricity sector would argue.<sup>32</sup> However, this assumption is questionable since not all “markets”, including electricity given that it is an essential service with no substitutes,<sup>33</sup> may be suitable to be opened to competition and deregulation. On this point the following passage is noted:

*In many cases we are forced into ‘markets’ where they can bring no discernible benefits, but only a great deal of hassle. We now have the farcical situation of ‘retail competition’ forcing us to choose between firms that have nothing to do with the physical task of generating or distributing electricity. Zealots for the market and for ‘competition’ fail to understand that competition itself involves costs, and that it is a means to an end, not an end in itself. As Bank of England Governor Mark Carney put it: ‘All ideologies are prone to extremes. Capitalism loses its sense of moderation when the belief in the power of the market enters the realm of faith. In the decades prior to the crisis, such radicalism came to dominate economic ideas and became a pattern of social behaviour’.*<sup>34</sup>

Furthermore, as noted previously, the actual practical experience of electricity deregulation and competition in Australia is far from what has been idealised. This is confirmed, for example, by the comments of the Prime Minister that were cited earlier. The Chairman of the Victorian Essential Services Commission has also said that “... *the energy market is rigged and the case for government intervention is mounting*”.<sup>35</sup> Accordingly, that there is a case, indeed a compelling need, for the retail electricity sector to be deregulated is yet to be substantiated let alone sustained.<sup>36</sup>

As well, the extent of actual (real) competition in the retail electricity sector in Australia is questionable given that there are only three predominant retailers (Origin, AGL and EnergyAustralia) which hold an estimated 90% of the market in Queensland, 91% in New South Wales, 79% in South Australia and 63% in Victoria.<sup>37</sup> This dominance of the retail electricity market by just three retailers is hardly conducive to efficient or effective competition let alone to incentivising the reduction of prices for consumers. This situation is indicative of a case of market failure which would justify an appropriate response from Government.

The Issues Paper asked whether there are impediments to competition between electricity retailers and what the barriers are to switching retailers (p. 12). One of the key arguments frequently made in favour of electricity price deregulation is that “downward pressure” is put on prices because consumers are said to be able to shop around and move between retailers. However, what has become increasingly apparent is that many consumers have been reluctant to switch.<sup>38</sup> During its recent inquiry into electricity prices the QPC also noted that “... *there could be a reasonably large*

<sup>32</sup> <<http://www.news.com.au/national/breaking-news/sa-energy-retailers-ripping-off-families/news-story/50d9dbd44c87bb6cdcd21ab2c61d01ce>>;

<<http://www.brisbanetimes.com.au/federal-politics/political-news/energy-retailers-say-turnbull-inquiry-will-bust-pricegouging-myth-20170327-gv79lo.html>>

<sup>33</sup> Note footnotes 7, 8 and 9

<sup>34</sup> McAuley, I. & Lyons, M., 2015, *Governomics: Can We Afford Small Government?*, Melbourne University Press, p. 60

<sup>35</sup> <<http://www.smh.com.au/business/push-to-reregulate-energy-retailing-gathers-pace-20170412-gvjtwj.html>>

<sup>36</sup> While I am aware of the historical reasons why National Competition Policy and deregulation of the retail electricity sector were first introduced in Australia, time has now moved on. The subsequent experience of retail electricity deregulation shows that it does not seem to be able to accommodate the contemporary needs of society let alone provide the solutions that were originally envisaged or promised. Deregulation is not a sacred object that it should be revered for its own sake. If it is not meeting its original aims, then something is amiss and it should be reformed or, if necessary, replaced with a more appropriate alternative.

<sup>37</sup> <<http://www.smh.com.au/business/open-energy-markets-failing-households-20170205-gu65tk.html>>;

The QPC also noted that the South-East Queensland retail electricity market is dominated by AGL and Origin Energy (QPC, 2016, Final Report, Electricity Pricing Inquiry, p. ix).

<sup>38</sup> <<http://www.brisbanetimes.com.au/queensland/queenslanders-reluctant-to-switch-electricity-providers-survey-20160218-gmy0i0.html>>;

<<http://www.news.com.au/finance/money/costs/aussies-can-save-hundreds-by-shopping-around-for-a-better-electricity-deal-but-many-arent-making-the-switch/news-story/7b625920f1f2b891fed023bec364b8fd>>

number of consumers who currently are not, and may never be, interested in participating actively in the electricity market".<sup>39</sup> The reasons why customers are reluctant to switch electricity retailers are many and varied. One is a lack of trust by consumers in retailers. In this regard a recent study of electricity consumers confirmed that there is a "... general wariness about the market and the sense that it is not working in [consumers'] interests".<sup>40</sup> Even those "... consumers who are switching – who are actively engaging in the market – are not reporting higher levels of satisfaction with value for money than those who are not".<sup>41</sup> This wariness was leading many consumers "... not to engage at all".<sup>42</sup> The QPC similarly reported that there are trust issues between consumers and retailers which can influence some customers not to switch.<sup>43</sup> The QPC also noted that low levels of consumer engagement in the electricity market mean reduced competitive pressure on retailers, leading to some customers paying more than they should.<sup>44</sup> Whatever the reasons for the reluctance to switch, the end result is that electricity retailers are less incentivised to drive down their prices. This consequently impedes the effectiveness of competition and results in less than optimal outcomes for consumers.<sup>45</sup>

One potential barrier to switching electricity retailers, as suggested by Energy Consumers Australia, is the complexity and difficulty of doing so.<sup>46</sup> Already, the complexity of offers and agreements is making it difficult and less attractive for many customers to engage with the electricity market, a point recognised by the Issues Paper (p. 13). The QPC has also acknowledged that, "*Too much choice or overly complex contracts can leave customers feeling confused and overwhelmed, which may make them more likely to disengage*".<sup>47</sup> Similarly, the Grattan Institute has noted that, "*Lower price deals are available, but most consumers find the market so complicated that they have given up trying to find them*".<sup>48</sup> Sometimes, for some customers, it may simply be a case of 'better to stay with the devil you know' because switching is seen as just too difficult, and onerous. When transaction costs are also factored in,<sup>49</sup> these could act as a further disincentive to switching retailers, particularly if any potential savings that could be made from switching are not perceived as significant and therefore 'not worth the effort'.

Not only is it the case that many customers face difficulty in comprehending the offers and contracts of electricity retailers, it is also axiomatic that retailers are generally driven by the desire to maximise their profits.<sup>50</sup> If customers being able to readily switch retailers means that retailers could lose their customers (and their profits) to other retailers, then what is the incentive for retailers to act against self-interest and make it easier for their customers to switch such as by making offers and contracts easier to understand? Any move to make it easier for customers in these respects will likely need to be initiated by an independent entity rather than waiting for retailers themselves to take this step.

<sup>39</sup> QPC, 2016, Final Report, Electricity Pricing Inquiry, p. 170

<sup>40</sup> <<http://www.smh.com.au/business/open-energy-markets-failing-households-20170205-gu65tk.html>>

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> QPC, 2016, Final Report, Electricity Pricing Inquiry, p. 173

<sup>44</sup> Ibid, pp. 169-170, 206-207

<sup>45</sup> <<http://www.smh.com.au/business/open-energy-markets-failing-households-20170205-gu65tk.html>>

<sup>46</sup> <<http://www.news.com.au/finance/money/costs/aussies-can-save-hundreds-by-shopping-around-for-a-better-electricity-deal-but-many-arent-making-the-switch/news-story/7b625920f1f2b891fed023bec364b8fd>>

<sup>47</sup> QPC, 2016, Final Report, Electricity Pricing Inquiry, p. 207

<sup>48</sup> Pages 3, 26, <<https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf>>

<sup>49</sup> Switching incurs a range of transaction costs for consumers "... who have to keep looking out for new introductory offers and making arrangements to change their suppliers" (Crouch, C. 2016, "The Paradoxes of Privatisation and Public Service Outsourcing" in *Rethinking Capitalism, Economics and Policy for Sustainable and Inclusive Growth*, M. Jacobs & M. Mazzucato eds, Wiley-Blackwell, p. 160).

<sup>50</sup> <<http://www.abc.net.au/news/2017-03-14/sa-government-to-announce-power-intervention-strategy/8350878>>

<<http://www.news.com.au/finance/business/cold-hard-economic-reality-of-power-supply-in-australia/news-story/e9518d5f8532b812881ba0f21c7511e5>>

If deregulation of the retail electricity market is to continue (although, as noted previously, the case in this regard is yet to be made), then impediments to competition and barriers to switching such as those outlined above need to be addressed as a priority. As it is currently situated, the reluctance of many consumers to switch electricity retailers – irrespective of the reasons – indicates a clear case of market failure and would require an appropriate response from Government. Customers should not be “blamed” for not switching.<sup>51</sup> The onus should be on electricity retailers to act in such a way that consumer confidence in the sector is engendered.

### Issue 3 – Customers and their interaction with the market

The ACCC’s Issues Paper invited comments about the ability of customers to understand and compare electricity offers, impediments to informed decision making, the ways that customer experience may impact on competitive outcomes, and reasons why customers do not consider switching or choose to remain with their existing electricity retailer (p. 14).

The Issues Paper states, *“The ability of customers to make informed choices about the contracts that they are entering into and the options available to them is essential to a functioning and competitive retail electricity market. In order for the competition benefits outlined above to be achieved, customers must be able to engage with the market to understand offers and choose the service that best suits their needs”* (p. 12).

This comment represents an idealised view of how a theoretically perfect retail electricity market should operate. If the retail electricity market in Australia had been operating like this then there would have been no need for the ACCC’s inquiry. Yet, as the Issues Paper also acknowledges, *“A number of recent papers have noted low customer understanding of retail electricity offers, including discounting and contract structure, low levels of customer engagement and trust and low levels of awareness of where to find information ...”* (p. 12). These are hardly characteristics of an efficiently operating market, indeed their presence would drastically impair market quality and effectiveness. Again, a case of market failure is apparent which would justify an appropriate response from Government.

Issues relating to trust, complexity of contracts and agreements, and low levels of customer participation in the electricity market have already been identified earlier in this submission as being impediments to retailer competition and barriers to customer switching. There are also other reasons why customers do not consider switching or choose to remain with their existing electricity retailer. Under the new era of electricity deregulation customers are frequently told that all they need to do is “shop around” to get the deal *“... that best suits their needs”* (Issues Paper p. 12). However, in shopping around what many are confronted with is a confusing array of offers and deals which can overwhelm them to the point that they end up by not making a choice at all. The Issues Paper notes that there are some 4300 generally available offers throughout the National Energy Market (p. 13). The problem with all this choice is that *“... when people are confronted with too much choice their search costs can be so high that they fail to make any purchase”*.<sup>52</sup> This point was also acknowledged by the QPC<sup>53</sup> and the Issues Paper itself which said, *“The number of offers available*

<sup>51</sup> The Chairman of the Victorian Essential Services Commission has expressed concern that, *“... electricity was the only market where customers were held responsible for making competition work, and were blamed for not shopping around enough ...”* (<<http://www.theage.com.au/victoria/households-being-lured-into-misleading-electricity-and-gas-deals-energy-watchdog-20170415-gvlgyw.html>>). That there is indeed an expectation in some quarters that consumers should bear the responsibility for making competition in the retail electricity market work is exemplified by the following statement: *“... consumers who do not participate in the market, particularly those who remain on the higher-priced standing offers, can expect to pay more than those customers who shop around for a better deal”* (QPC, 2016, Final Report, Electricity Pricing Inquiry, p. 203).

<sup>52</sup> McAuley, I. & Lyons, M., 2015, *Governomics: Can We Afford Small Government?*, Melbourne University Press, pp. 53-54

<sup>53</sup> QPC, 2016, Final Report, Electricity Pricing Inquiry, p. 207

can make it difficult for customers to identify and compare all available offers and make a decision about their electricity service” (p. 13). Even though there may be dedicated Government websites to help customers compare offers, the Issues Paper acknowledged that “... awareness and access to information about electricity offers alone does not enable customers to make fully informed decisions” (p. 13). Not only is there too much choice, but as the St Vincent de Paul Society has warned, “... there’s a lot of bad offers out there. You can save \$300-\$400 a year [by shopping around for a better deal] but you could go onto a worse deal if you’re not careful”.<sup>54</sup> Similarly, the Grattan Institute has noted how “... consumers who think that they are getting a good deal find that, after a year, they are on one of the poorest deals in the market”.<sup>55</sup> For many customers, the reality of switching suppliers just to find a bargain is that they end up paying more.<sup>56</sup> For some, the risk (and cost) in switching is simply too great. The retail electricity sector is yet to demonstrate that it comprehends the immensity and significance of these issues to consumers.

The Issues Paper also acknowledged the complexity and marketing of offers, particularly the use of discounts, which may make it difficult for customers to understand which offer best suits their needs (p. 13). With respect to discounts, the concerns expressed by the Chairman of the Victorian Essential Services Commission that many discounts are not genuine and are not in the long-term interests of consumers,<sup>57</sup> and the findings of the Grattan Institute that the way retailers advertise their discounts “is confusing and possibly misleading ... even consumers who take advantage of discounts can end up paying much higher prices when their contract expires”,<sup>58</sup> are particularly disconcerting. Such concerns highlight the potential need for the retail electricity sector to be subject to stronger transparency and accountability requirements than may currently be the case. The view of the Grattan Institute, for example, is that Government should require “... retailers to clarify exactly how much the household will pay under supposedly ‘discounted’ offers and when the discount will expire”.<sup>59</sup> The Grattan Institute has also proposed that retailers should be required to report the data behind their high profit margins to an independent agency.<sup>60</sup> If deregulation of the retail electricity market is to continue (again, the case in this regard is yet to be conclusively established), then in order to ensure consumer and public confidence in the sector it is essential that issues relating to transparency and accountability be addressed as a high priority.

I trust the above comments and observations will assist the ACCC in its inquiry.

Yours sincerely

Don Willis

<sup>54</sup> <<http://www.smh.com.au/business/energy/energy-savings-emerge-for-the-savvy-queensland-households-20160728-gqfsh7.html>>

<sup>55</sup> Pages 27-28, 32, <<https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf>>

<sup>56</sup> McAuley, I. & Lyons, M., 2015, *Governomics: Can We Afford Small Government?*, Melbourne University Press, p. 167

<sup>57</sup> <<http://www.smh.com.au/business/push-to-reregulate-energy-retailing-gathers-pace-20170412-gvjtwj.html>>;

<<http://www.smh.com.au/business/household-ripoffs-trigger-call-to-reregulate-electricity-20170312-guwmze.html>>;

<<http://www.theage.com.au/victoria/households-being-lured-into-misleading-electricity-and-gas-deals-energy-watchdog-20170415-gvlgyw.html>>

<sup>58</sup> <<http://www.smh.com.au/business/household-ripoffs-trigger-call-to-reregulate-electricity-20170312-guwmze.html>>;

Page 3, <<https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf>>

<sup>59</sup> <<http://www.smh.com.au/business/household-ripoffs-trigger-call-to-reregulate-electricity-20170312-guwmze.html>>

<sup>60</sup> <<http://www.abc.net.au/news/2017-03-13/competition-in-energy-retailing-has-failed-grattan-institute/8349602>>;

Page 3, <<https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf>>