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16 November 2017

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

Dear Sir/Madam

**Re Retail Electricity Pricing Inquiry – Preliminary Report – September 2017**

I write in relation to the above report<sup>1</sup> by the Australian Competition and Consumer Commission (ACCC) and provide the following comments and observations in response. I also note that many of the points I made in my submission<sup>2</sup> on the ACCC's earlier issues paper are still pertinent with respect to the matters raised in the preliminary report.

I note the following points from the ACCC's report:

- It acknowledges that there is a severe electricity affordability problem across the National Electricity Market and that the price increases over the past ten years are putting Australian businesses and consumers under unacceptable pressure (p. 5).
- It acknowledges that retail electricity prices have significantly increased in the past decade, and that many households cannot absorb these increases (pp. 5, 13). Given that there are now many people experiencing financial stress this is a situation which does not only affect "vulnerable customers", although their plight still cannot be ignored (pp. 13, 144).
- It acknowledges that there is insufficient competition in the generation and retail markets, which both raises prices and increases barriers to entry (pp. 5, 151).
- It acknowledges that while retail price deregulation of electricity has benefited some, it has hurt others (pp. 5, 98, 151).
- It suggests the presence of a significant degree of information asymmetry such as indicated by consumers not having complete understanding about electricity offers which is then taken advantage of by some retailers (pp. 8, 126, 154).
- It claims that an effective retail market is founded on engaged consumers who have the ability to consider available options and shop around, thereby driving competition between retailers (p. 126). However, this ideal state is offset by the reality that consumers have no ability to exit the electricity market (pp. 5, 151). As well, electricity is essential and people cannot live without it (pp. 10, 121). The essentiality of electricity and the inability to exit the market means that consumers are captive to electricity retailers because they need the service and cannot seek an alternative.<sup>3</sup> The Grattan Institute has similarly observed that electricity "... is an essential service without substitutes".<sup>4</sup> The Productivity Commission recently noted that "consumers lack the power to provide market discipline".<sup>5</sup> One key reason for this is that an individual consumer on their own, even if they were to switch retailers, would still not have sufficient power to force the retailer to lower their prices

<sup>1</sup> <<https://www.accc.gov.au/system/files/Retail%20Electricity%20Inquiry%20-%20Preliminary%20report%20-%202013%20November%202017.pdf>>

<sup>2</sup> <<https://www.accc.gov.au/system/files/Don%20Willis.pdf>>

<sup>3</sup> For a discussion of the meaning of essentiality see <<https://www.esc.vic.gov.au/wp-content/uploads/esc/fc/fc947897-7d4f-4772-97c9-959e3baad0db.pdf>> (pp. 35, 36)

<sup>4</sup> <<https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf>> (p. 3)

<sup>5</sup> <<http://www.pc.gov.au/inquiries/completed/productivity-review/report/productivity-review.pdf>> (p. 168)

simply by taking that action. Such power could only be possible through organised and targeted collective action, but in the main consumers do not operate this way (as also noted by the ACCC [p. 125]). Therefore, placing the onus on consumers to “shop around” unjustifiably raises expectations about their ability to “drive competition between retailers” and does little to change fundamental retailer behaviour. Also, as pointed out in my submission to the ACCC’s issues paper, the reality for many customers who switch suppliers just to find a bargain is that they end up by paying more.<sup>6</sup>

- It acknowledges that some electricity retailers have not always acted in the interests of consumers (pp. 128, 132, 167ff). It also acknowledges that retailers may use consumer biases to their own advantage in the way that they market and design offers (p. 126).
- It acknowledges that a full deregulated system has not served to benefit all consumers (p. 101, 102, 151).
- It acknowledges that the electricity market is “exceptionally complex” (pp. 5, 151) and that it includes features which may reduce incentives for consumers to incur search costs even where it is economically rational to do so (p. 124). Again, such consumer behaviour only benefits retailers because it leads to some consumers not switching their retailers (pp. 125, 126). This is despite the fact that many consumers lack confidence that the market is working in their interests (p. 125).
- It acknowledges that competition has suffered due to retailer behaviour and dominance of the market in some cases by only a small number of competitors (pp. 7, 96, 97, 100, 101, 105, 132).
- It acknowledges that over recent years increases in residential bills were driven by factors including retailer operating costs and retailer margins (pp. 6, 35, 100). The point I made in my submission to the issues paper was that most people would fail to see why any essential service for which there is no substitute should be marketised.
- It claims that the introduction of retail competition means that most residential and small business can now choose from “dozens of retail offers” (p. 121). Paradoxically, it also acknowledges that for many the consumer experience of electricity deregulation has been difficulty in understanding and comparing all the offers (pp. 8, 126). As pointed out in my submission to the issues paper, too much choice can sometimes result in some people not making any choice at all. This is another reason why some consumers do not switch retailers which, of course, advantages the retailers.
- It acknowledges that retailer discounts are a major issue of concern for consumers (pp. 128, 130). As noted in my submission to the ACCC’s issues paper, “... *even consumers who take advantage of discounts can end up paying much higher prices when their contract expires*”.<sup>7</sup>

I also note some relevant comments from a recent Productivity Commission report<sup>8</sup> including:

- Governments play a major role in making the rules that are essential to establish confidence and thus make markets work well (p. 155).
- Consumers lack the power to provide market discipline. A regulatory system that empowers consumers, through information and effective complaint and redress systems, helps bring market discipline to bear on providers (p. 168).
- While improving the information available to consumers enhances their ability to impose market discipline, these mechanisms work best where there is a strong consumer safety net in place (p. 169).

<sup>6</sup> McAuley, I. & Lyons, M., 2015, *Governomics: Can We Afford Small Government?*, Melbourne University Press, p. 167

<sup>7</sup> <<https://grattan.edu.au/wp-content/uploads/2017/03/Price-shock-is-the-retail-market-failing-consumers.pdf>> (p. 3)

<sup>8</sup> <<http://www.pc.gov.au/inquiries/completed/productivity-review/report/productivity-review.pdf>>

Concluding observations based on the above:

- The retail electricity market in Australia has failed consumers. It represents a clear case of market failure.
- The national competition policy (NCP) reforms of the 1990s led to the deregulation of the retail electricity sector. However, NCP is not a sacred object or icon that it should be venerated and pursued regardless of cost and circumstance, neither should it be exempt from being reviewed, revamped or even replaced with a more suitable model if contemporary conditions so require.
- Even if the deregulated model remained, at the very least government has a key role to play in ensuring that the retail electricity market operates more fairly, transparently and accountably for consumers than is currently the case.
- Given the issues and concerns identified and acknowledged by the ACCC's report, taking a "business as usual" approach with respect to the retail electricity sector is not a viable option. To ensure that public and consumer confidence is not jeopardised, major change and reform to the current operating model for the sector is essential. It is the role of government to step up to the challenge.

I trust that highlighting the above points will assist the ACCC in identifying and targeting the particular areas for change and reform that are needed to the retail electricity sector in Australia.

Yours sincerely

Don Willis