

25 September 2019

Ms Susie Black
Director – Coordination and Strategy
Merger & Adjudication Review Division
Level 17 Casselden Place
2 Lonsdale Street, Melbourne 3000

Sent by email to: [REDACTED]

Dear Ms Black

New Energy Tech Consumer Code - AA1000439

The Behind The Meter Working group (the BTMWG), on behalf of the Applicants, has considered the issues raised by the submissions following the ACCC's draft determination on 1 August 2019 and the Pre-Decision Conference held on 9 September 2019.

We write to provide further information to the ACCC on several matters including:

1. Clause 24 – Payment and finance
2. Clause 4 – Unsolicited sales
3. Appeal for applicants
4. Appointment of the Chair of the Industry Council

We provide the following response to these matters, and **attach** an amended New Energy Tech Consumer Code, in change marked and final versions.

Clause 24 – Payment and Finance

As stated in our previous submission dated 6 September 2019, the BTMWG understands Buy Now Pay Later (BNPL) providers are intending to develop a code of conduct that would enhance the protections provided to consumers utilising these finance products. The BTMWG support this approach and have amended the previous clause 24(b) to permit products regulated under this approach to be utilised by signatories.

It is our understanding that a code of this nature could be approved by the Australian Securities and Investment Commission, under its Regulatory Guide 183. We note that a number of stakeholders have submitted that ASIC approval may be challenging, or delay implementation of such a code. The BTMWG note these concerns, but consider that if practicable, obtaining regulator approval ensures a thorough and transparent consultation process, as was the case in the development of the NETCC.

The Administrator, in consultation with the Industry Council will be required to ensure any code developed provides substantively equivalent protections to those provided in the NCCPA. Approval by a regulator will assist the Administrator in identifying whether or not any code will deliver positive consumer outcomes, consistent with the intent of the NETCC.

Clause 4 – Unsolicited sales

The BTMWG has considered further submissions on reducing consumer harm with unsolicited sales practices and propose to introduce the following commitments for signatories to NETCC.

We consider that signatories wishing to engage in unsolicited sales should have processes and procedures in place to ensure positive outcomes for consumers. Additional wording has been included to ensure that the Code Administrator is able to conduct reviews on signatories' processes

and policies to allow further assessment and consideration of any anticipated harm from direct marketing.

Additionally, we propose that signatories should not be able to offer finance products during unsolicited sales, unless they themselves hold an Australian Financial Services Licence. This ensures competitive neutrality, given the expanded clause 24(b). Without this additional limitation, Signatories would have only been able to offer products not regulated by the NCCPA during unsolicited sales. This would result in an unacceptable outcome and should be avoided.

3. Appeal for applicants

The BTMWG supports a right of appeal for applicants to the NETCC and as such, propose an additional power be provided to the panel to hear appeals from applicants refused by the Administrator.

4. Appointment of the Chair of the Industry Council

The Stakeholder Panel, consisting of Chief Executives of the participants of the BTMWG, formally endorsed Clare Petre as the successful candidate for the position of Chair of the Industry Council. Clare Petre has been appointed as the Interim Chair for the NETCC for a period of 12 months. In appointing the Interim Chair, the Working Group sought a candidate with the following capabilities:

- Person of high standing and with an extensive understanding of consumer protection issues
- Capable of reflecting the viewpoints and concerns of consumers
- Expertise in consumer affairs and the confidence of consumers, consumer organisations, industry and other key stakeholders
- Supporter of strong governance frameworks
- Knowledge of self-regulatory frameworks
- Familiarity with industry and the energy sector
- Chairing, facilitation and negotiation skills

We expect the first roles of the interim chair will be to establish the Industry Council and will determine and guide proper process for the overall implementation of the NETCC.

Yours sincerely



Kane Thornton
Chief Executive
Sent on behalf of the Applicants