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Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Sent electronically to adjudication@accc.gov.au

Attention: Susie Black

Final Submission on the New Energy Tech Consumer Code [AA1000439]

Brighte Capital (**Brighte**) encloses its final submission to the Australian Competition and Consumer Commission (**ACCC**) in relation to its Draft Determination on the proposed New Energy Tech Consumer Code (**NETCC**).

Brighte thanks the ACCC for the opportunity to participate in the Pre-Decision Conference (**PDC**) on Monday 9 September 2019 and to make its final submission.

Brighte's submission briefly summarises why it is both feasible and desirable to modify the NETCC to permit signatories to offer lawful buy now pay later (**BNPL**) arrangements to consumers.

Brighte submits that NET suppliers who wish to become a signatory to the NETCC should have the ability to work with ethical BNPL providers.

Brighte is confident that the BNPL industry code that is currently under development will deliver substantively equivalent consumer protections to those contained in the National Consumer Credit Protection Act (2009) (Cth) (**NCCPA**).

Please do not hesitate to contact me, or Ann Devine on [REDACTED] should you wish to do so.

Yours sincerely,



Katherine McConnell

CEO and Founder

AA1000439 – New Energy Tech Consumer Code – Final Submission

NEW ENERGY TECH CONSUMER CODE

Brighte Capital Pty Ltd (**Brighte**) welcomes the opportunity to make a final submission to the Australian Competition and Consumer Commission (**ACCC**) in relation to its Draft Determination to authorise the New Energy Tech Consumer Code (**Consumer Code**) for a period of five years.

1. Brighte supports the development of a voluntary industry code to improve practices in the new energy technology (**NET**) sector. Brighte agrees that encouraging the growth of NET products should not come at the expense of consumers, particularly vulnerable customers or customers experiencing hardship.
2. However, Brighte's concern has been that Clause 24 of the Consumer Code, as currently proposed, would prevent NETCC signatories from enabling their customers to choose the product that they think is the most effective, convenient and appropriate for their situation.

Why it is important not to restrict access to BNPL products

3. Brighte submits that it is important not to restrict access to BNPL products by effectively banning signatories to the NETCC from using them. This is an unnecessary measure that would deprive consumers of a popular and valuable alternative to other consumer finance and credit products.
4. In Brighte's view, the NETCC should facilitate the ongoing growth and uptake of NET products, particularly solar and battery energy storage systems, by promoting fair competition between NET providers.
5. Removing BNPL products from the NET market would result in:
 - (a) some lower cost deferred payment options being eliminated from the market;
 - (b) less innovation in deferred payment, as NCCPA exemptions exist to allow room for innovation (as demonstrated by the development of BNPL products);
 - (c) potentially some customers being unable (or unwilling) to access deferred payment options because the alternatives lack the valuable features of BNPL products; and
 - (d) less competition in the NET and finance sectors.

BNPL products are adequately regulated

6. BNPL products are subject to extensive regulation under the Australian Securities and Investments Commission Act 2001 (Cth), the Australian Consumer Law (ACL) and are subject to the Australian Securities and Investments Commission's (ASIC's) new product intervention powers, including those coming into effect in April 2021. These consumer protections are similar to those under the National Consumer Credit Protection Act 2009 (Cth) (NCCPA) and the National Credit Code (NCC) and provide suppliers and consumers with an avenue to hold BNPL providers to account.
7. Brighte is confident that the current regulatory regime and the BNPL industry code, that is currently being developed by ethical BNPL providers, will provide adequate and similar consumer protections as those provided by the NCCPA and NCC.

BNPL products provide significant benefits to consumers

8. BNPL products are a popular financing option, particularly within the NET sector. There has been increasing uptake of these services and vigorous competition in that market.
9. Brighte's strong success as a young finance business is evidence of the huge consumer demand for BNPL products as a popular enabler of investment in the new energy tech industry. Flexigroup and Brighte combined have financed more than 200,000 solar installations. The availability of the BNPL products has brought forward the benefits to these consumers that accrue from switching to energy efficient, renewable-fuel electricity systems.
10. BNPL products have been very important in facilitating the growth of the solar industry by giving consumers a choice in the type of finance they wish to use to invest in solar products.
11. BNPL products offer significant benefits to consumers in the NET sector. These include
 - (a) enabling consumers to invest in high-value goods that deliver substantial savings on energy bills;
 - (b) offering a cost-effective source of finance that delivers substantial savings in comparison to the upfront cost of purchasing NET products;
 - (c) providing consumers with improved choice and access to financial options that are convenient and easy to use;
 - (d) providing consumers with a credit contract that contains transparent, easy to understand repayments expressed in dollar figures; and
 - (e) low fees and charges.

Changes proposed by the Behind the Meter Working Group

12. Brighte welcomes the approach to the Payment and Finance Section, proposed by the BTMWG contained in the Applicants' submission to the ACCC on 6 September 2019.
13. Brighte notes that the BTMWG's intent was not to exclude BNPL products, that are exempt from the NCCPA requirements, by type. Rather, it was to ensure that consumers receive adequate protections when entering into finance arrangements with NETCC signatories.
14. Brighte understands that the Australian Finance Industry Association (**AFIA**) is making a submission to the ACCC about the BNPL industry code. Brighte is a member of AFIA and supports its position on the code.
15. Brighte is confident that the BNPL industry code that is currently being developed by Brighte, FlexiGroup and other providers of BNPL products, will deliver substantively equivalent consumer protections to those considered by the NCCPA, particularly in relation to the assessment of a consumer's financial circumstances, dispute resolution and hardship management.
16. Given the code development process is currently underway but will not be finalised by the time of the ACCC's final determination in October 2019, Brighte requests that the Applicants and the ACCC give consideration to including interim arrangements to enable NETCC signatories to continue to offer BNPL arrangements provided by members of the BNPL industry code working group, such as Brighte and FlexiGroup.

CONCLUSION

17. In summary, NETCC signatories should have the ability to work with ethical BNPL providers, if they wish to do so.
18. Brighte submits that given the existing regulatory protections, combined with a requirement for a provider offering BNPL payment arrangements to be a signatory to an industry code, NETCC signatories should be able to offer BNPL products provided by ethical BNPL providers like Brighte.
19. Therefore, it is both feasible and desirable to modify the NETCC to permit signatories to offer lawful BNPL arrangements to consumers.
20. Brighte thanks the ACCC for considering this, and its previous submissions.