

4 October 2019

BY EMAIL

Australian Competition and Consumer Commission
23 Marcus Street
CANBERRA ACT 2601

Attn: Susie Black

By email: adjudication@acc.gov.au

Dear Ms Black

RE: AA1000439 – New Energy Tech Consumer Code – RateSetter Submission

RateSetter Australia RE Limited (**RateSetter**) is pleased to make a further submission in relation to the proposed New Energy Tech Consumer Code (**NETCC**). This submission is to be read in conjunction with our submission to the ACCC in relation to the NETCC dated 23 August 2019.

As previously communicated, RateSetter is Australia's largest provider of regulated consumer credit for the purpose of funding solar and other renewable energy products. RateSetter has facilitated over \$45 million in consumer loans for the purchase of clean energy equipment such as solar panels and batteries. In providing this finance, RateSetter has partnered with ~1,000 accredited merchants and installers.

RateSetter is additionally the exclusive administrator of the Home Battery Scheme, a scheme operated by the Government of South Australia and supported by the Federal Government's Clean Energy Finance Corporation to provide subsidies and finance to ~40,000 South Australian households to facilitate the purchase of home battery storage systems. RateSetter makes this submission in its own capacity and not on behalf of the Government of South Australia nor the Clean Energy Finance Corporation.

RateSetter holds Australian financial service licence (**AFSL**) number 449176 and Australian credit licence (**ACL**) number 449176 and is the responsible entity of the RateSetter Lending Platform (ARSN 169 500 449). All finance offered to consumers by RateSetter for the purchase of renewable energy systems is regulated by the National Consumer Credit Protection Act (**NCCPA**) and National Credit Code (**NCC**).

We wish to communicate several important further considerations to the ACCC:

'Buy-now-pay-later' is not the same as 'interest-free' finance

1. It is important to distinguish buy-now pay-later (**BNPL**) from so-called "interest-free" finance offered to consumers in the renewable energy industry:
 - a. BNPL is generally considered to represent short term finance offerings (typically 6 weeks) for low value goods (typically under \$600) where the merchant is prepared to absorb the cost charged by the BNPL finance provider (typically 3-5% of the good's price). This is very clearly a payment solution for the consumer;
 - b. Unregulated so-called "interest-free" finance offerings in the renewable energy industry are for longer terms (typically 5 or 7 years) for higher value systems (typically around \$8,000) where the merchant is unable to absorb the finance costs charged by the finance provider (charged as a merchant fee) so is forced to inflate the price of the good when purchased

with such a finance arrangement. This is very clearly a longer-term credit offering for the consumer.

2. Market surveillance activities undertaken by us and by other regulated lenders shows that for so-called “interest free” finance, the retail cash price is typically inflated by ~25% to pay for the financiers costs of providing credit. This cost of credit and related price inflation is an *intrinsic aspect of so-called “interest-free” credit*. Put simply, where there is interest-free finance that is accompanied by a merchant fee charged by the financier, there will always be price inflation, because merchants have no other way to pay for the cost of finance except to pass it on to consumers. **If ACCC does authorise the proposed revised draft code that permits so-called “interest free” finance, it would essentially ensure that illegal, opaque and misleading charging for credit through price inflation would continue for consumers. We do not believe that this is something that consumers, industry or the ACCC wish as an outcome.**
3. ASIC, in its recent *Report 600: Review of buy now pay later arrangements*, specifically notes at paragraphs 34 to 38, that these two different segments of the BNPL/interest-free market exist. Submissions made to the ACCC by other parties in relation to the NETCC have quoted many comments made by ASIC in this report in support of their statements. However, many of the comments identified do not relate to “interest-free” finance, but really to the very different small amount BNPL payment type arrangements.
4. Further, ASIC’s report notes that in relation to so-called “interest-free” finance, there is evidence that price inflation does occur, and that this may be misleading and deceptive, and, where the inflation relates to a cost of credit, render so-called “interest-free” finance subject to the NCCPA. Given this, it is possible that many of the so-called “interest free” arrangements previously entered into with customers (or are proposed to be entered into after the authorisation of the amended code) are subject to the NCCPA, but do not comply with that act’s requirements. This gives rise to significant legal risk for consumers, vendors and financiers. The ACCC should protect against this risk and not allow for so-called “interest free” products that may be regulated by the NCCPA but fail to comply with the related requirements.

A BNPL code is unlikely to provide sufficient protections to consumers for NET purchases

1. We understand that certain providers of unregulated so-called “interest free” finance to the renewable energy industry are seeking to have their finance offerings legitimised by, firstly seeking to have it fall under the umbrella of BNPL finance, and secondly seeking to have a BNPL self-regulation code established. We support the concept of a BNPL code, however, we do not believe that such a code should apply to the two very different offerings – one a payment solution and the other a longer term credit offering coupled with price inflation – as outlined above.
2. Finance companies that have been offering unregulated finance offerings to renewable energy consumers have been claiming that the BNPL self-regulation code that they seeking to have established, approved by ASIC and apply under the NETCC would provide an equivalence of regulation and the same protections to consumers as the NCCPA. The reality is such a code will not provide an equivalence of regulation nor the same protections to consumers. In this regard, we would highlight:
 - a. The key terms of the proposed BNPL code disclosed in NETCC submissions made to the ACCC do not include the same standards of disclosure and transparency for consumers as the NCCPA, either in form or in substance. Consumers currently utilising so-called “interest free” finance offerings where coupled with price inflation do not provide transparency to consumers, and the proposed BNPL code does not sufficiently address this issue and certainly does not provide equivalence with the NCCPA. The consequences

of this shortfall are significant. It is well understood that price and cost transparency is essential for true competition to be fostered in any industry, and such, the existence of the BNPL code in the renewable energy industry could only be detrimental to the level of competition in the industry and detrimental to consumers;

- b. The key terms of the proposed BNPL code disclosed in NETCC submissions made to the ACCC do not include any requirements to comply with the same standard of responsible lending laws or regulations as in the NCCPA, requiring only instead that the financier “Ensure the appropriate consideration of a consumer’s personal financial situations before credit is extended” – a substantially lower standard than that in the NCCPA. Consequently, any finance provided to consumers under this code has a much greater propensity to result in a consumer falling into financial hardship and/or suffering harm than any regulated finance provided under the NCCPA;
- c. The key terms of the proposed BNPL code disclosed in NETCC submissions made to the ACCC do not include any requirement that there be no price inflation at the point-of-sale to cover the cost of the finance provided. We believe it is critical that irrespective of the form of finance offered, consumers seeking to purchase renewable energy equipment must be offered a single price, as they would be in any other industry, so they can effectively make comparisons.

Impact on competition and innovation

1. Finance companies that have been facilitating unregulated finance offerings to consumers have been claiming that restricting finance offerings to NCCP regulated finance would reduce innovation in the renewable energy industry. We would note:
 - a. Creating a finance product that pretends not to charge customers for credit and so sits outside the existing credit regulations is not innovation, it is regulatory arbitrage. We and other regulated finance providers are not aware of any other real innovation that BNPL providers have introduced to the industry over recent years. However, regulated finance providers have been able to introduce a number of significant and pro-consumer innovations. For example, RateSetter was the first lender in the industry to allow consumers to gain a personalised interest rate quote, and to allow consumers to gain such a quote without impacting their credit score. This has helped consumers shop around for the best finance deal;
 - b. Even if so-called “interest free” finance is innovation, it is innovation that comes at a cost to consumers. Just as we would not say that designing a car that is extremely fast but fails to meet all safety and road standards is valuable innovation for consumers, so too do we think that any innovation provided by so-called “interest free” financiers cannot be valuable innovation. RateSetter believes that the ACCC should not encourage innovation that acts against consumers best interests.
2. Certain finance companies active in the renewable energy industry that have been promoting the BNPL code have claimed that allowing finance to be provided to consumers outside the NCCPA will increase competition amongst finance providers. This cannot be true, as finance offerings provided by companies operating under the proposed BNPL code would not be directly comparable to finance provided under the NCCPA. Both vendors and consumers would be unable to contrast and compare offerings, and accordingly, competition could only be reduced
3. There is ample competition already between providers of regulated finance to the renewable energy industry, with numerous companies focused specifically on the industry, and all financiers implicitly

also being in competition with mortgage providers, given most homeowners also have the ability to draw on their mortgage to cover the cost of home improvements. If all companies providing finance to the industry were forced to compete on same grounds, rather than regulatory arbitrage conferring an advantage on some providers who elect not to comply with the law, then the level of competition would only increase.

If you wish to discuss any of the submissions made in this letter, please feel free to contact me on

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Yours truly

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Ben Milsom
Director
RateSetter Australia RE Limited