23 August 2019

BY EMAIL

Australian Competition and Consumer Commission
23 Marcus Street
CANBERRA ACT 2601

Attn: Susie Black

By email: adjudication@accc.gov.au

Dear Ms Black

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

RateSetter Australia RE Limited (**RateSetter**) is pleased to make a submission in relation to the draft determination issued by the ACCC on 1 August 2019 and the proposed New Energy Tech Consumer Code (**NETCC**).

RateSetter has not previously made a submission to the ACCC regarding the NETCC but is an interested party in our capacity as Australia's largest provider of regulated consumer credit for the purpose of funding solar and other renewable energy products. Since our launch in 2014, 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 over 550 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). Finance facilitated by RateSetter for renewable energy purposes are regulated by the National Consumer Credit Protection Act (**NCCPA**) and National Credit Code (**NCC**).

Improving consumer protections

1. RateSetter strongly supports the ACCC's draft determination, and in particular the proposed section 24 which provides that where a signatory to the NETCC is to offer New Energy Tech to a residential consumer with a deferred payment arrangement, and this arrangement includes an interest component, additional fees or an increased price, the signatory will ensure that:
    a) this payment arrangement is offered through a credit provider licenced under the NCCPA; and
    b) this payment arrangement is regulated by the NCCPA and the NCC

2. We agree with the ACCC that the section 24 requirement, if authorised, would, by reducing or excluding the use of unregulated financing for New Energy Tech, significantly improve consumer welfare. RateSetter has observed, and continues to observe, significant harm caused to consumers arising from unsuitable and/or unregulated finance arrangements for New Energy Tech.

3. In submissions to the ACCC in relation to the NETCC, RateSetter notes that several providers of 'interest free' finance for the purchase of New Energy Tech state that alternative regulations (for example, the ASIC Act, the Australian Consumer Law, product intervention powers, and self-regulation) provide equivalent protections to consumers to those under the NCCPA. RateSetter disagrees with this characterisation and notes that the 'alternative regulations' cited do not provide for a number of important protections available under the NCCPA, including, but not limited to:

    a) transparency of costs via prescribed disclosures which under the NCCPA give consumers clear, standardised information relating to the costs of credit, helping them make an informed and balanced decision relating to their investment in New Energy Tech;

    b) responsible lending obligations which prohibit NCCPA regulated financers from extending credit to consumers which may put them at risk of suffering substantial financial hardship;

    c) mandatory dispute resolution scheme membership, giving free and independent external dispute resolution (EDR) schemes to consumers;

    d) hardship variation requirements to provide payment arrangements to consumers who are suffering temporary financial hardship; and

    e) loan enforcement requirements which mandate specific notices and timeframes to ensure consumers who have defaulted under a loan have an opportunity to put their account in good standing and avoid potentially disruptive and harmful enforcement proceedings.

4. RateSetter also has concerns that even where the ASIC Act and the Australian Consumer Law provide some notional protection for consumers, the absence of a primary regulator charged with their enforcement for the financing of New Energy Tech has led to poor practices and consumer harm. For example, RateSetter has raised with several regulators (including the ACCC via email to Ms Leah Won on 5 March 2019) its observations of price inflation occurring where New Energy Tech is purchased using 'interest free' finance. Whilst RateSetter considers that this practice is illegal and harmful to consumers, no prosecution or enforcement has yet to commenced by a regulator[1].

5. Further, while the recently introduced product intervention powers could be used by ASIC to regulate so-called "interest free" finance offerings, no intervention power has been exercised to date in respect of these offerings, nor has any actual intervention been formally proposed by ASIC. Should these powers be utilised in future to extend the consumer protections in the NCCPA to unregulated providers, it is always open for the Applicants to revise the NETCC to allow for unregulated products subject to an intervention power to be facilitated by code signatories.

6. RateSetter recognises that some so-called "interest free" finance providers are members of EDR schemes provide a form of dispute resolution for consumers. However, RateSetter notes that:

    a) membership for unregulated providers is voluntary and may be withdrawn at any time, potentially leaving existing and future customers without dispute resolution mechanisms on which they have relied; and

    b) the scope of an EDR scheme to assist consumers of so-called "interest free" finance is very limited, as without the application of the NCCPA, consumers have narrow grounds on which

[1]See RateSetter's public comments in relation to this issue at: https://www.theaustralian.com.au/business/financial-services/interestfree-rorts-need-regulating/news-story/88321571adbbc2acdc8efc3f4e01528a

they can make a complaint regarding an “interest free” finance provider, being the contractual terms of any finance agreement and some aspects of general consumer law.

Availability of credit

7. RateSetter disagrees with submissions relating to the draft code that section 24 requirements will significantly limit the availability of credit for consumers, potentially harming consumers and competition.

8. Given the commercial incentives operating on existing providers of regulated finance and the competitive market in which they operate, RateSetter does not expect a significant decrease in the availability of finance for consumers following the introduction of the NETCC. As an example, RateSetter has significant funding available to provide finance to consumers for the purchase of New Energy Tech and expects to grow its regulated lending activities significantly in the next 24 months.

9. In addition to the existing supply of regulated finance from providers such as RateSetter, existing providers or new entrants may also choose to become regulated under the NCCPA, further increasingly supply. This continued availability of finance means that the adoption of the NETCC is unlikely to cause significant harm to the New Energy Tech industry and its competitiveness.

10. Importantly, RateSetter expects that any reduction in the provision of credit following the authorisation of the NETCC would only affect those consumers who would not be eligible to borrow under the NCCPA, i.e. those applicants who do not meet responsible lending criteria. That consumers who cannot afford a loan are excluded from credit is not a harm and does not constitute an argument as to why unregulated providers should be permitted to provide finance to New Energy Tech consumers.

Effects on competition

11. As set out above, RateSetter does not consider that the section 24 requirements will have a detrimental effect on the competitiveness of New Energy Tech providers or related finance providers.

12. Instead, RateSetter considers that the introduction of the NETCC will stimulate competition amongst finance providers by providing a more level playing field on which they can compete. Under the status quo, unregulated finance providers offering so-called “Interest ‘free” finance to consumers and faster approval processes that are not subject to responsible lending requirements are often at a significant advantage to regulated providers. By removing this advantage (which comes only at the expense of consumer welfare) RateSetter expects increased competition from regulated finance providers, improving pricing and access to credit for all New Energy Tech consumers.

Final remarks

As one of the largest finance providers for New Energy Tech in Australia, RateSetter supports the introduction of the NETCC and in particular the requirements set out in section 24. We believe that this code will have the effect of increasing consumer welfare while improving competition amongst New Energy Tech vendors and finance providers.

If desired, RateSetter would be pleased to meet with the ACCC to provide further information in relation to our perspectives on the draft determination. Please do not hesitate to contact me on 0481085312 or if you would like to meet or discuss our submission in further detail.

Yours truly

Ben Milsom
Director
RateSetter Australia RE Limited