From: Mindy Lim [redacted]
Sent: Thursday, 12 November 2020 5:14 PM
To: Staltari, Danielle
Cc: Kolacz, Miriam; Mahony, Andrew; Black, Susie; David Sanders
Subject: RE: Questions on transition of existing signatories might work to the NETCC. [SEC=OFFICIAL]

Hi Danielle

Just confirming that I will send an amended version of the Code (marked up and clean versions) separately after this. I had inadvertently left the third line forcing clauses in the copy sent on 5 November 2020.

In regards to the BNPL later query:

How does the CEC determine compliance with the alternative finance provisions of the Solar Code? Is the CEC exercising discretion when considering compliance with these provisions given the above statement from the 5 November 2020 submission?

In the online application form for solar retailer to become Signatories to the Code, the applicant retailer is asked whether they offer their customers alternative finance to outright purchase. If the retailer indicates that they do, then they are required to name the lender(s) to whom they refer customers and to upload a sample copy of the finance agreement/loan contract provided to the consumer by the lender.

When the CEC then reviews that application, the documentation provided, including the finance agreement as well as the solar retailer's own sales agreement is checked against
each of the finance and alternative purchasing provisions of the Code (2.1.22 – 2.1.24). In the event that the contracts are non-compliant with the finance and alternative purchasing provisions of the Code, the pro forma is offered to the applicant as stated in our previous submission.

With regard to clauses 2.1.23 and 2.1.24, if the finance provider has implemented dispute resolution procedures, hardship variation provisions and default payment arrangements and this is evidenced in the documentation provided, then statements to the effect of 2.1.24 (a) and (b) of the Code are not required to be signed by the consumer. To that extent, the CEC does exercise discretion in this instance.

Regards
Mindy

From: Staltari, Danielle <Danielle.Staltari@accc.gov.au>
Sent: Thursday, 12 November 2020 2:01 PM
To: Mindy Lim [redacted]
Cc: Kolacz, Miriam <miriam.kolacz@accc.gov.au>; Mahony, Andrew <andrew.mahony@accc.gov.au>; Black, Susie <Susie.Black@accc.gov.au>; David Sanders [redacted]
Subject: RE: Questions on transition of existing signatories might work to the NETCC. [SEC=OFFICIAL]

OFFICIAL

Hi Mindy

Thank you for your response below. In reviewing the Code given on 5 November 2020 there are two provisions in the Code which were deleted in the version provided to the ACCC with the application May 2020. The provisions which are in the 5 November 2020 Code are:

Clause 2.1.25 which states:

Signatories will not offer an agreement which involves "third line forcing", such as supplying solar panels on condition that the consumer purchase energy from another energy supplier, unless prior notification to, or authorisation from, the ACCC has been provided in accordance with the Competition and Consumer Act 2010.

Then the corresponding breach in the breach matrix which states:

Signatories must not offer an agreement which involves "third line forcing" Major

Can you please confirm if these clauses are intended to be in the 5th of November Code which the CEC is seeking authorisation for?

The other question I wanted to ask relates to the alternative finance provisions of the Code. In CEC's submission of 5 November it states:

In the case of BNPL providers, if they have implemented dispute resolution procedures, hardship variation provisions and default payment arrangements into their 3 documentation, then statements to the effect of 2.1.24 (a) and (b) are not required to be signed by the consumer.

We understand that it is a requirement of the Solar Code (2.1.23) that if the finance provider is not regulated by the NCCP the signatory must ensure the contract contains provisions in the same form as 2.1.24 of the Solar Code.

How does the CEC determine compliance with the alternative finance provisions of the Solar Code? Is the CEC exercising discretion when considering compliance with these provisions given the above statement from the 5 November 2020 submission?

We would appreciate a response to the questions today and happy to discuss.

Regards

Danielle

Danielle Staltari
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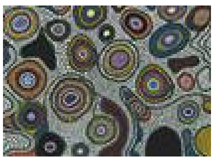
T: 02 6243 1185 | www.accc.gov.au | E: danielle.staltari@accc.gov.au
Working Mon (finishing at 2.30pm), Tues, Wed (finishing at 12pm) and Thurs
On the days I am not at work please contact Susie Black on 02 6243 1055

**As of October 2020, the ACCC's Adjudication Branch has changed its name to Competition Exemptions Branch (exemptions@accc.gov.au), but our role is the same; we assess applications for authorisation, notifications, class exemptions, certification trade marks, and export agreements.*



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Please Note: If you received this message outside your business hours it is because it was a convenient time for me to send it. Please do not feel obliged to respond until your normal work hours.

From: Mindy Lim [redacted]
Sent: Thursday, 12 November 2020 10:48 AM
To: Staltari, Danielle <Danielle.Staltari@accc.gov.au>
Cc: Kolacz, Miriam <miriam.kolacz@accc.gov.au>; Mahony, Andrew <andrew.mahony@accc.gov.au>; Black, Susie <Susie.Black@accc.gov.au>; David Sanders [redacted]
Subject: RE: Questions on transition of existing signatories might work to the NETCC. [SEC=OFFICIAL]

Hi Danielle

Please see below in response to your email yesterday.

Is there any likelihood that a retailer will have to be a signatory to both the Solar Retailer Code and the NETCC simultaneously? If yes, how will the potential for confusion and the administrative burden on signatories be managed?

The CEC would estimate that there is a very low likelihood that a signatory could be on both programs simultaneously as the administrative burden on signatories would be high (as distinct from the Code Administrator needing to administer both programs for a period of time due to piloting and testing a number of signatories before full implementation).

At present, the Code Administrator sends out reminders at different intervals leading up to renewal of a signatory's status:

- *6 weeks*
- *2 weeks*
- *1 day*

In the lead up to the NETCC, the Code Administrator could update these renewal reminder emails to notify and remind existing signatories that the Solar Retailer Code would be superseded by the NETCC and the options would be to either (a) Transfer their ASR status to NETCC as part of the renewal process; or (b) resign from the ASR program once expiry has passed.

In the unlikely event that a retailer is a signatory to both programs, the Code Administrator would:

- *Clearly communicate expectations on a cut off date on obligations to the Solar Retailer Code*
- *Allow a reasonable period for a retailer to amend all relevant documentation and advertising to reflect the NETCC*
- *Communicate dates of when the NETCC would come into effect*

What will happen if retailers are being transitioned from the Solar Code to NETCC ahead of their Solar Code annual fee being due (ie they still have time left on their signatory status under the Solar Code). Would there be a refund for that part of the fee which relates to the Solar Code?

At present, when an ASR renews their status prior to their expiry date (this could happen up to 6 weeks prior), signatories are not offered a refund and the new expiry date moves forward a year. Additionally, no refund is given if an ASR chooses to resign their status before the expiry date. There would be no refund in the scenario outlined by the ACCC above and the CEC would not recommend this due to the administrative burdens on signatories, the Code Administrator and our Finance team. We would consider the proposed plan (i.e to renew ASRs onto NETCC as their expiry came up) to be a 'cleaner' method of transition.

Please let me know if I can clarify anything further.

Regards
Mindy

From: Staltari, Danielle <Danielle.Staltari@accc.gov.au>
Sent: Wednesday, 11 November 2020 9:44 AM
To: Mindy Lim [redacted]
Cc: Kolacz, Miriam <miriam.kolacz@accc.gov.au>; Mahony, Andrew <andrew.mahony@accc.gov.au>; Black, Susie <Susie.Black@accc.gov.au>; David Sanders [redacted]
Subject: Questions on transition of existing signatories might work to the NETCC. [SEC=OFFICIAL]

OFFICIAL

Hi Mindy

We had a couple of questions relating to how the transition of existing signatories might work to the NETCC.

From the project plan CEC has provided we understand that:

- A small batch of signatories will be moved to the NETCC between July 2022 and October 2022 as part of a test pilot.
- The remaining signatories who wish to transition will move to the NETCC from January 2023 to July 2023.

Is there any likelihood that a retailer will have to be a signatory to both the Solar Retailer Code and the NETCC simultaneously? If yes, how will the potential for confusion and the administrative burden on signatories be managed?

What will happen if retailers are being transitioned from the Solar Code to NETCC ahead of their Solar Code annual fee being due (ie they still have time left on their signatory status under the Solar Code). Would there be a refund for that part of the fee which relates to the Solar Code?

Regards

Danielle

Danielle Staltari
Director | Competition Exemptions*

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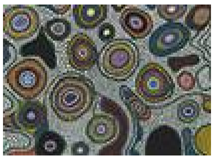

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