

3 April 2020

Hon. Justice O'Bryan
Deputy President,
Australian Competition Tribunal
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

Sent electronically to registry@competitiontribunal.gov.au

Dear Deputy President,

**ACT 1 of 2019 – Application by Flexigroup Limited
Submission of Information to the Australian Competition Tribunal**

Brighte Capital Pty Limited (**Brighte**) encloses its submission of information to the Australian Competition Tribunal (**Tribunal**) in relation to ACT 1 of 2019 – Application by Flexigroup Limited (**Application**).

Brighte thanks the Tribunal for the opportunity to provide this information.

Brighte's interest in the Application is as an active participant throughout the consultation processes conducted by the Behind the Meter Working Group (**BTMWG**) and the Australian Competition and Consumer Commission (**ACCC**) in relation to the New Energy Tech Consumer Code (**NETCC**).

Please do not hesitate to contact me about this submission should you wish to do so.

Yours sincerely,

A handwritten signature in blue ink that reads "KmcConnell".

Katherine McConnell

Chief Executive Officer

ACT 1 OF 2019 – APPLICATION BY FLEXIGROUP LIMITED – BRIGHTE SUBMISSION OF INFORMATION TO THE AUSTRALIAN COMPETITION TRIBUNAL

1. INTRODUCTION

- 1.1 Brighte Capital Pty Ltd (**Brighte**) welcomes the opportunity to provide information to the Australian Competition Tribunal (**Tribunal**) for its consideration in relation to the Application by Flexigroup Limited, ACT 1 of 2019. It makes this submission as an interested third party to the Application.
- 1.2 Brighte participated in the public consultation processes conducted by the Behind the Meter Working Group (**BTMWG**) to develop the New Energy Tech Consumer Code (**NETCC**) during 2019. Brighte made submissions to the BTMWG on 6 February and 4 March 2019.
- 1.3 Brighte also made submissions to the Australian Competition and Consumer Commission (**ACCC**) about the NETCC on 29 May, 29 August, 25 September and 8 November 2019 and during the Pre-decision Conference on 9 September 2019. Brighte reiterates the points made in those previous submissions, listed in the Index of Non-Confidential Versions of Submissions lodged with the Tribunal on 14 February 2020.
- 1.4 Brighte maintains its support for a voluntary industry code to improve practices in the new energy technology (**NET**) sector. As in previous submissions, Brighte agrees that encouraging the growth of NET products should not be done in a way that poses a risk to consumers, particularly vulnerable consumers or those experiencing hardship.
- 1.5 However, Brighte is concerned the NETCC would effectively:
 - (a) Bring the otherwise exempt Buy Now Pay Later (**BNPL**) providers under the *National Consumer Protection Act 2009* (**NCCPA**) regime by requiring them to comply with the requirements contained in sections 128 -133; and
 - (b) Ban BNPL from being used for NET in unsolicited sales, denying consumers an appropriate, legal, popular and convenient financing option.

2. ABOUT BRIGHTE

- 2.1 Brighte is an award winning, innovative, agile and customer focused fintech that operates an on-the-spot finance platform. Brighte uses technology to solve customers' problems and address their needs with fit for purpose finance solutions.
- 2.2 It provides consumers with convenient, simple and transparent financing options to assist them in purchasing solar, battery and home improvements.
- 2.3 Brighte has grown rapidly since it began lending in November 2016. In November 2019 Brighte was recognised by Deloitte as the 2nd fastest growing technology company in Australia and 4th fastest in Asia Pacific having achieved 8,881% revenue growth over the last 2 years. Brighte was the winner of Finder's Green Lender of the Year Award 2020 and the Green Leader of the Year Award 2020.
- 2.4 Brighte holds an Australian Credit Licence. Brighte provides two financing options to enable Australian homeowners to invest in solar, batteries and home improvement products: BrightePay and the Brighte Personal Loan (**BPL**)

- 2.5 BrightePay is a continuing credit facility or BNPL product. It is a payment plan option that removes the upfront cost of a purchase and allows the customer to spread the cost over time. BrightePay is not regulated by the NCCPA or National Credit Code (**NCC**) because this product meets the exception criteria set out in section 6(5) of the NCC.
- 2.6 BPL is an interest bearing, loan product that is regulated under the NCCPA and NCC.
- 2.7 Brighte one of the largest providers of finance to enable homeowners to invest in solar products. As such, it has an in-depth knowledge of the finance industry as it relates to the purchase of NET products by Australian consumers.
- 2.8 Brighte has added significant value to consumers, SMEs and the Australian economy since it began operations in 2016. It continues to do so.
- 2.9 In 2019 Brighte engaged Deloitte Access Economics (**Deloitte**) to conduct an independent consumer and vendor study in relation to Brighte's BNPL product. Deloitte produced an independent report in August 2019 (**the Deloitte Report**)¹ using its findings from that study. The Deloitte Report highlighted, among other things, the benefits that BNPL products provide to consumers, businesses and the economy.

3. **BENEFITS FOR CONSUMERS**

- 3.1 BNPL products are a popular financing option particularly in the NET sector. There has been increasing uptake of these services and vigorous competition in that market. The popularity, rapid adoption and re-use of these fintech enabled solutions and high net promoter scores demonstrate that they are valued, fit for purpose products for the Australian consumer.
- 3.2 The interest and uptake has only increased as a result of the current circumstances precipitated by the coronavirus global pandemic (**COVID-19**). COVID-19 has resulted in a large number of people spending more time at home, including working remotely from their houses. Those people are now increasingly focused on home improvements, home comfort, and energy savings.
- 3.3 BNPL products offer real benefits to consumers by enabling consumers to make a capital investment in high-value goods that:
 - (a) Delivers savings on energy bills;
 - (b) Offers a cost-effective source of finance that delivers savings in comparison to the upfront cost of purchasing NET products; and
 - (c) Provides consumers with improved choice and access to financial options which are also convenient and easy to use.
- 3.4 As at 31 March 2020, ~49,000 BrightePay BNPL payment plans and ~5300 BPL loans have been approved by Brighte. Over 93% of these have been for the purposes of allowing consumers and SMEs to invest in NET products including solar and batteries.
- 3.5 Prior to COVID-19, these customers were expected to make a saving of up to \$23 million in household energy expenses over the next 12 months by using NET products purchased with assistance from Brighte. ²However, given the exponential increase in time that people are now spending in their homes, self-isolating, learning and working remotely, we anticipate these savings will be much greater.

¹ Deloitte Access Economics, 'Consumer and vendor study: Brighte Capital Pty Limited', August 2019

² Ibid, p.43

- 3.6 Even though Brighte has only been providing payment plans for 41 months, Brighte has already seen customers reusing their line of credit to make additional investments in their homes, demonstrating the utility and popularity of the payment plan.
- 3.7 ASIC Report 600 (November 2018) (**Report 600**) found that the BNPL Industry is diverse and evolving, a statement with which Brighte agrees.
- 3.8 Report 600 also indicated that BNPL arrangements are used by many younger customers. This is not the case for Brighte. By contrast, Brighte's customers are much older than other BNPL customers. Brighte's customers are also homeowners. They are mature and experienced in the use and management of credit. Our customers make a considered choice to invest in NET products to add value to their homes and generate energy savings. They use the BrightePay BNPL payment plan as an affordable way to do so.
- 3.9 To obtain credit with Brighte, applicants must satisfy our strict eligibility criteria and undergo a robust credit assessment process. This is demonstrated by Brighte's low arrears rates and hardship cases.
- 3.10 The value of BNPL products is reflected in the Deloitte Report. The Deloitte Report found that BNPL is an effective form of finance and that BNPL products have a significant and important role in assisting consumers to purchase solar products.
- 3.11 There has been strong demand for solar energy solutions from Australian households. The availability of the BrightePay product has brought forward the benefits to these consumers that accrue from switching to energy efficient, renewable-fuel electricity systems.
- 3.12 Energy efficient products provide cost savings for households by reducing mains electricity consumption (i.e. from drawing less from the grid and from feeding excess back into the grid). As an example, BrightePay enables substantial energy savings on energy bills of more than \$1000 per year on average. Deloitte estimated annual electricity bill savings for Brighte customers to be between \$10 million and \$23 million.³ Brighte considers this will increase significantly as stated above due to increased home and energy usage as a result of COVID-19.
- 3.13 NET products are also a capital investment for any residence. Consumers who cannot, or do not want to, pay for the purchase in full and up front might not be able to access these products without finance. Deloitte has found that without BrightePay, 70% of Brighte customers would not have purchased solar, or would have postponed their purchase.⁴ A further 13% of customers would have paid using a credit card, personal loan or by redrawing from their mortgage, which are all potentially more expensive than BrightePay.⁵
- 3.14 The other benefits Deloitte identified were: ⁶
- (a) Choice and access:
BNPL provides consumers with an alternative to paying up front with cash or traditional loan products, such as personal loans or credit cards.
 - (b) Convenience and ease of use:
BNPL providers generally offer consumers a straightforward indication of whether they can borrow or not, via a mobile app or online.

³ Ibid, p.43

⁴ Ibid, p.vii

⁵ Ibid, p.63

⁶ Deloitte Access Economics, 'Consumer and vendor study: Brighte Capital Pty Limited', August 2019

BNPL products offer unique financing features, such as increased availability at the point of sale, speed of application process, greater transparency in relation to fees and obligations, and lower costs due to interest components and fees that do not exceed the low exemption thresholds in the NCCPA.

(c) Ease of understanding:

74% of Brighte consumers agreed Brighte's terms and conditions are easy to understand.⁷

Consumers feel that BNPL repayments and terms and conditions are easy to understand, e.g. because prices are generally expressed in dollars rather than percentage terms.

Terms that are shorter and clearer are more likely to be read, and understood, by consumers.

(d) Recommendations:

BNPL may be recommended by friends and family, or suppliers.

Compared to other credit options, such as personal loans or credit cards, consumers preferred BrightePay because it

(1) allowed them to make fixed repayments (66% of respondents), and

(2) offered an efficient approval process (60% of respondents).⁸

- 3.15 As a result of COVID-19, the Australian community is facing uncertainty and a significant economic downturn. The federal, state and territory governments are implementing comprehensive targeted financial assistance programs to individuals and households impacted by the crisis.
- 3.16 Brighte is committed to supporting the government's efforts during the crisis and the economic recovery by continuing to offer affordable and convenient payment solutions. This would include offering BrightePay to consumers who wish to use it to make investments in solar, an expense reducing asset. The ability to continue to provide BNPL is vital as families are spending more time at home, working and studying remotely and consuming more energy.
- 3.17 As noted in the Deloitte Report, homeowners like the ease of understanding repayment amounts in dollar terms. BNPL products provide this feature and it enables customers to manage their household budgets more easily in this time of economic uncertainty.

4. **VALUE FOR VENDORS**

- 4.1 Brighte has accredited 1,700 vendors with more than 5000 agents. Many of our vendors are family run businesses or SMEs. They provide employment for their direct employees and contract installers. Brighte has enabled our vendor network to grow their businesses and benefit the economy through job and wealth generation.

⁷ Ibid, p.viii

⁸ Ibid, p. 40

4.2 As noted above, Deloitte found that without BrightePay, 70% of Brighte customers would not have purchased solar, or would have postponed their purchase.⁹ The services Brighte provides to these vendors have enabled them to bring solar within the reach of Australian households.

4.3 Like all businesses, Brighte vendors need to manage cash flows and compete for consumers. Finance arrangements can help them deal with these challenges. Vendors weigh up the costs and benefits of different finance solutions, including taking consumer preferences into account.

4.4 The Deloitte Report conducted a vendor survey to understand the reasons that Brighte vendors consider the BrightePay product to be a useful tool to assist them to effectively and efficiently operate their businesses. The main reasons were:¹⁰

(a) Customer acquisition:

Vendors use BrightePay to access new consumers and markets.

Consumers value BNPL for the reasons outlined in paragraph 3.14. Consumers want to BrightePay to pay off their purchase of NET products over time, so vendors choose to offer it as a 'competitive advantage' in the competitive market for NET products.

Vendors value the services that Brighte provides to them including a customer relationship management system (CRM) for vendors, efficient online application processes that are easy to understand and convenient for customers, a dedicated account manager, training and marketing support.

(b) Cash flow and business processes:

BrightePay allows vendors to maintain a smoother cashflow. Brighte pays the vendor upfront and accepts the risk of non-payment by the consumer. An upfront payment ensures the wait times of traditional invoicing are avoided, giving a vendor greater cash flow and security.

(c) Risk mitigation

For many businesses, especially SMEs the administrative burden of invoicing and following up of invoicing can be onerous. Many invoices issued by SMEs are paid late.

According to a report by the Australian Small Business and Family Ombudsman (ASBFEO) almost half (45%) of the surveyed SMEs reported that they have more than 10 outstanding invoices per month (greater than 30 days late) and they need to pursue invoices more than twice before payment was received.¹¹ Of the SMEs surveyed, 51.5% of businesses stated that asking twice for overdue payment was normal. This is a cost to SMEs including the cost of extra resources engaged in debt recovery.

The ASBFEO report also highlighted the serious issues faced by SMEs if invoices are not paid on time. One in four SMEs have difficulties meeting tax obligations while one in five are unable to expand their businesses.¹²

4.5 The economic downturn caused by COVID-19 is having a significant impact on our vendors particularly those who are SMEs.

⁹ Ibid, p.viii

¹⁰ Ibid, p10-11

¹¹ Australian Small Business and Family Enterprise Ombudsman, *Review of payment terms, times and practices*. 2019, p21

¹² Ibid, p21

- 4.6 The support packages being provided by federal, state and territory governments to SMEs are to cushion the economic impact of COVID-19, to enable them to stay in business and build a bridge to the recovery of the Australian economy.
- 4.7 Brighte vendors, like all businesses are having to make difficult decisions in these uncertain times, including whether to wind back or close their businesses and lay off staff. Vendors need ability to be able to continue to offer the financial product their customers choose as the most appropriate for their needs and objectives.
- 4.8 BNPL is a legitimate financial product. Disabling vendors' ability to offer BNPL products to customers who wish to use them to purchase NET products, as the NETCC seeks to do, will have a detrimental effect on their ability operate their businesses. It also runs contrary to actions by federal, state and territory governments to keep SMEs operating, keep people in employment and to protect the economy.

5. **BUY NOW LATER CODE OF PRACTICE**

- 5.1 Brighte is a member of the Australian Financial Industry Association (**AFIA**).
- 5.2 Leading BNPL industry participants, including Brighte and the Applicant, have developed the AFIA Buy Now Pay Later Code of Practice (**BNPL Code**). The BNPL Code was developed to respond to Report 600 and the Senate Economics Reference Committee, which recommended the development of a Code of Practice for the BNPL industry.
- 5.3 The BNPL Code is at present subject to a public consultation period, with input sought from a range of stakeholders.
- 5.4 The BNPL Code goes beyond the legal requirements applying to BNPL products. It will provide customers with strong safeguards that help them better understand the product and their rights. It also includes standards around helping customers who experience financial difficulties.
- 5.5 The BNPL Code's key parts include obligations for BNPL providers to:
 - (a) Assess customers to ensure a BNPL product will be suitable to them before providing it, as well as provide additional controls for customers identified as potentially more vulnerable through the assessment process;
 - (b) Ensure customers have access to internal complaints handling, so complaints are resolved quickly and fairly, and if they cannot be resolved, can be taken to the Australian Financial Complaints Authority (AFCA);
 - (c) Provide hardship assistance to customers that experience financial difficulties;
 - (d) Disclose a summary of key BNPL product features to improve customers' understanding of the product and ensure customers are properly informed about the products' terms and conditions; and
 - (e) Ensure vendors and merchants act consistently within BNPL provider guidelines.
- 5.6 Brighte is confident that the current regulatory regime and the final BNPL Code will deliver adequate and substantively equivalent consumer protections to those provided by the NCCPA, particularly in relation to the assessment of a consumer's financial circumstances, dispute resolution and hardship management.

6. CONSUMER CHOICE, COMPETITION AND INNOVATION

- 6.1 BNPL is a lawful, legitimate and popular method of financing. It provides significant value to consumers, businesses and the economy.
- 6.2 Brighte supports a robust regulatory environment that promotes consumer confidence, informed decision-making and innovation. However, we believe that the ongoing growth and uptake of fintech and NET products are served by promoting fair competition between NET and finance providers. The NETCC should facilitate the objectives of consumer choice and competition and remove unnecessary restrictions that threaten to undermine them.
- 6.3 The Australian government has recognised the increasing importance that innovative industries like Fintech have in job creation, growing the economy and ensuring international competitiveness. In September 2019 the Senate established a Select Committee on Financial Technology and Regulatory Technology (**Senate Committee Inquiry**) to examine the size and scope of the opportunity for Australian consumers and business arising from Fintech and Regtech.
- 6.4 Fintechs, like Brighte, use customer-centric design to deliver BNPL products that consumers value. The speed, convenience and transparency of these solutions give customers greater choice and control to make informed decisions. Listening to and doing the right thing by the customer builds trust, loyalty and engagement with customers.
- 6.5 BNPL products have been very important in facilitating the growth of the NET industry by giving consumers choice in the payment method that they wish to use to purchase NET products to invest in their homes and future.
- 6.6 As the Australian economy moves from economic uncertainty to recovery, innovative financial products like BNPL have an important role to play in stimulating the economy, creating jobs and ensuring consumers have access to valuable, affordable and competitive financial options.
- 6.7 The NETCC in its current form will reduce consumer choice, innovation and competition in the NET and finance sectors and reduce the uptake of these important products. It will require BNPL providers, who are otherwise exempt from the NCC, to comply with sections 128-133 of the NCCPA. This would impose sector-specific regulation on a lawful financing product.
- 6.8 Paragraph 3(d) of the NETCC prohibits BNPL finance being offered to customers in unsolicited sales, even though unsolicited sales are legal, provided specific conditions are met by the seller. This condition prevents customers of vendors who become NETCC signatories to choose a BNPL product to invest in new energy tech products if the sale is unsolicited, even when the customer wants to use it and it suitable for them.
- 6.9 It is also important not to restrict access to NET products by preventing consumers from choosing BNPL finance to make their purchase. Any legal payment method should be able to be offered when an unsolicited sale is made. Therefore, paragraph 3(d) of the NETCC is an unnecessary measure that would deprive consumers of a valuable and competitive alternative to other consumer finance and credit products.

7. CONCLUSION

- 7.1 Brighte thanks the Tribunal for the opportunity to provide information for its consideration in relation to the Application by Flexigroup Limited, ACT 1 of 2019.
- 7.2 Brighte supports a voluntary industry code to improve practices in the NET sector and agrees that the growth of it should not be done in a way that is detrimental to consumers, particularly vulnerable consumers or those experiencing hardship.

- 7.3 BNPL products are valued by consumers. They enable consumer choice and provide significant benefits to them, to vendors and the economy.
- 7.4 The conditions imposed on the use of BNPL products in the NETCC go beyond what the law requires and will have the effect of reducing competition, consumer choice and innovation in the finance and new energy tech industries.
- 7.5 They will also have a negative financial impact on consumers who want to use them to reap energy bill savings, vendors who sell new energy tech products and the people and business would rely on them for employment and ethical BNPL providers.
- 7.6 During this time of economic uncertainty, and later as the economy stabilises and moves from uncertainty to recovery to growth, it is essential for consumers, vendors and the Australian economy that signatories to the NETCC continue to be able to provide BNPL products to customers who choose to use them. To restrict the use of BNPL products in the NET sector is an unnecessary burden that consumers and SMEs do not need, and which would hamper the recovery of the Australian economy post COVID-19.