

NOTICE OF LODGMENT

AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Second Statement of Daniel Robert Foggo

File Number: ACT1 of 2019

File Title: Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code and the determination made by the ACCC on 5 December 2019

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



A handwritten signature in blue ink, consisting of a stylized 'D' followed by a 'U'.

DEPUTY REGISTRAR

Dated: 25/05/2020 8:01 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



Statement

No. ACT 1 of 2019

IN THE AUSTRALIAN COMPETITION TRIBUNAL

Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited

Applicant

Statement of: Daniel Robert Foggo
Address: 14 Martin Place, Sydney NSW 2000
Occupation: Chief Executive Officer
Date: 25 May 2020

This document contains confidential information which is indicated as follows:

[Confidential to RateSetter] [REDACTED]

I, Daniel Robert Foggo of 14 Martin Place, Sydney NSW 2000, say as follows:

1. This is the second statement I have made in this proceeding.
2. Now shown to me is a bundle of documents marked '**Exhibit DF-3**' and a further bundle marked '**Confidential Exhibit DF-4**' which contains information that is commercially sensitive and confidential to RateSetter. When I refer to a document in this statement, I refer to it by the page number in Exhibit DF-3 or Confidential Exhibit DF-4.
3. In early June 2018, I instructed **[Confidential to RateSetter]** [REDACTED] to undertake a 'mystery shopper' exercise to assess the

extent to which “new energy technology” (**NET**) suppliers offer a higher retail price for NET products when the consumer is to acquire them with BNPL finance rather than cash (i.e. by credit card or bank transfer). I have made enquiries of persons involved in the exercise and understand that the process they adopted was as follows.

4. They selected 11 NET suppliers comprising a range of business sizes, in order to obtain a cross section of the solar merchant industry. Each NET supplier was known to offer BNPL arrangements.
5. On various dates in June and July 2018, they contacted the nominated NET suppliers by telephone using details published on each NET supplier’s website or other marketing material. On each call they:
 - (a) asked for system specifications, including manufacturer and model of panels, for a standard 5kW solar panel system for a standalone house;
 - (b) asked for quotes for a standard 5kW solar panel system for a standalone house if paid for in cash (i.e. credit card or bank transfer) and, alternatively, with finance;
 - (c) if finance was available, asked whether the finance was ‘interest free’ or not, and if ‘interest free’ finance was available, what the repayments for the quoted system price would be, and the name of the supplier of the proposed ‘interest free’ finance;
 - (d) asked if the total price of the financed system was higher than the cash price, and if so what the reasons for that price difference was.
6. To ensure that the interactions were as natural as possible, a script was not used.
7. In two instances the NET suppliers provided follow up emails with details of the quoted system and finance options. Copies of these emails are at pages 2 to 6 of **Confidential Exhibit DF-4**.
8. The results of the ‘mystery shopper’ exercise were summarised in a table. A copy of the table is at pages 7 to 9 of **Confidential Exhibit DF-4**.
9. As the table shows, each NET supplier quoted a higher price for the NET products when offering them with BNPL finance. The price of the NET product when offered with BNPL finance was between **[Confidential to RateSetter]** and **[Confidential to RateSetter]** higher than the cash price. The average increase was **[Confidential to**

RateSetter [REDACTED] and the median increase was **[Confidential to RateSetter]** [REDACTED]. The increase differed both by the term of the BNPL arrangement as well as the financier.

10. On 22 May 2020 I caused calculations to be performed comparing the total cost to purchase a NET product for which the cash price would be \$8,735, if:
 - (a) the NET product is acquired using a Flexigroup Humm 60-month 'interest free' loan where the purchase price of the product is increased by **[Confidential to RateSetter]** [REDACTED]; and
 - (b) the NET product is acquired with a 60-month RateSetter Green Loan and the purchase price is not increased.
11. The calculations are set out and summarised in the spreadsheet at page 2 of **Exhibit DF-3**.

Date: 25 May 2020

[REDACTED]

Daniel Robert Foggo

Exhibit certificate

No. ACT 1 of 2019

IN THE AUSTRALIAN COMPETITION TRIBUNAL

Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited

Applicant

This is the exhibit marked “**DF-3**” to the statement of Daniel Robert Foggo dated 25 May 2020.

Filed on behalf of RateSetter Australia RE Limited, Intervener
Prepared by Aldo Nicotra
Law firm Johnson Winter & Slattery
Tel +61 2 8274 9555 Fax +61 2 8274 9500
Email Aldo.Nicotra@jws.com.au
Address for service Level 25, Bond Street, Sydney NSW 2000

Flexigroup (Humm) Vs Ratesetter Green Loan

Comparison of finance product construct and costs to customer

Author: RateSetter

Date of comparison: Friday, 22 May 2020

	1. Humm 'interest free' loan	2. RateSetter Green Loan	Comments
Product comparison			
A) Average system cost	\$8,735.00	\$8,735.00	Based on Flexigroup's quoted 'average cost of a solar purchase'
B) Average merchant fee (% of system price)	22%	0%	Humm source: Median implied price inflation as per RateSetter's Summary of investigations table
C) Net Finance Amount (inclusive of effect of vendor fee)	\$11,198.72	\$8,735.00	Net Finance Amount equals the purchase price for the consumer under finance. For Humm's product it includes the merchant fee = [Average system cost] / [1 - Average vendor fee]
D) Upfront Fee / Loan establishment fee	\$85.00	\$350.00	Fee capitalised into the customer's loan. RateSetter's fee is the typical fee that would be payable for a loan of this amount and term. Humm's range \$35-\$90
E) Risk Assurance Charge	\$0.00	\$206.36	Fee capitalised into the customers loan. The Risk Assurance Charge is the typical fee that would be payable for a loan of this amount and term
F) Monthly account keeping fee	\$8.00	\$3.00	
H) Interest rate	0.00%	6.50%	The current rate as at 22 May 2020
I) Average finance term (months)	60	60	
K) Customer monthly repayment	\$196.06	\$184.80	Principal to be repaid is Net Finance Amount + Upfront Fee + Risk Assurance Charge (if applicable). Monthly repayments in arrears, includes monthly fees
J) Comparison rate	Not disclosed	9.81%	This includes the interest rate as well as certain fees and charges relating to the loan. The formula is as set out in the National Credit Code
G) Ongoing late fees			
Missed payment fee	\$0	\$25	Fee payable in the event of a scheduled monthly repayment being missed
Late Payment Fee / Arrears fee	\$6	\$0	Fee payable in each month an account is in arrears
Cost of finance comparison			
Upfront fees	\$85.00	\$350.00	
Total account keeping fees (full term of loan)	\$480	\$180	
Total customer fees	\$565.00	\$530.00	
Total interest paid	\$0.00	\$1,616.41	
Price inflation due to vendor fee	\$2,463.72	\$0.00	= [Net finance amount] - [Average system price]
Total cost to customer (fees + interest + price inflation)	\$3,028.72	\$2,146.41	= [Total cost to customer] / [Average system price]
Total cost to customer as % of system price	34.67%	24.57%	= [Total cost Humm] - [Total cost RateSetter]
Additional cost for Humm product	\$882.31		