

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: Submissions

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 'A' followed by a 'U'.

DEPUTY REGISTRAR

Dated: 15/05/2020 1:36 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.

COMMONWEALTH OF AUSTRALIA
Competition and Consumer Act 2010 (Cth)



IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2019

Re: 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

Applicant: Flexigroup Limited [ACN 122 574 583]

ACCC SUBMISSIONS IN SUPPORT OF FINAL SECTION 90(6) SUGGESTIONS

PART I INTRODUCTION

1. These submissions address the ACCC's suggestions, provided in accordance with paragraph 15 of the directions made on 4 February 2020 as amended by paragraph 2 of the directions made on 7 May 2020, for the Tribunal to consider for the purpose of issuing notices under s 90(6) of the *Competition and Consumer Act 2010 (Cth)*.
2. These submissions are structured as follows:
 - 2.1. Part II explains how the proposed recipients have been selected;
 - 2.2. Part III addresses each proposed suggestion, identifying the probative value of the information sought and addressing the potential burden imposed by it.
3. There are two annexures to these submissions.
 - 3.1. Annexure A to the submissions sets out the six suggested information requests which are the subject of submissions in Part III.
 - 3.2. Annexure B to the submissions sets out proposed notices that are addressed to each proposed recipient and give effect to the suggested information requests.
4. As will be seen from Annexure B, the ACCC suggests that any notices that the Tribunal is minded to issue pursuant to s 90(6) should request compliance by no later than 27 May 2020. As explained below, the ACCC does not consider that time period to be burdensome for any of the suggested information requests. Moreover, if any recipient should not be in a position to comply, the Tribunal may, but need not, take into account any information received after 27 May 2020: see s 90(6A).

PART II RECIPIENTS

A. FLEXIGROUP AND RATESETTER

5. The ACCC suggests that some of the proposed notices be issued to Flexigroup (Suggestion 6) and Ratesetter (Suggestions 1, 2, 3, 4 and 6). The Tribunal will be familiar with these entities by reason of their direct involvement in the proceeding.
6. As to Flexigroup, it is convenient to point to paragraphs [6]-[16] of the statement of Taras Mysak and paragraphs [1]-[6] of its amended statement of facts, issues and contentions.
7. As to Ratesetter, it is convenient to point to paragraphs [10]-[17] of the Daniel Robert Foggo statement and paragraphs [1]-[3] of its statement of facts, issues and contentions.

B. BRIGHT CAPITAL PTY LTD

8. Brighte Capital Pty Ltd (**Brighte**) is an appropriate recipient of a notice.
9. *First*, it offers both regulated and unregulated financing products. It can therefore be expected to provide information relevant to both kinds of products.
10. *Second*, information held by Brighte is likely to be informative because it is a substantial participant in the market of providers of finance for NET products. In its own submissions to this Tribunal, it claims that it is “one of the largest providers of finance to enable homeowners to invest in solar products” (at paragraph [2.7]) and that (at paragraph [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.

11. [REDACTED] Brighte was one of the providers studied by ASIC in Report No 600. According to that report at paragraph 179:

We selected the providers based on the following considerations:

- (a) our understanding of the market and the most prominent providers;
- (b) complaints data from consumer groups and our internal systems;
- (c) our intention to capture different business models; and
- (d) analysis of financial statements available to us.

¹ See Statement of Taras Mysak dated 24 April 2020 at [36]-[37] and Document FXL.001.002.0337; Statement of Daniel Robert Foggo dated 8 May 2020 at [35], p 78.

12. It is a member of AFIA and involved in the preparation of the proposed BNPL Code of Practice. The AFIA media release says:²

The BNPL providers, who under AFIA's guidance have drafted the Code, represent over 95 percent of the BNPL market, include Afterpay, Brighte, flexigroup, Latitude, Openpay, Payright and Zip Co.

13. *Third*, Brighte was involved in the Behind the Meter Working Group that led to the NETCC, it made submissions to the ACCC and it has now made submissions to the Tribunal. Accordingly, it is not a third party which is entirely removed from this review.

C. DEVIZO PTY LTD

14. Devizo Pty Ltd offers the Payright product, which is a BNPL finance product. It is an appropriate recipient of a notice.
15. *First*, Devizo Pty Ltd claims to be a substantial provider of finance for NET products. In its submission to the ACCC, it said it is "a provider of Buy Now Pay Later (**BNPL**) finance in relation to new energy products and services (**New Energy Tech**), specifically in the solar sector". It said further that:

Within the broader home improvement sector, the solar installation market is a priority growth segment for Payright. In 2019 alone Payright has attracted and accredited a significant volume of solar merchants through targeted and priority business development activities. This merchant acquisition activity has resulted in a consistent month-on-month volume increases in Payright loan applications and approvals to customers purchasing solar products throughout 2019. The significant growth Payright has experienced in relation to solar products clearly demonstrates the underlying consumer demand and popularity of NCCPA and NCC exempt BNPL products and is consistent with the broader growth trend noted by ASIC in its Report 600 which stated a five-fold increase in the numbers of consumers using BNPL arrangements between the 2015/16 and 2017/18 financial years.

16. *Second*, it is a member of AFIA and involved in the proposed BNPL Code of Practice. It also made submissions to the ACCC during the authorisation process. It is thus not entirely removed from the present process.

D. ZIPMONEY PAYMENTS PTY LTD

17. zipMoney Payments Pty Ltd offers both BNPL finance products and regulated finance products. The ACCC understands zipMoney Payments Pty Ltd offers a regulated finance product for larger NET purchases over \$1000. The ACCC only suggests that notices be issued in respect of that regulated product. It is an appropriate recipient of notices for the following reasons.

² The media release is available from <https://www.afia.asn.au/bnpl>.

18. [REDACTED]

19. *Second*, its parent company (Zip Co Limited) is a member of AFIA and involved in the development of the proposed BNPL Code of Practice and is thus not a wholly disinterested party.

20. *Third*, it is one of the providers studied by ASIC in Report No 600.

E. AFIA

21. The Australian Finance Industry Association (**AFIA**) is a body representing over 150 providers of consumers, commercial and wholesale finance that operate across Australia, as well as entities that provide services to the industry. Earlier this year, AFIA announced that it and its BNPL members were working together and proposed to release a Code of Practice for the BNPL sector. It ran a public consultation process on a draft, which closed on 11 March 2020.⁴

PART III JUSTIFICATION FOR EACH SUGGESTION

A. FIRST SUGGESTION

22. **Probative value.** The information sought goes to the risk of harm to consumers in accessing BNPL finance in the absence of the requirements imposed by the Consumer Code (see Issues List at [21.3]). Some possible risks of BNPL finance (as with other forms of finance) include that consumers insufficiently understand the product or overcommit themselves and find themselves in financial distress. The information sought will provide some quantitative insight into the prevalence of some of these risks coming home.

23. **Burden.** This information should be readily available to the recipients as part of their ordinary business records. In addition, request number 1.5 of the first suggestion is drawn more narrowly than the direction made to Flexigroup on 7 May 2020, which required greater particularisation of complaints to be provided. This suggestion is addressed only at obtaining figures.

24. The Tribunal may wish to consider whether a more broadly drawn notice (reflecting the direction made to Flexigroup) should be given to Ratesetter, having regard to the greater level of Ratesetter's involvement in this review compared to the other proposed recipients.

B. SECOND SUGGESTION

25. **Probative value.** This information is relevant to understanding to what extent BNPL and regulated finance products are relied upon to finance NET purchases. That is relevant for two reasons:

³ See Statement of Taras Mysak dated 24 April 2020 at [36]-[37] and Document FXL.001.002.0337; Statement of Daniel Robert Foggo dated 8 May 2020 at [35], p 81.

⁴ See generally <https://www.afia.asn.au/bnpl>.

25.1. To understand the extent of the risk posed by any unfair practices in the sale of BNPL products.

25.2. To understand the impact on consumer choice if any requirements or conditions should reduce the number of BNPL providers.

26. **Burden.** The suggestion is drawn narrowly, and is limited to numerical data only. The burden is likely to be low.

C. THIRD SUGGESTION

27. **Probative value.** This information is relevant to understanding the risk posed by BNPL products to consumers and the potential consumer harm. It is likely that the larger the financial commitment, the more important it is to enhance transparency and understanding, and the greater the risk of overcommitment and potential harm.

28. **Burden.** The suggestion is drawn narrowly, and is limited to numerical data only. The burden is likely to be low.

D. FOURTH SUGGESTION

29. **Probative value.** This is relevant to the Clarification on Unsolicited Offers Condition. It informs the impact of this condition upon suppliers of NET products and consequently on finance providers.

30. **Burden.** The suggestion is drawn narrowly, and is limited to numerical data only. The first limb of the suggestion only requires a best estimate, recognising that the recipients may not have full visibility of the amount of unsolicited sales made by retailers. The second limb requests the provision of information that should be in the possession of the finance providers in the ordinary course of business.

E. FIFTH SUGGESTION

31. **Probative value.** An update on the Code of Practice is important because Flexigroup relies upon it to contend that the conditions which the ACCC imposed are unnecessary: see Flexigroup ASOFIC at [52]. It is important, therefore, to understand the progress of this Code of Practice. That may also be relevant to any transitional provisions that the Tribunal may consider appropriate.

32. **Burden.** The burden is low. Flexigroup is one of the entities involved in AFIA and developing the Code of Practice. As a result, it should be well placed to provide the Tribunal with relevant information. Alternatively, at least through Flexigroup, it may be anticipated that AFIA is aware of this review proceeding. And having regard to the matters in paragraph 21 above, it is to be expected that AFIA would be in a position to provide the information sought.

F. SIXTH SUGGESTION

33. **Probative value.** This issue may go to the assessment of the desirability of enhanced consumer protections in the NET Code regarding transparency of cost of finance but also more specifically potential consumer harm and risk related to different types of finance offerings in connection with NET products sales.

34. The ACCC notes that price inflation is a possible problem identified by ASIC Report No 600 (finding 3), and it was a matter raised before the ACCC going to fairness: see Determination at [3.4(c)]. It is also an issue raised in the evidence before the Tribunal.⁵
35. **Burden.** The ACCC expects the burden of responding to these suggestions to be low. The material that responds to the suggestions is likely to already exist. If it does not, then what is sought is largely numerical data that should not be burdensome to collate.

Ruth C A Higgins SC

Christopher Tran

15 May 2020

⁵ See Statement of Daniel Robert Foggo dated 8 May 2020 at [40]-[41]; Affidavit of Elisa Jane Bolzonello Re Solar Panel Quotations dated 4 May 2020 at [45]-[46].

ANNEXURE A

FLEXIGROUP SECTION 90(6) SUGGESTIONS

A. FIRST SUGGESTION (COMPLAINTS DATA)

1. The Tribunal should issue written notices to:

- 1.1. Brighte Capital Pty Ltd;
- 1.2. Devizo Pty Ltd;
- 1.3. Ratesetter Australia RE Limited; and
- 1.4. zipMoney Payments Pty Ltd,

requesting those entities to provide to the Tribunal the following information with respect to their supply of 'buy now pay later' (**BNPL**) finance products and/or regulated credit products⁶ respectively relating to the supply of NET products⁷ in each of the 2 years prior to 30 April 2020:

- 1.5. the number of complaints received,
- 1.6. the number of financial hardship applications received,
- 1.7. the number of internal dispute resolution cases opened, and the number of internal dispute resolution cases completed to resolution,
- 1.8. the total number of transactions, the amounts financed, and the total amounts written-off, annually,
- 1.9. the total number of customer defaults (meaning customers in 30+ days of payment arrears) recorded each month, identifying the number of those customers either 60+ or 90+ days in arrears, and
- 1.10. a comparison of:

⁶ References to 'regulated' finance or credit products are references to finance or credit products that are subject to regulation under the *National Consumer Credit Protection Act 2009* (Cth) and the National Credit Code.

⁷ The meaning of terms 'New Energy Tech' and 'NET' used in this document is the meaning given in the New Energy Tech Consumer Code submitted to the ACCC for authorisation i.e. includes products, systems and services that: a) are small-scale (in-home or small business) products and systems that generate, store or trade energy away from Australia's main transmission and distribution energy networks or as distributed energy resources connected to an energy network b) are services that support or are closely related to those products or systems c) monitor or manage a customer's usage of energy whether on or off an energy network, and d) the Consumer Code Administrator is satisfied sit appropriately within the Consumer Code, future flexibility and innovation permitting. The definition under the Consumer Code is not intended to include simple, low cost or off-the-shelf New Energy Tech, such as might be purchased from a whitegoods or hardware store for self-installation.

1.10.1. the rate of customer defaults on BNPL finance products supplied in relation to New Energy Tech (**NET**) products as against the rate of customer defaults on BNPL finance products supplied in relation to non-NET products;

1.10.2. the rate of customer defaults on regulated finance products supplied in relation to NET products as against the rate of customer defaults on regulated finance products supplied in relation to non-NET products.

B. SECOND SUGGESTION (USE OF BNPL FINANCE FOR SALES OF NEW ENERGY TECH PRODUCTS)

2. The Tribunal should issue a written notice to:

2.1. Brighte Capital Pty Ltd;

2.2. Devizo Pty Ltd;

2.3. Ratesetter Australia RE Limited; and

2.4. zipMoney Payments Pty Ltd,

requesting them to identify to the Tribunal the proportion and amount of NET sales made by NET retailers that involve the use of BNPL finance and/or regulated credit products for each of the past two years (prior to 30 April 2020).

C. THIRD SUGGESTION (USE OF BNPL FOR NEW ENERGY TECH PURCHASES)

3. The Tribunal should issue written notices to:

3.1. Brighte Capital Pty Ltd;

3.2. Devizo Pty Ltd;

3.3. Ratesetter Australia RE Limited; and

3.4. zipMoney Payments Pty Ltd,

requesting them to identify to the Tribunal the average size of BNPL arrangements for NET purchases and the average size of BNPL purchases for each of the past two years (prior to 30 April 2020).

D. FOURTH SUGGESTION (UNSOLICITED SALES)

4. The Tribunal should issue written notices to:

4.1. Brighte Capital Pty Ltd;

4.2. Devizo Pty Ltd;

4.3. Ratesetter Australia RE Limited; and

4.4. zipMoney Payments Pty Ltd,

requesting them to identify to the Tribunal for each of the two years prior to 30 April 2020:

4.5. their best estimate of the extent to which NET retailers rely on unsolicited sales expressed as a percentage of total sales of NET products , and which proportion of those sales are financed either by BNPL or regulated finance products, including an explanation for the basis of the estimate; and

4.6. the proportion and amount of their financing which is provided to finance unsolicited sales of NET products.

E. FIFTH SUGGESTION (BNPL CODE OF PRACTICE)

5. Unless Flexigroup is able, and agrees, to provide the relevant update to the Tribunal by the time of the hearing, the Tribunal should issue a written notice to AFIA requesting it to provide the Tribunal, shortly before the hearing, with:

5.1. an update on the progress of the proposed BNPL Code of Practice

5.2. an estimate of when it might come into force, including a description of the process to be followed and any indicative timetable for each remaining step.

H. SIXTH SUGGESTION (PRICE INFLATION)

6. The Tribunal should issue written notices to:

6.1. Flexigroup;

6.2. Ratesetter Australia RE Limited;

6.3. Brighte Capital Pty Ltd;

6.4. Devizo Pty Ltd; and

6.5. zipMoney Payments Pty Ltd,

requesting them to provide to the Tribunal the following information for each of the past two years prior to 30 April 2020:

6.6. the fees and costs each charged to NET merchants;

6.7. how those fees and costs are calculated;

6.8. details of the safeguards, including but not limited to policies, guidelines, instructions, compliance procedures or contractual arrangements, in place to ensure those fees and charges are not passed on to consumers, such details to include a description of the purpose, operation and application of the safeguards;

- 6.9. the number of complaints, queries and disputes concerning price inflation as a result of fees and charges being passed on;
- 6.10. the number of disputes between NET merchants and the providers, and details of the actions taken by the providers against NET merchants, concerning price inflation as a result of fees and charges being passed on; and
- 6.11. details of any instructions and/or guidance, if any, provided or made available to NET retailers during the past two years (to 30 April 2020) regarding the calculation or review of upfront or base price of NET products in light of applicable merchant fees relating to finance, including a description of the instructions and/or guidance, how they should be used and/or applied, and their purpose.

ANNEXURE B

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2019

Re: 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

Applicant: Flexigroup Limited [ACN 122 574 583]

**NOTICE UNDER SECTION 90(6) OF THE *COMPETITION AND CONSUMER ACT 2010*
(CTH)**

To: Brighte Capital Pty Ltd (ACN 609 165 906)
Level 15, 1 Margaret Street
SYDNEY NSW 2000

THE TRIBUNAL REQUESTS THAT:

1. Pursuant to ss 90(6)(c) and 101(2) of the *Competition and Consumer Act 2010* (Cth), Brighte Capital Pty Ltd provide the information in Schedule 1 to the Australian Competition Tribunal on or before 27 May 2020.

SCHEDULE 1

1. For each of the past two years prior to 30 April 2020, with respect to the supply of 'buy now pay later' (**BNPL**) finance products and/or regulated credit products by Brighte Capital Pty Ltd in relation to the supply of New Energy Tech (**NET**) products:
 - 1.1. the number of complaints received;
 - 1.2. the number of financial hardship applications received;
 - 1.3. the number of internal dispute resolution cases opened, and the number of internal dispute resolution cases completed to resolution;
 - 1.4. the total number of transactions, the amounts financed, and the total amounts written-off, annually;
 - 1.5. the total number of customer defaults (meaning customers in 30+ days of payment arrears) recorded each month, identifying the number of those customers either 60+ or 90+ days in arrears; and
 - 1.6. a comparison of:
 - 1.6.1. the rate of customer defaults on BNPL finance products supplied in relation to NET products as against the rate of customer defaults on BNPL finance products supplied in relation to non-NET products;
 - 1.6.2. the rate of customer defaults on regulated finance products supplied in relation to NET products as against the rate of customer defaults on regulated finance products supplied in relation to non-NET products.
2. For each of the past two years prior to 30 April 2020, the proportion and amount of NET sales made by NET retailers that involve the use of BNPL finance and/or regulated credit products.
3. For each of the past two years prior to 30 April 2020, the average size of BNPL arrangements for NET purchases and the average size of BNPL purchases.
4. For each of the past two years prior to 30 April 2020,
 - 4.1. an estimate of the extent to which NET retailers rely on unsolicited sales expressed as a percentage of total sales of NET products, and which proportion of those sales are financed either by BNPL or regulated finance products, including an explanation for the basis of the estimate; and
 - 4.2. the proportion and amount of Brighte Capital Pty Ltd's financing which is provided to finance unsolicited sales of NET products.
5. For each of the past two years prior to 30 April 2020:

- 5.1. the fees and costs charged by Brighte Capital Pty Ltd to NET merchants;
- 5.2. how those fees and costs are calculated;
- 5.3. details of the safeguards, including but not limited to policies, guidelines, instructions, compliance procedures or contractual arrangements, in place to ensure those fees and charges are not passed on to consumers, such details to include a description of the purpose, operation and application of the safeguards;
- 5.4. the number of complaints, queries and disputes concerning price inflation as a result of fees and charges being passed on;
- 5.5. the number of disputes between NET merchants and the providers, and details of the actions taken by the providers against NET merchants, concerning price inflation as a result of fees and charges being passed on; and
- 5.6. details of any instructions and/or guidance, if any, provided or made available to NET retailers regarding the calculation or review of upfront or base price of NET products in light of applicable merchant fees relating to finance, including a description of the instructions and/or guidance, how they should be used and/or applied, and their the purpose.

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2019

Re: 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

Applicant: Flexigroup Limited [ACN 122 574 583]

**NOTICE UNDER SECTION 90(6) OF THE *COMPETITION AND CONSUMER ACT 2010*
(CTH)**

To: Devizo Pty Ltd (ACN 605 753 535)
Level 1, 55 Whitehorse Road
BALWYN VIC 3103

THE TRIBUNAL REQUESTS THAT:

1. Pursuant to ss 90(6)(c) and 101(2) of the *Competition and Consumer Act 2010* (Cth), Devizo Pty Ltd provide the information in Schedule 1 to the Australian Competition Tribunal on or before 27 May 2020.

SCHEDULE 1

1. For each of the past two years prior to 30 April 2020, with respect to the supply of 'buy now pay later' (**BNPL**) finance products and/or regulated credit products by Devizo Pty Ltd in relation to the supply of New Energy Tech (**NET**) products:
 - 1.1. the number of complaints received;
 - 1.2. the number of financial hardship applications received;
 - 1.3. the number of internal dispute resolution cases opened, and the number of internal dispute resolution cases completed to resolution;
 - 1.4. the total number of transactions, the amounts financed, and the total amounts written-off, annually;
 - 1.5. the total number of customer defaults (meaning customers in 30+ days of payment arrears) recorded each month, identifying the number of those customers either 60+ or 90+ days in arrears; and
 - 1.6. a comparison of:
 - 1.6.1. the rate of customer defaults on BNPL finance products supplied in relation to NET products as against the rate of customer defaults on BNPL finance products supplied in relation to non-NET products;
 - 1.6.2. the rate of customer defaults on regulated finance products supplied in relation to NET products as against the rate of customer defaults on regulated finance products supplied in relation to non-NET products.
2. For each of the past two years prior to 30 April 2020, the proportion and amount of NET sales made by NET retailers that involve the use of BNPL finance and/or regulated credit products.
3. For each of the past two years prior to 30 April 2020, the average size of BNPL arrangements for NET purchases and the average size of BNPL purchases.
4. For each of the past two years prior to 30 April 2020,
 - 4.1. an estimate of the extent to which NET retailers rely on unsolicited sales expressed as a percentage of total sales of NET products, and which proportion of those sales are financed either by BNPL or regulated finance products, including an explanation for the basis of the estimate; and
 - 4.2. the proportion and amount of Devizo Pty Ltd's financing which is provided to finance unsolicited sales of NET products.
5. For each of the past two years prior to 30 April 2020:

- 5.1. the fees and costs charged by Devizo Pty Ltd to NET merchants;
- 5.2. how those fees and costs are calculated;
- 5.3. details of the safeguards, including but not limited to policies, guidelines, instructions, compliance procedures or contractual arrangements, in place to ensure those fees and charges are not passed on to consumers, such details to include a description of the purpose, operation and application of the safeguards;
- 5.4. the number of complaints, queries and disputes concerning price inflation as a result of fees and charges being passed on;
- 5.5. the number of disputes between NET merchants and the providers, and details of the actions taken by the providers against NET merchants, concerning price inflation as a result of fees and charges being passed on; and
- 5.6. details of any instructions and/or guidance, if any, provided or made available to NET retailers regarding the calculation or review of upfront or base price of NET products in light of applicable merchant fees relating to finance, including a description of the instructions and/or guidance, how they should be used and/or applied, and their the purpose.

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2019

Re: 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

Applicant: Flexigroup Limited [ACN 122 574 583]

**NOTICE UNDER SECTION 90(6) OF THE *COMPETITION AND CONSUMER ACT 2010*
(CTH)**

To: RateSetter Australia RE Limited (ACN 166 646 635)
Level 5, 14 Martin Place,
SYDNEY NSW 2000

THE TRIBUNAL REQUESTS THAT:

1. Pursuant to ss 90(6)(c) and 101(2) of the *Competition and Consumer Act 2010* (Cth), RateSetter Australia RE Limited provide the information in Schedule 1 to the Australian Competition Tribunal on or before 27 May 2020.

SCHEDULE 1

1. For each of the past two years prior to 30 April 2020, with respect to the supply of 'buy now pay later' (**BNPL**) finance products and/or regulated credit products by RateSetter Australia RE Limited in relation to the supply of New Energy Tech (**NET**) products:
 - 1.1. the number of complaints received;
 - 1.2. the number of financial hardship applications received;
 - 1.3. the number of internal dispute resolution cases opened, and the number of internal dispute resolution cases completed to resolution;
 - 1.4. the total number of transactions, the amounts financed, and the total amounts written-off, annually;
 - 1.5. the total number of customer defaults (meaning customers in 30+ days of payment arrears) recorded each month, identifying the number of those customers either 60+ or 90+ days in arrears; and
 - 1.6. a comparison of:
 - 1.6.1. the rate of customer defaults on BNPL finance products supplied in relation to NET products as against the rate of customer defaults on BNPL finance products supplied in relation to non-NET products;
 - 1.6.2. the rate of customer defaults on regulated finance products supplied in relation to NET products as against the rate of customer defaults on regulated finance products supplied in relation to non-NET products.
2. For each of the past two years prior to 30 April 2020, the proportion and amount of NET sales made by NET retailers that involve the use of BNPL finance and/or regulated credit products.
3. For each of the past two years prior to 30 April 2020, the average size of BNPL arrangements for NET purchases and the average size of BNPL purchases.
4. For each of the past two years prior to 30 April 2020,
 - 4.1. an estimate of the extent to which NET retailers rely on unsolicited sales expressed as a percentage of total sales of NET products, and which proportion of those sales are financed either by BNPL or regulated finance products, including an explanation for the basis of the estimate; and
 - 4.2. the proportion and amount of RateSetter Australia RE Limited's financing which is provided to finance unsolicited sales of NET products.
5. For each of the past two years prior to 30 April 2020:

- 5.1. the fees and costs charged by RateSetter Australia RE Limited to NET merchants;
- 5.2. how those fees and costs are calculated;
- 5.3. details of the safeguards, including but not limited to policies, guidelines, instructions, compliance procedures or contractual arrangements, in place to ensure those fees and charges are not passed on to consumers, such details to include a description of the purpose, operation and application of the safeguards;
- 5.4. the number of complaints, queries and disputes concerning price inflation as a result of fees and charges being passed on;
- 5.5. the number of disputes between NET merchants and the providers, and details of the actions taken by the providers against NET merchants, concerning price inflation as a result of fees and charges being passed on; and
- 5.6. details of any instructions and/or guidance, if any, provided or made available to NET retailers regarding the calculation or review of upfront or base price of NET products in light of applicable merchant fees relating to finance, including a description of the instructions and/or guidance, how they should be used and/or applied, and their the purpose.

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

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Applicant: Flexigroup Limited [ACN 122 574 583]

**NOTICE UNDER SECTION 90(6) OF THE *COMPETITION AND CONSUMER ACT 2010*
(CTH)**

To: ZipMoney Payments Pty Ltd (ACN 164 440 993)
Suite1, Level 1, 95-97 Grafton Street
BONDI JUNCTION NSW 2022

THE TRIBUNAL REQUESTS THAT:

1. Pursuant to ss 90(6)(c) and 101(2) of the *Competition and Consumer Act 2010* (Cth), ZipMoney Payments Pty Ltd provide the information in Schedule 1 to the Australian Competition Tribunal on or before 27 May 2020.

SCHEDULE 1

1. For each of the past two years prior to 30 April 2020, with respect to the supply of 'buy now pay later' (**BNPL**) finance products and/or regulated credit products by ZipMoney Payments Pty Ltd in relation to the supply of New Energy Tech (**NET**) products:
 - 1.1. the number of complaints received;
 - 1.2. the number of financial hardship applications received;
 - 1.3. the number of internal dispute resolution cases opened, and the number of internal dispute resolution cases completed to resolution;
 - 1.4. the total number of transactions, the amounts financed, and the total amounts written-off, annually;
 - 1.5. the total number of customer defaults (meaning customers in 30+ days of payment arrears) recorded each month, identifying the number of those customers either 60+ or 90+ days in arrears; and
 - 1.6. a comparison of:
 - 1.6.1. the rate of customer defaults on BNPL finance products supplied in relation to NET products as against the rate of customer defaults on BNPL finance products supplied in relation to non-NET products;
 - 1.6.2. the rate of customer defaults on regulated finance products supplied in relation to NET products as against the rate of customer defaults on regulated finance products supplied in relation to non-NET products.
2. For each of the past two years prior to 30 April 2020, the proportion and amount of NET sales made by NET retailers that involve the use of BNPL finance and/or regulated credit products.
3. For each of the past two years prior to 30 April 2020, the average size of BNPL arrangements for NET purchases and the average size of BNPL purchases.
4. For each of the past two years prior to 30 April 2020,
 - 4.1. an estimate of the extent to which NET retailers rely on unsolicited sales expressed as a percentage of total sales of NET products, and which proportion of those sales are financed either by BNPL or regulated finance products, including an explanation for the basis of the estimate; and
 - 4.2. the proportion and amount of ZipMoney Payments Pty Ltd's financing which is provided to finance unsolicited sales of NET products.
5. For each of the past two years prior to 30 April 2020:

- 5.1. the fees and costs charged by ZipMoney Payments Pty Ltd to NET merchants;
- 5.2. how those fees and costs are calculated;
- 5.3. details of the safeguards, including but not limited to policies, guidelines, instructions, compliance procedures or contractual arrangements, in place to ensure those fees and charges are not passed on to consumers, such details to include a description of the purpose, operation and application of the safeguards;
- 5.4. the number of complaints, queries and disputes concerning price inflation as a result of fees and charges being passed on;
- 5.5. the number of disputes between NET merchants and the providers, and details of the actions taken by the providers against NET merchants, concerning price inflation as a result of fees and charges being passed on; and
- 5.6. details of any instructions and/or guidance, if any, provided or made available to NET retailers regarding the calculation or review of upfront or base price of NET products in light of applicable merchant fees relating to finance, including a description of the instructions and/or guidance, how they should be used and/or applied, and their the purpose.

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2019

Re: 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

Applicant: Flexigroup Limited [ACN 122 574 583]

**NOTICE UNDER SECTION 90(6) OF THE *COMPETITION AND CONSUMER ACT 2010*
(CTH)**

To: Flexigroup Limited (ACN 122 574 583)
Level 7, 179 Elizabeth Street
SYDNEY NSW 2000

THE TRIBUNAL REQUESTS THAT:

1. Pursuant to ss 90(6)(b) and 101(2) of the *Competition and Consumer Act 2010* (Cth), Flexigroup Limited provide the information in Schedule 1 to the Australian Competition Tribunal on or before 27 May 2020.

SCHEDULE 1

1. For the past two years prior to 30 April 2020:
 - 1.1. the fees and costs charged by Flexigroup Limited to NET merchants;
 - 1.2. how those fees and costs are calculated;
 - 1.3. details of the safeguards, including but not limited to policies, guidelines, instructions, compliance procedures or contractual arrangements, in place to ensure those fees and charges are not passed on to consumers, such details to include a description of the purpose, operation and application of the safeguards;
 - 1.4. the number of complaints, queries and disputes concerning price inflation as a result of fees and charges being passed on;
 - 1.5. the number of disputes between NET merchants and the providers, and details of the actions taken by the providers against NET merchants, concerning price inflation as a result of fees and charges being passed on; and
 - 1.6. details of any instructions and/or guidance, if any, provided or made available to NET retailers regarding the calculation or review of upfront or base price of NET products in light of applicable merchant fees relating to finance, including a description of the instructions and/or guidance, how they should be used and/or applied, and their the purpose.

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2019

Re: 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

Applicant: Flexigroup Limited [ACN 122 574 583]

**NOTICE UNDER SECTION 90(6) OF THE *COMPETITION AND CONSUMER ACT 2010*
(CTH)**

To: Australian Finance Industry Association Limited (ACN 000 493 907)
Level 11, 124-130 Pitt Street
SYDNEY NSW 2000

THE TRIBUNAL REQUESTS THAT:

1. Pursuant to ss 90(6)(c) and 101(2) of the *Competition and Consumer Act 2010* (Cth), Australian Finance Industry Association Limited provide the information in Schedule 1 to the Australian Competition Tribunal on or before 27 May 2020.

SCHEDULE 1

1. An update on the progress of the proposed BNPL Code of Practice.
2. An estimate of when the proposed BNPL Code of Practice might come into force, including a description of the process to be followed and any indicative timetable for each remaining step.