

## 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: Third 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: 10/06/2020 10:12 AM

#### 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: 10 June 2020

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

1. This is the third statement I have made in this proceeding.
2. In paragraph 10 of my First Statement, I noted that RateSetter offers “regulated” loans.
3. In paragraph 17 of my first statement I said that RateSetter does not permit merchants that offer RateSetter’s regulated loans to do so on an unsolicited basis.
4. I understand that RateSetter’s merchants would be permitted to offer its regulated loans on an unsolicited basis if RateSetter were to appoint them as its “credit representatives”.
5. I set out below some of the key reasons why we do not support such a sales model. I am not aware of any other provider of regulated loans that appoints merchants as its credit representatives.

## **PRACTICALITIES OF CREATING AND MAINTAINING AUTHORISATIONS**

6. I understand that if RateSetter were to appoint a body corporate merchant as corporate representative, RateSetter would need to give written notice to each of those body corporates and notify ASIC of each appointment (including details of the date of authorisation, name, date and place of birth, principal business address). Those body corporates would, in turn, need to authorise each natural person who would engage in the credit activities on RateSetter's behalf. RateSetter would also need to give its written consent for that authorisation to occur.
7. Further, every natural person that is authorised to engage in credit activities on RateSetter's behalf would need to have background checks performed, both prior to their appointment and while they continue to act as a representative. Such checks typically include references and criminal history checks, searches of ASIC's register of banned and disqualified persons etc.
8. Many merchants have a large number of sales staff. Some are large call-centre based operators. The required checks could be significant, require substantial time and resources and, where call centres are based offshore, practically difficult to carry out.

## **CONFLICT WITH OTHER AUSTRALIAN CREDIT LICENCE HOLDERS**

9. A credit representative may be authorised by multiple Australian Credit Licence holders (**licensees**), where each licensee consents to that person being a credit representative of the other. However, this creates significant legal risk for each licensee and practically often requires complex inter-licensee arrangements (including negotiation of indemnities) to allocate risk between the licensees.
10. Given the cost of such arrangements, it would be unlikely therefore that a merchant would have multiple authorisations. In my view this would see a reduction in competition and choice for the consumer.

## **COMPLIANCE REQUIREMENTS FOR CREDIT REPRESENTATIVES**

11. As a licensee, RateSetter would be responsible as between the licensee and the consumer, for the conduct of the representative, whether or not the representative's conduct is within the authority of the licensee.
12. The compliance requirements for a merchant that offers regulated finance as "credit representative" will therefore often be higher than those that are applicable for a merchant

that offers regulated finance pursuant to the “Point of Sale Exemption” in the NCCPA. In particular:

- (a) Ongoing monitoring and supervision – licensees have a continuous obligation to monitor and supervise credit representatives to ensure they are adequately trained and competent to act in that capacity, including that they are complying with the NCCPA. This will often entail the credit representative having to engage in and interact with the licensee’s compliance team, to demonstrate it is satisfying these requirements;
- (b) Disclosure documents - the merchant would have to prepare (or have the licensee prepare for them) various disclosure documents to be provided to consumers in addition to the licensee’s disclosure documents;
- (c) Unsuitability assessment - credit representatives of a licensee may under section 116 of the NCCPA be required to perform a preliminary assessment on behalf of the licensee, before providing credit assistance to a consumer. In each instance this would require significant training and associated compliance monitoring costs that merchants are unlikely to accept;
- (d) EDR membership - credit representatives must become members of AFCA in their own right. This creates an additional compliance burden and cost for the merchant;
- (e) Ongoing training – credit representatives must be adequately trained and competent to engage in the credit activities authorised by the licensee. This typically includes periodic training and adherence to a training/professional development plan.

### **COSTS, TIME AND RISKS**

- 13. I consider that the time, costs and risks associated with the above would be significant and outweigh the benefit to RateSetter in its loans being offered on an unsolicited basis.
- 14. I do not consider there to be any prospect of RateSetter appointing merchants as its credit representatives.

### **OUR COMPANY VALUES AND ETHICS**

- 15. In addition to those commercial considerations, RateSetter’s business model is centred around transparency and full and honest disclosure with consumers.

16. I view unsolicited sales activities as not aligned with our company values and not in customers' best interests.
17. The unsolicited sales models typically used by solar companies commonly utilise high-pressure sales tactics and other methods which increase the harm to consumers. This goes against RateSetter's philosophy and desire to create positive outcomes for consumers.

10 June 2020

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Date:



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Daniel Robert Foggo