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4 April 2019

To Dr Ron Ben-David
Chairman
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne Victoria 3000
retailenergyreview@esc.vic.gov.au

Dear Dr Ben-David

amaysim submission on Victorian Default Offer and Draft Advice

1 Introduction

This submission relates to:

- the Victorian Default Offer (**VDO**) provided for under the Energy Legislation Amendment (Victorian Default Offer) Bill 2019 (**VDO Rules**); and
- the ESC's draft advice to the Victorian Government (**Draft Advice**).

amaysim aspires to be Australia's best customer-focused utilities service provider. amaysim is accordingly highly supportive of all regulatory changes that produce long-term, sustainable benefits for consumers. Our submission contains constructive suggestions (together with our reasons for them) for improvements to the VDO to make it fairer and more effective for consumers and industry.

We would be delighted to discuss this submission with you directly.

2 Background on the industry and amaysim

The Australian energy market today resembles in many respects the mobile services market of 10 years ago. The offerings (in particular, conditional discounts) are complex and confusing, generators, distributors and retailers are distrusted. Retailers tend to push company-first, unfriendly contracts, to maintain a "front-book/back-book" business model, which is primarily focused on protecting margins.

amaysim is a large tier two energy retailer offering innovative products in competition with the major energy retailers (including gentailers). Competition from tier two retailers is vital to ensuring the major energy retailers are not able to utilise their market dominance to the detriment of consumers.

amaysim entered the energy market in 2017 when it acquired the Click Energy Group. We retail electricity and gas over 80,000 residential and small business customers in Victoria and over 200,000 customers nationally.

amaysim is a pure retailer. We do not have any generating capacity, relying instead on generators and other counterparties to hedge (typically using load following hedges) our exposure to spot market volatility. This makes us a "price taker", with very limited scope to control our wholesale costs. This is an important point of difference between tier two retailers and the major energy retailers, which we make detailed submissions on below.

amaysim acknowledges that retail margins of some energy retailers may be above some international benchmarks. However, we submit in this paper that retail margins cannot be looked at in isolation of the other components of consumer's energy bills. The unique geographical layout of the NEM, vast transmission distances and volatile weather patterns (which further exacerbate average versus peak usage) all contribute to Australian energy costs which are higher and more difficult to manage, comparatively, to those in other international markets.

3 amaysim's recommended improvements to the VDO and the Draft Advice

We make the following recommendations with a view to maintaining, encouraging and increasing competition amongst all energy retailers for consumers, and to reducing costs for consumers:

Recommendation #1 – Address gentailer dominance

The ACCC acknowledges that it is already very difficult for tier two retailers to compete with the "big three" gentailers. The VDO will exacerbate this. To address this:

- put in place measures to ensure gentailers cannot simply 'shift' their retail margin into their wholesale books
- procure the ACCC to revisit the introduction of a market abuse rule in conjunction with the introduction of the VDO
- procure the ACCC to consider a requirement for all gentailers to structurally separate wholesale and require their wholesale divisions to provide fair and open access to hedges for tier two retailers

Reform of retail margins in the absence of other market reforms may distort the market adversely in the medium and long term. Other market reforms should be considered and implemented in conjunction with the VDO

The current timeline for implementation of the VDO should be delayed to ensure government is fully apprised of the impact of the regulation

Recommendation #2 – Allow for innovation and reverse major retailer bias

The VDO cost methodologies should be adjusted to:

- to allow for and encourage innovative product offerings
- reverse out their implicit major retailer bias

Recommendation #3 – Retail operating costs

More specifically, the VDO cost methodologies should take into account and allow for:

- the purchase of non-current (ie capital) assets
- recent increases in bad debt experienced, particularly those of by tier two (and lower) retailers

Recommendation #4 – Wholesale costs

The VDO cost methodologies should also take into account and allow for:

- the additional wholesale costs which the non-gentailer retailers incur (eg by hedging)
- more recent load data - in particular the Q1 2019 data and all recent pricing data up to the date of the relevant VDO calculation
- the costs of wholesale risk management including, in particular, the cost of capital allocated to meeting prudential requirements

More generally, the calculation methodologies should 'more transparently set out the costs' as stated in the Draft Advice. Things like Monte Carlo simulations are not easily 'understood…familiar and readily applicable"

Recommendation #5 – Address the interaction with the Best Offer rules

The interaction of the VDO with the Best Offer rule could generate outcomes which mislead consumers. This must be addressed. As an alternative, we recommend regularly referring consumers to the Victorian Energy Compare website (via bills, as currently proposed) so that consumers are prompted to fully consider their current circumstances and compare all retailers' most recent offers

While the intent behind the Best Offer rule is to create a 'benchmark' for consumers to make comparisons to, this may have the unintended effect of discouraging innovative products and offerings, to the detriment of consumers

We recommend the Best Offer rule only apply to comparable typical market construct energy products (eg which take per-unit usage and price into account in pricing)

Recommendation #6 – Other reform

Reform market practice to require switching between retailers to occur within 24 hours

Urgently put in place reforms to stop or regulate all win-back activity. It is now highly prevalent in the industry and the cost of it is ultimately borne by all consumers

Remove cooling off periods for retailers who do not acquire customers via door-knocking

Without these improvements, amaysim considers that the VDO will fail to meet:

- the ESC's own objectives of promoting the long-term interests of Victorian consumers with respect to the price, quality and reliability of essential services; and
- the Terms of Reference, which indicate that the Victorian Government wants the VDO to be an option to safeguard customers who are unable or unwilling to engage in the

market, without impeding the consumer benefits experienced by those who are active in the market.

The reasons for our recommendations are set out below

4 The VDO will potentially shift retail margin into gentailer's wholesale books

While a small number of retail customers will benefit from lower prices in the short-term,[1] the VDO has the potential to cause structural retail margin compression in the medium to long-term.

While we appreciate this is one of the objectives of the VDO and the Draft Advice, and we are supportive of this in principle, the VDO costs methodologies and the tariffs which will flow from them will (if they remain in their current form) incentivise gentailers (which also happen to be the major retailers) to simply shift foregone retail margin into their wholesale divisions, which will ultimately be protected due to the VDO tariffs being regularly re-set by reference to the wholesale market.

If wholesale costs increase due to the VDO, the first loss for the tier two retailers will be to their retail margin. Tier two retailers who are wholesale price takers and only earn a retail margin stand to lose significantly in this scenario. Their retail margins will be compressed by the VDO, and then further compressed by the increased wholesale costs passed onto them by the gentailers who are incentivised to shift margin into their wholesale divisions.

This is likely to lead to a number of tier two retailers exiting the Victorian market which will have the very undesirable effect of substantially lessening competition.

The present structure of the National Broadband Network is having a similar impact on participants in the telco market. Here the Australian government, rather than the gentailers, have set wholesale prices at a level that is compressing retailers' retail margins to the point that many of the tier two telcos, including amaysim, have or are in the process of exiting the NBN market. What will the end result of this be? Only the major telco retailers will ultimately be left in this market, at which time they will be largely free to price their NBN's offerings unfettered by any real competition. See Annexure 1 for further details on the evolution of the NBN.

We encourage the ESC to look to the reformed, agile Australian mobile market as a model for the retail electricity market. In the mobile market, pricing is unregulated, the three mobile carriers actively compete against each other, other retailers and virtual network operators (including amaysim) in a market that is transparent, innovative and customer-focussed. Prices have been going down and inclusions have been going up for well over a decade. Smaller retailers like amaysim are in our view essential to a healthy market and healthy competition. Both smaller mobile retailers and their customers benefit from the very active and competitive wholesale arms of the three carriers who actively compete to win wholesale business from each other.

[1] Australian Competition and Consumer Commission, (Restoring electricity affordability and Australia's competitive advantage), Retail Electricity Pricing Inquiry – Final Report, June 2018 (**ACCC Report**), page 25 at Figure 1.25 which shows just over 5% of Victorian residential non-solar customers were on standing offers as at 30 June 2017.

The ability of gentailers to potentially misuse their market power has already been raised by the ACCC and the AER. In the ACCC's Final Report on electricity affordability (**ACCC Report**), the ACCC acknowledged that "the current wholesale market structure is not conducive to vigorous competition"[2] and that higher wholesale prices are attributable to "a subtle and sustained 'lift' in prices that can be attributed in part to a lack of competitive constraint"[3]. While the ACCC concluded that it "does not consider it appropriate to recommend the introduction of any market power mitigation rule at this time" the ACCC Report noted that "this question should be revisited periodically…".[4]

In our view, the introduction of the VDO necessitates such a revisit, as it will:

- encourage the gentailers to simply shift their foregone retail margin into their wholesale book; and
- facilitate and encourage further market growth by the major energy retailers who have the benefit of very strong balance sheets and cashflows, large sticky customer bases and sophisticated support infrastructure. These 'assets' will also enable them to further discourage retailer innovation in products that champion the customer.

In addition, we believe that the VDO should also prompt the ACCC to revisit the requirement for all gentailers to structurally separate wholesale and require their wholesale divisions to provide fair and open access to hedges for tier two retailers.

5 Other reforms should accompany the VDO if it is to be sustainable

In the ACCC Report, the ACCC[5] concluded that residential consumers have faced a real increase of 35% in their bills and a price increase of around 56% in real terms over the period from 2007-08 to 2017-18. Over that period:

- network costs contributed 35% of the total increase to average customer bills and 38% to average residential customer effective prices
- wholesale costs contributed 22% to the total increase to average customer bills and 27% to average residential customer effective prices
- environmental costs contributed 20% to the total increase to average customer bills and 15% to average residential customer effective prices
- retail costs contributed 7% to the total increase to average customer bills and 8% to average residential customer effective prices
- retail margin contributed 16% to the total increase to average customer bills and 13% to average residential customer effective prices

These findings plainly show that retail margin has been, in percentage terms, a significantly smaller contributor to rising electricity bills and prices between 2007-08 and 2017-18.

[2] Ibid, page 88.

[3] Ibid, page 96.

[4] Ibid.

[5] Ibid, page v

The ACCC Report also concluded that wholesale costs currently represent approximately 34% of the average residential customer's bill, and networks costs 42%, whereas retail margin currently represents approximately 8%.

When combined with retail costs, this still only represents 16.7% of the average residential customer's bill. Accordingly, it is unclear whether regulation which seeks to cap retail margin is the most sensible starting point when network and wholesale costs, which make up such a large proportion of consumer's bill, have increased by a disproportionate percentage over the last decade.

amaysim submits that while capping retail margins will in the short term lower prices for some consumers, it will also, in the absence of more balanced reform, create long term distortions to the market which will likely result in these savings being eroded in the medium term. See section 4 above for one example of this.

We submit that the VDO will not provide sustainable energy price competition on its own. The first and second reading speeches on the VDO Rules stated that:

> *"Access to affordable energy is vital for all Victorians. This Bill is a key part of the Government's broader package of reforms aimed at making Victoria's energy retail markets simpler and fairer, and cutting the cost of energy for Victorian households and small businesses."*[6]

The ESC must have regard to this "broader package of reforms" before implementing the VDO. Reform is not just required at the retail level (as addressed by the VDO) but must, by necessity of meeting the VDO Rule's objectives, be addressed across the industry more broadly, including at the wholesale and distribution levels. Implementation of the VDO in isolation is not sustainable.

We also refer you to the Second Reading Speech in relation to the VDO Rules which highlights this need for thorough and considered review:

> *"Recognising the significance of a decision to regulate tariffs, the Bill inserts a further requirement for the Minister to consult the Premier and the Treasurer before making such a recommendation. These amendments will ensure that the reserve pricing powers can be exercised more flexibly and be based on a broad range of information, with appropriate requirements to ensure these matters are considered at senior levels of government."*

We submit that the current timeline for implementation of the VDO should be delayed, to ensure stakeholders at senior levels of government have been provided with, and have had time to fully contemplate, all information pertaining to this reform and the impact it will have on industry, competition and consumers.

6 Adjust operating cost structure to facilitate and encourage innovative products

The VDO effectively imposes a regulated operating cost structure.

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[6] First Reading Speech in relation to the VDO Rules, page 426-426, 20 February 2019; Second Reading Speech in relation to the VDO Rules, page 723, 7 March 2019.

In our view, this will disincentivise retailers from any further investment in customer service or other innovative features which improve customer experience. In fact, the VDO will cause all retailers to entirely reconsider their cost structure. The results of this will likely be analogous with those being experienced in the National Broadband Network market – cost cutting, poor customer service and no investment in new features or experience improvements as a result of unsustainably low margins.

As you are aware, amaysim will soon launch an innovative new energy subscription product that aims to address many of the concerns raised by the regulators regarding the complexity of energy products. See Annexure 2 for further details on it.

Details of this product were first raised with the ESC in November 2018. amaysim wants to release a subscription-based energy product because its essence is customer centric design. Subscription relies on a number of characteristics including simple and transparent pricing, no contracts, no monthly bills, no conditional discounts, flexibility to easily change plans and options for various additional features. amaysim's new subscription energy product has these characteristics and, based on our research, consumers are keen to have this product available to them in the energy market.

We believe that our subscription energy product will bring much needed simplicity and transparency to consumers at a fair and sustainable margin. Unfortunately, the cost methodology of the VDO Rules undermines this product's commercial viability in the Victorian market, despite our unwavering intent to sell it at a fair margin.

Without being able to generate a fair margin, retailers like amaysim will need to reconsider investment in and creation of future innovations. This will obviously not benefit energy consumers.

We submit that the ESC should reconsider their cost methodologies with a view to not only permitting but encouraging the development and roll out of innovative products.

7 Adjust VDO cost-methodologies to reverse out implicit major retailer bias

The cost-methodologies used by the VDO are heavily weighted to a substantial and mature generator profile, and often supported by management of wholesale costs.

This cost-methodology bias does not consider the fact that smaller retailers often have to spend more money to acquire customers or invest more in customer service than large retailers who have the full benefit of long-term investment in brand and services due to time-in-market and scale. Energy customers benefit from the efforts of smaller retailers to grow and to achieve scale.

It is unclear how a new or recent market entrant can be expected to have a cost structure which is the same as that of an incumbent. Ultimately, the winners from the VDO (in its current form) are likely to be large vertically-integrated incumbents who have more capital, who can benefit from wholesale markets and who are able to withstand the prolonged pressure of a low margin environment as non-incumbents exit the market.

We are also of the view that the ESC needs to allow for the fact that the incumbents who dominate the market have had the benefit of being 'in-market' with their brands for many decades. Their brands are well known and their marketing budgets have been, over the years, substantial. In contrast, smaller, lesser-known and newer market entrants have not had this benefit. The operating cost assumptions built into the VDO incorrectly assume an even playing field in this respect and effectively prevent new market entrants or any meaningful investment in marketing (or brand awareness) by them.

It is also unclear that the assumed operating cost structure allows for any meaningful investment in future innovation, upgrades to billing platforms or system or process improvements. It will cause a lowest common denominator approach in an industry which is ripe for innovation and customer-centricity.

We accordingly submit that the cost methodologies of the VDO be reconsidered and re-sculpted to have regard to the costs of not just the major retailers but also the smaller ones.

8 Allow for more retail operating costs

In response to the ESC's invitation to substantiate material changes in costs since the ACCC's Retail Electricity Pricing Inquiry (**REPI**) analysis,[7] amaysim submits the following changes are material to retail operating costs and should be considered for inclusion in the ESC's final advice to the Victorian Government:

- an allowance be included for the purchase of non-current assets (ie the purchase of capital assets)

  This allowance is essential as it will encourage energy retailers to provide innovative solutions for customers, through investing in, amongst other things, new billing systems and IT solutions. For example, an energy retailer's billing system is fundamental to being able to deliver innovative and consumer friendly solutions. An allowance for the purchase of non-current assets should be included via an allowance for depreciation and amortisation. Depreciation and amortisation can also be reliably measured and substantiated, given the application of applicable accounting standards and most energy retailers, if not all, have depreciation and amortisation audited in preparing financial statements.

- a larger allowance generally for retail operating costs to reflect significant cost increases in the 2018/19 financial year

  The proposed retail operating costs set out in the Draft Advice is based on the ACCC's REPI analysis which finishes at 2017/18. amaysim and other market participants have seen significant increases in costs in the 2018/19 financial year, in particular in the area of bad debts. There should be an additional allowance to take into account these recent increases. To illustrate, amaysim estimates retail operating costs have increased by approximately 9%, on a per customer per annum basis, from 2017/18 to 2018/19, driven predominantly by an increase in bad debts. We believe that this increase should be accounted for in retail operating costs. We do not believe that the 5% "buffer" accounts for this change.

Based on the above, we believe that the retail operating cost component of the VDO should increase from $104.50 (excl GST), as highlighted in the ESC's Draft Advice, to $124.02 (excl GST).

7 Australian Competition & Consumer Commission. Retail Electricity Pricing Inquiry, Final Report, July 2018.

9 Allow for more wholesale costs

The VDO cost methodologies also require refinement for wholesale costs. Our submissions in this regard include the following:

- the VDO cost methodologies do not reflect tier two retailers' wholesale costs where the retailer is not a risk taker (ie it utilises load following hedges)

  Like many other tier two (and below) retailers, amaysim is not vertically integrated and relies on generators and other counterparties to hedge its exposure to spot market volatility and compete with vertically integrated energy companies (who are not exposed to volume risk) on a like-for-like basis. As a result, we have no control over our wholesale costs.

- improve the transparency of the approach taken to wholesale costs

  The Draft Advice states that it has used an approach that "transparently sets out the costs". There are, however, a number of cost components that, so far as the Draft Advice provides, cannot be considered transparent, including:

  - **the Monte Carlo simulation**: using a Monte Carlo simulation to determine the VDO price is not transparent nor, for many, easily "*understood…familiar and readily applicable*" as is required by the set criteria. It is certainly not "reproducible" by anyone other than the adviser that devised the simulation.

    It is therefore strongly recommended that a much simpler formula, based on multiples of observable futures prices, be devised and applied. This will enable all participants to quickly and easily determine the VDO price that would apply in future periods, and be able to plan and manage their commercial operations more effectively (so as to reduce risk). This is a feature of the Globird submission which we broadly support.

  - **Load Profiles**: the Draft Advice states that the load profile from 2012-17 is reasonable to use for 2019-20. We would not expect load profiles from that far back to be representative of load profiles to be faced in 2019-20. More recent data should be used for the calculation of wholesale costs - with rooftop solar installations and energy efficiency measures being implemented, the market structure and load for residential customers has changed significantly over the last 5 years.

    Further, to capture fully the demand risk profile that retailers are having to consider in their pricing, it is imperative that Q119 be included. Although arguably a one-in-five-year occurrence, retailers have to consider this potential outcome when pricing every year and the Q119 outcome will most closely reflect the risk and cost analysis for 2019-20.

  - **Volatility Allowance:** there is little visibility on how this is determined other than the reference to "3.5 times the standard deviation of wholesale costs".

    The amount of working capital required for wholesale procurement is much easier to calculate and transparent. It is the prudential support requirement of AEMO plus the cash required to meet an AEMO Call Notice resulting from a stress event.

Such a stress event is readily defined by the Market Rules being a CPT event[8] occurring during periods of maximum demand (as occurred in January 2019). All retailers must ensure they carry this amount of liquid capital as failing to meet an AEMO Call Notice within 24 hours will result in immediate market suspension and customers being transferred to the Retailer of Last Resort).

- spot price data should not be used in estimating wholesale electricity costs

  Firstly, historical spot prices should not be used to predict the future. Using spot prices that are up to 7 years old is inappropriate and outdated, given the market has undergone such fundamental and structural change of late. The best representation of future spot prices (without specifically modelling them) are the forward prices published by the ASX. These represent expected future spot prices. In addition to this, the futures price should not be discounted, removing a risk premium, to achieve a comparable spot price.

- other wholesale costs incurred by a retailer can be material, including the external operating costs of a retailer's risk management operation (eg brokerage, exchange fees etc). Further, significant capital is required to support ASX and OTC margins and credit support. These costs and capital requirements should also be included.

- all future VDO calculations should include reference to the applicable calendar year wholesale contract traded on the ASX. We would expect this to be the case from 1 January 2020. That is, we would expect the 2020 VDO will include a wholesale cost calculation based on the 2020 calendar year futures contract.

- the ESC estimates the network losses relying on data available from AEMO for distribution loss factors (**DLF**) and marginal loss factors. DLF depends on the network, and the type of line (either short sub-transmission or long sub-transmission). The DLF related to long sub-transmission lines is higher than the DLF for short sub-transmission lines.

  In the VDO analysis, the ESC considers only the short sub-transmission line is relevant (see note 45, p. 26). Our understanding is that some customers are on long sub-transmission lines. Therefore, the VDO network losses are underestimated and should be weighted by the customer numbers on each type of line. This would add approximately $3.20 to the annual bill of a residential electricity customer.

amaysim supports a wholesale methodology approach similar to that proposed by Globird,[9] which is considerably more transparent and replicable by retailers. This would address, in part, the key areas highlighted above, given it is both transparent and reflective of smaller retailers' costs.

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8 Cumulative Price Threshold event, equivalent to 7½ hours at the Market Price Cap (currently $14,500/MWh) after which the spot price is capped at the Administered Price (currently $300/MWh).

9 Public forum GloBird Energy presentation slides, 25 March 2019 available at: https://www.esc.vic.gov.au/sites/default/files/documents/VDO%20-%20Draft%20advice%20-%20public%20forum%20presentation%20-%20GloBird%20Energy%20-%2020190325.pdf.

10 Address ability of VDO and Best Offer to mislead consumers

The interaction of the VDO with the Best Offer has the potential to inadvertently mislead consumers.

The Victorian Best Offer rule change requires retailers to periodically inform customers, via their bill, of the "cheapest offer" that is:

- generally available; and
- does not require paid membership or affiliation as an eligibility criterion with the retailer having discretion to present cheaper plans from their non-generally available offers.

We are concerned that this may not be sufficiently sophisticated. Relying on a customer's previous usage behaviour to forecast the next 12 months and then referring customers simply to the VDO, and ignoring more tailored (ie sophisticated) plan offerings may mislead customers as to the most appropriate plan for them.

The Best Offer rules also require customers to be notified of expected savings over a 12-month period if they switch plans. The rules require this to be expressed as a dollar value and the only permitted qualifier is the word "may". In other words, that a customer *may* save the advertised dollar amount. The issue with this is that there are at least three material variables which energy retailers cannot control in creating this representation:

- the ESC and/or the Victorian Government may change the VDO from time to time. This would materially change (up or down) the savings which a retailer has represented to its customers
- retailers are not able to control, impact or predict the actual consumption by a customer over the forward-looking 12-month period. As a result, it is almost certain that the actual dollar value paid by a customer over that period will differ from the theoretical dollar value saving the retailer represented. It is for this very reason that amaysim does not provide an annual cost saving across any of its marketing materials or platforms as the likelihood of misrepresentation is too high. Nor does the Victorian Energy Compare website make any representations as to expected savings under one plan versus another
- increases during the next 12 months in wholesale charges over which non-incumbents have no control - to achieve wholesale price certainty retailers without generating capacity, like amaysim, enter into electricity hedges which add circa $20 to $25 to their wholesale costs

It is unclear how the ESC and the Victorian Government proposes to deal with the potential for the VDO (and its interaction with the Best Offer) to mislead customers. Clearly, this is an unintended consequence which needs to be addressed.

For context, the ACCC has been actively discouraging calculators or predictive tools on energy retailers' websites which purport to represent potential savings over a period of time or by comparison to other plans or products.

As a result, we query the compatibility of the Best Offer and VDO Rules with the Australian Consumer Law.

We recommend that due consideration is given to these matters in finalising the VDO Rules and the Best Offer rule. An alternative which still meets the Victorian Government's policy objective may be to regularly refer consumers to the Victorian Energy Compare website (via bills, as currently proposed) so that consumers are prompted to fully consider their current circumstances and compare all retailers' most recent offers. This would dramatically reduce the risk of inadvertently misleading customers whilst still encouraging them to consider if they are on the best available offer.

Another interaction of the VDO with the Best Offer, is that it limits the ability of retailers such as amaysim to bring innovative products to market.

amaysim wants to expand its reputation as Australia's customer champion of the mobile market into the energy market. Our aim is to lead the move away from complicated tariff structures and hidden fees (much like mobile 10 years ago), towards simple energy subscription products where customers pay a set price each month for a fixed amount of energy.

Details of amaysim's new subscription energy plans are set out below in Annexure 2. Our business objective is to put the power back into our customers' hands by offering unprecedented transparency and flexibility.

The VDO (as currently structured) does not allow for a like-for-like comparison with products that sit outside the typical market construct. In many respects, the VDO is expected to further cement the typical market construct which promotes opaque pricing backed by per-unit rates. The market should be moving away from this pricing – we are concerned that the VDO and Best Offer together entrench it.

amaysim submits that subscription pricing should be excluded from the Best Offer requirement for the following reasons:

- the Best Offer rule should only apply to comparable typical market construct energy products which simply take per-unit usage and price into account in determining the bill amount
- subscription based products rely on investment in customer experience and value-added features which, in other markets such as telecommunications, are considered consumer benefits but which, under the VDO, would be compared to basic products which lack these benefits

11 Improve "switchability", including by banning win-backs and removing cooling off periods

amaysim's first-hand experience of the reforms of things like win-back activities, cooling-off periods and account portability in the telecommunications sector suggests that they may also benefit electricity consumers.

The ACCC Report describes the "aggressive retention activity" adopted by many retailers in the form of "saves" and "win-backs",[10] and reports that smaller retailers estimated that

[10] The ACCC, at page 142 of the ACCC Report, describes a 'save' as the situation where a customer cancels their switch to another retailer before it is completed, thereby maintaining supply from their existing

around 20 per cent of newly acquired customers are lost to saves or win-backs. The ACCC reported that smaller retailers identified this retention activity as a key reason for their limited ability to grow in the market and that it ultimately affected their overall competitiveness.[11] Accordingly, the ACCC questioned whether retention activity in the energy market was in the best interests of customers as a whole. [12]

amaysim does not believe, based on its own experience in the retail energy market, that customers are best served by this activity. In our experience, up to 20% of all sales fail to result in the acquirer becoming the FRMP for a variety of reasons, including access to meters, incorrect addresses, credit and win-back activity. By far the largest proportion of this is win-back activity, which resulted in approximately 8,000 customers won over the past 12 months reverting to their original retailer.

By contrast, amaysim's experience in the mobile telecommunications industry is that competition and consumers generally benefit from improved portability between suppliers. In 2001, the Mobile Number Portability Code introduced strict requirements for the portability of mobile phone numbers between providers. Today, most ports complete within three hours and many are completed within minutes,[13] freeing up customers to move between suppliers with ease and without fear of losing their mobile number. The mobile market has experienced significantly increased competition since the introduction of same-day mobile number portability.

The ACCC Report suggests that many of the big three retailers' customers have never switched retailers. Those retailers have more customers with very long tenures compared to other retailers.[14] amaysim submits that aggressive retention activity and the inability of customers to switch retailers within minutes or hours are significant constraints on the competitiveness of retail electricity markets.

In addition, cooling-off periods force incoming retailers to impose a "holding period" while they wait for the 10-business day cooling-off period to lapse. amaysim appreciates that imposing cooling-off periods made policy sense when some retailers were engaged in aggressive door-knocking activity. However, retailers who do not acquire customers in this way and who instead acquire customers online or over the phone should not be subject to cooling-off periods.

In our submission, the ESC and the Victorian Government must urgently consider further customer empowerment provisions including switching reforms, limiting or eliminating "win back" campaigns during switching, giving customers access to real time data, and encouraging retailers to release innovative products that champion the customer. These types of reforms help build and sustain a market that promotes competitively priced, high quality, reliable essential services.

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retailer, and a 'win-back' as the situation where a customer is induced to re-contract with the losing retailer days, weeks or months after their switch away has been completed.

11 ACCC Report, page 143.

12 Ibid.

13 https://www.acma.gov.au/Citizen/Phones/Numbers/Keeping-your-number/mobile-number-portability-faq-1

14 ACCC Report, page 141.

We submit that there is no better way to encourage competition than by enabling consumers to vote with their feet and we will write to the Victorian Government on these matters separately.

Conclusion

amaysim supports the objectives of the VDO and the Draft Advice and asks the ESC to consider this submission with an open and constructive mind. Without the improvements we recommend, the VDO may have the inadvertent and undoubtedly unintended effect of contributing to the inefficiencies of our energy retail market rather than reducing or removing them.

We would welcome the opportunity to discuss our recommendations with you. Please contact our Chief Strategy Officer, Alexander Feldman ([redacted]) or Chief Executive Officer, Peter O'Connell [redacted]) should you wish to do so.

Yours faithfully

Peter O'Connell
Chief Executive Officer

Alexander Feldman
Chief Strategy Officer & General Counsel

Annexure 1 - The NBN experience

The present structure of the NBN is having a similar impact on all participants in the telco market. Here the government, rather than the gentailers, have set wholesale prices at a level that is compressing retailers' retail margins to the point that many of the tier two telcos, including amaysim, have or are in the process of exiting the NBN market.

The impact of this policy setting is that:

- retailers stop innovating because their focus is shifted to survival and cost management
- customer experience suffers due to cost cuts
- if left unabated, smaller retailers exit the market and competition is further reduced

This is evidenced by:

- MNF Group, whose brands include MyNetFone, Symbio Networks, Telcoinabox and PenntyTel and one of Asia-Pacific's fastest growing technology companies, selling its residential fixed-line broadband customer base to regional telco Southern Phone Company. This sale comes not long after amaysim sold its fixed-line broadband customer base to Southern Phone for reasons that, amaysim CEO Peter O'Connell said at the time, were made in light of "unsustainably high wholesale costs"
- Telstra's public comments at its 2018 AGM and 2019 interim result that it, as the largest incumbent in fixed line broadband, expects "margins to trend towards zero" under current NBN wholesale pricing and industry dynamics
- TPG, Australia's second-largest broadband business, attributing a 4.8% fall in its 2019 half year earnings (compared to the prior comparable period) of its largest business segment – residential fixed-lined broadband – exclusively as a result of the NBN rollout. TPG warned that without further intervention by the government to force NBN Co to lower the price of bandwidth it charges to retailers (also known as Connectivity Virtual Circuit or CVC), it will likely abandon its best value $60 NBN12 product
- Vocus, Australia's fourth-largest telecommunications company and broadband reseller, announcing at its 2019 interim result that it will stop expanding its NBN resale business. Vocus' CEO, Kevin Russell, said the NBN was "economically unattractive," and while the company would continue to service existing NBN clients it does not intend to increase market share

Annexure 2 – amaysim's new subscription product

In February 2019, amaysim announced that it had accelerated its investment in a new disruptive energy product suite, intended to assist in bringing much needed simplicity, customer centricity and transparency to the energy sector.

The details of this new product suite were released to the ESC and the Australian Energy Regulator in early November 2018.

This new product suite will have the following key features:

- it will be subscription-based and provide customers with a set amount of energy for a fixed monthly price
- customers will be able to retain the benefit of unused inclusions and will know in advance the cost of top-ups if they need more energy in a period
- customers will receive notifications from amaysim if they would be better-off on a different plan (with less or more inclusions) and can monitor their usage relative to their inclusions online or on their mobile device
- customers will interact with the product suite (and their energy usage) via our website or our smart phone applications, which will be both empowering and a step in the direction of the all-important consumer data right
- the product suite will include a fair and sustainable margin which does not require future price rises to remain viable (assuming relative stability of wholesale and distribution costs)
- more customer centric features are in the pipeline for future roll-outs

amaysim's new energy product suite will remove many of the issues plaguing existing energy products. amaysim expects to launch it in Victoria imminently. The energy market needs this type of innovation and businesses need a regulatory framework which supports long-term investment for the benefit of consumers.