

1 November 2018

Dr Peter Boxall
Chair
Independent Pricing and Regulatory Tribunal
PO Box K35, Haymarket Post Shop NSW 1240



Submitted via IPART website.

Dear Dr Boxall

IPART 2017-18 retail energy markets monitoring draft report

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon people who are marginalised and facing disadvantage. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

Retail electricity prices across NEM states have steadily increased in real terms since deregulation of the retail electricity market began in the 1990s.¹ Similarly, retail gas prices have increased significantly since 2011.² Any price rises will further burden consumers – particularly low income and vulnerable consumers, for whom any increase to cost of living is of substantial detriment. In light of this, PIAC supports the continued monitoring of NSW retail electricity and gas prices and welcomes the opportunity to provide feedback on the Independent Pricing and Regulatory Tribunal's (IPART) draft report.³

IPART should acknowledge that retail competition is not delivering the intended results for consumers

PIAC contends that IPART's final report should strongly identify the failings of the current retail energy market. PIAC notes recent reviews conducted by both the Australian Energy Market Commission (AEMC) and Australian Competition and Consumer Commission (ACCC) that found the deregulated electricity market is not delivering expected benefits for consumers.

In its 2018 Retail Energy Competition Review, the Australian Energy Market Commission (AEMC) found that "while competition in the retail energy market continues to evolve, it is currently not delivering the expected benefits to consumers."⁴ In particular, the AEMC characterised retail price markets as: having complex and confusing tariff structures; having increasing price dispersion which is driven by discounting rather than effective segmentation ; and structured in a way such that these discounts are difficult to compare as often they are subject to a number of eligibility conditions. Such insights are also supported by the Australian Competition and Consumer Commission's (ACCC) Retail Electricity Pricing Inquiry final report which noted, amongst many other issues, that:

¹ Carbon + Energy Markets, [Australia's retail electricity markets: who is serving whom?](#), 2016.

² Oakley Greenwood, [Gas Price Trends Review 2017](#), December 2017, 222.

³ IPART, [Review of the performance and competitiveness of the retail energy market in NSW](#), Draft Report, October 2018.

⁴ AEMC, [2018 Retail Energy Competition Review](#), June 2018, i.

Incumbents have benefitted from large parts of their customer bases being inactive or disengaged from the competitive market, often remaining on high-priced standing offers. Incumbents are able to make very attractive offers to retain customers, effectively through cross-subsidies paid by their inactive customer cohort. This has enabled incumbents to compete only selectively, and with a disproportionate focus on efforts to retain profitable customers rather than to win new ones. In that environment, new entrants and smaller retailers are competing only for the 'active' part of the market which is price sensitive and often low-margin. This model of competition has not delivered a dynamic and competitive market.⁵

This is in contrast to IPART's draft report, which largely suggests that the NSW retail energy markets are functioning well. PIAC contends that IPART should re-visit this finding in light of the AEMC and ACCC's work.

Asserting that consumers should be more engaged is not a remedy for these issues

Retail price deregulation has required consumers to become, and remain, engaged in the electricity market in order to pay a reasonable price for their electricity. PIAC supports allowing engaged consumers to make full use of competitive market offers, and new technologies to derive the most benefit for their electricity services. Indeed, there are many consumers who are willing and able to do this, and PIAC supports making it easier for them.

However, this must not be a pre-requisite to receive a fair and reasonable offer. Many consumers are unable engage fully with the retail energy markets due to poor energy literacy and/or technological barriers, or other priorities and issues that relate to their personal circumstance.

In this context, and that of the retail market failures identified by the AEMC and ACCC, PIAC contests IPART's finding customer engagement in the retail market is sufficient.⁶ As we noted in our submission to IPART's 2016-17 draft report:

A lack of information makes it difficult for consumers to manage their energy use and costs, and shop around for the best retail deal for them. The complexity of the retail energy market has consistently mitigated against informed choices by consumers and resulted in what has been called a 'confusopoly'. For many consumers, the inability to effectively engage with the market means many consumers default to very expensive energy contracts with high retail margins.⁷

PIAC also questions IPART's distinction between consumers who do not switch energy retailer because they "did not have time" and those for whom there is a barrier to engagement with the market.⁸ PIAC considers that, for many consumers, not having time is a function of the considerable barriers to engagement that exist. If it were simple to switch, it would not take as much time to do so, and more consumers would do so.

These issues are particularly relevant for low income and vulnerable consumers, who tend to be the least able to engage and the least able to afford higher energy costs. In addition to the barriers to engagement identified above, vulnerable consumers may have additional barriers including being less numerically or financially literate, having a language barrier, or a disability

⁵ ACCC, [Retail Electricity Pricing Inquiry. Final Report](#), July 2018, xi.

⁶ IPART, *Review of the performance and competitiveness of the retail energy market in NSW*, 2018, 40.

⁷ PIAC, [Letter to Draft Report – 2017 NSW retail electricity market monitoring](#), November 2017, 4.

⁸ IPART, *Review of the performance and competitiveness of the retail energy market in NSW*, 2018, 44.

or being on hardship plan or prepayment arrangement which would limit their ability to change retailers.

Recently, PIAC conducted research that found that the NSW consumers disconnected from energy supply were likely to have multiple characteristics associated with social vulnerability, including unemployment, medical conditions and disability.⁹ If these consumers are unable to pay their bills to remain connected to energy, PIAC does not consider it likely that they will be able to effectively engage with the complex energy market to get a better deal.

The onus should not, therefore, be on already disadvantaged consumers, who are often the least likely to effectively engage with the complexities of the competitive retail market, and for whom higher energy costs have the most consequence,¹⁰ to be engaged to compare numerous offers.

In IPART's 2016-17 final report, IPART agreed with PIAC that vulnerable consumers may find it difficult to engage in the market and/or reduce energy consumption.¹¹ As a result, it recommended that retailers and governments have a role in making sure these consumers engage in the market.

PIAC does not consider that this has happened to any meaningful degree in the following year. While PIAC acknowledges that the NSW Government is currently working to implement mechanisms to facilitate easier switching, we do not consider this will address the fundamental difficulties many consumers have engaging with the retail energy market.

Therefore, IPART should use the 2018 final report to acknowledge this ongoing failure and consider options for market reform that do not shift the blame to a lack of engagement by consumers.

PIAC agrees that the market remains relatively concentrated

PIAC agrees with IPART's finding that the retail market remains relatively concentrated, with the big three retailers having a combined market share of 85% of electricity consumers in June 2018.

PIAC notes IPART's re-stated 2017 finding that the level of concentration in the retail electricity market was comparable with markets for other widely consumed goods and services.¹² We do not dispute this finding.

We do, however, disagree that this suggests that level of concentration is appropriate for a deregulated retail energy market. As IPART states in the draft report, the ACCC has raised concerns about the level of competition in some of the comparable industries. While, as IPART notes, these industries have not had price-regulation introduced, PIAC does not consider this to be a particularly high bar. If the ACCC has concerns about concentrations in those industries, PIAC considers it appropriate for there to be some concern about concentration in the NSW retail energy market; particularly because energy is an essential service.

⁹ PIAC and UMR Research, *Close to the Edge – a Qualitative & Quantitative Study*, yet to be published.

¹⁰ NCOSS, *Turning off The Lights: The Cost of Living in NSW, June 2017*, 2017, pg. 29.

¹¹ IPART, [Review of the performance and competitiveness of the retail electricity market in NSW](#), November 2017, 6.

¹² IPART, [Review of the performance and competitiveness of the retail electricity market in NSW](#), Final Report, November 2017, 45-47.

A market concentration issue PIAC is particularly concerned about is ‘win-back’ marketing, which is prevalent among the big three retailers. This practice limits the ability of smaller retailers to grow their market share and, indeed, even enter the market.

Customer ‘win-back’ is the practice of an incumbent retailer, on becoming aware that another retailer has acquired their customer through market customer transfer processes, contacting that customer and offering to match or better the deal offered by the new retailer. This typically occurs during the cooling off period on the new contract, so there is no penalty for the consumer cancelling the new contract.

On the surface, ‘win-back’ seems to offer an immediate benefit to the customer in question, in the form of a cheaper energy contract. However, the practice appears to drive up the cost of customer acquisition for new retailers, making it hard for them obtain a viable market share, or deterring them from entering the market altogether. At the same time, the cost of customer retention for the incumbent retailer is relatively low.

Further, ‘win-back’ marketing has the hallmarks of anticompetitive behaviour, as it is possible only because the incumbent retailer is privy to information that the customer has initiated a change of retailer – no other retailer has access to this information.

PIAC is concerned that this limits the ability of new retailers to enter the market, resulting in less effective competition in the longer term. The practice also only favours consumers who are engaged and penalises those who are disengaged by placing them on more expensive offers.

IPART should explicitly consider vulnerable consumers in retail energy markets

In our information paper submission, PIAC stated that we supported IPART explicitly examining the outcomes for vulnerable consumers as one of its indicators in this review.

PIAC notes that IPART has not done so in the draft report. Instead, the report only briefly addresses assistance available to low-income consumers and recommends that there not be a default tariff accessible for those customers.

PIAC maintains that IPART should assess how the market is currently working for this particular subset of consumers before making such a recommendation.

Further engagement

PIAC would welcome the opportunity for further engagement with IPART and other stakeholders to discuss these issues in more depth.

Yours sincerely,

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