

## Customer Consultative Group discussion – Default market offer draft determination consultation

*Attendees: Georgina Davis (Individual), Mark Henley (Individual), Douglas McCloskey (Public Interest Advocacy Centre), Vanessa Emery (Financial Counselling Australia) and David Harding and Simon Moore (Business NSW), AER staff*

*4pm, 29 March 2023*

AER staff provided an overview of the AER's 2023-24 default market offer (DMO) price determination and sought CCG member views on the Draft Determination published on 15 March 2023.

### Comments from CCG members noted above

#### 1. Consumer outcomes on standing and market offers

- Members suggested the median market offer by itself was not seen as a good indicator of customer outcomes. If the DMO is being set in the context of market offers available, it's important to have information not just on the publicly available offers but how many consumers are on them.

Members believed that the number of people on specific market offers should be a key consideration into the DMO calculation process. The presence of a market offer did not mean it was accessed by a large proportion of the market. Members suggested that offers should be weighed in accordance with the number of people accessing those offers in the market. This provides a more accurate representation of the prevalence of market offers in the market than the median market offer.

Members believed it not unreasonable to introduce a reporting requirement for retailers to provide aggregate data on the spread of consumers on their different market offers. Members considered it beneficial to know whether individuals on market offers are on the best offers possible for their situation. If lower offers exist on the market and aren't being used, then they should not be material considerations for the AER's calculation of the DMO

- Members emphasised a distinction between offers being formally and practically available. While offers may be available in the market, they are not always accessible by the comparators, brokers, and some retailers due to the situation of the customer. Members were concerned that the AER's spread didn't reflect the reality of the spread of offers available to consumers if they were to seek a new deal.
- While advertising the DMO might be an obligation, these obligations are not translating into requests. The DMO was originally created to provide a comparison point to stop advertising of high 'discount' rates. It should now function as the very worst price that consumers should be paying.
- Members highlighted that a focus on a flat tariff structure for DMO was an important methodological practice moving forward. With a growing divergence of tariff structures on the market, members suggested that the inclusion of other tariff structures in the DMO process would overcomplicate the process for consumers. The DMO should act as a regulated flat tariff offer available to all consumers and offered by all retailers. This would allow a simple point of comparison for consumers and protect them from market forces.

## **2. Wholesale Data Accuracy**

- Members held the view that the AER's methodology is an improvement on previous iterations. The AER was seen as gathering better wholesale data, while acknowledged as being a work in progress.
- Members reaffirmed their view offered in the options paper, that it was critically important for the AER to have the best data it can get from wholesale markets, favouring accuracy over transparency (when in conflict). In the current circumstances, members had no questions about what the AER was doing with the data.
- With the OTC v ASX data analysis, members requested further justification to explain both why this data was required and whether there was any difference between the two.

## **3. Further justification surrounding retailer margins**

- Members questioned the different margins for residential and small business customers and requested further justification for the selection of the 10% level for residential customers and 15% for small business. Members noted that other jurisdictions have targeted lower margins and noticed an immaterial impact on the availability of offers in the market, indicating the margin was big enough to maintain competition.

Members believed currently the DMO was being set at a point to offer profitability to all retailers over consumer protection. If the AER does not consider further margin reduction possible, then members requested that greater consideration be given to what might be an acceptable level of retailer harm that could be incurred in favour of increasing consumer protection. Members believed that the setting of the DMO at a price that ensured all retailers were protected didn't satisfy its goals of protecting consumers.

Members requested consideration of the higher retailer margin of small business customers. The AER has sited that the small business market faces perceived higher costs to serve. However, by embedding this in the retailer margin, the AER is ensuring this higher cost to serve continues to provide bad outcomes for small business customers.

Members have voiced concerns with the level of the retailer margin and proposed alternatives. Where the AER did not deem it possible or reasonable to change, further explanation is required.

- The post-pandemic environment has meant that some businesses have blurred the lines between home and business. Members consider this a categorisation of customers that has not been recognised in current or past DMOs. The ability to neatly separate them into residential and small business customers is difficult when they at times function as both. While this group has always existed, the changing nature of work and work requirements means that this group will grow. Members believed this weakened the need for regulatory separation between residential and small business customers and asked for additional justification for why separation was still required.

#### **4. Review of objectives for future DMOs**

- Members believed it would be worthwhile for the AER to conduct a review into the objectives of the DMO. This was in recognition that this has not been conducted and the DMO was not effectively serving as a consumer protection and price regulation tool. The purpose of such a review would be to reaffirm the balance of the DMO objectives.

Members suggested including considerations based on a better understanding of consumer vulnerability, the role of the market, volatility and the cost involved of transition in the next few years. There is an opportunity to offer a recommendation of what future price regulation might look like, with particular attention to when defaults should apply, who should have access to them and how can these regulations mitigate vulnerability and support fair and efficient outcomes.

A review of this sort was deemed to be worthwhile to reaffirm the direction and purpose of the DMO in subsequent periods.