



Regulating conditional discounting

Stakeholder submissions invited on draft rule

The Australian Energy Market Commission (AEMC) has made a draft rule to protect customers from large conditional discounts and conditional fees on retail contracts. The rule aims to address issues related to penalties imposed on customers who miss pay-on-time conditions by capping the level of conditional discounts and conditional fees to reasonable costs. Stakeholders are invited to make written submissions by 16 January 2020.

Background

Conditional discounts are pricing structures whereby customers receive a financial incentive (typically lower energy rates) when a certain payment condition is met. Conditional discounts accounted for 78 per cent of market offers in 2017, decreasing to 47 per cent in early 2019. The level of conditional discounts was material prior to 2019 with the majority of offers featuring conditional discounts of 20 per cent or more in mid 2018. Missing a payment condition in a contract with a large conditional discount could result in a considerable financial burden to a small customer.

The Australian Competition and Consumer Commission's (ACCC) 2018 Retail electricity pricing inquiry investigated conditional discounting practices. It found that 27 per cent of residential customers failed to realise their pay-on-time conditional discount. The figure was also material for hardship customers, with 58 per cent of those customers failing to pay on time. The ACCC subsequently recommended that conditional discounts be restricted to reasonable costs.

The draft rule

The ACCC's findings on conditional discount realisation demonstrate that risk allocation between customers and retailers may be imbalanced, and that certain pricing structures may not be in the long-term interests of customers. In the case of large conditional discounts, the AEMC found that risk allocation between parties is no longer balanced, and therefore targeted restrictions on the level of conditional discounts and conditional fees (e.g. late payment fees) is appropriate.

The draft rule restricts the level of conditional discounts and conditional fees retailers can offer to the reasonable costs likely to be incurred by the retailer when a customer fails to comply with the payment condition.

The draft rule protects customers by stopping retailers from recovering excessive costs from customers who fail to comply with certain payment conditions. The rule will also enable retailers to manage the risk of breach of payment conditions in a more cost-reflective manner.

In addition to the restriction to reasonable costs outlined above, the draft rule:

- Is limited in its application to conditional discounts and conditional fees that are related to payment timing or method. Only terms that are triggered because of a failure to comply with a payment condition are captured by the rule (e.g. direct debit dishonour fee).
- Limits duplication of penalties — when a contract includes both a conditional discount and a conditional fee that are triggered by the failure to comply with the same payment condition. The combined value of the penalty is capped to the reasonable costs the retailer is likely to incur when retail contract conditions are not met.
- Makes transitional provisions which require that existing retail contracts with a conditional

discount or conditional fee comply with this rule when a benefit period is reset or the term of the contract is extended or renewed.

Rule change request

The rule change request was submitted by the Honourable Angus Taylor, Minister for Energy & Emissions Reduction, on behalf of the Australian Government in February 2019. The rule change request proposed that the level of conditional discounts for gas and electricity retail offers be restricted to the "reasonable cost savings" that a retailer expects to make if a customer satisfies the conditions of the discount. The proponent's key objectives were to remove "excessive" penalties for customers (particularly vulnerable customers) who do not meet discount conditions, and to improve the comparability of conditional discount offers. The draft rule meets the policy objectives set by the proponent.

For information contact:

Adviser, **Conrad Guimaraes** (02) 8296 0649

Director, **Ben Davis** (02) 8296 7851

Media: Communication Director, Prudence Anderson 0404 821 935 or (02) 8296 7817

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