Designated complaint — Further Action Notice

Date: 19 August 2025

Designated complainant: CHOICE

Issue: potentially misleading practices by energy retailers

ACCC response to the designated complaint

On 21 May 2025 CHOICE made a designated complaint to the Australian Competition and Consumer Commission (ACCC) about confusing and potentially misleading practices of energy retailers in relation to certain energy plans. CHOICE's complaint largely relates to 3 main issues:

- identical plan names used for plans with different rates.
- Better Offer and Best Offer messages with plans not available to consumers.
- the use of plan names that refer to 'savings' when the plans are more expensive than the standing offer.[1]

A summary of the complaint is set out at the end of this Notice.

The ACCC is satisfied that the designated complaint relates to a significant or systemic market issue that affects consumers in Australia, and relates to either:

- a potential breach of the *Competition and Consumer Act 2010* (the CCA); or
- one or more of the ACCC's powers or functions under the CCA, including the Australian Consumer Law (ACL).[2]

Significant or systemic market issues generally are those involving:

- conduct that is likely to negatively impact, in a substantial way, a sizeable group of consumers or small businesses.
- conduct that is likely to cause a high level of detriment to a particular group of consumers.

[1] 'Standing offers' are contracts that electricity retailers must offer and act as a default option where consumers have not entered into a market offer. Consumers can also ask to be put on the standing offer. The prices of standing offers are capped by the relevant regulator for that region, such as the AER in NSW, SA and SE QLD via the 'default market offer' which is expressed as an annual price, or the ESC via the 'Victorian default offer' which is a set tariff price.

[2] These are threshold issues that a designated complaint must meet, pursuant to section 154ZK of the *Competition and Consumer Act 2010*.

- issues that have a widespread adverse impact, or potential impact, on consumers and/or small businesses, market dynamics, or the Australian economy. This may arise in one market, or across multiple markets or segments of markets.
- the priority factors noted in the ACCC's Compliance and Enforcement Policy.

The ACCC recognises that the issues raised by CHOICE are significant market issues which may cause consumer harm. They occur in the context of regulations that are specifically designed to provide consumers with information that assists them to identify cheaper accessible offers for an essential service.

Conduct by retailers that contributes to challenges consumers experience in navigating the energy market results in less consumers being able to access the best energy plan to suit their needs. It is important for retailers to provide clear and accurate information about energy plans so that consumers can make informed decisions when choosing an energy provider and plan. Misleading pricing and claims in relation to energy is one of the ACCC's Compliance and Enforcement priorities for 2025/26.

In 2018, the Australian Government directed the ACCC to conduct an inquiry into the prices, profits and margins in relation to the supply of electricity in the National Electricity Market (which covers NSW, Victoria, South East Queensland and South Australia).

The ACCC has reported 12 times as part of this inquiry. The ACCC's latest electricity inquiry report found that more than 80 per cent of Australian households in the National Electricity Market (NEM) could move to a cheaper electricity plan if they shopped around or contacted their electricity provider to get a better deal.

Actions the ACCC proposes to take

CHOICE requested in its complaint that the ACCC:

- consider how action such as law reform, regulatory guidance or other changes to the regulatory framework could address the issues and harms detailed in its complaint;
- investigate specific matters raised in CHOICE's complaint, and if contraventions are found, bring enforcement action.

Outlined below are the further actions the ACCC will take in response to each of the three main issues CHOICE raised in its complaint.

Identical plan names and Better or Best Offer messages with plans not available to consumers

CHOICE's complaint identifies several policy processes, inquiries and reviews being conducted by other agencies which are relevant to the issues raised in its complaint. In considering the issues raised in CHOICE's designated complaint, the ACCC has consulted with other energy market stakeholders, including the Australian Energy Regulator (AER), Essential Services Commission (ESC) and Australian Energy Market Commission (AEMC).

A recent AER decision requires retailers that re-use plan names to provide additional information below the Better Offer message alerting consumers to a cheaper 'same named' plan. The decision by the AER to require this information aims to address customer confusion that may result from some retailers creating newer versions of existing plans with the same name. The AER has provided retailers a three-month timeframe from 23 May 2025 to add this additional information to their bills, however retailers are encouraged to implement as soon as possible.

In addition, the AER will continue to consider the retailer practice of re-using plan names and options to address this as part of its upcoming reviews.

Further, the ESC is currently reviewing the Energy Retail Code of Practice which applies in Victoria.

Following careful consideration, the ACCC is of the view that the AER and ESC processes underway are currently the most effective avenues to address issues in relation to the use of the same names for plans with different rates, and Better or Best Offer messages with plans that are not available to all consumers. The review processes provide an opportunity to consider the issues raised by CHOICE together with broader issues facing consumers in the energy market in a holistic way.

The ACCC will continue to engage with the AER and ESC on their upcoming review and law reform processes including on their consideration of the issues raised in CHOICE's complaint.

Plans referring to 'savings'

The use of the word 'savings' (or similar) in plan names is a potent descriptor and would be an enticement to many consumers.

In response to CHOICE's complaint concerning retailers' use of the word savings' (or similar) in plan names, the ACCC will investigate whether retailers are representing that energy plans offer certain savings or value to consumers when this is not the case. The ACCC will consider whether consumers may be misled or deceived by these plan names, or descriptions of plans, which do not offer genuine savings or may discourage consumers switching to cheaper plans available to them.

If the ACCC considers its investigation identifies conduct in contravention of the ACL, we will take enforcement action where appropriate. We may also prepare industry guidance or make contributions to policy or law reform initiatives.

Summary of the designated complaint

The designated complaint from CHOICE raised three key issues:

1. Alleges that the widespread practice of energy retailers reusing identical names for plans with differing prices results in customers receiving communications from energy retailers that are confusing and potentially misleading or deceptive.

   An example of this occurs in the context of the Better Offer and Best Offer messages required under the AER's Better Bill's Guidelines and ESC's Code. CHOICE alleges that where a Better Offer or Best Offer message refers to a lower cost plan which has the same name as the consumer's existing plan, consumers may believe that the message is a mistake or irrelevant to them. Consequently, consumers impacted in this way may be missing out on better priced energy plans.

2. Outlined examples of plans with names including phrases like 'save' or 'saver' that were more expensive than other plans offered by the same retailer, and in some instances, that were more expensive than the retailer's standing offer.

   In these circumstances, consumers may rely on allusions to value and savings in energy plans and descriptions to inform their decision making when in fact there is no genuine saving.

3. CHOICE states that some consumers received a Better Offer or Best Offer message referring to a plan that was not available to them. In these instances, consumers may be dissuaded from pursuing a better offer now and into the future as they believe the information provided is inaccurate or irrelevant to them.

CHOICE provided a range of examples and case studies from consumers and CHOICE supporters in their complaint. The complaint also included results of the CHOICE Consumer Pulse survey dated September 2024 which sought to gauge how consumers interpret same name messages.