

20 April 2011

Dr Richard Chadwick
General Manager Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email: adjudication@acc.gov.au

Dear Dr Chadwick,

ACCC Draft Determination Applications for Authorisation lodged by Energy Assured Limited in respect of a scheme to self regulate door to door energy sales (11 April 2011)

The Consumer Utilities Advocacy Centre Ltd ("CUAC") is an independent consumer advocacy organisation. It was established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In informing these debates, CUAC monitors grass roots consumer utilities issues with particular regard to low income, disadvantaged and rural consumers.

We welcome the ongoing opportunity to participate in the ACCC's consultations on Energy Assured Limited's ("EAL")'s voluntary scheme to self regulate door-to-door energy sales. We have to date submitted three responses to the EAL scheme and revised scheme on 21 November 2010, 10 January 2011 and 4 March 2011, and have participated in consumer group discussions at the ACCC and AER.

CUAC commends the ACCC for their Draft Determination Applications for Authorisation lodged by Energy Assured Limited in respect of a scheme to self regulate door-to-door energy sales (11 April 2011) ("Draft Determination"). We are pleased that the ACCC has, in its Draft Determination, considered the significant concerns which CUAC and other consumer organisations have raised in their submissions to the EAL scheme and has proposed to deny authorisation to EAL. We agree with the ACCC that the EAL scheme "may dampen consumer confidence", "add complexity", has "the potential for confusion by

consumers” and “may in fact generate some public detriment.”¹ We support the conclusion reached in the Draft Determination that the public benefits submitted by EAL are unlikely to arise because of the following reasons:

- Information provided to consumers about their legal rights when in contact with a sales agent or when entering a contract falls short of existing regulatory obligations (for example: the Australian Consumer Law and the National Energy Retail Law and Rules);
- Inability of consumers and consumer organisations to lodge complaints about retailers under the EAL complaints mechanism;
- Insufficient public accountability around reporting non-compliance with the EAL scheme, especially with regard to systemic breaches;
- Inadequate sanctions process.²

Further, given the ambiguity, lack of clarity and transparency regarding the EAL scheme, we also agree that it would be inappropriate for the ACCC to grant an authorisation subject to conditions.

As mentioned in our 21 November 2010 submission, industry compliance with existing regulatory obligations around marketing is already a recognised problem, as evidenced from complaints data collected by the Energy and Water Ombudsman (“EWOV”) and the Essential Services Commission of Victoria (“ESCV”). Door-to-door marketing is regulated by Commonwealth, State and Territory legislative provisions, rules and regulatory bodies. Given the compliance issues that we currently have around door-to-door marketing and the significant consumer detriment that can arise from unconscionable misselling and marketing misconduct, we believe that there is a need for stronger monitoring and enforcement of existing marketing obligations by the appropriate regulatory authorities to ensure industry remains compliant and consumers safeguarded.

In principle, CUAC welcomes initiatives taken by industry to improve service delivery to consumers, including initiatives to improve marketing practices at the doorstep. However, input from consumer organisations is essential towards any industry initiative which seeks to improve the consumer experience. This has not occurred in the EAL process. Although EAL claims to have “consulted” various consumer organisations in

¹ ACCC Draft Determination Applications for Authorisation lodged by Energy Assured Limited in respect of a scheme to self regulate door to door energy sales (11 April 2011), at 46.

² ACCC Draft Determination Applications for Authorisation lodged by Energy Assured Limited in respect of a scheme to self regulate door to door energy sales (11 April 2011), at 46.

their 11 January 2011 response to the ACCC, this is a misrepresentation. CUAC remains unconvinced that industry has demonstrated a firm commitment to improve outcomes for consumers. In particular, the EAL scheme does not offer protection above the current regulatory framework. Therefore, we fully support the ACCC's view that, "the majority of public benefits asserted by EAL are either unlikely to be realised or do not extend or add to the consumer protection framework already provided for in the current regulatory environment."³

CUAC submits that the ACCC's Draft Determination in proposing to deny authorisation to EAL is the right outcome for consumers. We strongly recommend that the ACCC confirm this in its Final Determination in June 2011.


We note, however, that the Draft Determination acknowledges that the EAL scheme could be improved in a number of ways. CUAC would be keen to enter into genuine consultations with EAL in the future and work towards developing a code which would improve door-to-door marketing standards above the current regulatory protections prior to EAL submitting any revised application for authorisation to the ACCC.

If you have any queries on the above, please do not hesitate to contact the undersigned at (03) 9639 7600.

Yours sincerely,



Jo Benvenuti
Executive Officer



Deanna Foong
Senior Policy Officer

³ ACCC Draft Determination Applications for Authorisation lodged by Energy Assured Limited in respect of a scheme to self regulate door to door energy sales (11 April 2011), at 53.