

2 May 2014

By email: adjudication@accc.gov.au

Gavin Jones
Director
Adjudication Branch
Australian Competition and Consumer Commission

Dear Mr Jones

Energy Assured Limited - Revocation and Substitution - A91390 & A91391

Thank you for the opportunity to provide further comment on the Draft Determination to revoke authorisations A91258 and A91259 and substitution with A91390 and A91391.

We note that the ACCC will authorise the substituted code should the public benefit it creates outweigh any public detriment associated with anti-competitive conduct. As we have noted in previous submissions on this code, Consumer Action has been not convinced that the code offers public benefits in terms of improved consumer protection that outweigh public detriments. The anti-competitive detriment includes entrenching poor commission-driven sales practices in competitive retail energy markets. We submit that commission-driven sales is anti-competitive because it incentivises behaviour that limits consumers' ability to exercise free choice.

That said, it is our strong view that the conditions proposed by the ACCC can only enhance the EAL Code. We offer two broad comments on the Draft Determination.

Systemic breaches – Conditions C2, C4 and C5

The imposition of additional rules to address systemic issues is a major and welcome improvement to the EAL Code. Identifying and reporting potentially systemic matters will go some way toward making marketers and retailers accountable for the conduct of salespeople, rather than simply punish individuals who are incentivised by commission-based remuneration structures.

Condition C1 – Information to be disclosed by Comparators

We are pleased at the specific inclusion of comparator services, and the requirement of disclosure of commissions and identification of which retailers are being compared. We expect that these comparator services will become more common in time, and therefore

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including them in the Code helps to prevent poor industry practices developing and the attendant consumer detriment.

We note that in paragraph 107 of the Draft Determination, EAL submitted that no comparators currently use face to face sales agents to sell energy products directly to consumers. Rather, they use follow up telephone calls or website visits based on leads generated by face to face sales agents.

Thank you again for the opportunity to provide further input.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink, appearing to read 'S. Wilson'.

Sarah Wilson
Senior Campaigner