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Essential Services Commission

Level 37, 2 Lonsdale Street

Melbourne VIC 3000

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Submitted: james.clinch@esc.vic.gov.au

Dear James

AGL welcomes the opportunity to provide comment on the Essential Services Commission's (the Commission) questions regarding the implementation of Thwaites recommendations 3A-3F, particularly regarding the definition and scope of marketing.

AGL consider the value in these recommendations to be around an informed and educated consumer, which will involve the transparency and accessibility of retailer messaging, rather than attempting to split and define the concept of marketing. For this reason, AGL strongly support the Commission's full alignment with the Australian Energy Regulator's (AER) Retail Pricing Information Guideline (RPIG). Alignment with the RPIG would help achieve the intent behind recommendation 3 in creating uniformity and consistency in energy information to help consumers navigate the market.

Given the potential scope and impact of the decision regarding the definition of marketing, AGL would encourage the Commission to run a short stakeholder session to discuss the practicalities prior to releasing a draft decision to ensure it is consistent with industry processes and systems.

Scope of Marketing and standardisation

During the 3A-3F Workshop held on 11 July 2018, one participant spoke about the different interactions retailers have with customers and suggested the Commission consider them in three broad buckets i) Marketing, ii) Selling and iii) Information disclosures.

However, AGL consider this to be an outdated model of viewing marketing and note that attempting to broadly categorise these activities for the purposes of regulation requirements is inherently problematic. There is significant research regarding customer-centric marketing and how marketing should be informed by the customer, but this personalisation means that the question 'what is marketing' becomes more problematic to address and also calls into question the value of trying to define it.

What is marketing?

Marketing has traditionally been considered through the lens of the sales funnel where businesses 'push' content to customers to drive acquisition and retention. This would be in line with the buckets discussed above. This traditional model of marketing, selling and retention is outdated, and successful companies now view marketing as one aspect of a broader part of their ongoing engagement with customers. In today's landscape, where customers have access to more options across more channels than ever before, a



company's driver for consumer interaction is about engagement across the entire customer lifecycle. It's shifting from business triggers and traditional marketing calendars dictating what we say to the market and when, to a personalised conversation 'pulled' based on customer triggers. This is a recognition that there is no 'average customer' when it comes to their preferences on marketing or receiving/seeking information from their retailer. Customers have different behaviours and preferences and shows that businesses are moving away from a one-size-fits all marketing approach.

Customers' expectations of how they want brands to engage with them has changed significantly over recent years with brands like Amazon, the Iconic, Commonwealth Bank Australia, Uber and Nike setting the new standard. Customers have grown accustomed to receiving personalised and contextually relevant content to them in their channel of choice. For example, TripAdvisor offers a service where people can access information about different sites to view hotel information on, and in exchange they use the information people search for to send tailored marketing information (i.e. a special offer on a particular hotel that was searched).

This is not only influencing the way we communicate with customers and prospects, but also how organisations are structured. Agile cross-functional teams are designed to solve customer problems, which result in positive outcomes for the business. Therefore, restricting or standardising the way businesses engage with customers will stifle the innovation companies are striving to deliver for their customers. It will also create greater dissatisfaction with the energy sector, as research has shown that the one size fits all approach is no longer tolerated by customers.

Standardisation of marketing to customers would therefore stifle innovation or require so many standard variations to match the mediums that the regulatory burden would be too high to reasonably expect compliance and adherence by retailers. Furthermore, as new methods and new ways to communicate develop, the regulations would need to be continuously updated.

Direct marketing to specific segments

During the workshop, the Commission asked stakeholders to comment on the viability of direct marketing to Culturally and Linguistically Diverse (CALD) and aged consumers.

Regulating specific segments of customers and the way they need to be marketed to would impact the ability of retailers to personalise and innovate for their customers. Not all aged customers need to be or want to be marketed to in a specific way. They do not necessarily opt for our seniors offer or require information to be delivered in larger text. The over simplification of consumer experience and attempting to regulate this would only negatively impact the customers experience overall. Further, there is a high cost associated with developing targeted print marketing materials for different segments of the community, which does not necessarily guarantee a return-on-investment (ROI) meaning that any loss is a cost that customers will ultimately bear.

Problem

Outlined below are some of the barriers to defining marketing that the Commission should take into account when considering any marketing definition:

- Retailer branding – when is marketing and brand promotion separated?



- How can a one-size-fits all standardisation of marketing fix consumer understanding of the market to help them have greater transparency?
- Regulatory requirements on customer-facing staff (rather telephone or in person) are substantial and adding standardisation to this sector may create greater risks.
- To what extent can the Commission measure the success of the implementation of other recommendations when a number are interlocking or overlapping. For example, AGL consider that a large part of the confusion for customers in navigating the energy market relates to retailer discount practices and comparator transparency.
- Would the standardisation of small customer marketing material impact small business and residential differently?

Further, some concerns regarding specific CALD/Aged direct marketing requirements are:

- Risks retailers may face in segmenting their customers and an understanding of how we would avoid anti-discrimination impacts.
- Current accessibility concerns for the Victorian Energy Compare website – the Commission may seek to improve the functionality of the website including screen reading capability or translation options.
- The use of infographics can help CALD customers, and those with poor energy literacy, however there is a risk in seeking to simplify complex energy information in simplified infographics, particularly in terms of ensuring that Competition and Consumer Act requirements for not misleading customers are met by retailers.

Preferred approach

AGL consider that full alignment with the Australian Energy Regulator’s Retail Pricing Information Guideline version 5.0 would address matters of standardisation relating to both information disclosure and marketing practices. AGL strongly recommend the Commission consider amending Division 2A of the Energy Retail Code (ERC) to achieve full harmonisation to meet these recommendations.

The current requirements under the ERC are out-of-date and likely contribute to a lack of standardisation across retailers regarding information disclosure. Currently, retailers can either display offer information in line with version 3.0 of the RPIG (now two versions out of date) or with the specific requirements set out at Division 2A. This creates consistency concerns, for example, if aligning with the RPIG, documents can be titled “Energy Price Fact Sheets’ and if aligning with the alternative Victorian approach, documents can be titled “Price and Product Information Statements” (PPIS) (see section 15D). These now would be expected to be called Basic Product Information Disclosure documents, but retailers may choose a strict adherence to the Code as currently drafted (version 3 requires EPFS).

Therefore, aligning the ERC with the requirements set out in the RPIG will improve consistency of information to customers, the format with which information is displayed, will create improved efficiencies for retailers and will ensure that information disclosure is standardised across all retailers in all jurisdictions.



AGL note that this approach would be consistent with the recommendations made by the ACCC in their recent report on the inquiry into electricity.¹ The ACCC considers that the recent changes to the RPIG and ESC Victoria's process to improve marketing are likely to resolve a number of concerns raised in relation to the difficulties consumers face in estimating how much they will pay under certain offers. Most energy plan documents will now show estimated bills under three consumption levels and give consumers a clearer indication of the amount that they are likely to pay with and without discounts.

The ACCC considers that if Victoria does not implement the ACCC's recommendation to join the NECF, any changes to the Victorian Code should be consistent with the RPIG to reduce regulatory complexity and retailer costs.² Specific advantages of aligning with the RPIG as noted by the ACCC report are extracted below:

On 23 April 2018, the AER published a revised version of the RPIG following a consultation process drawing on consumer insights.⁵⁸⁴ The changes made to the RPIG were informed by stakeholder feedback, and findings from a range of consumer testing.

Specific information that must be provided when marketing or advertising a discount includes the amount or percentage of the discount, the component of the bill that the discount applies to, and where information on the underlying tariff can be found

Requirements relating to the information that retailers must provide to the AER for the Energy Made Easy website include:

a requirement to submit specific information to the AER in relation to generally available offers, to be published on the Energy Made Easy website. Energy Made Easy will then generate a basic plan information document (the plan document) for each offer, showing key information about the offer. This information includes a comparison pricing table showing the estimated cost of the offer for three household usage profiles, usage charges, demand charges, supply charges, discounts, the base level tariff and any terms and conditions attached to the offer. Comparison pricing tables are not included in small business plan documents. The Energy Made Easy website will also create a detailed plan information document with additional information regarding the offer terms and conditions.

Retailers must use language that is clear, simple and widely understood in the information that they provide to the AER for the Energy Made Easy website, and also in advertising and marketing. The RPIG sets out a number of prohibited terms.

Retailers must also link to the plan document on the retailer's own website (rather than create their own plan documents), provide a copy of the plan document to a consumer during in-person marketing activity, include clear text in mass media and social media referring consumers to plan documents, and identify and refer to the plan ID number generated by Energy Made Easy, so that a consumer can find out further information from the electricity retailer only by referencing the plan ID number.

¹ Recommendations 26-28

² ACCC report page 271



Alternative approach

Until retailers understand the intended scope of marketing, it is difficult to provide meaningful comment on the standardisation of marketing materials beyond that of aligning with the AER's RPIG.

If the Commission determines that alignment with the RPIG is not appropriate in the Victorian context, AGL recommend that the Commission consider the operationalisation of this requirement based on existing regulatory requirements such as the Competition and Consumer Act and the Victorian Code of Conduct for Marketing Retail Energy. A market agreed standard on information accessibility will have a much higher cut-through for consumer access to information and therefore informed decision making, than attempting to standardise marketing. Standards on information accessibility already have substantial research regarding best practice behaviour and are most likely to meet the aim of the recommendations by allowing customers to access information.

For example, the Australian Government committed to complying with the Web Content Accessibility Guidelines (WCAG) in 2013.³ Minimum accessibility requirements could be captured under the Code of Conduct for Marketing Retail Energy, such as at section 3.1 under Clear Language, but should be sufficiently principles-based to future-proof any requirements.

Another mechanism the Commission could consider is the provision of information through existing channels such as community, social supports and governments. AGL support a shared responsibility model and consider that the outcome for this recommendation should be to improve the engagement of CALD & aged consumers through the provision of information and education rather than on a regulatory response relating to specific marketing. Consumer groups and the Government have a large role to play in the education and energy literacy of consumers.

Community groups have an important role to play as advocates for customers and to help improve customers understanding of energy and other financial matters, rather than placing greater regulatory requirements on retailers who may not be the most appropriate to manage these matters.

The Australian Competition and Consumer Commission (ACCC) recommended that funding for energy literacy should come from State and Federal governments (at \$5 per household).⁴ Improving energy literacy will also help minimise confusion for customers relating to retailer information and marketing. For example, QCOSS Thriving Communities seeks to elevate financial literacy in communities as an important step in helping vulnerable customers and those experiencing hardship to take control of their finances in a supported and dignified way. By raising awareness, capability and comfort in our communities we can encourage greater access to support services and change the trajectory of vulnerability and hardship in Australia. AGL understand that in 2012-13 the AER developed a Train the Trainer pack that was rolled out

³ Web Content Accessibility Guidelines (WCAG) version 2.0 is the level currently achieved by Australian Government.

⁴ ACCC recommendation 38 - In addition to existing funding, the Australian Government and the relevant state or territory government should fund (to a value of \$5 per household in each NEM region, or \$43 million NEM-wide, per annum) a grant scheme for consumer and community organisations to provide targeted support to assist vulnerable consumers to improve energy literacy. This grant scheme should be modelled on the approach taken by the Queensland Council of Social Services in administering the Switched-on Communities program. This targeted support will assist vulnerable consumers to participate in the retail electricity market and choose an offer that suits their circumstances.



to consumer intermediaries to help inform customers of their key consumer protections and rights relating to energy supply.

Should you have any questions or comments, please contact Con Hristodoulidis on (03) 8633 6646.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Elizabeth Molyneux', written in a cursive style.

Elizabeth Molyneux

General Manager Energy Market Regulation