



Re Energy Supply Probe – proposed retail market remedies

To: Neil Barnes, Team GB Markets

I am writing to you on behalf of the Chartered Institute of Purchasing & Supply (CIPS), the leading body for the purchasing and supply chain profession which represents the interests of over 50,000 buyers in 150 countries, 28,000 of which are located in the UK. The following points address the Energy Supply Probe – proposed retail market remedies consultation.

Due to diary commitments CIPS and the CIPS Energy committee have compiled the following summary points. If you require further clarification, please do not hesitate to get in touch

- CIPS would like to highlight the following points relating to the Probe consultation.
- CIPS believes that the general standards proposed demonstrate good practice and should apply to all sectors.
- The definitions of micro businesses and SMEs are unclear. CIPS suggests the following:
 - Small: micro-enterprises as defined as a result of the Consumers, Estate Agents and Redress Act 2007.
 - Medium: organisations that use less than 30m kwh of gas or 1m kwh of electricity and which are not included under small. Or it could be defined as less than £1m spend on gas and electricity but with the volatile nature of energy prices this could cause some organisations moving in and out of this segment.
- If the micro business term is used this could lead to confusion over who has to terminate a contract and who doesn't. CIPS would urge for clarification on this issue to avoid “roll-over” contracts for this business category.
- CIPS would like to see further transparency and availability of supplier's T&Cs prior to purchase. We would be in favour of these being published on supplier's websites.

- CIPS would urge for a more explicit definition of end contract notification. Suppliers should notify their customers of a contract ending at least two months before the end of the contract.
- CIPS is in favour of the removal of supplier's ability to automatically roll over fixed-term contracts.

CIPS would like to reiterate the following points made in our previous consultation response dated 28th November 2008.

Non-transparent Payments by Suppliers to Third Party Intermediaries

Over the past few years CIPS have increasingly become concerned at commissions paid by suppliers to TPIs without the knowledge of the customer and we are now looking for Ofgem to become involved. Previous meetings have shown there is a high degree of concern. Customers should know and agree the levels of the commissions being paid. However, this is not the case for various reasons. Many TPIs want it kept hidden as it may be difficult to justify the charges to its customers. At the same time there are many good TPIs that would welcome full disclosure of these commissions by all TPIs. Whilst we are not trying to stop the payment of commissions from suppliers to TPIs the amount of the commissions paid should be made known to the customer.

Non-transparent commissions give rise to other problems:

- A TPI may go just to suppliers which are willing to pay its desired level of commission. This is not necessarily in the best interests of the customer.
- There are some instances we believe where TPIs have contracts with suppliers that stop a supplier disclosing the commissions to the Customer. We think these should be stopped.
- Some TPIs prevent their customers having any discussions with any supplier, including their own supplier. We think this is bad practise and it is being used to hide the levels of commission paid.

Some may take the view that customers should not allow the above but CIPS takes the view that we are here to protect customers, even large ones. (The latter have been victims of large, hidden commissions.) We hope that Ofgem take the same view. It is also questionable whether hiding of commissions could be interpreted as collusion and leaves the TPI and supplier open to future legal action by the customer.

CIPS has set up a small working party to look at this whole subject. It has had discussions with many of the twelve major suppliers and these discussions are to continue. Suppliers have declared their dislike of the levels taken by some TPIs and would like their customers to know the actual amounts being taken. Some suppliers try and control the levels of commission but others are unwilling to challenge the payments demanded by TPIs as they may take their business elsewhere, and this has happened. If suppliers tackled this as a group then they could be referred to the Competition Commission. Suppliers would like Ofgem to put forward guidelines or even a code as we would. Other suppliers have also said they would like CIPS, as a professional body, to be involved. A code could be made very simple but it would take the cooperation of suppliers. We now think that cooperation would be forthcoming. CIPS is willing to be

involved but would only consider support for a code if it insists on complete disclosure of commissions by TPIs. We know of no code, actual or proposed, that includes this.

Interestingly we have been told that until about ten years ago suppliers disclosed commissions paid to TPIs to their customers. We think this should happen and further, should be written into the supply contract between the supplier and its customer. This receives support from several suppliers. If Ofgem do no more it should issue guidelines to this effect.

Please do not hesitate to get in touch if you have any questions regarding the points raised.

Kind regards

Emma Brooks
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