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Dear Louise

The Retail Market Review: Non-domestic Proposals

1. The Utilities Exchange Limited ("UX") is writing in response to Ofgem's request for submissions pertaining to the above consultation, and specifically the role and responsibilities of third party intermediaries (TPIs) in the non-domestic market. UX welcomes the opportunity to respond to this request and would be happy to discuss this with you in depth at a future date if required.
2. UX is a leading and independent provider of energy procurement and risk management services. Formed in 1995 we provide comprehensive services to the private and public sector alike, tailoring the solution to the needs of the buyer. Our existing customer base provides for the modest SME consumer to very large high profile clients with complex portfolios to manage.
3. Our responses pertain to the questions raised in Chapter 4 of the Ofgem document entitled, "*The Retail Market Review: Non-domestic Proposals*" (Ofgem Reference 157/11), which relates to the activities of TPIs.

Question 13: *Do stakeholders agree that the introduction of a new supply licence condition focussed on sales activities is a suitable method to prevent harmful sales and marketing activities in the non-domestic sector?*

4. The way in which suppliers conduct their sales activities is a matter for those individual suppliers. However, on paper any means by which greater transparency is achieved should improve the way in which suppliers interact with their customers.

5. The primary requirement that Ofgem is clearly seeking to achieve is that customers are not put onto deals which are not in their best interest. In the context of price, this is something that **should** be easy to evaluate, although as the experience of the domestic market indicates, comparing one deal against another is not something that is necessarily straightforward.
6. With regard to non-price elements, this is something that is highly subjective and therefore could prove difficult to both evaluate and enforce – particularly in the case of more complex flexible deals, where price is merely one element of the contract. Indeed, it is the experience of UX that some of our clients have rejected the lowest price deal in favour of one that provided a better overall offering in terms of contractual terms, flexibility and other factors.
7. With this in mind, one of the phrases that is commonly used in the context of tenders operated under the requirements of the Office Journal of the European Union (OJEU) is that a customer seeks to achieve the “most economically advantageous” tender outcome. Therefore, we would suggest that the focus be based on an assessment of all criteria of any awarded contract, as well as the remit given to any TPI by a customer in the context of what that customer is looking to achieve from the tender process.
8. Ofgem’s document states that it is looking to ensure that the Supplier *“need(s) to take all reasonable steps to ensure that both their activities and the activities of the TPI are transparent, not misleading and that the customer is given accurate information”*.
9. UX already operates with highly transparent business practices as far as our relationship with both suppliers and customers is concerned. However, we would welcome suggestions from Ofgem as to how this could be achieved in the context of the broader objectives of the legislative reform process.
10. In the context of Paragraph 4.6 of the Ofgem document, we are strongly opposed to the term *“Representative”* to describe the relationship between UX and suppliers, on the ground that we are fully independent of all suppliers and seek to promote the best interests of our customers – not those of suppliers.
11. While we can see that there are some TPIs for whom the term *“Representative”* would be an appropriate description, e.g. those that are contracted exclusively by a certain supplier to secure business, UX is categorically not such a company.
12. To that end, we would propose that the term *“Supplier Sales Agents”* be used solely for this latter group of TPIs. UX represents energy buyers and is wholly independent and impartial from a supplier standpoint. As such, we regard ourselves as *“Customer Agents”* (or an equivalent term that demonstrates our independence from suppliers) acting in the best interests of the buyer/client.
13. Given this difference in the structure and operation of the two different types of TPIs referred to in Paragraph 12, we would not wish to be beholden to any particular supplier(s) as far as our procurement services are concerned. One of the primary reasons that larger TPIs (such as UX) exist is because of the lack of transparency in pricing and contractual terms from suppliers. We would therefore be strongly opposed to any practice that would implicitly or explicitly prevent us from operating in the best interests of our clients.
14. In terms of charging, UX’s fees are fully transparent. We do not receive any additional commission from any supplier of either gas or electricity.

15. For telephone call recording, UX's Risk Management division already has this capability.

Question 14: *Do stakeholders agree that this licence condition is necessary if Ofgem decides not to proceed with its Standards of Conduct proposals?*

16. For the reasons stated in Paragraph 11 above, we would not be in favour of being directly integrated from a regulatory standpoint within the obligations of a supplier(s) on the grounds that it would compromise our independence.

17. Considering Option 1 for a Standard of Conduct presented in Chapter 5 of the Ofgem document ("*Legally binding via an overarching licence condition*"), our view is dependent upon the sub-division of the Ofgem definition of "*Representative*" as per Paragraph 12. With regard to the companies referred to as "*Supplier Sales Agents*" in Paragraph 11 above, this approach would be appropriate given that such companies are operating solely on behalf of the supplier(s) in question. However, in the case of UX, we would want to ensure that any such obligation was covered primarily through the contractual structures that would exist with suppliers and not in such a manner that jeopardised our independence and ability to operate in the interests of our customers.

18. Option 2 for a Standard of Conduct ("*Non-binding + industry commitment*") would be our preferred option – but, only in the event that Option 1 could not be established in a manner that ensured UX's independence. Again, however, the independence of UX must be highlighted as an immediate concern.

19. In the context of the increasing importance of energy prices and the conduct of suppliers on the political agenda, not to mention the apparent lack of trust that buyers have with regard to all industry energy suppliers, we do not believe that Option 3 for a Standard of Conduct ("*Non-binding*") would be seen as appropriate.

Question 15: *Do stakeholders consider the introduction of an accreditation scheme for TPI Codes of Practice will reduce harmful TPI activities across the whole market?*

20. An appropriately structured and regulated accreditation scheme would potentially reduce harmful TPI activities. However, there is a concern in the broader context of the TPI sector that any such accreditation scheme should not be unduly onerous, nor should it be based on a "one-size-fits-all" approach.

21. We would therefore advocate a system whereby TPIs have the ability to submit their own views on a Code of Practice for approval to Ofgem, such that the key characteristics of any such code are determined by the regulator in light of its broader objectives relating to the supply community.

22. As stated, however, we would expect the requirements for "*Supplier Sales Agents*" as defined in Paragraph 12 to be different to that for "*Customer Agents*", as they would potentially be more straightforward to achieve given that the requirements for the former group could be encompassed within either the licence condition or Standards of Conduct approach.

23. One issue that has not been addressed is the cost of implementing any such Code of Practice and how this is met on an industry-wide basis. Clearly these costs could be disproportionate for some TPIs and we would not wish to find ourselves in the position of having to pass on any such costs in order to remain operational. This could prove counterproductive in our efforts to drive down cost and minimise complexity for our clients. Indeed, the companies referred to as "*Supplier Sales*

Agents" in Paragraph 12 could find themselves at an advantage should their costs of compliance for any Code of Practice be absorbed into the broader contractual structure that they have with their affiliated Supplier(s).

24. We would maintain that any such Code of Practice must be applied to public sector supported TPIs such as LASER and Buying Solutions in the same manner as their private sector counterparts. This is essential to ensure that no unfair competitive advantage is gained by these public sector entities.

Question 16: *What do stakeholders consider to be key criteria for an accreditation scheme for TPI Codes of Practice?*

25. Those stated in Appendix 5 of the Ofgem document represent an appropriate starting point for the TPI Code of Practice. However, we would like to reserve judgement until after Ofgem's TPI forum in March 2012.

Question 17: *Do stakeholders believe it is necessary for TPIs to disclose their actual fee, or would making clear the fact that the customer is paying a fee for their services be sufficient?*

26. As stated, UX's fees are fully transparent. We do not receive any additional commission from any supplier of either gas or electricity.

27. While we can see the obvious benefit for the customer in ensuring that our approach is mirrored across the industry, the Ofgem document highlights that there may be resistance in establishing such an approach on an industry-wide basis.

We trust that this helps with your consultation process. Should you wish to discuss this in more detail, please contact Dr. Craig Lowrey on 01473 407978 or by email at craig.lowrey@ux-online.com.

Yours sincerely



Martin Birtles
Managing Director