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Dear Annette

## **Marketing Licence Condition**

We support Ofgem's proposal to continue with the Marketing Licence Condition, whilst self-regulation proves itself. The Marketing Licence Condition is an effective "back-stop" to protect customers, but is not an effective means of securing best practice, and over prescription could stifle innovation.

In preference to increasing the scope of the Marketing Licence Condition, we would welcome Ofgem making suggestions to the AES for development of the F2F Code, or the development of a Telesales Code, to cover the issues raised in the consultation document.

We are also very concerned over the lack of time to review the detail of any proposed increase in scope of the Marketing Licence Condition. Draft wording must be available in good time to comment before the statutory consultation period<sup>1</sup>.

We would however expect to support changes to make clearer that the condition applies to save and winback activity, to require director level sign off on an annual basis including comment on our policy on vulnerable customers and to remove reporting requirements.

We have detailed comment on three specific issues.

## **Innovation**

We are concerned that changes to the Marketing Licence Condition will restrict innovation, and hence act against the interest of consumers.

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<sup>1</sup> For instance the outline wording of the proposals in Para 6.8 to require a contact to be terminated at customer request and to restrict the hours of sales activity is different from the F2F Code.

For instance, the use of hand held devices by field sales agents offers great potential to increase the accuracy of recording customer information and reduce costs of sales. The greatest efficiency would come if contract details were posted to the customer – in a similar process to that following a telesale.

Our initial assessment is that the proposals in Para 6.9 to provide information in writing (other than any savings message – discussed below) are not an additional restriction, but nor are they really necessary – and with any additional regulation, there is a risk that it will turn out to be restrictive. We question whether the proposals are really necessary or are not already sufficiently covered by other legislation.

The proposal in Para 6.9 to require a 14 day cancellation period is also inappropriate. Energy is not a more difficult product for consumers than other goods and services that requires more time to consider (nor are there great penalty changes if a customer changes his mind after the cancellation period). It could easily be in customers' interest to have less of a delay in the transfer period.

## **Confirmation of savings messages**

We propose that Ofgem confirm their support for the proposal and ask suppliers to work up a practical means of implementation, prospectively for incorporation into the AES Code.

The principle is sound – a written record of a key savings message gives an audit trail and, therefore, can give the customer confidence in its accuracy – but there are a number of issues:

- ◆ Will the customer appreciate the need to supply accurate product, supplier and consumption data to get an accurate figure?
- ◆ Will a supplier be legally obliged to meet the figure, even if incorrect or the customers' circumstances change?
- ◆ Will there need to be so many qualifiers that customers are confused?
- ◆ What if the customer telephones a supplier, provides slightly different information (or the telesales agent has different supporting technology) and gets a different answer?
- ◆ Should the same principle be applied to telesales, recognising that although access to technology should make it easier to provide accurate data, there would be an increased sales cost?

These issues may be resolved, but not by April this year.

## **Checks in the sales process**

We do not support requiring a second positive confirmation from the customer before proceeding with a sale. It in effect requires a customer to be sold to twice – both unattractive as a proposition and potentially ruling some customers out of the market.

Our experience is that a contact rate by phone of 70% is exceptional and whilst we would not expect as low a response rate to written communication as in the PPM Debt Assignment trial (5-15%), it is clear that many customers, possibly the more disadvantaged, would drop out if a written response was required. These actions would also add to the cost of sale and extend the duration of the transfer process.

A simpler process would be for all sales to close with some kind of verification – a checklist for F2F sales or a scripted confirmation for telesales. This has the intended effect of ensuring that the customer is aware they have entered into a contract without disadvantaging customers who are less active or cannot be contacted. An additional safeguard is provided by licence requirement for a sales audit contact – the fact that this is not robust in preventing ETs shows the difficulty in contacting customers or securing a response to a communication.

Such steps could be complemented by Ofgem giving notice of a stronger line on suppliers with significant number of erroneous transfers – the implication being that sales audit procedures are weak. Such action would also incentivise suppliers to reduce the number of erroneous transfers due to incorrect MPANs or MPRs – these would not be affected by more onerous confirmation requirements.

## Conclusion

Given:

- ◆ the potential for development of a simpler marketing licence condition and subsidiary code presented in Para 3.6;
- ◆ the need for further work on confirmation of savings messages and further sales checks;
- ◆ the lack of time to consider complex changes; and
- ◆ the encouraging, downward, trend in sales complaints and the growing effectiveness of the F2F Sales Code,
- ◆ **we recommend that the current Marketing Licence Condition is extended for one further year.**

We would be pleased to discuss any of these points further and would be happy to participate in a workshop focussed on the outstanding issues. Please do not hesitate to contact me on 0870 419 1617.

Yours sincerely

Graham Kirby  
Retail Regulation Manager