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Proposals for the amendment of standard licence condition 48 (SLC 48) – A Consultation Document

Dear Annette,

This is the response of RWE Innogy to December 2003 document, representing the views of the licensed retail energy businesses operating under the npower name and brand. Detailed comments on the individual proposals you make in relation to SLC 48 are included in the appendix to this letter.

Overview

At the outset it is important to state that our position has changed little from our response to your earlier consultation (see our letter of 17th October 2003). We continue to believe that it is inappropriate to enhance the application of the licence condition or expand its scope without a clear justification for doing so.

We share Ofgem's desire to establish consumer confidence in the market so that the sales process benefits consumers by enabling them to access real savings and exercise choice. However, we disagree that this necessitates the amendment of SLC 48 because:

- there is clear evidence that the industry is addressing mis-selling;
- imposed changes will undermine this self-regulation;
- the proposals duplicate existing consumer law

Self-Regulation

Whether or not energywatch complaint statistics are as precise as possible, they should reflect changes over time given that they have been compiled in a consistent manner. energywatch's latest sales complaints statistics clearly indicate that the industry and its individual members have jointly and separately reduced the level of sales complaints. Indeed, if we consider Ofgem's original criterion for investigation into SLC48 compliance (1 complaint per 1,000 transfers) no supplier would invoke this trigger despite energywatch's use of more robust procedures, less tolerant of supplier behaviour, than was the case when Ofgem's criterion was first devised.

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Since the implementation of the AES Code of Practice in December 2002 and the commitment by the industry in May 2003 to reduce the ratio of complaints below one per one thousand transfers by August 2003, significant progress has been delivered. This is reflected in the published complaints statistics and the exceeding of the 5/03 commitment to the point where in November 2003 the industry average figure for complaints per thousand transfers was 0.62, a reduction of some 55% in less than a year.

While it is early days we believe this constitutes very real evidence of self-regulation delivering on its promises. In addition it demonstrates that co-regulation in the form of the Code and SLC 48 is working effectively now.

The Case for Change

In the light of this and mindful of the considerable powers available to Ofgem through general consumer law under the umbrella of the Enterprise Act, the need for the proposed changes is not made. Indeed Ofgem's proposals:

- Should not be extended to include sales via the Internet and direct mail because:
  (a) these areas are subject to other detailed regulatory requirements;
  (b) they represent sales transactions initiated by the customer, which are quite different to the transactions SLC 48 was intended to cover.
- Are incomplete because Appendix 1 does not assess the consequential impact upon suppliers and other agencies when proposals duplicate existing obligations and therefore increase the regulatory burden.

Summary

We are not convinced of the case for SLC 48's continuation beyond March but would accept the existing SLC 48 for a further two years in preference to any other changes proposed.

Consequently we do not accept the proposed amendments to SLC 48 in Section 6 of the December document. These changes also run counter to the principles of good regulation in terms of:

1. consistency with other regulatory requirements; and,
2. proportionality in the context of the existence of self-regulation; and,
3. the absence of a clear case for change.

To conclude it would be our intention to vote against any proposed modifications to SLC 48 as set out in section 6 of the December document. We hope the above and detailed comments that follow are a constructive contribution to this debate.

Yours sincerely,

Alan Hannaway
Economic Regulation

APPENDIX – Specific Comments on "Proposals for consultation" (Section 6 of December Consultation Document)

1. Doorstep and other face-to-face channels

- In respect of face-to-face sales, the proposal to introduce specific prohibitions on misleading consumers as to a supplier's approach, forgery, etc, is a prime example of replicating what is already covered within self-regulation in the form of the AES Code. It both creates a form of double jeopardy for suppliers across the boundaries of formal and self-regulation and undermines confidence in the latter.
- The proposal to require that specific information is provided in writing at the point of sale (claims made, name of supplier being contracted with, identity of the agent, how to make a complaint, details of cancellation rights) again replicates what is required by self-regulation and general consumer law. In addition it incorporates it formally into the licence regime, thereby increasing the regulatory burden and cost, potentially to the detriment of sales activity and undermines the industry's very real efforts to address mis-selling.
- Also in the area of cancellation rights it cuts across general consumer law and specifically the Consumer Protection (Distance Selling Regulations 2000). Again the case is not made for such duplication and it opens up the possibility of inconsistencies between two distinct forms of regulation.

  For example the above regulations are now subject to a consultation exercise by the DTI, closing date 23/4/04, in the specific area of cancellation rights, beyond the implementation of any changes from this SLC 48 exercise.

2. Telesales channels including all out-bound & in-bound calls

- In the application of the same prohibitions to telesales as is referenced above for face-to-face sales, we acknowledge that the same duplication does not exist currently with the AES Code. However, the very nature of the telesales transaction in terms of scripting, hand-offs to supervisors, the ability to verify, highlights the need to justify the need for such prohibitions. Is there evidence in terms of the feedback received by Ofgem that justifies implementation of the face-to-face requirements currently being observed within the AES Code?
- In relation to the provision of information in writing, not more than five days after contract agreement, again other than mirroring what the AES Code observes in terms of face-to-face sales there is no rationale to introduce this into the more controlled environment of telesales. Again do Ofgem have evidence of particular issues, particular types of complaint, in relation to telesales that would justify this change?
- On the matter of cancellation rights we are concerned by Ofgem's attempt to regulate an area of activity which is provided for in consumer law. Again no real justification for the duplication or acknowledgement of problems it might create in terms of suppliers being pursued on two regulatory fronts and any inconsistency if regulations do not continue to mirror each other. The current consultation on the Distance Selling Regulations is an example.
- Whilst the industry effectively delivers a period of fourteen days to cancel a contract it does not merit its incorporation into SLC 48 and deviating from what is set down in consumer law and in literature and contract materials.

3. Internet, on-line or electronic sales channels

- We are disappointed at the proposal to amend SLC 48 to cover Internet and other electronic sales channels. It is wholly inappropriate in the context of the existence of general consumer law in this area and the nature of the sale and the consumer's initiation of the contact with suppliers.
- The appropriateness of including this channel was considered and not adopted at the last review prior to the extension of SLC 48 at 1/4/02. Nothing has changed, or presumably come to Ofgem's attention, in terms of justifying its inclusion within its scope now.

- The issue of duplicating and potentially cutting across consumer legislation in terms of formalising a period of fourteen days to cancel a contract is similarly inappropriate here.

4. Direct mail channels

- It is surprising and unacceptable that as part of this exercise and reviewing the scope of SLC 48 that Ofgem propose extending the licence regime into areas that are already subject to regulatory oversight by other agencies.
- Everything from direct mail, bill inserts, billboards, door drop leaflets, etc., produced by suppliers is regulated by general consumer law and overseen for the most part by the Advertising Standards Authority. These requirements specifically prohibit the provision of misleading information.
- In addition such communications are for the most part an invitation to treat, rather than a sales transaction, encouraging consumers to actively contact suppliers to enter into discussions about a potential contract.
- Again we believe it is inappropriate for such provisions to be co-opted into SLC 48 without any apparent justification and in view of the additional regulatory burden it places on suppliers through duplication of both regulatory requirements and effort.
- In this and other areas where the proposed amendments mirror other regulatory requirements it would be helpful for Ofgem to indicate if, as part of their regulatory impact assessment, there has been any discussion with the other regulatory agencies involved (i.e. DTI, OFT, Trading Standards, ASA, etc).

5. Reporting and auditing

- Our experiences indicate that there is no demand from consumers for this data, with the few requests received being from consultants, industry watchers. The potential removal of the requirement to make available such information is therefore welcomed but in the context that if SLC 48 is to persist beyond April it must be in its present form.
- On the proposal for corporate confirmation of both the auditing of compliance with SLC 48 and the exercise of due diligence, including a reference to vulnerable customers, there is no case for expanding the scope of SLC 48. It fails to acknowledge the commitment of the industry through the AES Code and the external auditing that takes place as part of that process.

6. Contract verification

- We presently report on the verification of sales and record any associated customer dissatisfaction, on which Ofgem have raised no concerns. Consequently there is no case made for widening the scope of SLC 48 in this way. Instead in the spirit of co-regulation it would be prudent to allow suppliers to differentiate and bring forward initiatives in this area.
- If positive verification was mandated after the sale the impact on contracts processed may be detrimental. While phone numbers are obtained for the majority of contracts, the proportion of decision-making contacts is less. A significant percentage of customers do not welcome such contact and the implementation of the proposal may be an irritant to customers taking part in the sales process and undermine rather than strengthen confidence in it. Ofgem should therefore retain the existing audit arrangements included at paragraphs 3 and 4.

7. Obligations removed from the licence condition:

Generally we are supportive of the removal of formal regulation when appropriate, but here it is as part of a package which overall expands the scope of SLC 48 without a clear rationale, empirical evidence for doing so. In that context we support the retention of these obligations.

8. Obligations retained in the licence condition

On the basis of previous comments, if Ofgem feel obliged to extend the application of SLC 48 beyond 1 April 2004, then it should be on the basis of retaining the licence condition in its current form.