

27 February 2009

Andy MacFaul  
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Corporate Affairs Division  
Ofgem  
9 Millbank  
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Dear Andy

**Proposed corporate strategy and plan 2009-2014**

Consumer Focus welcomes the opportunity to comment on the proposed Ofgem corporate strategy 2009-2014. In general we agree that the seven themes remain valid and suitable. It is apparent that there is a large degree of crossover between the various themes. For example, security of supply is an issue that impacts on European issues and the regulation of networks is also associated with better regulation. Care should be taken to ensure that these crossovers do not result in duplication of effort.

There are some big challenges facing the market such as meeting climate change targets and security of supply. We note that the government is taking action on these issues. However, Ofgem need to be proactive to ensure a sustainable, secure and affordable energy supply.


Consumer Focus also has concerns that Ofgem does not have an agreed standard timeline for the publication of documents for consultation. There have been several examples recently when either:

- A large number of consultations were released simultaneously or over a short space of time; and
- When a very short time period, such as two weeks, is allowed for responses.

We consider this completely inadequate. Ofgem needs to publish documents for consultation regularly throughout the year, allowing a standard period for responses. This allows for more appropriate stakeholder engagement and allows time to plan workloads.

Please refer to Annexe A for our detailed comments on the proposed Ofgem corporate strategy. I hope these comments are helpful and would be pleased to follow them up with you either in person or via telephone (020 7799 7936).

Yours sincerely



**Robert Hammond**  
**Head of Regulated Industries**

## **Annex A: Consumer Focus Response to Ofgem's Proposed Corporate Strategy**

### **1. Creating and sustaining competition**

Consumer Focus believes that consumers are not benefitting fully from competition. The creation and sustainability of competition in the gas and electricity markets is a key issue as it will provide material benefits to consumers. There are a number of issues raised in the proposed Ofgem Corporate Strategy 2009-2014 that relate to competition and that Consumer Focus has comments about, as follows.

#### **Wholesale/Retail Prices**

We support proposals by Ofgem to help reduce barriers to entry and to improve the wholesale markets more generally. This work should be a high priority for Ofgem, and thus we are concerned at the apparent lack of progress, if any, in increasing liquidity on the regulator's part.

We continue to be concerned about wholesale and retail gas and electricity prices and the time lag between price increases and decreases. The lack of transparency and understanding by consumers in this area has led to a marked loss of confidence in suppliers' pricing policies. Ofgem has stated that it has found no evidence that energy firms raise retail prices faster in response to increasing wholesale costs than they reduce retail prices when wholesale costs fall. However, it also stated that the evidence is inconclusive and that further evidence and analysis is required to establish the speed and direction of retail and wholesale energy prices. We would note that absence of evidence is not evidence of absence.

Therefore we welcome the Government's statement in the pre-budget report and Ofgem's commitment to monitor and regularly report on the link between wholesale and retail prices, which is something we had been calling for. We think Ofgem's analysis of commercially confidential information on suppliers' hedging strategies will help provide consumers with greater certainty about when they can expect to see changes in their energy bills and greater confidence in the prices they pay for their energy. We believe that where there is clear evidence of companies not passing through price reductions to consumers when they should, the regulator must take firm and swift action against the offending suppliers. We look forward to reviewing Ofgem's first quarterly report on this issue. This work should be of the highest priority for Ofgem and this should be reflected in the corporate strategy.

Since the last strategy consultation consumers have endured significant price rises and there is anecdotal evidence that consumers do not have a real choice between suppliers given their copycat pricing behaviour. Consumer Focus agrees with the position in the strategy, and in the energy probe, that some consumers are still not benefitting fully from competition. Furthermore, these are the vulnerable or disadvantaged consumers who are most in need of a broader choice in the energy market, such as those on pre-payment meters.

### **Energy Probe Remedies**

Ofgem must implement the package of energy probe remedies, and explain clearly why each of the relevant issues is an important one. Also, Ofgem must set out a timetable for delivering each of the probe remedies, outline how they will achieve the agreed outcomes and include clear milestones so that success criteria is clear. This information has not been released by Ofgem and should be announced publicly. Stakeholders need this information in order to plan how best to contribute to the different work streams.

### **Consumer Confidence**

BERR recently published its 2008 Consumer Conditions Survey. Consumers were asked to rate 45 UK markets across key performance indicators including ease of comparing quality and prices, choice, living up to expectations, protecting consumer rights and the trustworthiness of advertising and marketing in each market. Consumers rated the gas and electricity markets lowest of all 45 markets in the study with a consumer confidence index score of only 58 out of 100. This highlights that there is much to be done to improve consumers' engagement in and experience of the gas and electricity markets. Thus we welcome Ofgem's increased investment in consumer engagement, as cited in our recent Rating Regulators report.

Consumer Focus strongly supports Ofgem's work and priorities within this area. A desirable outcome would be a market where consumers are confident about the prices they pay and can make accurate and reasonable expectations about when price changes will impact their bills. We see this as particularly pertinent in a period in which marketing efforts by energy suppliers have risen at the same time as debt rates and disconnection levels.

Consumer Focus believes that an annual statement, including total price and total consumption, would be one of the simplest metrics for comparison which Ofgem appears to be considering. In line with the aim of enabling consumers to better understand climate change impacts and the clarity of green claims, such a statement could usefully include a CO2 figure as well. An analogy might be drawn with the recently introduced requirement on financial institutions to provide customers with annual statements in relation to regulated fixed sum credit agreements under section 77A of the Consumer Credit Act 1974, which came into force on 1<sup>st</sup> October 2008. These statements were introduced in order to increase transparency for consumers by setting out details of the interest rates charged, the opening and closing balance on the account, the amount and date of payment, interest and other charges made. It would be equally in the interests of consumers to be sent this type of information annually about their fuel accounts.

### **Complaints Handling and Redress for Energy Consumers**

Consumer Focus will be carrying out a strategic review of the new arrangements to ensure they are delivering upon the government's goal of strengthening and streamlining consumer redress and representation in the energy sector. We look forward to working closely with Ofgem on this project to ensure a thorough review is carried out and there is no duplication of effort by our two organisations.

Consumer Focus is also looking forward to working closely with Ofgem on our proposals to develop new complaints performance information to help energy consumers make informed choices about the choice of supplier and to incentivise further improvements in industry performance. Both our

organisations have a strong interest in monitoring the impact of the new complaint handling standard on energy licensees' customer service performance.

### **Debt and Disconnection**

Consumer Focus looks forward to working closely with Ofgem on our joint review of suppliers' debt and disconnection processes and policies. It is important to ensure that the consumer protection framework to protect consumers, particularly the most vulnerable consumers, is sufficiently robust. Ofgem is already aware of Consumer Focus' concerns in this area. Our project will help determine whether changes are necessary to ensure that consumers are adequately protected by the current framework, which is a mixture of licence conditions, codes of practice and an industry statement of principles.

### **Energy Theft and Meter Interference**

Meter interference and energy theft is an issue that Consumer Focus takes very seriously. We recognise that meter tampering involves serious safety risks and that the theft of electricity and gas carries a cost to all consumers. Consumer Focus naturally wants to see suppliers doing their utmost to ensure high detection rates of meter interference by Revenue Protection services.

Ofgem has a role to play in helping maximise detection rates and ensuring suppliers adopt consistent and reasonable policies in the resolution of meter interference cases. Suppliers should be able to rely on Ofgem to provide best practice and up to date guidance on determining liability and applying an appropriate level of charges (e.g. for investigating interference and supplying a replacement meter) where meter tampering is detected. We are concerned that Ofgem has not provided guidance to update its policy statement on equipment damage and meter interference, thus leaving suppliers with no current guidance on Ofgem's policy. This may have contributed to concerns identified in some suppliers' Revenue Protection policies which resulted in Consumer Focus making a formal referral to Ofgem in February 2009. Our concerns centred on suppliers' remedies in meter interference cases, particularly where vulnerable consumers were involved.

It is important for Ofgem to ensure that suppliers recognise the connection between debt, disconnection and meter interference. Where debt repayment is not set at a level that is sustainable and affordable for consumers, the likelihood of instances of meter tampering will be higher. Ofgem must encourage suppliers to view their policies on debt and revenue protection holistically, to ensure the causes of meter tampering are addressed as rigorously as the effects.

### **Smart Meters**

Consumer Focus supports the roll out of smart metering to every household in this country by 2020. We consider smart meters will provide 'hassle free' billing by ending estimated bills, a greener future by allowing consumers to control their consumption, fairer charges by ending payment differentials and new services such as early warning systems for vulnerable consumers. We therefore support the recent government announcement to roll out smart meters. We will be working to ensure that costs and disruptions to consumers are kept to a minimum and that consumer safeguards are central to the project's implementation.

Ofgem needs to ensure that the technology does not just constitute the lowest common denominator, but provides consumers with all the information required to properly exercise choice in the market.

## **2. Regulating Networks Effectively**

There are challenges facing the networks with regard to investment. The current economic climate will impact on the level of investment necessary to ensure climate change targets are met. Ofgem need to acknowledge this serious challenge and address it clearly in the corporate strategy.

### **RPI-X@20**

We acknowledge that the work being undertaken by the RPI-X @20 review is important. The reasoning for the longer-term review is that the current RPI-X form of regulation may not be the best way to deliver new and emerging challenges including the need to move to a low carbon economy, to support investment and to ensure security of supply. We agree that the current framework has become too complex, making it difficult for stakeholders to understand and engage in the process. We are also concerned at the lack of substantive progress that has been made in the longer-term review since it was announced nearly a year ago. It has yet to proceed beyond the stage of defining the overall objectives and the nature of the building blocks despite the stated importance of the review. The leisurely timetable set by Ofgem for the RPI-X@20 review creates additional risks and uncertainty for the market.

### **Network Charges**

Consumer Focus has serious concerns with Ofgem's insistence on promoting cost-reflective network charges. We seriously doubt whether it is either fair or appropriate for domestic consumers to pay the resultant differing grid charges when by definition they cannot respond to price signals. Furthermore many consumers, particularly those we consider to be disadvantaged, do not understand the different elements of their bills already.

Consumer Focus also believes that there is a problem because of the fact that renewable energy targets are national but the charges for domestic consumers that fulfil those targets are not national. What is right for generators may not be right for domestic consumers and Ofgem should bear this in mind so as to be more consumer focussed.

Ofgem should note that the networks (distribution and transmission) are not the principal instruments to deliver Governmental environmental targets. Consumers are the instrument as they underwrite the costs and make usage decisions, whereas the networks (and thus the suppliers) are the infrastructure through which their responses can be enabled.

## **3. Helping to Achieve Sustainable Development**

Consumer Focus has a responsibility, set out in the Consumers Estate Agents and Redress Act 2007, to act in a way that contributes to the achievement of sustainable development. It recognises the scale of the challenge, in terms of climate change, energy security and the needs of individual consumers, particularly the fuel poor, and will continue to advise Ofgem on consumer needs to

inform its policy and programme development. Contributing to the achievement of sustainable development is a duty for Ofgem under the Energy Act 2008. The impact of this duty on Ofgem's external facing work and internal operations makes it a valid and necessary strategic theme for the organisation.

Consumer Focus is satisfied with the issues identified but there are two areas where it would ask Ofgem to be clearer about its intentions. Sustainability in the energy sector should not only refer to carbon and other greenhouse gas emissions, and Consumer Focus would like clearer reference to security of supply as a driver of this strategy. We welcome Ofgem's focus on the need to provide clear information to consumers across these issues, and the examination of different tariff structures and products, including rising block tariffs and energy service packages, on the uptake of energy efficient measures.

Ofgem consistently references its preference for market-based mechanisms. Consumer Focus is supportive of mechanisms where they offer a fair deal for consumers (in terms of cost and accessibility), but recognises that the cost of carbon and consumer demand are not driving investment in renewable energy and energy efficiency initiatives as much as the regulatory instruments of CERTs and Renewable Obligations. Given the scale of the climate change and energy security challenges and the timetable for action, and in the absence of short-term commercial imperatives, Ofgem should not shy away from the use of further regulatory instruments, particularly if this delivers an equitable outcome for consumers.

Consumer Focus wishes to stress the importance of better integrating CERT with Warm Front and the equivalent programmes in the devolved regions. We favour bringing all energy efficiency programmes into one programme, administered by local authorities or Low Carbon/Affordable Warm Zones. This would reduce consumer confusion considerably and help increase take-up rates. Ofgem's role in this area should be to participate wholeheartedly in wider debates about the future delivery of energy efficiency. On the post-2011 Supplier Obligation, we think Ofgem should, like us, favour splitting this into two programmes, one with carbon reduction targets and another with fuel poverty (or broader social) targets.

Ofgem should work with suppliers to encourage them to provide up to date and timely property-level data on improvements carried out under CERT and CESP to the EST Home Energy Efficiency Database. Such information is critical for allowing the effective targeting of energy efficiency and fuel poverty programmes. If suppliers do not cooperate, Ofgem should introduce a licence requiring them to provide such data.

Ofgem should also work with stakeholders to encourage geographic equity of expenditure on energy efficiency programmes to ensure that expenditure is related to need. The Greater London Authority and devolved administrations have expressed particular concern about the current inequity in geographical expenditure.

In relation to green tariffs, consumers should have clear information on the grid mix for individual tariffs, allowing them to make an informed choice. Consumer Focus is concerned about the lack of transparency in this area and the potential for green wash. We shall be publishing a cross-sectoral

report on 'green claims' in summer 2009. This will include some examples from the energy sector, and will inform Defra's review of its Green Claims Code.

The options for smart meters are now under consideration by the Government and Ofgem may have a role in administering the resultant scheme. Whichever solution is chosen, consumers' data and freedom to switch must be protected. There must also be an education and advice programme to help consumers use meters to save money and reduce their carbon footprint.

Consumer Focus believes feed-in tariffs and renewable heat incentives have the potential to encourage the development of local, sustainable energy generation. The fuel poor will benefit more from renewable heat incentives, as this group of consumers tend to be 'heat poor' rather than 'power poor'. These and other consumers will require tailored guidance on what systems will best suit their location and pocket, which will be crucial given that small scale renewable could potentially provide an important role in tackling fuel poverty in rural areas and hard to treat properties. Ofgem recognises that the administration of these schemes should minimise burdens on companies and costs to consumers; cost and administrative savings should not be made at the expense of maximising the environmental benefits of investments.

#### **4. Helping to protect the security of Britain's energy supplies**

Currently security of supply is one of the most important challenges for the regulator and the energy market. Addressing this challenge is linked intrinsically to the issues of investment and government support.

Network regulation needs to continue to be clear and predictable so as to incentivise companies to make long term decisions and thus ensure supply. The question of gas storage and the diversity of supply are issues that Ofgem need to consider as priorities.

#### **5. A Leading Voice in Europe**

Consumer Focus strongly supports an approach to UK energy market regulation by Ofgem that has a marked European dimension, in particular over the liberalisation process and any work on a consumer charter addressing "energy affordability". We believe this approach is especially valid given the recent problems experienced by some European countries dependent on gas from Russia. Ofgem has an important role to play in helping push Europe in a more liberalised direction, which would especially benefit British consumers.

We believe that although Ofgem engages with the European energy dimension well, it does not engage sufficiently with its stakeholders when it deals with Europe-wide issues. For example, an area which we feel the corporate strategy fails to address is that of direct consumer protection. Ofgem has an important role to play in the development of consumer protection protocols across member states, and in particular the establishment of complaint handling standards. Too often competition has been cited as the means to delivering consumer protection, when the experience in the GB market has shown this is not the case – especially in the short term. This is perhaps demonstrated by the need to introduce complaint handling standards ten years after market

liberalisation. It is essential that lessons are learned from the GB experience and Ofgem must promote the requirement for effective mechanisms of consumer redress as a matter of urgency.

A key priority for Ofgem should be to continue with the citizen's forum and become involved in the debate on consumer protection in liberalised markets. Other government agencies use various methods to encourage stakeholder involvement. The BERR EU Consumer Policy team hold regular stakeholder meetings and fully brief them with regard to any developments. The Ofcom Consumer Policy Unit manages a quarterly Consumer Forum and is initiating an online platform for communicating with stakeholders. Ofgem could adopt these models to improve working with stakeholders around EU issues.

We note that although the strategy discusses a need for non-discrimination in allocating transmission, access to storage is not mentioned. We see this as a key issue in reforming Europe's energy markets and creating a level playing field for British energy consumers in relation to their European counterparts.

## **6. Helping to Tackle Fuel Poverty**

Rising gas and electricity prices have hit all consumers and concerns many people in the United Kingdom. The result is that the number of people living in fuel poverty is rising. Given the UK is currently in recession, we believe that it is crucial for Ofgem to take a proactive stance on addressing suppliers' policies on debt and disconnection.

Ofgem acknowledge in the corporate strategy the importance of work in this area. Consumer Focus believes that one strategy to address fuel poverty is social tariffs. The Government and Ofgem currently rely on voluntary agreements with suppliers to provide social tariffs and other social programmes to low income consumers, although the Government has threatened legislation if it considers suppliers are not providing sufficient help.

Consumer Focus does not consider the current approach adequate, for example suppliers only spend 0.24 per cent of turnover on social tariffs and rebate schemes, and only three suppliers providing social tariffs that meet Ofgem guidelines.

Consumer Focus argues that the Government should mandate minimum standards for social tariffs, and that Ofgem needs to be absolutely strict in enforcing their use where suppliers would be mandated to offer them. These standards should include eligibility criteria, proportionality and a guarantee that the social tariff is the lowest tariff on offer from each supplier regardless of payment method. We recommend that the Fuel Direct system is modernised so that it provides an alternative payment method for low income consumers and potentially provides the same price advantages as direct debit.

Ofgem should consider whether, in the context of alleviating fuel poverty, it should have some kind of regulatory oversight of the domestic fuels market, which currently has no real regulatory protection for consumers.



In relation to complaints handling we believe that Ofgem would be better placed to help consumers by using the data on disconnections and vulnerable consumers available from Consumer Focus' Extra Help Unit.

Consumer Focus has concerns over the unintended consequences of Ofgem's promotion of cost-reflective tariffs. The priority should be protecting vulnerable consumers, regardless of payment method. Consumer Focus favours a legal mandate to end unfair discrimination against payment methods used by low income or vulnerable groups. It should be remembered that "fair" does not necessarily mean cost reflective, and Ofgem needs a mechanism by which suppliers are incentivised to bring down the costs of payment methods used by vulnerable groups. Our position on this is that price discrimination by payment method stops being a primary driver of competition.

Consumer Focus is a sponsor of the Fuel Poverty Bill being put to Parliament by David Heath MP. We believe that that the installation of much more extensive energy efficiency and renewable measures is central to eliminating fuel poverty and reducing the dependence of low income consumers on suppliers.

## **Consumers**

We acknowledge that progress has been made by Ofgem on consumer issues in the past year or so. An example of this is that Ofgem has adopted a consumer interest toolkit and has established a Consumer Challenge Group. However, we are concerned that consumer issues remain something of a marginalised activity at Ofgem. There remains a need to 'mainstream' the importance of consumer issues and Ofgem could do more to reach out to consumer groups.

Further, Ofgem tends to put out consultation documents and await responses and then proceed on the basis of submissions received. Ofgem could think about smarter ways to engage with a wider number of groups who have an interest in fuel issues, even if this is marginal. Examples include roundtable discussions linked to consultations, 'teach-ins', more accessible consultation documents and meeting directly with stakeholders.

Ofgem also tends to be fairly reactive and when action is taken, it occurs relatively slowly. There is great scope for the regulator to start thinking more about the long-term issues facing consumers and their likely needs as the market and technology develops. Ofgem should try to anticipate issues before they arise and set about integrating solutions to policy development to pre-emptively prevent consumer detriment. An 'early warning system' or long-term planning group are examples of possible solutions to this issue.

## **7. Better Regulation**

We welcome the emphasis in this corporate strategy on consumer engagement under the banner of Consumer First. We are pleased to hear that the various activities that Ofgem has put in place as part of this initiative are already making a positive contribution to policy development.

In principle we welcome the industry code governance reviews. There is a real need for improvements to the industry code arrangements so that consumers benefit from reforms quicker

and that the process is more inclusive for all those involved in the market. Consumer Focus is represented on the Code Administrators Working Group and is contributing to the development of a range of strategies to improve code modification arrangements and the operation of code administrators. Consumer Focus looks forward to the results of these reviews during 2009.

As you know, Ofgem is one of six regulators that Consumer Focus has assessed in its Rating Regulators study, which was published on 26<sup>th</sup> February. In summary, areas where Ofgem performs relatively well against our assessment framework include accessibility, transparency and the use of some types of reputational regulation through the publication of firm-specific performance information. We have also been pleased to witness an increased investment in Ofgem's consumer affairs function over the last twelve months, which bodes well for the future. However, Ofgem was criticised by stakeholders for its regulatory approach; at the heart of these criticisms is an over-reliance on market mechanisms, in particular consumer switching, to regulate markets. There was a mixed performance with respect to being sensitive to differences in the consumer experience across Great Britain, and there is also scope for improvement in relation to developing an outcome-based approach. We would encourage Ofgem to develop an action plan to address the issues raised in our study.

We encourage Ofgem to take steps to address the widely-held perception identified in Rating Regulators that Ofgem places an overreliance on market mechanisms to regulate the market, and that Ofgem is often slow to react when there is evidence of consumer detriment. Our stakeholder evidence was collected before the publication of the findings of Ofgem's probe into the energy market, which provided a more balanced view than previously of the opportunities and limitations provided by market mechanisms. Whether or not the probe will change stakeholder perceptions is likely to depend on the way in which Ofgem follows through on its action plan and if future interventions continue to demonstrate the more balanced view described above.

To address stakeholder concerns further, Ofgem might wish to consider the approach taken by Ofcom which has published a set of principles setting out the circumstances when different types of regulatory approach are likely to be suitable, including circumstances where direct intervention from the outset will be necessary.

Consumer Focus also has concerns that Ofgem does not have a proper/standard timeline for the publication of consultation documents such as this corporate strategy. We note the proliferation of consultation documents in late December 2008 and more recently where a two week period is all that has been allowed for consultation on the 65 day notice period for unilateral contract variations. This is completely inadequate. We believe that such timing means there is less opportunity for stakeholder responses to be prepared and submitted. Ofgem needs to publish documents for consultation regularly throughout the year, allowing a standard period for responses that reflects the complexity of potential impact of the subject under consideration. This allows for more appropriate stakeholder engagement and allows time to plan workloads.

Consumer Focus still has concerns about the resources used for enforcement of the licensing regime. We accept that some of these enforcement decisions will be complex and will take time to thoroughly investigate but the 9-month period should be seen as a limit and not a target.

On Ofgem’s proposed Performance Indicators for 2009-10, Consumer Focus is not convinced that a 70% target for letters regarding industry code modifications being published within 25 working days is sufficiently robust. It is also not clear what “respond substantially” to customer contacts means, and that no time is set down for completing consumers’ investigations. If possible there should be a guideline time period rather than leaving it open-ended.