



Suppliers, customer  
representatives and other  
interested parties

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*Promoting choice and  
value for all customers*

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Date: 30 March 2009

Dear Colleague,

**Decision document: Regulation of marketing to domestic customers**

On 18 February 2009, Ofgem published a consultation document entitled "Regulation of marketing to domestic customers".<sup>1</sup> That document consulted on the proposal to continue for a further two years the licence condition dealing with marketing to domestic customers.

Having carefully considered the responses received, the Authority considers that although the fundamentals of a competitive market are in place and the transition to an effective competitive market is well advanced and continuing, there are still a number of areas where this transition needs to be accelerated. In the light of this, and taking into account the recommendation of the Energy Supply Probe – Initial Findings Report to consult on strengthening the marketing licence condition, the Authority considers the licence condition should be extended for a further two years. Therefore, the marketing licence condition will continue from 31 March 2009. This letter sets out the reasons for this decision.

In the February consultation document, we expressed concerns about evidence from the Probe of poor switching decisions by consumers on the doorstep and recent cases and allegations of mis-selling. We noted that in response to these concerns we are also considering as part of the Probe whether the marketing licence condition should be strengthened. We noted that the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) are not well established and that the inability of the Authority to impose financial penalties on suppliers is a weakness in relying on the CPRs exclusively to regulate sales and marketing activities in the energy sector. We expressed the view that existing industry self regulation in relation to doorstep selling cannot be relied on to adequately regulate sales and marketing activities. As such, we invited views as to whether the marketing licence condition should be retained for a further two years.

Ofgem received nine responses to our consultation. Six were from suppliers, two from consumer groups and one from the Energy Retail Association (ERA), who provided a high-level industry response on behalf of its members. Copies of the responses may be found on the Ofgem website.<sup>2</sup>

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<sup>1</sup> This document may be found on the Ofgem website:

<http://www.ofgem.gov.uk/Markets/RetMkts/RetailMarketsIssues/DirectMktng>

<sup>2</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/RetailMarketsIssues/DirectMktng>

## **Consultation Responses**

### *Respondents who supported maintaining the licence condition for a further two years*

Four suppliers were content with the proposal to extend the marketing licence condition. Of these, one supplier believed that the evidence of the investigation of RWE npower and uncertainty over the potential application of the CPRs is sufficient to justify continuation of the marketing licence condition. However, they suggested an extension of one year instead of two. Another supplier argued that although the marketing licence condition is currently fit for purpose, its removal must remain an objective.

Consumer Focus strongly recommended that the marketing licence condition is retained until 2011 at least. In the light of evidence of continued problems surrounding mis-selling, it considered that the energy industry is still failing to regulate itself sufficiently and that the licence condition is very much still required to regulate marketing and to provide adequate protection for consumers. It felt that although the CPRs are a useful tool they are still to be established and the lack of ability to impose a financial penalty on offending suppliers is a weakness. As such, Consumer Focus did not believe that the CPRs are sufficient on their own to regulate marketing to domestic consumers within the energy market.

Citizens Advice strongly supported retention of the marketing licence condition. It continued to be concerned by the number of issues reported by its' bureaux in relation to sales and marketing activities. It reported that individual cases dealt with by the bureaux reveal that dubious sales and marketing activities can cause significant consumer detriment, particularly to more vulnerable members of society.

### *Respondents who did not support maintaining the licence condition for a further two years*

Two suppliers did not support an extension of the marketing licence condition. Both considered that the combination of existing consumer protection legislation and industry self regulation (in the form of the EnergySure Code) provides a high level of protection for consumers and that removal of the licence condition would not result in any detriment to consumers. One argued that Ofgem would still retain considerable powers to take action under the CPRs. The other felt that further thought is required to address concerns around sales and marketing, rather than requiring a specific licence condition, particularly where consumers' interests in products extends to features other than price.

The ERA stressed the importance of the EnergySure Code in raising standards and reducing the level of complaints against suppliers on the sale of energy contracts on the doorstep.

## **The Authority's decision**

We consider that the development of competition in energy supply is such as to require the continuation of the marketing licence condition. We are concerned about evidence of poor switching decisions by consumers on the doorstep and recent cases and allegations of mis-selling, which suggest that competition is not sufficiently developed to enable the removal of the marketing licence condition. This is consistent with the findings of the Energy Supply Probe, that there was scope to improve the functioning of the energy retail markets. The licence condition remains the only avenue through which a financial penalty can be levied on suppliers and we believe that this constitutes an important driver of improved behaviour in this area. Consumer protection legislation is not sufficiently well established and we are yet to see sufficient evidence that industry self regulation can on its own provide a suitable level of protection for consumers.

The Authority therefore considers that the licence condition should be extended for a further two years until 31 March 2011.

Attached to this letter are copies of a Notice made pursuant to paragraph 13 of standard condition 25 of the gas and electricity supply licences.

We intend to consult shortly on proposals to strengthen the marketing licence condition as part of the remedies package coming out of the Energy Supply Probe.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'AW', with a long horizontal line extending to the right from the end of the signature.

Andrew Wright  
**Managing Director, Markets**

## NOTICE

### NOTICE UNDER STANDARD CONDITION 25 OF THE ELECTRICITY SUPPLY LICENCE

#### Whereas:

1. Paragraph 25.11 of standard condition 25 (Marketing of Electricity to Domestic Customers) ("the Condition") of the electricity supply licence provides that the Condition shall cease to have effect on 31 March 2009 ("the termination date").
2. Paragraph 25.12 of the Condition provides that the Gas and Electricity Markets Authority ("the Authority") may give Notice of its decision to set a new termination date ("the new termination date"); provided that it has consulted with relevant persons, has determined that the development of competition in electricity supply is such as to require the continuation of the condition in whole or in part and that the new termination date is no more than two years after the termination date.
3. Paragraph 25.14 provides that where the Authority sets a new termination date on more than one occasion, such part of the condition as may be specified by it will apply as if the termination date was the last new termination date set by the Authority.
4. The Authority published a public consultation document entitled, "Regulation of marketing to domestic customers" on 18 February 2009. Copies of that document are available from the Ofgem Research and Information Centre, 9 Millbank, London SW1P 3GE (020 7901 7003) or the Ofgem website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).
5. The Authority stated in the public consultation document that it considers that the development of competition in electricity supply is such as to require the continuation of the Condition until 31 March 2011.
6. The Authority received nine responses to the public consultation document. No responses were withdrawn. All responses are available from the Ofgem Research and Information Centre or on the Ofgem website.
7. The Authority has carefully considered all responses made to the public consultation document.

In accordance with paragraph 25.13 of the Condition, the Authority gives Notice that it has set a new termination date of 31 March 2011.

This Notice is dated 30 March 2009.



Andrew Wright  
**Managing Director, Markets**

## NOTICE

### NOTICE UNDER STANDARD CONDITION 25 OF THE GAS SUPPLY LICENCE

#### Whereas:

8. Paragraph 25.11 of standard condition 25 (Marketing of Gas to Domestic Customers) ("the Condition") of the gas supply licence provides that the Condition shall cease to have effect on 31 March 2009 ("the termination date").
9. Paragraph 25.12 of the Condition provides that the Gas and Electricity Markets Authority ("the Authority") may give Notice of its decision to set a new termination date ("the new termination date"); provided that it has consulted with relevant persons, has determined that the development of competition in gas supply is such as to require the continuation of the condition in whole or in part and that the new termination date is no more than two years after the termination date.
10. Paragraph 25.14 provides that where the Authority sets a new termination date on more than one occasion, such part of the condition as may be specified by it will apply as if the termination date was the last new termination date set by the Authority.
11. The Authority published a public consultation document entitled, "Regulation of marketing to domestic customers" on 18 February 2009. Copies of that document are available from the Ofgem Research and Information Centre, 9 Millbank, London SW1P 3GE (020 7901 7003) or the Ofgem website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).
12. The Authority stated in the public consultation document that it considers that the development of competition in gas supply is such as to require the continuation of the Condition until 31 March 2011.
13. The Authority received nine responses to the public consultation document. No responses were withdrawn. All responses are available from the Ofgem Research and Information Centre or on the Ofgem website.
14. The Authority has carefully considered all responses made to the public consultation document.

In accordance with paragraph 25.13 of the Condition, the Authority gives Notice that it has set a new termination date of 31 March 2011.

This Notice is dated 30 March 2009.



Andrew Wright  
**Managing Director, Markets**