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Dear Ms. Van Rensburg

Retail Market Review: Non-Domestic Proposals

The Energy Retail Association (ERA), formed in 2003, represents electricity and gas suppliers in the domestic market in Great Britain. All the main energy suppliers operating in the residential market in Great Britain are members of the Association - British Gas, EDF Energy, npower, E.ON, ScottishPower, and SSE.

The ERA is pleased to respond to Ofgem's proposals that are designed to help business customers engage more effectively in the energy market. This is a high level industry view and the ERA's members will also be providing individual responses. We would be happy to discuss any of the points made below in further detail with Ofgem if this is considered to be beneficial.

Summary

The ERA's members are committed to delivering improvements for Non-Domestic customers. The ERA's role as a trade association relates to the micro-business space. In this regard, we would highlight the recent progress that the association has made in drawing up voluntary standards for back-billing micro-business customers in conjunction with stakeholders. The standards, which any supplier can adopt, include a pledge not to back-bill these customers beyond three years for electricity and 4/5 years for gas, where the supplier is at fault.

In respect of the Retail Market Review, the ERA supports Ofgem's objectives to:

- help more business customers be aware of their contract terms;
- improve the supplier switching experience for business customers;
- increase confidence when using third party intermediaries (TPIs); and
- improve customers' trust in suppliers.

We would agree that some regulatory reforms may be necessary to help secure these goals. However, Ofgem needs to take all reasonable steps to ensure that they will deliver the intended outcomes without imposing undue burden on suppliers. In this regard, we believe that more work needs to be done to ensure that:

- the definition of "small business" in respect of the proposed expansion of SLC 7A is targeted at appropriate organisations and is practical to implement;

- conclusions regarding customer transfer objections take account of supply transfer requests as well; and
- the behaviour of TPIs can be properly controlled by parties that have adequate powers to do so.

The ERA also has views on the proposal to introduce Standards of Conduct (SOCs) as an overarching, enforceable licence condition. These will be provided in the Association's response to Ofgem's consultation on its Domestic Proposals.

Protections for smaller business customers

Ofgem is proposing to expand SLC 7A protections to businesses that meet one or more of the following criteria:

- an annual consumption of electricity of not more than 55,000 kWh;
- an annual consumption of gas of not more than 293,000 kWh;
- a Profile class 3 or 4 electricity meter; or
- fewer than 50 employees and an annual turnover or annual balance sheet total not exceeding Euros 10 million.

There is no easy answer to what the appropriate definition of a small business should be when considering the expansion of these protections. Indeed, the ERA's members have different views. However, they do agree that there are difficulties with Ofgem's proposal.

Firstly, the new definition will encompass larger companies with smaller sites, "half hourly" customers and public sector organisations who purchase their energy centrally, for whom these protections will not be appropriate. Given Ofgem have noted that there was "general resistance to extending the SLC to larger businesses"¹, we presume that such anomalies would not be an intended result of Ofgem policy. The ERA believes that the definition should be changed to eliminate such anomalies.

Secondly, the introduction of a second broader tier of protection would introduce further layers of complexity in how suppliers fulfil their various obligations. Given the fact that the micro-business definition is already difficult to administer, we believe that more work needs to be done with stakeholders to arrive at a sensible definition from first principles.

In this regard, we are concerned that there may be a lack of continuity in Ofgem's rationale, which could lead to regulatory creep. The original justification for introducing additional protections for micro-businesses was that these customers had similar characteristics to those in the domestic sector. Now, Ofgem argues that SMEs should be granted additional protections because they "are very similar to micro-businesses"². This is why the ERA believes that a return to first principles is required, and would encourage Ofgem to take this forward with industry and stakeholders.

Customer transfer blocking – "Objections"

The ERA agrees that in order to improve the switching experience and increase trust in the industry Ofgem should take action where the objections procedure is being used illegitimately, and agrees that the provisions of SLC 14 are sufficient in this regard. The ERA also supports efforts to improve the quality of information when providing reasons for objections.

However, the ERA is not convinced that the conclusions that Ofgem draws in chapter 3 are watertight. A repeated objection does not make it an illegitimate objection. In this respect, Ofgem may wish to look at the other end of the process as well; repeated registration requests trigger

¹ Ofgem, Retail Market Review: Non-Domestic Proposals, para 2.3 p. 11

² Ibid, para 2.11, p. 12

repeated objections. With this in mind, we would be concerned that publication of data relating to objections could be misleading and cause unjust reputational damage to suppliers unless handled sensitively. With this in mind, we believe that Ofgem would need to be confident of being able to present the data in a way that ensures it is interpreted appropriately before taking the decision to publish.

Third party intermediaries

The ERA agrees that steps should be taken to ensure that TPIs undertake sales activities in a way that does not mislead the customer. However, in order for the reforms to be effective, the ERA believes that they should meet two key tests in addition to the Principles of Better Regulation:

1. parties responsible for regulating behaviour of TPIs must be able to ensure compliance; and
2. small and micro-business customers should receive comparable protections, irrespective of which TPI they use.

The ERA does not believe that Ofgem’s proposal to introduce a new licence condition, which would effectively make suppliers responsible for regulating the behaviour of TPIs, meets the first test. Ofgem states that its proposal “does not require suppliers to have contracts with all TPIs”³ since this would not be a “proportionate intervention”⁴. Nevertheless, Ofgem states that, in order to comply with the licence condition, suppliers would “as a minimum...where the supplier and TPI have a relationship...have to ensure that:

- a. appropriate arrangements will be made to allow the customer to have transparent dealings with a TPI. In practice this may see a customer being made aware of which suppliers the TPIs services cover (eg one supplier or the complete non-domestic market);
- b. that there are arrangements to provide the customer with transparency relating to additional fees that the TPI may charge them. This could see TPIs disclosing to customers whether or not a fee has been paid for their services;
- c. the TPI will record and retain the full telephone conversation with the customer.”⁵

We agree that Ofgem should not expect suppliers to have a contract with every TPI that they deal with. In light of this, we would welcome feedback on how Ofgem expects suppliers to realise the proposed “minimum” standards of compliance laid out above? If these minimum standards were laid out in contracts between TPIs and suppliers, could a supplier face a financial penalty for a licence breach if the TPI breached the terms of its contract? We would also welcome Ofgem’s views on how this arrangement caters for TPIs that represent more than one supplier.

Notwithstanding these difficulties, it may be that the licence condition becomes more workable if it makes clear that using an Ofgem-accredited TPI (as per the Code of Practice proposal) is both necessary *and sufficient* to comply with the licence condition for small and micro-businesses. In which case, the licence condition should not be introduced until Ofgem has developed its accreditation regime. Ofgem would also need to ensure that reporting of TPIs’ performance against an accredited Code of Practice (CoP) does not place suppliers with an undue regulatory risk of non-compliance with the licence condition, should the TPI be in breach of the CoP. In any case, this issue should be resolved by the enforcement measures embedded into the CoP.

Returning to the two tests laid out in the introductory paragraph to this section, the ERA believes that the optimum means of achieving them would be for Ofgem to be able to enforce the Business Protection from Misleading Marketing Regulations (BPMMSs). We therefore consider that Ofgem

³ Ibid, para 4.6, p. 27

⁴ Ibid, Table 4.1, p. 31

⁵ Ibid, para 4.7, p. 28

should focus its efforts on securing those powers.

Standards of Conduct

As stated above, the ERA also has views on the proposal to introduce Standards of Conduct (SOCs) as an overarching, enforceable licence condition. These will be provided in the Association's response to Ofgem's consultation on its Domestic Proposals.

Conclusion

The ERA supports the aims of Ofgem's Non-Domestic proposals, and believes that reforms may be required to achieve them. We hope that this response assists Ofgem in determining which proposals may need further thought in order to deliver the intended outcomes, and we would welcome the opportunity to discuss them in greater detail with Ofgem in due course. In the meantime, if you would like any further information, please contact Alun Rees on 020 7104 4165 or alun.rees@energy-retail.org.uk.

Kind regards,

Lawrence Slade
Chief Operating Officer