

David Hunt  
Head of Retail, Energy Markets  
Ofgem  
9 Millbank  
London  
SW1P 3GE

1<sup>st</sup> May 2013

Dear David,

### **The Retail Market Review – Final non-domestic proposals**

1. We welcome the publication of Ofgem's final non-domestic Retail Market Review (RMR) proposals. We support the objective of providing Micro Businesses with appropriate regulatory protection and believe these final proposals will broadly achieve that aim. In particular, we strongly support the Third Party Intermediary (TPI) Code of Practice currently under development, and believe it could help protect the interests of non-domestic customers from the small number of 'rogue' TPIs operating today.
2. Our detailed comments on these final proposals are set out below. We have also highlighted below a number of areas where we are still concerned that the proposals will not be in the interests of consumers. Ofgem should review these ahead of making a final decision. Specifically:
  - The requirement to implement the Micro Business protection proposals by 31<sup>st</sup> December 2013 is unreasonable. The proposed RMR timetable provides for Ofgem to make a decision in June 2013, with supplier implementation programmes starting from August 2013. This affords suppliers less than six months in which to make complex and fundamental changes to their billing systems, customer communications and, potentially, the segmentation of their business. This is an unreasonable expectation which we believe cannot be met.
  - The lack of information on how Ofgem will enforce the Standards of Conduct before they are fully implemented creates significant uncertainty and risk. We welcome recognition from Ofgem that ensuring business processes are demonstrably consistent with the Standards of Conduct will necessarily be an evolutionary process. However, the lack of specific detail over how Ofgem will decide whether to take enforcement action in relation to the Standards of Conduct is a real concern. It is vital that Ofgem use the current review of enforcement procedures to clearly set how they will assess whether a supplier's implementation process is progressing at a reasonable pace before they decide whether enforcement action is warranted.

- The draft licence conditions are ambiguous in places and may lead to Ofgem's stated policy aims remaining unfulfilled. Elements of the drafting around the application of the Standards of Conduct are poorly defined, and are likely to create problems for suppliers as they come to implement the proposals. For instance, the reference to "guidance" in the draft licence condition is inappropriate, making the guidance binding on suppliers despite Ofgem's stated intention to avoid such an outcome. Similarly, we support extending the existing Micro Businesses protections to a greater number of customers, but the drafting Ofgem have proposed may result in some businesses being classed as both a Micro and non-Micro Business simultaneously. This has the potential to cause confusion for suppliers, customers and various stakeholders in the consumer redress scheme as they seek to establish how each supplier has classified each customer.
3. In the following sections we set out our views on the proposals relating to Micro Business protection, Standards of Conduct, reducing barriers to switching for all businesses, TPIs, the draft Impact Assessment and the proposed Licence Drafting. Appendix A to this response also sets out our more detailed comments on the drafting of individual Licence Conditions and associated guidance.
  4. This response is submitted on behalf of the Centrica group of companies (excluding Centrica Storage), is not confidential, and may be placed on the Ofgem website.

#### *Micro Business protection*

5. We support the proposals to increase the level of regulatory protection afforded to Micro Businesses, both through extending the scope of Licence Condition 7A and through the provision of contract end and termination dates on the bill. We also believe Ofgem should take this opportunity to require non-domestic suppliers to use the bill to signpost to the Citizens Advice consumer service. Although some suppliers already signpost in this way, we believe all suppliers should be obliged to adopt this approach. Notwithstanding this, the current proposals will require significant changes to both suppliers' billing systems and customer communications. This will be a material undertaking. On that basis, the requirement to complete the implementation by the end of this year is unreasonable.
6. Specifically, work cannot start on implementing these proposals until suppliers have certainty about what they will be required to deliver in August 2013. This gives suppliers less than six months in which to make these fundamental changes. This is likely to lead to suppliers either being non-compliant by 31<sup>st</sup> December 2013, or embarking on poor quality implementation programmes which risk negatively impacting customers. Ofgem should allow suppliers a reasonable length of time in which to implement these proposals.
7. We accept the criteria for the proposed Micro Business definition but are concerned that retaining the consumption element of the definition could result in a number of large businesses being inappropriately captured by the new rules. These customers do not consider themselves to be Micro Businesses. When assessing whether a customer is "Micro", suppliers will only have access to consumption information for sites within their own portfolio. If a large customer chooses to split their portfolio across a number of different suppliers, they may find themselves classified as 'non-Micro' with some suppliers and 'Micro' with other suppliers.
8. This will also create issues for both customers and industry stakeholders supporting the consumer redress arrangements. Given the customer's classification will depend on the aggregate consumption of sites in the supplier's portfolio and not the aggregate consumption of all the customer's sites, customers will find access to complaints and redress processes with some of their suppliers but not others. Similarly, stakeholders in the consumer redress process

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may be unable to establish whether the customer is indeed a Micro Business without first speaking to the supplier in question.

9. Regulatory protection comes at a cost and if it is inefficiently targeted at customers who do not need such protection, the resulting increase in energy bills will not be offset by the benefits perceived by Ofgem. For instance, customers with split portfolios may be confused by the fact that bills one from supplier include contract end date information but bills from another supplier do not. We also note that, despite Ofgem's statement that they "have been careful to restrict [their] intervention to those areas ... where [their] research and consumer groups have shown there to be problems"<sup>1</sup>, this issue will extend the scope of the Standards of Conduct to some large businesses. The application of this extension will be random in nature, depending entirely on the customer's decision about how they divide their portfolio.
10. Ofgem should seek to resolve this issue by either removing the consumption test from the proposed Micro Business definition, or allowing customers to 'opt-out' of the Micro Business protections where appropriate. Such an 'opt-out' mechanism could be accompanied with reasonable controls to ensure that the process was not abused. We also note that were any abuse to occur, Ofgem would have the right to take enforcement action under the proposed new Standards of Conduct.
11. Finally, we are also concerned that the proposed drafting of the Licence Conditions creates the potential for customers to be defined as a Micro Business and a non-Micro Business at the same time. The definition of Micro Business today under the Gas and Electricity Regulated Providers (Redress Scheme) Order (2008)<sup>2</sup> requires suppliers to treat a business as 'Micro' for both fuels if they consume under the required amount of energy in either their gas or electricity. By contrast, the Licence drafting in these final proposals may result in a customer being classified as Micro on one fuel independently of their status on the other fuel. This is likely to create customer confusion and operational complexity, and should be resolved in Ofgem's final decision.

#### *Standards of Conduct*

12. We understand the rationale for the proposed introduction of the Standards of Conduct, and agree that this has the potential to help rebuild consumer trust in the retail energy market. The introduction of Standards of Conduct into licence represents a fundamental shift in the nature of regulation however. We are therefore pleased that Ofgem recognises that ensuring all business processes are demonstrably consistent with the Standards of Conduct will necessarily be an evolutionary process.
13. This being said, the lack of specific detail regarding how Ofgem will decide whether to take enforcement action in relation to the Standards of Conduct remains a concern. In particular, we ask Ofgem to clarify the process it will follow in assessing whether a supplier's implementation process is progressing at a reasonable pace (in the context of deciding whether to commence enforcement action).
14. Given the subjective nature of the Standards of Conduct, we also ask Ofgem to ensure there are proper controls against the risk of inconsistent or disproportionate enforcement decisions. Whilst the proposed independent Enforcement Panel is welcome, we do not consider this to be a sufficient safeguard in itself.
15. We have previously highlighted good practice from other Principles Based Regulation regimes that may be helpful for Ofgem when reviewing how Standards of Conduct will be enforced (e.g.

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<sup>1</sup> The Retail Market Review – Final non-domestic proposals, paragraph 4.8.

<sup>2</sup> Article 2(1)

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the financial services sector). One aspect of such regimes is independent scrutiny of enforcement decisions – and a route to seeking independent review (without the more drastic step of seeking a full Judicial Review). Such a step can be helpful in providing Ofgem and licensees with assurance that regulatory action will be fair and consistent. We therefore ask Ofgem to consider making access to independent review (e.g. to an independent tribunal) a standard part of the enforcement process.

16. Finally, whilst we welcome the provision of guidance on the application of the Standards of Conduct, we believe that the guidance provided has been written specifically for the domestic market. Whilst much of this is relevant in the non-domestic sector, elements within it are inappropriate when assessed in the context of a business to business relationship, for example when considering issues of vulnerability or ability to pay. Ofgem should address this by providing specific non-domestic guidance on the application of the Standards of Conduct.

#### *Reducing barriers to switching for all businesses*

17. We support steps to increase the monitoring of the customer transfer process. As acknowledged in the Impact Assessment however, objection volumes are inextricably linked to the frequency of acquisition attempts and any published data on the former must provide sufficient context on the latter.

#### *Third Party Intermediaries (TPIs)*

18. We continue to support Ofgem's proposals for ensuring that businesses receive appropriate protection from the actions of the 'rogue' TPIs which operate in the market today. In particular, we are keen to see the development of the proposed TPI Code of Practice, and have been supporting Ofgem in its development. In particular, it is important that this Code of Practice provides customers accessing the market through TPIs with the same level of protection that they have when they go direct to a supplier.
19. We are keen for the Code of Practice to ensure that the commission structures of TPIs are clear and transparent to the customer before any agreement is made. This level of transparency will be important in helping customers make informed decisions about what is best for them and their business, and Ofgem should ensure it is secured through the Code of Practice. We will work with Ofgem to identify the most effective way of providing customers with commission information.
20. It will also be important for Ofgem to ensure that suppliers are not able to continue using TPIs which operate outside the remit of the Code of Practice. We believe this will be best achieved by introducing a new licence obligation on suppliers to only contract with TPIs which are accredited under the Code of Practice. Without this, it is likely that some TPIs may continue to operate in a way which runs contrary to customers' interests.

#### *Impact assessment*

21. Whilst we welcome the inclusion of a detailed Impact Assessment alongside the non-domestic RMR proposals, we are not convinced by all of Ofgem's assumptions. For example, we do not believe that the full cost of implementing the Standards of Conduct has been considered. Whilst we consider this proposal has long term benefits for customers, Ofgem should be clear that its implementation will be a material undertaking costing £millions.

*Conclusion*

22. Ofgem's final RMR proposals represent a significant improvement over the proposals set out in the October 2012 document. There are however a number of areas of significant concern which prevent us from accepting the package as proposed.
23. We would be happy to continue helping Ofgem develop these proposals further, if that would be beneficial. We will be in contact shortly to arrange a suitable time to discuss these points in more detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alisdair Cameron'. The signature is written in a cursive style with a large initial 'A'.

Alisdair Cameron  
Managing Director, SME Energy