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Consultation: GEMA gaining enforcement powers under The Business Protection from Misleading Marketing Regulations 2008 (SI 2008/1276)

Dear Mr Sumner,

I am pleased to attach Energy UK's response to Ofgem's consultation on GEMA gaining enforcement powers under The Business Protection from Misleading Marketing Regulations 2008. It is not confidential.

Energy UK is the trade association for the energy industry. Energy UK has over 70 companies as members that together cover the broad range of energy providers and supplies and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and last year invested £10billion in the British economy.

This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Enforcement powers

Energy UK welcomes Ofgem's consultation, and believes that Ofgem should be given the powers to regulate Third Party Intermediaries (TPIs) directly. We will continue to support Ofgem's campaign to be able to enforce the Business Protection from Misleading Marketing Regulations (BPMMRs).

TPIs are becoming an increasingly important part of the market, and Energy UK believes that direct regulation will help to ensure that all participants' practices are both fair and transparent. This should help to promote consumer trust and engagement in the market, benefitting consumers, suppliers and the TPI industry itself. This in turn will improve competition in the non-domestic sector. For example, we would encourage greater transparency in the commission that they charge as this would help customers understand what their energy costs are.

Energy UK agrees that there is currently a gap in legislation surrounding the protection of business customers. This has been a low priority area for the Office of Fair Trading (OFT) and, to date, the OFT has not used the BPMMRs to take action against TPIs in the context of energy supply. This demonstrates that action to move enforcement powers to Ofgem is necessary.

Accreditation of TPIs

Energy UK agrees with Ofgem's suggestion that suppliers should be obligated to work only with accredited TPIs, and this would be possible with a single accredited code in place. Such an obligation would ensure that all suppliers and TPIs are subject to appropriate governance, which would strengthen trust in TPIs and energy suppliers' process when gaining customers, and as a consequence would promote trust in the energy market as a whole. Most of our members consider that this would be a sensible way forward, providing a reliable, accredited code was in place while some members believe that there may be merit in targeting the Code of Practice at TPIs working with Micro Business customers. One of our members suggests that imposing such a requirement on suppliers would be unnecessary, as the incoming Standards of Conduct would ensure that suppliers only use TPIs whose practices are of an appropriate standard.

Energy UK would support a licensing regime run by Ofgem, and would support Ofgem acting as the enforcement body for code of practice.

TPI code of practice

Energy UK agrees that Ofgem obtaining enforcement powers will complement the TPI Code of Practice which is currently being developed collaboratively by Ofgem, the energy industry and TPIs themselves, and supports the development of a single accredited code of practice. This code of practice should be applicable to all TPIs. Some of our members consider that Ofgem should be responsible for enforcing and monitoring the code, whereas others would prefer an independent panel, such as is seen under the Trading Standards model. However, all agree on the key principle that the oversight body should be independent and impartial and have powers to apply sanctions in the event of a breach.

Energy UK feels that a timeline on how Ofgem plans to take its work on TPIs forward would be valuable and we look forward to continuing to work with you and others in this important area.

I hope that this feedback assists you in your decision-making process. If you have any questions, please do not hesitate to contact me on 020 7747 2963 or daisy.cross@energy-uk.org.uk

Yours sincerely,

Daisy Cross

Policy and External Relations Executive