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Dear Phil

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

Please find attached our response to the consultation.

We support Ofgem seeking enforcement powers under the BPRs and focusing its attention on the Third Party Intermediaries (TPIs) sector. We believe, however that it is the action of only a few errant TPIs that it is leading to the mistrust of the sector. This is consistent with our findings from the audits we have conducted of TPIs who have signed up to the independent code of practice developed by E.ON . These show that whilst there are areas for improvement, the vast majority of TPIs audited are performing to acceptable standards. Outside of the audit process, however we identified some dubious practices by one TPI which led to the TPI being excluded from the code by the independent Code Manager.

We recognise that extending Ofgem power's however will help to tackle the poor practices of the few who do not sign up to codes of practice and are therefore supportive of the proposal. As a first step we suggest Ofgem provide guidance to TPIs aimed at addressing areas of concern, for instance ensuring that customers have clarity of the services TPI are offering to customers.

In view of Ofgem's wider TPI review it seems sensible to prepare for all outcomes and as such we support the government's amendment to the Energy Bill which allows for a backstop licence regime.

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Yours sincerely

Steve Russell  
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## Consultation Response and Questions

**Question:** *Do Stakeholders have further evidence of the impacts of mis-selling by brokers on business customers?*

In April 2012 launched a code of practice for TPIs who sell E.ON products (“the code”) to customers serviced by our SME business. The code is managed by an Independent Code Manager. As at March 2013 there were 184 TPIs operating to the code of practice.

Since August 2012 we have been auditing TPIs contracted with E.ON’s SME business for compliance with the code. Whilst these audits cannot cover the supplier/product selection process they do look at the systems, processes and capabilities of the TPI along with the contract verification process. To date we have carried out 38 audits and have identified 1 major breach of the Code (no complaints process) and 125 minor infringements against some of the detailed requirements of the code. Separately to the audit process we identified some dubious practices by one TPI which led to the TPI being excluded from the code by the independent Code Manager. Where we have identified minor infringements TPIs have shown a willingness to act promptly to address the shortfalls.

**Question:** *Do you agree with the identified gap in Ofgem’s powers?*

Yes

**Question:** *Do you agree the exercise of the powers we are seeking will help address the issues we have identified with TPIs?*

Whilst we have very limited evidence (one TPI) of mis-selling of energy contracts by TPIs we are aware that others may have wider evidence and that this is contributing to the mistrust of the industry. We agree that exercise of powers by Ofgem will help address the issues of mis-selling but recognise this may only be a mile stone to enhanced regulation of this area by Ofgem. We therefore support the government’s amendment to the Energy Bill which would allow backstop provisions for licensing TPIs.

**Question:** *Do stakeholders have further evidence on the impact of Ofgem gaining BPR powers on TPIs, including details of the number of TPI firms operating in this market and their size and revenues.*

No evidence but as set out above our SME business has relationships with around 200 TPIs which range from sole traders to medium/large organisations.

Our Corporates business has dealt with enquiries from around 600 TPIs over the years (although some of these will also have dealt with our SME business.)

***Question: Do stakeholders have further views on our assessment of the regulatory impacts of Ofgem gaining these powers in terms of the costs to TPI firms of Ofgem taking action under powers requested?***

As Ofgem state it is difficult to see how any additional costs will arise to TPIs of Ofgem assuming powers under the BPRs as they should already be working to the required standards. With regard to the costs on non-compliant businesses we agree that those businesses should be prepared to meet the costs for responding to Ofgem investigations and taking corrective action. This seems to be wholly justified in terms of the benefits to customers using TPI services.

***Question: Do stakeholders have further information on the expected impact on the Court of Ofgem gaining these powers?***

We don't have visibility or evidence of the scale of potential breaches of the BPRs so we cannot provide on information on the impact on the courts of Ofgem along with Office of Fair Trading assuming enforcement powers.