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Dear Katie,

Please find enclosed with this letter our response in relation to the Third Party Intermediaries exploration of market issues and options issued by Ofgem on 28<sup>th</sup> June 2013.

While this document does not need to be treated as confidential we would appreciate notification if any of the content is going to be published.

Firstly may we take this opportunity to thank you for providing a further opportunity for TPIs to present their thoughts as part of this on-going consultation process.

Our approach, in line with our previous submissions regarding the RMR and TPI work is one of 'simplicity' and 'transparency'.

We believe that following the work of the RMR the latter element 'transparency' has begun to take effect.

Furthermore our work on the Prime Minister's SME Energy Working Group has underlined the increased desire from most sides of the table to open up the transparency of the market and to search for solutions for the non-domestic energy customer.

It is our belief that the non-domestic energy market is not currently functioning in a way that engenders trust from customers, nor encourages transparency from participants in the market.

To this end our major focus in this consultation is on simplicity. It is our belief that there are a great many more incorrect decisions to be made than correct ones. And indeed we think the simplest, most universal, and unequivocal option is the one best suited to the non-domestic energy market's short, medium and long term needs.

Our simple recommendation is:

A code of conduct applicable to all sales and post sales transactions whether undertaken by TPI, supplier or their representative.

I hope you find our response useful, if you wish further clarification around any of the information that has been provided in this response please do contact me and I will support all I can.



Thank you once again for the opportunity to respond to this consultation document and we look forward to seeing the implementation of what we hope will be a positive and market defining set of proposals.

Yours sincerely,

James Constant

Managing Director  
Business Juice

## Executive Summary

### Acknowledgment

We would like to thank Ofgem for the opportunity to provide consultative feedback regarding the Third Party Intermediaries exploration of market issues and options

### Our Approach

Our approach is one of dialogue and understanding but also of frank and constructive comment.

Our specific approach to the Third Party Intermediaries exploration of market issues and options has been an over-arching call for simplicity and transparency. Both of these elements we see as essential to delivering the competitive market that non-domestic customers and market participants deserve.

**Simplicity** – it is essential to ensure that the principle of any change is one of making things as simple as possible for the customer, supplier, TPI and regulator alike. There is already too much unnecessary, though well intended, bureaucracy that gets in the way of improving the experience of non-domestic customers. This exploration should be a catalyst for less not more complexity.

**Transparency** – the ultimate goal of this review must be improved transparency and increased non-domestic customer participation. Vested interests, however ingrained, should not get in the way of genuine market improvement.

### Overview

#### Our recommendation

We call for a code of conduct applicable to all sales and post sales transactions whether undertaken by TPI, supplier or their representative.

#### Key statements

- We must encourage participation and actual experience of the market
- Overall TPIs are a force for good
  - Suppliers and TPIs work well together bringing value to one another and the customer
  - Ofgem’s own research underlines the importance and positive experience of TPIs to the non-domestic market.
  - All suppliers utilise TPIs, not just small or new entrants
- Suppliers can deliver the ultimate sanction – stop employing rogue TPIs
  - Suppliers should vote with their feet by walking away from sub-standard TPIs even in the absence of a universal Code of Conduct
  - SLC25 should not change suppliers existing governance of TPIs
  - Competent and responsible suppliers should already manage TPIs with effectiveness
- Umbrella TPIs are a major cause for concern in the non-domestic market
  - There is a fatal disconnect between the underlying TPI and the ‘regulation’ of the supplier
  - With no post sale focus, customer experience suffers
- Any Code of Practice must apply to all sales channels whether TPI or supplier
  - Direct regulatory legislation for TPIs is unnecessary
  - As founder members of the E.ON TPI Code of Conduct we call for all parties to join

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## Third Party Intermediaries exploration of market issues and options – Business Juice Response

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- We call for Ofgem to administer this single code for the benefit of the market
- The code must be extended to call all sales interactions, not just those of TPIs
- We recommend that it should be extended to cover post sales interactions as well as sales interactions
- Market monitoring is a pragmatic and sensible move
- The correct path is simple: A code of conduct applicable to all sales and post-sale interactions whether undertaken by TPI, supplier or their representative.
- Ofgem should pursue a universal SLC enabling suppliers to drop errant TPIs and the regulator to drop errant Suppliers.

### **About**

Business Juice is a wholly owned subsidiary of Forward Internet Group.

Business Juice operates two commercial brands in the non-domestic market, uSwitch for Business and Business Juice.

In addition Business Juice owns the Energyforecaster website, <http://www.businessjuice.co.uk/energy-forecaster>, a forum for debate and information regarding the UK energy market and designed to help UK business navigate the future energy challenge.

Business Juice provides TPI energy procurement services to non-domestic customers from the smallest micro business to the largest I&C business.

Business Juice is uniquely positioned for market commentary given its leaders' background in establishing and leading new entrant energy suppliers, their deep experience in the domestic price comparison space and their significant exposure to the insurance and communications industries.

This holistic insight greatly aids a balanced view of the market and promotes a pragmatic and constructive approach to tackling problems within the industry.

Business Juice currently sit on the cross industry SME Energy Working Group established by the Prime Minister to tackle the issues in the business energy market, and are active participants in numerous lobbying activities.

**CHAPTER:** Two

**Question 1:** Do you agree with the scope and range of TPis operating in the energy market, from the information provided? Do you have any further views on this?

**KEY STATEMENTS RELEVANT TO THIS ANSWER**

- We do not believe that generic business assumptions are helpful
- We do not recognise our business model in the descriptions
- ‘Funding sources’ are dictated by the supplier, not the TPI
- All suppliers utilise TPis, not just small or new entrants
- TPis provide a ‘known’ cost delivery of customers to suppliers in direct contrast to other channels
- A non-TPI derived customer contract will still have an acquisition cost attributed to it and chargeable to the customer within their energy rate

Range of TPI Activities

Whilst we understand the desire for Ofgem to summarise the TPI market we believe it is prudent to point out that generalisation around the intent, philosophy and commercial drivers of a business isn’t an approach we are comfortable with.

Indeed if we take our dealings with our customers, we recognise each as being unique in their characteristics and who require bespoke support in navigating the energy market.

It is therefore uncomfortable to see a wide variety of businesses grouped under a single description “TPI” and then distilled into 3 core business types, agent, broker and consultant.

Suffice to say we do not recognise our business model in any of these and would question whether it is indeed possible to reflect the subtleties of a business’ approach to their market in such a generalised form.

Whilst we recognise Ofgem’s desire to distil many and varied businesses into a single pot we would strongly caution against the continued use of this ‘definition’ for anything other than a limited piece of scene setting for the purposes of context within this document.

Funding sources and transparency

Again we are uncomfortable with the generic approach to this definition.

One of the key challenges to these generalisations is that we operate in the entire non-domestic market. In doing this we service everything from the smallest SoHo to the largest FTSE 100 organisation.

As a result our ‘funding sources’ differ dramatically based on the customer type and most crucially the energy supplier involved.

The one overriding characteristic that permeates through all our relationships is one of fairness.

We pride ourselves on providing a service that crucially saves our clients both time and money at a cost which is reflective of that benefit and which is entirely defensible.

In addition, as part of our standards of service, we provide total transparency on the costs involved on request.

TPIs in the domestic retail energy market

Given we do not operate in the domestic retail energy market we have no comment to make on this area

TPIs in the non domestic retail energy market

We welcome Ofgem’s recognition in 2.33 that some TPIs, like ourselves, provide services to the entire market

However we are concerned at the inference in 2.34 that TPIs are confined to support new entrant or smaller suppliers.

The reality is that all suppliers, of all shapes and sizes, utilise the TPI market to access potential customers.

Crucially they do this willingly, at a known cost, looking to attract a specific characteristic of customer that meets the needs of their individual portfolio requirements.

This is an extremely important point.

The alternative methodology for an energy supplier to access the non-domestic market in order to attract customers is to

- build their own call centre capability,
- or outsource such activity to a service provider,
- or to undertake promotional campaigns to their target audience.

Each of these alternative routes to market are costly, with the latter being extremely uncertain in its effect.

In total contrast, the energy supplier, utilising their TPI network will provide the TPIs with a list of business characteristics they value – based on credit score, consumption level, business type etc.

Furthermore the supplier will make clear the amount of money they are willing to pay for such a customer.

It is essential to underline that this is not the amount of money they are willing to gamble on an advertising campaign to generate leads into their business, rather this is the amount of money they are willing to spend to receive a contracted customer on their books.

This is crucial as to why TPIs and Energy Suppliers work so well together for the benefit of their customers.

- The customer gets the energy deal that best suits their needs,
- The supplier gets a contracted customer that fits their portfolio requirements at a known cost,
- and the TPI is paid by the energy supplier for their services provided.

The price a non-domestic energy customer will pay for their energy usage includes the cost of acquisition related to their contract.

In the event that a customer is acquired by an energy supplier but not via the TPI route there is still a cost of acquisition related to their contract.

The cost of a TPIs service is not a premium on the customer contract, it is the cost of acquisition which if it hadn't been paid to the TPI would have been required to cover the cost of the energy suppliers' alternative customer acquisition channels.

The suggestion or inference to the contrary of this is as misleading as it is inaccurate

**CHAPTER:** Three

**Question 2:** Do you consider our understanding of consumers’ experience of TPIs in the retail energy market is accurate?

**KEY STATEMENTS RELEVANT TO THIS ANSWER**

- Ofgem’s own research underlines the importance and positive experience of TPIs to the non-domestic market.
- We do not share the view of widespread TPI malpractice in the industry
- Confidence and clarity are an industry issue not a TPI issue
- We must encourage participation and actual experience of the market
- Suppliers can deliver the ultimate sanction – stop employing rogue TPIs
- Umbrella TPIs are bad for the market and bad for customer experience
- Overall TPIs are a force for good

The market experience

We greatly welcome Ofgem’s reference to the Harris Interactive research of June 2011 and appreciate the balance that these findings bring to the perception of TPIs within the non-domestic market.

We also applaud the findings of the Insight Exchange research of December 2012 in underlining the long-term nature of many TPIs relationships with their clients.

We must therefore contrast this with the initial statements in section 3.2 that gives the impression of widespread malpractice. This is simply not the case.

Indeed 3.10 is presented as a criticism of TPIs but the inability to “find useful price comparison data in the market” and the “doubt whether advice from a TPI is unbiased, complete and relevant to their particular needs” is surely an issue created by the entire market whether regulator, supplier, TPI or simply a market commentator.

The vast majority of non-domestic energy customers do not switch, do not use TPIs and their only ‘experience’ is of their incumbent supplier and the market commentators. This state of affairs needs to be challenged by all parties. Mistrust in the energy market cannot be allowed to be engendered by general perception and not actual experience.

Simplicity & Transparency

In our RMR consultation response of December 2012 we called for a culture of Simplicity and Transparency. We continue to call for this and are actively working as part of the Prime Minister’s SME Energy Working Group to bring this about.

It is essential that as an industry we provide the tools to the customer to navigate the market with confidence and ease.

In doing so we need to all present a true reflection of the potential of the market to benefit



their organisations. We must not continue to allow the potential positive benefits of the market to be ignored or disparaged.

Rogue TPIs

With regard 3.11 and the ‘conduct’ of TPIs, in taking the non-domestic market as our focus, it is clear to us that there are a number of ‘bad pennies’ in the market who are long overdue sanction.

We recognise the attempts of the UIA and E.ONs TPI code of conduct to address these issues at source.

However we continue to maintain that a supplier refusing to deal with a rogue TPI is the easiest way to prevent the misleading of customers.

Unfortunately it is a sad fact of any industry that some businesses will operate to lower standards than others.

Rather than denigrating the whole of a market segment for the poor behaviours of a few we continue to call for action, by the employing suppliers, to remove these people’s lifeline from the market.

We are encouraged to see that a number of energy suppliers who had previously worked with one of the most notorious, nuisance calling, hard sales organisation have recently severed ties. Sadly one supplier still operates in conjunction with this party. However it is clear that the organisation would not be able to operate in the market without active supplier support.

The suppliers have moved in the right direction, however now is the time to finish the job and ostracise such organisations completely.

Umbrella TPIs

A further concern for us in the market is the continued existence of ‘umbrella’ TPIs, or those who hold energy supplier relationships but allow other non-supplier affiliated TPIs to work under their ‘umbrella’.

We are not comfortable with this.

As a TPI we are beholden to the continued good opinion we are held in by both our clients and our energy supplier partners.

Losing this goodwill would threaten our business; this therefore is the ultimate deterrent for treating our customers and partners unfairly.

However given there are a significant number of TPIs who do not hold these relationships with suppliers directly and can ‘hide’ behind an ‘umbrella’ TPI where is the self policing going to come from?

Indeed their relationships with their ‘customers’ are scant as they operate as a sales only function, with no post sale customer care responsibility. We are aware of organisations that have allegedly stolen customer data and work this via the ‘umbrella’ TPI with the supplier

unable or unwilling to cease this damaging relationship.

For this reason we believe that ‘umbrella’ TPIs are inherently bad for the market, and that suppliers should stop ‘sponsoring’ such activities and indeed those undertaken by rogue brokers.

Balanced overview

Overall our response is a balanced one.

TPIs are hugely beneficial to the market, the levels of engagement in the non-domestic market would fall considerably without the presence of TPIs.

Furthermore the cost of customer acquisition for suppliers, and therefore the energy cost to the customer, would rise significantly in the absence of a working TPI market.

The problems of rogue TPIs are there but crucially they are a small segment and both known and identifiable.

It is essential that we focus on removing the rogue and umbrella TPIs from the market not at the cost of the bulk of TPIs who have been a huge boon to the market since the opening of competition.

**CHAPTER:** Three

**Question 3:** Do you have further evidence to share regarding consumers' experience of TPIs in the retail energy markets?

**KEY STATEMENTS RELEVANT TO THIS ANSWER**

- Umbrella TPIs are a major cause for concern in the non-domestic market
- Their existence makes sense for suppliers but the benefits do not outweigh the costs
- There is a fatal disconnect between the underlying TPI and the 'regulation' of the supplier
- With no post sale focus, customer experience suffers
- Suppliers should vote with their feet away from sub-standard TPIs even in the absence of a universal Code of Conduct

Umbrella TPIs

We remain extremely concerned around the activity of 'umbrella' TPIs within the non-domestic market.

Whilst we understand why energy suppliers would wish to use these routes as a source of customers without the hassle of dealing with multitudes of one-man band and small TPIs we do not believe those benefits outweigh the costs.

We believe that this model is entirely flawed due to the fatal disconnect between supplier and customer feedback to the underlying TPI.

Such TPIs can operate with impunity and yet will not suffer from a supplier ending their relationship.

Similarly their focus on simply getting a customer to agree to a deal, and having no focus on after sales support, or knowledge of the workings of the process, results in sub-standard customer experience

Positive Supplier power

We would strongly welcome action from Suppliers to cease sponsoring such operators for the benefit of the wider market and most crucially their customers.

We also continue to call for the progressive approach recently adopted by some suppliers of ceasing relationships with the know 'rogue' TPIs in the market.

We continue to push for naming and shaming of both the TPI and sponsoring supplier to finally remove these sub-standard players from the market.

**CHAPTER:** Four

**Question 4:** What are your views on the existing regulatory measures applying to TPIs?

**KEY STATEMENTS RELEVANT TO THIS ANSWER**

- Signposting is essential for consumer protection
- BPMMRs must relate to all sales channels whether TPI or supplier
- SLC25 should not change suppliers existing governance of TPIs
- Code of Practice must apply to all sales channels whether TPI or supplier
- Back billing is a major barrier to engagement in the market
- Smart metering needs clarity and a clear goal of customer benefit
- The Green Deal is ripe for exploitation in the current information vacuum
- Direct regulatory legislation for TPIs is unnecessary

Consumer Protection

There exists a fundamental problem that extends beyond the energy market when it comes to consumer protection.

This problem is the sheer lack of clarity over where somebody can go when things go wrong and what rights they have.

This consultation cannot resolve that.

However the participants within it, and Ofgem in particular, should be taking the lead in ‘signposting’ the direction in which consumers need to travel when things do go wrong.

Without this any existing or future measures will quite simply fail to address the issues that exist.

BPMMRs

We have consistently supported the move for TPI miss-selling to be subject to BPMMRs.

However we also believe that this should, for the transparency and fairness of the whole market, be extended to all parties interacting with non-domestic customers, whether they are a TPI, the supplier themselves or a representative of the supplier.

Without this we will create a two tier standard of conduct in the market that would be bad news for the customer.

SLC25

We have also consistently supported the imposition of supply licence conditions on energy suppliers with regards to TPIs. Again these need to be applicable to all parties regardless of

whether the interaction was undertaken by the TPI, the supplier themselves or a representative of theirs.

We recognise Ofgem’s concern with regard SLC25 and the potential for suppliers to be unwilling to deal with TPIs that they do not feel they are able to control.

Or indeed all TPIs if the supplier lacks the capability and willingness to do this.

We however feel that this risk is overblown.

From a supplier perspective – given their dependence on TPIs and the certainty of cost and customer deliver that they bring to all suppliers, big or small – we feel that it is unlikely that they would not recognise the value of placing an effective structure to ensure compliance with SLC25.

Indeed we find it somewhat surprising that suppliers in their day-to-day interactions with TPIs would not already be undertaking this approach.

TPIs are the major driver of acquisition business for suppliers. It should therefore be expected that such an essential channel of business should be actively and correctly managed. We doubt that there exists any supplier who does not currently do this to at least a basic level.

From a TPI perspective we believe that those who are at risk of this are those who are behaving improperly in the market, if the governance structure is doing its job properly then it is entirely correct that these TPIs should be actively removed from the market.

Clearly in all this there needs to be context, and a single transgression, however innocent cannot be used to drive an otherwise quality TPI from the market.

That said we believe the maturity of the market and the TPI / Supplier relationship is such that a wholesale risk to the current players is unlikely.

#### Code of Conduct

We are founder members of the E.ON TPI Code of Conduct and have worked closely with E.ON in developing the principles of this code.

We encourage all suppliers to sign up to this code and to therefore require their TPIs to likewise be subject to its conditions. It is not perfect but it is a step forward and needs support from the whole industry to achieve its commendable goals.

We are not members of the UIA, however we recognise the work that they do and the passion with which they approach the market and the contribution of their members to it.

However as the suppliers themselves do not back this code we feel that it lacks the market wide dynamic that we believe is essential for a single, all encompassing code to succeed.

We believe that a code of conduct must apply to all sales interactions with a non-domestic customer, whether these are undertaken by a TPI, the supplier themselves or their

representatives.

Anything less means a two-tier market, customer confusion and poor customer experience.

Back billing

We are closely involved in the on-going debate on back billing and are delighted to see suppliers beginning to move to a one year commitment and an implementation time of early 2014.

However this does not represent the views of the whole supplier community and so there remains a great deal of work to do to ensure that one of the key barriers to customer trust and engagement is removed from the market.

The greater the fear of a surprise bill running into many thousands of pounds is a clear deterrent from engaging in the energy market.

Smart Metering Installation Code of Practice

This is a subject worthy of a much greater focus however we are concerned around a number of issues with regards smart metering in the non-domestic energy market. These can broadly be categorised into four main areas. Each impacting on the ease of understanding and therefore potential engagement of customers in the market.

Firstly the protocols, interoperability and the potential redundancy of the technology that early adopters have had installed. Clients who have been proactive in their energy management must not be penalised or punished for their foresight.

Secondly, the timetable and speed of installation. Customers need to know what is happening, when and why and what they can expect before, during and after the event. There is great potential for a climate of inertia to hit the market in the light of false or uncertain promises.

Thirdly, the potential impact on business customers of surprise back billing caused by a meter change highlighting a previously unforeseen issue. The recent increase in back billing complaints seen by the FSB has been attributed to this issue. Customers should not be suffering because of Supplier, Meter Operator or Data Collector error.

And finally, the extent to which smart meters will bring half hourly settlement to all businesses. The advent of smart metering could provide the essential window needed for customers to modify behaviours to enable genuine cost and usage reflective tariffs. Or it could be an unused gimmick that fails to engage the customer in the energy market.

Green Deal accreditation

Like others we are concerned as to the lack of impact of the green deal to date

However we are also concerned as to the lack of clarity for what the green deal can bring to the non-domestic market.

Given this opaqueness of intention we are concerned as to the potential rise of ‘cowboys’ in the market, exploiting the vacuum of information to miss-sell to non-domestic customers.

Clarity is needed before the next miss-selling scandal erupts.

The Energy Bill

We would indeed expect BPMMRs to be extended to the non-domestic market and the Energy Bill to be the conduit for this being done.

What we would not envision is direct regulatory legislation being applied to TPIs, we believe that this would be as unnecessary as it would be unhealthy for the wider non-domestic energy market.

**CHAPTER:** Four

**Question 5:** Do you consider the current formulation of SLC 25 may be acting as a barrier to the development of more face-to-face multi-party TPI activity?

**KEY STATEMENTS RELEVANT TO THIS ANSWER**

- SLC25 should not change suppliers existing governance of TPIs
- The risk is exaggerated
- Suppliers should already manage TPIs with effectiveness
- Suppliers and TPIs work well together bringing value to one another and the customer

SLC25

We recognise Ofgem’s concern with regard SLC25 and the potential for suppliers to be unwilling to deal with TPIs that they do not feel they are able to control.

Or indeed all TPIs if the supplier lacks the capability and willingness to do this.

We however feel that this risk is overblown.

From a supplier perspective – given their dependence on TPIs and the certainty of cost and customer deliver that they bring to all suppliers, big or small – we feel that it is unlikely that they would not recognise the value of placing an effective structure to ensure compliance with SLC25.

Indeed we find it somewhat surprising that suppliers in their day-to-day interactions with TPIs would not already be undertaking this approach.

TPIs are the major driver of acquisition business for suppliers. It should therefore be expected that such an essential channel of business should be actively and correctly managed. We doubt that there exists any supplier who does not currently do this to at least a basic level.

From a TPI perspective we believe that those who are at risk of this are those who are behaving improperly in the market, if the governance structure is doing its job properly then it is entirely correct that these TPIs should be actively removed from the market.

Clearly in all this there needs to be context, and a single transgression, however innocent cannot be used to drive an otherwise quality TPI from the market.

That said we believe the maturity of the market and the TPI / Supplier relationship is such that a wholesale risk to the current players is unlikely.



**CHAPTER:** Five

**Question 6:** What are your views concerning our near term work to mitigate consumer harm and promote trust in the TPI market?

**KEY STATEMENTS RELEVANT TO THIS ANSWER**

- As founder members of the E.ON TPI Code of Conduct we call for all parties to join
- We call for Ofgem to administer this single code for the benefit of the market
- We insist that the code must be extended to call all sales interactions, not just those of TPIs

Non-domestic TPI code of practice

We fully support a non-domestic TPI code of practice.

We are founder members of the E.ON TPI Code of Conduct and have worked closely with E.ON in developing the principles of this code.

We encourage all suppliers to sign up to this code and to therefore require their TPIs to likewise be subject to its conditions. It is not perfect but it is a step forward and needs support from the whole industry to achieve its commendable goals.

However we believe that a code of conduct must apply to all sales interactions with a non-domestic customer, whether these are undertaken by a TPI, the supplier themselves or their representatives.

Anything less means a two-tier market, customer confusion and poor customer experience.

We applaud E.ON for taking the initiative in establishing the code, and we continue to call for Ofgem, or an independent body of their choosing, to take control of this from E.ON.

Operating a single code, covering all sales interactions with non-domestic customers whether undertaken by a TPI, the supplier themselves or their representatives, is the route we need to follow for a fit for purpose non-domestic energy market.

**CHAPTER:** Five

**Question 7:** Are there any further areas we should consider in the near term?

**KEY STATEMENTS RELEVANT TO THIS ANSWER**

- The code of conduct must be universal to cover all parties whether TPI or supplier
- We recommend that it should be extended to cover post sales interactions as well as sales interactions
- We believe this will engender a holistic approach to quality customer service

Universal Code of Conduct

We believe that the code of conduct must apply to all sales interactions with a non-domestic customer, whether these are undertaken by a TPI, the supplier themselves or their representatives.

Anything less means a two-tier market, customer confusion and poor customer experience.

Furthermore we believe that a code of conduct, applicable to all parties should be extended from merely sales interactions to all interactions with a customer including post sales service.

Doing this will ensure a holistic approach to quality customer service.

This can only benefit the market in the long term and foster a greater level of engagement, interaction and competition, as customers better understand the market and make more informed choices on their energy needs.

**CHAPTER:** Six

**Question 8:** What are your views on the potential wider scope of third party opportunities as a result of Energy market developments?

**KEY STATEMENTS RELEVANT TO THIS ANSWER**

- The free market should be allowed to choose opportunities
- The regulator should provide the foundation for competition
- Smart metering needs clarity if it is to be a springboard for success
- The flawed change of supplier arrangements must be reformed
- Smart metering must drive demand side response
- Businesses do not need protection, they need minimum standards of communication
- Midata is an opportunity to align market insight, it must not be missed
- Signposting is needed for effective energy efficiency action

The free market

It is self-evident that in an economy defined by a free market that any new development or technology will open up new potential for current or future participants.

This should be applauded.

It is therefore inevitable that a market such as we have in energy, currently undergoing significant scrutiny and being pushed to change will open such opportunities.

Whether it is smart metering, collective switching or any other initiative some will early adopt, some will fare well, some badly and some will optimise the offering and change the dynamic of that area of the market.

As a regulator Ofgem should be providing the platform for competition and positive customer experience, the market should do the rest and the customer should decide the winners and losers.

Smart Metering

That said, the move to smart metering is crying out for far greater clarity in cost, impact, timescale and benefit. Until this is done the market will be prey to errors and potentially redundant technology. There is real danger that without this smart metering will be a huge lost opportunity for the energy market.

Change of Supplier

It is even more essential that Ofgem focus on the change of supplier arrangements.

It is clear that the current framework where the incumbent supplier is the final arbiter of whether a transfer takes place is wholly inadequate and flawed.

Whilst we recognise the work being undertaken by Ofgem in this area, the need for fundamental change to the industry framework is essential to deliver a truly competitive market.

Electricity Settlement & Demand Side Response

We have highlighted elsewhere our 4 main concerns with an effective move to smart metering covering:

Firstly the protocols, interoperability and the potential redundancy of the technology that early adopters have had installed.

Secondly, the timetable and speed of installation

Thirdly, the potential impact on business customers of surprise back billing caused by a meter change highlighting a previously unforeseen issue

And finally, the extent to which smart meters will bring half hourly settlement to all business customers

This latter element is absolutely key to smart metering being more than a gimmicky gadget designed to feign progression.

Indeed settlement and demand side response should be the core focus of the smart metering roll-out.

A feed to a customers' computer and the suppliers' billing records is not enough.

Full 360-degree usage of demand data from all meters in settlement is the only true way forward to drive behavioural change and create a smarter, more efficient, more self-sufficient energy based economy.

Consumer vulnerability strategy & customer empowerment

We do not believe in the concept of vulnerable business.

We do not believe in the protection of businesses.

It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market

We believe that all business owners and leaders should have sufficient commercial awareness to enter a contractual commitment with confidence.

However the critical issue here is confidence in the market, this can only be engendered by the moves recently made by Ofgem to increase transparency for those customers.

Contract End dates and termination dates on invoices, clarity over termination windows and customer obligations and work being undertaken to review the continued existence of

rollover contracts.

All of these are contributing to an increased mood of transparency and openness in the market.

This is long over due.

Providing this easily accessible insight and the tools to exploit it is the responsibility of all market participants.

It is then the responsibility of the business leader to act upon this and provide a solid commercial foundation for their business.

#### mldata

We have long raised the issue of the discrepancy between BIS / DECC data and that held by the industry with regards business volume, categorization and behavioural characteristics.

We have called for a central, single source of data. This is essential to better understand our constantly evolving business markets.

We hope therefore that the mldata initiative, in its quest to open 'data' to its subjects will have brought a level of uniformity and clarity to the underlying data well in advance of any publication.

We again fear a lost opportunity and continued confusion if this is not the case

#### Energy Advice and Energy efficiency schemes

In a similar vein to the issues of consumer protection and the proliferation of bodies and protocols that bewilder the average customer; energy advice and efficiency schemes suffer from the self same ailments:

- too many parties,
- too many overlaps,
- too much confusion.

It is critical that Ofgem undertaken a 'signposting' role to ensure consumers can access the right information at a single, understandable source, relevant to their business requirements.

Joined up thinking is essential to win over the hearts and minds of consumers when we face the energy challenges that we do over the coming years.

**CHAPTER:** Seven

**Question 9:** Have we captured the full range of 'regulatory' options available?

**KEY STATEMENTS RELEVANT TO THIS ANSWER**

- The status quo has grown as a potential option following recent market change
- Issue guidance alone is unsatisfactory
- A light approach to sanction is ineffectual
- Strict accreditation fails on all counts
- Standard licence condition needs to be extended to cover supplier behaviour
- Direct regulation will detrimentally impact the market
- Market monitoring is a pragmatic and sensible move
- Ofgem should pursue a universal SLC enabling suppliers to drop errant TPis and the regulator to drop errant Suppliers.

Maintain the status quo

In 2012 this, in our opinion, was not an option.

However since this point the further development of the E.ON code of practice and the move by some energy suppliers to cease the use of known rogue brokers has begun to change the landscape.

Whilst there is still significant work to do to improve the market, change has been started and its impact has begun to be seen.

It would however require a leap of faith to expect all participants to grasp this opportunity positively.

On balance we still do not see this as the most positive option for change

Issue guidance

It's never usually a bad thing to communicate our feelings but to conclude the extensive reviews undertaken to date by simply expressing an opinion would be a deeply unsatisfactory outcome.

Having said that, with the developments seen in the market to date this could be excused.

However it would still appear to be an opportunity missed when there are clear demonstrable actions that can be taken to change the market for good.

Code of practice – Light approach to sanction

Firstly, any code must extend to all sales interactions, not just those undertaken by TPis, this is essential to prevent a regulator sanctioned two tier market from emerging.

Secondly, there is no definition of ‘light sanction’ and it is unclear why a light sanction would be less expensive than the ultimate sanction.

The ultimate sanction for a TPI is that the suppliers that support it walk away from it due to repeated sub-standard behaviour.

The ultimate sanction for a supplier is that customers refuse to contract with them because of sub-standard behaviour, offerings or contractual terms and that the regulator revokes their supply licence.

It is difficult to envisage a universal code applicable to all sales interactions that would have any influence without potential recourse to the ultimate sanction for each party.

#### Voluntary Code of Practice – Strict accreditation

It is unclear why strict accreditation would “increase costs to members”.

It is also not acceptable that this accreditation, the code itself or the cost is restricted to TPIs alone.

An effective Code of Practice must be applicable to all, must have clear accreditation requirements – these may indeed be quite basic – however they must be met, and must have clear sanctions for repeated or endemic misbehaviour.

It appears that this option meets none of those criteria

#### Code of Practice with a Standard Licence Condition

This option delivers on the ultimate sanction requirement for TPIs.

We do not believe the burden of managing such a supplier licence would be unduly greater than what a competent and responsible supplier would be undertaking already.

We would however expect to see the principles of the code of practice being extended to the suppliers themselves and their representatives via the supply licence itself, so as to ensure that suppliers also face their ultimate sanction for repeated or endemic misbehaviours.

#### Direct regulation of TPIs in the energy sector

This move would be of concern on two main counts

Firstly, it would suggest that the Code of Practice and Standard Licence Condition on Suppliers were inadequate to ensure quality standards in the industry. This would be very concerning.

Secondly, the additional cost burden on TPIs would be of grave concern.

No TPI operates on the same financial and resource plane as does an energy supplier and as a result would be far more likely to find the costs of direct regulation as a barrier to entry

into the market.

The knock on effect of less TPIs, less independent advice and less opportunity for customers to access the market with ease would end up impacting competition and further entrench consumers preconceptions of the market.

This would not be a good thing and would be a damaging step to take.

Market monitoring

We fully support the concept of market monitoring, whether this be objection behaviour from suppliers or complaints against a sales organisation.

Whatever form it takes, it is healthy and indeed essential that there is an objective oversight in any market so that at the very least a balanced view can be taken of the market and its issues going forward.

Favoured Option

On balance then we would recommend the best option is one of a universal code of conduct, applicable to all parties – TPI, suppliers and their representatives – that is enshrined in the supply licence, against which a supplier can drop a TPI and/or the regulator can drop a supplier.

In addition we believe it to be both sensible and prudent to monitor the market for adherence and good behaviour.



**CHAPTER:** Seven

**Question 10:** Do you agree with the implications of regulatory change into the TPI market?

## KEY STATEMENTS RELEVANT TO THIS ANSWER

- Change is underway, ongoing comment and pressure is the catalyst
- Much of the change has been voluntary
- The changes have occurred where the issues are quantifiable and undeniable
- The TPI 'issues' are more subjective and interconnected
- There are many more incorrect answers than there are correct ones
- The correct path is simple: A code of conduct applicable to all sales and post sales transactions whether undertaken by TPI, supplier or their representative.

### The market is already changing

Change is already under way in the non-domestic energy market and that is a good thing.

The Retail Market Review has been one catalyst for this.

The Prime Minister's SME Energy Working Group has been another.

This is to be applauded.

Would Suppliers be publishing contract end dates and termination dates on invoices if it weren't for Ofgem's RMR? No.

Would Suppliers be voluntarily ending rollover contracts if it weren't for the SME Energy Working Group? No.

It is the collective insight and growing pressure for change that is the catalyst for these positive moves in the market.

### Quantifiable issues

Furthermore it has been the clear, quantifiable impact of these issues that have highlighted the 'undeniable' problems that needed to be addressed.

### Subjective issues

With regards TPIs and the regulation thereof, things are less clear-cut.

There are rogue TPIs in the market, kept alive by Suppliers continuing to sponsor their activities

There are however a significant number of positive TPIs in the market, without which the scant numbers of engaged non-domestic energy customers would be even less.

There are issues with some TPIs earning significant commission levels that are difficult to place in the context of the service they have delivered.

There is however also real difficulties in relating the supplier rollover price or even the renewal price charged to a customer with the costs incurred by a supplier providing that service.

#### Interconnectivity of the industry

Indeed the fact that the earning potential of a TPI is set by the energy supplier, both in terms of the value placed on a specific customer or the maximum uplift permissible, then the tentacles of these 'issues' spread much wider than some simplistic interpretations would suggest.

#### What isn't the answer

Regulating TPIs out of the market is not the answer

Forcing TPIs to openly publish earnings when suppliers are not obliged to publish their cost of acquisitions or profit is not the answer

Allowing the activities of a few TPIs to cloud the benefits derived from the rest is not the answer

Increasing the barriers to entry of a TPI into the market is not the answer.

Creating two-tier sales standards in the market is not the answer.

#### The answer

Rather the answer must be a series of improvements to the market for the benefit of all customers:

A code of conduct applicable to all sales and post sales transactions whether undertaken by TPI, supplier or their representative.

Only this, with proper sanctions for transgressors, will create the market that non-domestic energy customers deserve.