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Dear Katie

**Third Party Intermediaries: exploration of market issues and options**

Thank you for the opportunity to give our views of the TPI market and whether it should be regulated going forward.

TPIs can offer valuable services to all forms of customers ranging from information and advice to full management of a customer's energy supply contracts. However as set out in the consultation document there are significant issues caused by a few rogue TPIs operating particularly in the non-domestic market. We believe, however that regulatory intervention is required in both the domestic and non-domestic sectors.

The issues of misselling and misrepresentation identified in the non-domestic market are in our view most effectively addressed through a licence condition on suppliers to only work with TPIs who operate to a single code of practice. We believe this provides the most holistic approach to resolving the issues. Whilst direct regulation of TPIs could be effective (and should remain the backstop option) there is the inherent risk of either gaps between the two regulatory regimes or overlaps neither of which would be desirable. A single regulatory tool supported by a comprehensive code of practice should be the most effective both in terms of achieving the desired outcomes and cost of operation.

It will take time to complete the development of the code sponsored by Ofgem however we do believe that action is required now. The micro business TPI code that E.ON developed has been in operation now for a year in our SME business. There are around 200 TPIs transparently working to the standards of the code. Allowing more than half the market<sup>1</sup> to continue work to no transparent

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<sup>1</sup> Based upon the 450 TPIs identified in the consultation document as operating in the non-domestic market

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standards is not in the best interests of customers. We call on Ofgem to encourage TPIs to commit now to a set of principles based upon section 4 of the draft code of conduct. This commitment could be made without the TPI committing to the governance framework which has yet to be developed. We suggest that Ofgem carries out a short consultation of section 4 to pick up any significant issues. We, for instance, would query whether 4.5.2 (requirement for information to meet Micro Business standards i.e. "plain and intelligible") was appropriate to a TPI selling a complex product to an I&C customer.

In the domestic market our concerns are primarily ones associated with multi-party TPIs conducting telesales and face to face marketing. There is a lack of transparency around this activity and it is unclear where accountability for regulatory compliance sits. It is also not clear what standards should apply. The Big Energy Saving Week 2 relaxation Ofgem provided for compliance with the detailed requirements of SLC 25 sent a confusing message to TPIs and suppliers.

As in the non-domestic market we believe that a licence condition is required on suppliers to work with TPIs who work to a single code of practice. The code should be comprehensive with effective sanctions and a dispute resolution service. The code would have the dual benefits of high standards of sales for customers and a single compliance regime for TPIs.

I have attached our detailed response to the questions raised in the consultation.

If you would like to discuss any aspect of this response further please call Steve Russell on 02476 181356 .

Yours sincerely

Steve Russell  
Commercial Regulation

## Response to detailed questions

*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?*

1. In addition to the wide range of TPI's operating in both the residential & business markets identified in the consultation document we are aware of three other categories;
  - Lead generators for TPIs. This group sells "warm" customer leads to TPIs. Some customers tell of being "harassed" at inconvenient times by these companies although we have no firm evidence we could share.
  - TPIs who carry out bill validation and account queries on behalf of non-domestic customers
  - Managing Agents – organisations which manage properties and arrange services for tenants. In some cases these Managing Agents enter into energy agreements on behalf of a tenant under the terms of their tenancy agreement. They can also engage the services of TPIs to procure energy contracts on their behalf or provide energy advice.

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

2. We feel that Ofgem's presentation of the customers experience is somewhat misleading. In paragraph 3.2 Ofgem has amalgamated two separate issues with different consequences to portray a significant problem.
3. The first issue, there are instances of misselling, pressurised conversations, nuisance calls and a general lack of transparency around energy offers. In our view these issues are currently mainly confined to the small business market. The outcomes of these issues could lead to customers making bad decisions and being locked into sub-optimal contracts.
4. The second issue, we agree that there is a general lack of transparency of how TPIs costs are recovered. This is true for all markets however in itself it does not necessarily lead to bad outcomes for customers. This is transparently true for the domestic market where the source/amount of the TPIs income is not fully transparent but does not lead to any adverse consequences for users of the site.
5. The misleading practices identified in paragraph 3.11 are the key issues for

the non-domestic market. Initiatives such as the independent code of practice developed by E.ON have helped to improve the experiences of some customers in our SME segment. However, until there is complete coverage of the market by a single code of practice some customers will continue to be misled.

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

6. Yes. Since August 2012 E.ON have conducted 63 audits of the TPIs compliance with the Code of Practice . The findings have been
- Three TPIs have had a major breach (lack of complaints process or training programme)
  - 14 TPIs have more than five minor breaches (process failures)
  - In total there have been 205 minor breaches.

7. The Top five audit trends:

Failures in TPI's

- i. Training Programme
- ii. Complaints Process
- iii. Data Protection Process – Marketing Consent
- iv. Sales Process
- v. Declaration of Commissions

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

8. In the domestic market the Confidence Code is an effective mechanism for dealing with online comparison sites. We believe that the regulatory measures around multi-party TPI activity both face-to-face and telesales could be more effective. Most TPI's providing this service will help a customer select a product and then, at the customers' request complete a sale on behalf of the supplier. At the stage of completing the sale the TPI is inherently a representative of the supplier and the stage of product selection they are not. This two stage process leads to two issues, the product selection process is regulated by the general consumer protection law e.g. Consumer Protection Regulations whilst the sale will fall under SLC 25. The compliance of the first stage will be a judgement for the TPI and the second stage a judgement by

each supplier (potentially leading to different requirements by different suppliers) It would be far more effective if the whole TPI process was subject to a single code of practice leading to a consistency of compliant service to domestic customers.

9. In the non-domestic market the existing regulations on TPIs have proved ineffective. Extending Ofgem's powers to the Business Protection from Misleading Marketing Regulations (BPMMRs) will likely lead to more active policing but will not in itself improve standards quickly. Either detailed guidance from Ofgem on the application of the BPMMRs or preferable a single code of practice is required to set out the standards required of TPIs.
10. Voluntary measures have not worked either. The advent of the TPI code developed by E.ON has shown a single supplier cannot change the market. It is too easy for TPIs to offer their services to other suppliers and avoid high standards that operating to a code requires. Ofgem is aware of one TPI who has been omitted from the independent code by the code manager because of very poor practice but continues to operate in rest of the market unaffected.

*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?*

11. As a supplier it is difficult to say but intuitively it feels like it is. Face-to-face sales are the potentially the most difficult to control and have the most prescriptive licence conditions around them. The lack of a code of practice means that when approached with a face-to-face proposal by multi-party TPI each supplier will take their own view on the compliance of the proposal. In fact in their guidance on marketing activities Ofgem identified six areas which needed to be considered in developing appropriate systems and processes. This will be a time consuming process for a TPI potentially involving many iterations of their proposal with each supplier.

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

12. We support the review of the Confidence Code and would welcome Ofgem extending the review to a public consultation. Issues we would want to raise are;
  - Presentation of principal terms of products to be the responsibility of the supplier
  - Transparency around the follow up customers can expect by providing

personal details during the quote process e.g. by providing a phone number, a customer could receive a sales call

- Code should explicitly cover mobile phone/tablet apps
- Users should have the ability to get comparisons in a durable medium.

13. We support the development of a single code of practice for TPIs operating in the non-domestic market. However, we are concerned at the pace of development. Recent developments by some suppliers to stop auto rollovers to micro businesses will lead to a bigger market for TPIs. It is essential that this positive development for customers is not undermined by the misleading practices of a few rogue TPIs. We urge Ofgem to pursue with vigour the completion of the code but in the meantime encourage TPIs to commit to the basic principles of the code (21<sup>st</sup> June version) which are set out section 4. Our suggestion is for Ofgem to conduct a short consultation to pick up any significant issues followed by a call to arms.

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

14. No, the priority should be the completion of the non-domestic TPI code of practice.

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

15. The consultation document captures the most likely areas where the market evolves. However, it is possible that in order to differentiate themselves some TPIs may transform into small suppliers. If that is the case they would fall outside of the code and the responsibility for monitoring compliance would sit directly with Ofgem through their supply licence conditions.

16. In addition we have noted a growth in TPIs seeking “basket” deals under which they will aggregate a number of small contracts in order to attract better offers from suppliers. This in itself is not an issue but some TPIs are seeking contracts with the sophisticated flexible arrangement such as the ability to flex the volume, buy in tranches, sell back volume, etc. Obviously there are risks and opportunities in this approach but where a Micro Business is involved then there needs to be special consideration about the appropriateness of the product.

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

17. Yes

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

18. There can be little doubt that regulatory change is required in the market. Customers using the services of a TPI in either the domestic or non-domestic market should have complete confidence that they will get the service they are led to expect. In our view the most likely regime to deliver this is one which provides a holistic approach where suppliers and TPIs are working within the same regulatory regime. This should provide the most seamless approach to delivering good experiences for customers for sales, service and complaint handling.
19. It is our view that for both domestic and non-domestic markets suppliers should be required under their licences to work only with TPIs who work to an approved code of practice. In the domestic market this would be the Confidence Code for internet price comparison sites and a new code of practice for face to face and telesales marketing. In the business market it would be the non-domestic TPI code of practice.
20. The scope of the codes must be clear and should capture all those non-charitable organisations acting in the area of energy procurement activity on behalf of customers. This would include lead generators and managing agents (activities identified in our response to question 1).
21. All codes would need to be approved by Ofgem but the codes themselves could be administered by an independent code manager with sanctions imposed by an independent panel. Where required unresolved complaints arising under the code would be referred to an ombudsman for resolution (the Energy Ombudsman would be the obvious choice). The domestic codes should also be drafted in consideration of SLC 25.1 (“marketing objective”) and the Standards of Conduct as they apply to representatives of multi-parties. Domestic suppliers working with TPIs under these arrangements would therefore automatically meet the requirements of these two licence conditions for the standards required by representatives.

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23<sup>rd</sup> August 2013