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2nd April 2013

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

Dear Phil,

SmartestEnergy welcomes the opportunity to respond to Ofgem's Consultation on GEMA gaining enforcement powers under The Business Protection from Misleading Marketing Regulations 2008 (SI 2008/1276)

SmartestEnergy believes that Third Party Intermediaries ('TPIs') can play an important role in facilitating competition that benefits businesses, especially in the form of supporting new supplier entrants. The role of a responsible TPI is invaluable to businesses considering the increasingly complex and diverse nature of the energy markets.

We wholeheartedly support GEMA seeking powers to enable Ofgem to address situations where brokers/TPIs mis-sell to business customers by marketing energy contracts in a misleading way.

These proposals are entirely consistent with GEMA's principal objective of protecting the interests of existing and future gas and electricity consumers

We agree that gaining BPR powers complements the development of an accredited code of practice by the industry as a key way of addressing TPI behaviour.

The remainder of this letter responds to the questions laid out in the order in your letter

Q. Do stakeholders have further evidence of the impacts of mis-selling by brokers on business consumers?

We are generally concerned that some smaller customers are either unaware or have no control over the levels of the commission which is paid out by suppliers to TPIs, although, because we operate in the larger, corporate end of the market, we have little direct experience of blatant abuse.

We have on one occasion in the past refused to deal with a broker who rang up asking what the maximum commission is and stating that they would give the business to the supplier who gave them the most. Clearly, anyone asking what the maximum level of commission is has not agreed a rate with the customer.

Q. Do you agree with the identified gap in Ofgem's powers?

Yes, although it appears that the proposals do not seem to go so far as to propose licensing brokers or compelling them to sign up to the accredited code of practice which we would support. However, the power to bring forward an injunction for a breach is a useful tool.

We are unsure that the power to request information will be of much use without brokers being required to be licensed. The reason for this is that the barriers to entry into the broker market are low and as such a broker could simply disappear and re-invent themselves under another trading name, in a way that is difficult for a licensed Supplier to do. It may, therefore, be difficult without licensing to track down some brokers, thus causing Ofgem additional time and effort in identifying them.

Q. Do you agree the exercise of the powers we are seeking will help address the issues we have identified with TPIs?

Yes.

Q. 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.

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

No. We agree that the proposals should have little impact on conventional businesses and TPIs who are compliant. However, some of the proposals may hinder smaller energy efficiency or engineering type firms providing a wider service base. The proposals will also cause consolidation in the market as the larger TPIs will offer aggregation services to the smaller unlicensed TPIs and share a cut of commission. However, this is no bad thing for customers as it avoids companies entering into obligations around, what is ultimately, a very complex market.

Q. Do stakeholders have further information on the expected impact on the Court of Ofgem gaining these powers?

No. But it is likely that the existence of the powers will increase the numbers of brokers who comply with the codes and legitimise their businesses.

Should you wish to discuss any aspect of these issues further, please do not hesitate to contact me.

Yours sincerely,

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