

To: Domestic and non-domestic suppliers, white label providers, consumers, consumer organisations, academics and other interested parties

Direct Dial: 0207 901 0533
Email: white.labels@ofgem.gov.uk

Date: 7 March 2014

Dear Colleagues,

White label providers – Call for evidence

In the retail energy market, there are several organisations operating as white label providers.¹ A 'white label', in the context of this call for evidence, is an organisation that does not hold a supply licence, but instead works in partnership with a licensed 'partner supplier' to offer gas and electricity using its own brand. It does not cover third party intermediaries that market the tariffs of a range of suppliers.

During the development of the domestic Retail Market Review (RMR) rules, we recognised that white labels have the potential to deliver greater consumer choice and competition. For example, white labels can be an avenue to facilitate entry of household brands in the retail energy market and the development of new business models. At the same time, we noted that white labels might undermine our aim of a simpler retail energy market and weaken consumer protections. In the domestic RMR statutory consultation, in June 2013, we said we would give further consideration to the right regulatory framework for white labels.

We would like you to provide evidence on white labels. Annex 1 provides more detailed information on our work on white labels and asks questions to further our understanding of them. We welcome your input on these questions and any other relevant information.

Your views will assist us in developing a regulatory framework that facilitates competition and promotes consumer choice through innovative business models, while providing for appropriate consumer protection and not undermining the RMR rules.

Please email your responses by 4 April 2014 to white.labels@ofgem.gov.uk. Our next steps, following this call for evidence, will include a stakeholder event in June to discuss the feedback we have received as well as some initial thoughts on options for the regulatory framework. We then expect to consult formally on our options in summer 2014.

Yours sincerely,



Maxine Frerk
Partner, Retail Markets and Research

¹ In this document we use the terms "market" and "markets" as shorthand for referring to different segments of the energy sector. For the avoidance of doubt these terms are not intended to describe or otherwise suggest the approach that may be taken by Ofgem for the purposes of market definition in competition law investigations.

Annex 1 – Call for evidence

Supply licence conditions and white labels

Under the Gas Act 1986 and the Electricity Act 1989, an organisation supplying gas and electricity to any premises is committing an offence unless authorised to do so by a supply licence.² While white labels do not hold a supply licence, their partner suppliers do. Partner suppliers are responsible for the supply of gas and electricity to the customers of their white labels. They are also responsible for ensuring that, where relevant, their white labels comply with supply licence conditions. Ultimately, the partner supplier would be liable in the event of a breach.

The Retail Market Review

The Retail Market Review (RMR) is our set of rules to make the retail energy market simpler, clearer and fairer. The Standards of Conduct for domestic and non-domestic customers have been in place since 26 August 2013. Our new rules to simplify domestic tariffs came into effect on 31 December 2013. The clearer information measures for domestic consumers are due to come into force on 31 March this year.³

The cap of four domestic core tariffs per metering arrangement and region, effective from 31 December 2013, is a central element of the domestic RMR tariff rules. Because of the risk of suppliers getting around the core tariff cap by creating white labels, we included the tariffs of white labels in the core tariff cap of the partner supplier.

At the same time, being aware of the potential for white labels to deliver innovative products and greater competition, we introduced a temporary exemption to allow us to consider the issue further. This exemption allows white label tariffs in existence on or before 1 March 2013 to be excluded from the tariff cap until 31 December 2014.⁴ In the domestic RMR statutory consultation, in June 2013, we said we would give further consideration to the right regulatory framework for white labels.

Besides the core tariff cap, there are a number of other domestic RMR rules that may have an additional impact on white labels. These rules are also included in the exemption until 31 December 2014 and are as follows:

- Applying the same surcharges, dual fuel discount and online discount across all tariffs of the partner supplier and of all its white labels.
- Treating white label tariffs as tariffs of the partner supplier for the purpose of the other discounts, bundles and reward points rules (for example, making bundles and discounts available to all customers on a tariff, including when the same tariff is available from the partner supplier and any of its white labels).
- Moving customers at the end of a fixed term contract to the cheapest evergreen tariff available from the partner supplier and all its white labels.
- Moving customers from expensive dead tariffs to the cheapest evergreen tariff available from the partner supplier and all its white labels.
- Presenting information on the cheapest tariffs for customers considering all the tariffs available from the partner supplier and all its white labels.

² There are exemptions to the prohibition of unlicensed supply set out in Orders made under these Acts and exceptions contained within the Gas Act 1986.

³ For more information, please see the RMR webpage in Ofgem's website:

<https://www.ofgem.gov.uk/electricity/retail-market/market-review-and-reform/retail-market-review>

⁴ Where a partner supplier replaces a white label tariff which was in existence on or before 1 March 2013 (and hence exempted from the core tariff cap) with another white label tariff, this new white label tariff is also exempted from the core tariff cap of the partner supplier until 31 December 2014.

1. What will be the impact of the RMR rules on white labels if we do not modify the regulatory framework for white labels before the exemption expires?

Scope of work

As discussed above, the RMR rules on simpler tariffs and clearer information that may have an additional impact on white labels currently apply to the domestic market only. For this reason, our intention is to focus on white labels in the domestic market. However, white labels operate in the domestic and the non-domestic retail market. We therefore welcome your views on whether our work should also consider white labels in the non-domestic market.

White labels are distinct from third party intermediaries (TPIs). TPIs are parties who are not energy suppliers, but engage with domestic or non-domestic consumers to assist with their energy supply needs. TPIs typically market the tariffs of a number of suppliers and, particularly in the non-domestic market, may charge a fee for this service. However, unlike white labels, TPIs do not offer gas and electricity tariffs under their own brand. We are taking work forward on TPIs under a separate programme.⁵

2. Should the scope of our work cover white labels in the non-domestic market? Please provide reasons for your answer.

3. Are there any business models in the retail market where the distinction between white label and TPI is unclear?

Supply activities and alternative business models

The supply of gas and electricity to consumers involves a number of related activities:

- purchase of energy in the wholesale market
- participation in industry arrangements and code compliance
- pricing of tariffs to customers
- billing-related customer activities
- non-billing-related customer activities.

Depending on their skills and experience, entrants to the market may look to existing suppliers to carry out some of these activities on their behalf. In particular, entrants may look to existing suppliers to undertake some of the more specialist technical roles, such as wholesale energy purchasing or compliance with industry codes. This might allow entrants to focus on other activities such as product design, marketing and customer service.

While the benefits in terms of the pressure on wholesale energy costs may be less in this partnership arrangement, there are likely to be benefits in terms of more entry in the market, which might increase competition and innovation. We are therefore interested in exploring the different regulatory models that might facilitate such a partnership approach.

We can see three basic models:

- White labels: the entrant operates under the licence of a partner supplier that has ultimate accountability for all aspects of supply and compliance. The entrant may however have greater control over certain supply activities, leaving others to the partner supplier. We discuss the possible features of this model in the next section.
- Obtaining a supply licence and outsourcing supply activities: the entrant obtains its own supply licence and takes on ultimate responsibility for all aspects of compliance, but outsources the more specialist areas, such as wholesale energy purchasing. A

⁵ For more information, please see the TPI webpage in Ofgem's website:

<https://www.ofgem.gov.uk/electricity/retail-market/market-review-and-reform/third-party-intermediaries-tpi-programme>

former white label has recently gone down this path by acquiring the supply licences that the partner supplier employed to supply the white label customers.

- Obtaining a supply licence and a direction discharging compliance: In 2009, we introduced an option informally known as 'Licence Lite'. This enabled Ofgem to issue a direction relieving a new licensed supplier of the obligation to be a direct party to certain industry codes, provided that commercial arrangements are in place for another fully licensed supplier to discharge code compliance in these areas on their behalf. This option was designed to reduce financial and technical barriers to entry, with the licence conditions selected accordingly.⁶

We are aware that although Licence Lite arrangements have been in place for some time there has been limited interest until recently. The original purpose of Licence Lite was to support distributed generators who wished to supply customers directly. It is unclear how far this model could go in supporting new entrants in the retail market. We are currently reviewing Licence Lite arrangements with a view to consulting on revised guidance later in 2014.

We would like to understand the reasons for the existence of white labels, given the availability of alternative business models that involve getting a supply licence. We would also like to understand the cost and timing involved for white labels in becoming licensed, noting that, under the current arrangement, the white labels exemption expires on 31 December 2014.

4. What considerations might make it preferable for an organisation to operate as a white label? Please cover regulatory, commercial, financial and any other relevant aspects.
5. What would be the cost and timing involved for white labels in becoming licensed?

Features of white labels

We engaged with a number of white labels and their partner suppliers throughout the development of the domestic RMR rules. This highlighted that white labels have different options for what supply activities they do themselves and what they rely on the partner supplier to do. We discuss these below.

Purchase of energy in the wholesale market

Suppliers buy energy for their customers in the wholesale market. This activity requires ongoing resources and industry knowledge to acquire products at competitive prices. Typically, the partner supplier buys the energy for the customers on white label tariffs in the wholesale market. However, we are aware of one white label that obtains energy in the wholesale market directly, primarily through the generation businesses it manages.⁷

Participation in industry arrangements and code compliance

Suppliers are required to comply with supply licence conditions. This includes, but is not limited to, requirements to maintain, become party to and comply with the industry codes and standards specified in the conditions.⁸ These involve arrangements for balancing and settlement and the arrangements with network companies. These are technically complex and our understanding is that all white labels look to their partner suppliers to undertake these activities for them.

⁶ The codes are the Master Registration Agreement, the Balancing and Settlement Code, the Connection and Use of System Code and the Distribution Connection and Use of System Agreement.

⁷ Electricity generation requires a generation licence, or an exemption from the requirement to have one.

⁸ For more information please see the Licences, codes and standards webpage in Ofgem's website:

<https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

Pricing of white label tariffs

In terms of tariff setting, our engagement with white labels and their partner suppliers suggests two broad approaches:

- Independent pricing: the white label has complete control over the tariffs it offers.
- Joint pricing: the white label and the partner supplier jointly decide the tariffs that the white label offers. This can include:
 - A tariff that is identical in everything but brand to one of the partner supplier's tariffs.
 - A tariff that is in some way linked to one of the tariffs of the partner supplier.

The definition of joint pricing captures a broad range of white label tariffs. Some will involve a minor difference with respect to a tariff of the partner supplier. This might take the form of a particular bundle, extra reward points or different end date. In other cases, the dependent tariff differs from the tariffs of the partner supplier in most or even all of its features, including standing charge and unit rate. There is nevertheless joint pricing because the white label cannot choose all of the tariff features freely.

Billing-related customer activities

White labels operating under joint pricing are typically reliant on partner suppliers for metering and billing functions. They then add their own brand to customer bills. They also generally delegate to the partner supplier the handling of billing enquiries and complaints.

White labels operating under independent pricing tend to cover the above activities, although ultimate responsibility for compliance with relevant obligations, such as complaints handling standards and rules around debt and disconnection, sits with the partner supplier.

Non-billing-related customer activities

All the white labels that we are aware of undertake their own marketing activities. Beyond this, there are a number of non-billing-related supplier obligations on which they might get involved. For example, for suppliers above a threshold size, there are obligations to participate in Government-designed social and environmental programmes offering social tariffs or energy efficiency support. White labels may play a role in identifying customers for these programmes, although ultimate responsibility for compliance with relevant obligations sits with the partner supplier.

6. What activities related to the purchase of energy in the wholesale market do partner suppliers cover on behalf of their white labels?
7. Are there any approaches to the pricing of white label tariffs that are not covered in our classification?
8. Do you have any evidence on the customer-related activities performed by white labels? Please cover both billing-related and non-billing-related customer activities.

Initial assessment of white labels

Competition considerations

White labels have the potential to increase competition in the retail energy market, which might lead to lower prices for consumers. However, price competition between white labels and partner suppliers can only happen with independent pricing. Arguably, independent pricing requires legal arrangements that prevent the partner supplier from interfering in the pricing of white label tariffs, for example, information barriers.

Beyond competition in pricing, white labels might also compete in other aspects such as customer service or product innovation, and in bundles and other services. We are aware that some white labels tailor their tariffs to particular customer segments, such as targeting low-usage customers with a zero standing charge. Under the current white label exemption, if those tariffs existed before 1 March 2013 then they are excluded from the core tariff cap of the partner supplier until 31 December 2014. It is unclear whether there will be the same commercial interest in offering those tariffs if they count towards the core tariff cap of the partner supplier.

White labels might also enhance competition by having a brand that is trusted by consumers. If a company has a strong brand in another market, then it may be able to attract and retain energy customers without incurring significant costs.

Consumer protection considerations

To operate in the retail energy market, suppliers need to obtain a supply licence and comply with conditions attached to that licence, which Ofgem has powers to enforce under the Gas Act 1986 and the Electricity Act 1989. Suppliers also need to comply with relevant EU and UK consumer protection legislation, which Ofgem has powers to enforce under the Enterprise Act 2002. Examples of consumer protection legislation include the Unfair Terms in Consumer Contract Regulations 1999 and the Consumer Protection from Unfair Trading Regulations 2008.

Partner suppliers are responsible for ensuring that their white labels comply with supply licence conditions and they would be liable in the event of a breach by their white labels. Both partner suppliers and white labels may be liable in the event of a breach of any EU and UK consumer protection legislation for which Ofgem has enforcement powers.

Ofgem has previously taken enforcement action against a partner supplier for a breach by the white label of the marketing licence condition. However, it is arguable that consumer protection would be stronger if Ofgem were able to take direct action against white labels that breach supply licence conditions. We welcome your views as to whether the contractual arrangements between white labels and their partner suppliers, combined with licence requirements on partner suppliers, provide necessary consumer protection.

Information on the partner supplier of the white label

Standard condition 25 of the supply licence requires a licensed supplier, among other things, to take all reasonable steps to ensure that consumers can readily identify the supplier whenever they are contacted in the context of doorstep or venue sales activities. That is, the consumer must be able to identify, from early on in the sales process, the partner supplier of any white label.

It has been suggested that requiring white labels to make it clear who the partner supplier is dilutes the benefit for white labels of having a strong brand. However, in our view this requirement is important in making it clear to consumers where ultimate liability for certain consumer protections falls.

Information on white label tariffs

We think it is important for consumers to have transparency about tariffs offered by white labels and their partner suppliers. As part of the domestic RMR, we have required suppliers to include, from 31 March 2014, information on their cheapest tariff for their customers in their regular communications.⁹ From 31 March 2014, white labels are required to include, in

⁹ That includes the following: bill or statement of account, annual statement, price increase notice and end of fixed term notice.

their regular communications, information on their cheapest white label tariff for their customers.

On 31 December 2014, the current exemption on white labels expires. White labels and their partner suppliers will then be required to include information about each others' tariffs in their regular communications. For example, the customers of a partner supplier will be told about a white label tariff if this is the cheapest tariff for them.

9. What value do white labels add to the retail market? Please cover any benefits on competition and innovation.
10. Are there any consumer protection concerns arising from the way in which white labels and their partner suppliers currently operate?
11. Is the information that white labels and their partner suppliers provide to consumers on their relationship and their tariffs sufficient?

How to respond

Please send your responses to this call for evidence by 4 April 2014 to:

white.labels@ofgem.gov.uk

Alternatively, please send a written response to:

Retail Market Policy (c/o Ruben Pastor-Vicedo)
Ofgem
9 Millbank
London
SW1P 3GE

Confidentiality and disclosure

Any information provided to Ofgem which relates to the affairs of an individual or a particular business will normally be subject to statutory restrictions on disclosure under section 105 of the Utilities Act 2000. However, you should note that there are exceptions to the statutory restrictions, including where the disclosure is necessary to facilitate the statutory functions of Ofgem (for example, publishing information to promote the interests of consumers) or other public bodies.

You should note that Ofgem cannot provide any assurances in relation to the treatment of information which may be the subject of a request made under the Freedom of Information Act 2000 ('FOIA'). However, we can confirm that Ofgem will always consider whether the statutory restrictions on disclosure apply to the requested information and therefore whether one or more of the FOIA exemptions apply.

We intend to publish all responses to this call for information on our website at www.ofgem.gov.uk. You may request for your response to be kept confidential. We shall endeavour to respect this so far as would be compatible with our statutory functions and the disclosure obligations set out above.

Before deciding whether to publish any information relating to the affairs of a particular licence holder or business, Ofgem is required to consider whether it is appropriate to redact any information on the basis that the information would or might, in our opinion, seriously and prejudicially harm the interests of that person ("confidential information"). In order to enable Ofgem to conduct this assessment, we would ask that you indicate in your response whether you consider any information to be confidential information and provide brief reasoning in support of your views. Where appropriate, we may seek further representations at a later stage in respect of any specific information Ofgem is proposing to publish.

Relevant Authority function

We are inviting you to provide information under our general market monitoring functions under section 34 of the Gas Act 1986 and section 47 of the Electricity Act 1989. We draw your attention to section 43 of the Gas Act and section 59 of the Electricity Act, which create an offence of providing false information.

- Section 43 of the Gas Act 1986

(1) If any person, in giving any information or making any application for the purposes of any provision of this Part, or of any regulation made under any provision of this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

- Section 59 of the Electricity Act 1989

(1) If any person, in giving any information or making any application under or for the purposes of any provision of this Part, or of any regulations made under this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.