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Dear Graham

Pricing benchmarks in gas and electricity – a call for evidence

1. UX Energy Services ("UX") is writing in response to Ofgem's request for submissions pertaining to the above consultation, and specifically the role played by pricing benchmarks as a direct determinant for customer bills. UX welcomes the opportunity to respond to this request and would be happy to discuss this with you in depth at a future date if required.
2. UX is a leading and independent provider of energy procurement and risk management services. Formed in 1995, we provide comprehensive services to the private and public sector alike, tailoring the solution to the needs of the buyer. Our existing customer base provides for the modest SME consumer to very large high profile clients with complex portfolios to manage. UX Energy Services is a trading name of The Utilities Exchange Ltd.
3. Our responses pertain to the questions raised in Chapter 2 and Chapter 3 of the Ofgem document entitled, "*Pricing benchmarks in gas and electricity markets – a call for evidence*" (Ofgem Reference 90/13).

Question 1: Do you agree with our review of the issues?

4. UX has a number of clients that have gas and electricity supply contracts that rely on information published by Price Reporting Agencies (PRAs). Unlike their domestic counterparts, these clients are directly exposed to the day-on-day and month-on-month variation in the wholesale energy price, and it is therefore essential that there is confidence in the information that is published given the consequences for their operations and cashflow.
5. We fully appreciate the requirement for the industry as a whole to have confidence in the pricing benchmarks that are reported. An absence of confidence could lead to less of a perceived need within the industry to provide prices and other information to PRAs. This would further compromise the operational integrity and intended purposes of the indices and prices published by PRAs as they become less reflective of "true" market conditions.

6. This would therefore imply a vicious cycle whereby the benchmarks ultimately become not fit for purpose.
7. Paradoxically, by highlighting the problems associated with PRAs, the well-publicised reports in *The Guardian* newspaper in November 2012 that have in part precipitated this action by Ofgem may have contributed towards just such an outcome. Reports in the aforementioned newspaper in May 2013 stated that a number of companies had ceased their cooperation with PRAs in the wake of the "scandal" – a development that could harm the market reflectivity of published information.
8. The press coverage and Ofgem's actions in this matter have illustrated two different aspects of PRAs and their output.
9. Firstly, there are internal procedural elements within PRAs that need to be stringent enough to ensure that any prices published are in fact market reflective. Furthermore, in the event that such information is not available and/or not provided, then procedures must also exist to ensure that information can be published as required as opposed to simply not publishing any data. ICIS Heren has already stated that it has amended its procedures to incorporate a deals-based reported index, as well as undertaking its own consultation on how the validity of its information and the associated methodology could be made more robust.
10. Secondly, there are pre-meditated attempts by those companies that provide information to PRAs to manipulate indices – either by selectively withholding information or by reporting trades that have not occurred. The latter of these is of course the most severe and should be viewed as such by regulatory agencies. The former, however, is far more problematic as there would be a requirement effectively to illustrate that the selective withholding of information was intentional and with the express intention of manipulating the index and not simply a matter of convenience on the part of the individual providing the information. Indeed it can be argued that an actual trade that was carried out, but which was done at a price that was not market-reflective due to human error, could be reported in good faith.
11. In addition, there is another aspect of this issue that should be considered, namely the role of Ofgem itself. Given that it has been reported that Ofgem failed to respond to recommendations that were made to it by BDO relating to this area, there is a danger that any action undertaken by Ofgem in this regard could be interpreted as a knee-jerk reaction to press and political pressure for its earlier decision not to act, as opposed to being well-considered and in the interests of all customers and the industry as a whole.

Question 2: What is your company's policy on providing information to price reporters or other price benchmarking services?

12. UX does not provide information to PRAs as our level of activities does not warrant such action.

Question 3: In what ways do you use benchmark prices provided by price reporting agencies or other price benchmarking services?

13. As stated in Paragraph 5, UX has a number of clients with contracts that provide them with the option to secure gas and electricity at benchmark prices published by PRAs.

14. It is therefore essential to our clients that these prices are both market-reflective and calculated in a transparent and regimented manner that is consistent with the importance and regard with which they are held in the sector.

Question 4: Do you use a single price provider only, or a combination or variety of prices?

15. As stated in our response to Question 3, UX does not use this information directly, although it is used by our clients. The use of prices is therefore dependent on their individual contractual circumstances.

Question 5: What are your views on the terms of the IPRO code of conduct and various published methodologies of the price reporting services with particular reference to the gas and electricity markets?

16. UX does not have a comment to make on this matter.

Question 6: In the context of GB gas and electricity markets, do you consider the current arrangements whereby price reporting agencies operate under a self-regulatory regime are fit for purpose?

17. PRAs have operated in the gas and electricity markets for more than 15 years and represent an integral part of the energy sector. Their own internal processes and procedures have evolved over that period, as well as reflecting their ownership structures, e.g. Argus as an independent organisation, Platts as part of the McGraw-Hill publishing company, and ICIS Heren having gone from an independent organisation to part of Reed Business Systems.

18. As such, their output is copyrighted and presented with a disclaimer regarding its use, as one would expect for any publication of this nature. While this could be viewed as something akin to a *caveat emptor* approach by the publishers, there is an implicit trust on the part of the companies that use the output of PRAs for pricing and/or contractual purposes that they are market-reflective and have been calculated in a manner that is consistent with the importance with which they are held, published and used.

19. While the self-regulatory approach has served the PRA sector well from an operational standpoint, that is not to say that it will continue to do so. The suggestion of guidance under an arms-length regulatory approach should therefore not be discounted, subject to the outcome of this process.

Question 7: Are there any other issues that you wish to raise in the context of this call for evidence?

20. UX does not have a comment to make on this matter.

We trust that this helps with your consultation process. Should you wish to discuss this in more detail, please contact Dr. Craig Lowrey on 01473 407978 or by email at craig.lowrey@uxenergyservices.com.

Yours sincerely



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Consultant