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Ofgem
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9th May 2014

Ref: Proposals for regulating non-domestic Third Party Intermediaries

Dear Andrew,

Please see the Chartered Institute of Purchasing and Supply's (CIPS) response to the consultation on regulating non-domestic Third Party Intermediaries.

The Chartered Institute of Purchasing & Supply (CIPS), the world's largest procurement and supply professional organisation and is the worldwide centre of excellence on purchasing and supply management issues. CIPS has a global procurement community of over 106,000 in 150 countries, including senior business people, high-ranking civil servants and leading academics.

The following response has been compiled after consultation with the CIPS Energy Special Knowledge Group (SKG). CIPS and the Energy SKG welcome this review and we look forward to working with Ofgem in the future.

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Question 1: Do you agree with the definition of TPIs? Please provide any suggestions along with supporting information.

Question 2: Do you agree with our list of proposed TPIs that could be covered by any regulation we introduce?

Question 1 and Question 2 are answered jointly below.

We have a number of comments relating to the definitions.

There is a difference between brokers and consultants in terms of fee source.

Brokers will generally charge for their services on a commission type of arrangement. This commission, usually on a pence-per-kwh, is received from the end consumer or the energy provider or both. There may be a performance related element to the fee which will depend on whether the energy broker exceeds the agreed targets.

A consultant (or a 'buyer's agent') will generally receive their fees from a fixed price or day rate arrangement. The consultant (or buyer's agent) will deal with any/all suppliers. The supplier selected has no bearing on the consultant's or agent's remuneration and can be, in effect, an extension of the end consumer's own resources. There may be a performance related aspect to the contract between the consultant or buyer's agent and the end consumer. Consultants and buyer's agent are usually independent of any energy provider whereas a TPI may have financial or other beneficial arrangements with specific energy companies.

An Aggregator would normally be associated with STOR (short term operating reserve) arrangements in terms of contracting with a end consumer or number of end consumers to use their combined generation capacity to offset periods of peak demand. This type of Aggregator should be covered by these proposals as they are also acting as an intermediary between the end consumer and the energy supplier.

Organisations, whether in the public or private sector, who arrange, manage or coordinate a consortium type of purchasing contact or arrangement can be either a TPI or consultant. These organisations should also be covered by these proposals to ensure that there is a "level playing field" amongst all intermediaries.

There are a number of companies who offer both brokerage services and consultancy services.

Organisations that offer energy efficiency advice, or smart meter products should be included if they have any commercial links with energy suppliers or other TPI's.

As a result of the variety of options available to potential TPI's and consultants, we would support the wider definition, namely:

"a non-domestic TPI is an intermediary engaged in direct or indirect activities between a non-domestic consumer and an active energy supplier".

Question 3: What types of organisations should be exempt from our TPI scope definition and why?

As previously mentioned, all the types of organisations listed and our amendments above should be covered by these proposals to ensure that there is a “level playing field”. Any exclusions from these proposals of organisations or groups who act as an intermediary will limit the fairness of the proposals as well as potential confusion from end consumers over who is or should be covered and who should not by the code of practice. Therefore we propose that there are no exclusions or exceptions from the scope and coverage of these regulations

Question 4: Do you agree with our recommended option for regulating non-domestic TPIs?

We strongly agree with the phrase in 3.1 that “non-domestic TPIs act in a fair, honest transparent, appropriate and professional manner”. However we also believe that energy suppliers must act in a similar way. As these proposals will have a direct effect on the ways of working with energy suppliers, there should be an overt statement in the regulations that energy suppliers should act “in a fair, honest transparent, appropriate and professional manner”.

We would support moving to option 3. However this option should not limit competition in the TPI market, or create a barrier to entry for now TPI enterprises. We have elaborated on these points in the response to the impact assessment.

Option 3 will work only if there are clear unambiguous communication paths for all stakeholders including end consumers, existing and potential TPIs, the energy suppliers and the regulatory authorities. For example, a list of TPIs who have met the licence conditions should be readily available to all on the internet. There should be notices of the withdrawal of a licence – not just through an email but on a website.

Any financial penalty and/or consumer redress is imposed should be proportionate to the transgression. There should be a process to appeal against the imposition or other admonishment. It should be noted that small TPIs may be financially or resource-limited in being able to lodge an appeal. This may lead to withdrawal from the market and/or a barrier to entry to the market. However, on balance, whilst any barriers are undesirable, the risk of fines to a company should be such that they act as a deterrent to transgression and has a financial impact on the company. Additionally the directors of the transgressing company should also be publically named and listed. These sanctions are an important aspect of the regulations.

Question 5: Do you agree with our proposed governance recommendations?

Our response to Question 5 is covered by the response to Question 6.

Question 6: Please provide your views on the appropriate representation for members of the proposed independent code board.

A sustainable governance model which is supported by TPIs is needed as covered under paragraph 3.22. Successful governance depends on ensuring that the processes are seen to be relevant, fair and not bureaucratic by TPIs.

Whereas we agree with the bullet points listed in paragraph 3.22, our view is that the publicising of the code should also be to the energy suppliers. Publicising the code should not be an end in itself, but a way to ensure that the organisations understand and “sign up” to the code. We would also propose and support an onus on the energy suppliers to publicise the code to their end consumers and potential clients.

Many energy suppliers have their own code of practice when working with TPIs. The understanding is that there is very limited monitoring of the compliance to the energy suppliers’ code of practice. We suggest that the Ofgem regulations will supercede the energy suppliers’ code of practice.

Monitoring of compliance will need to be developed by the governance body. It may be based on self-audit and using a sampling plan.

Both governance models may work in practice but in our view Option A is preferred.

Under Option A, Ofgem would be seen as being independent of the direct interests of either the energy suppliers or TPIs and would be seen as working for the end consumer. It would be seen as an advantage by end consumers of not being involved in day-to-day issues. However, the challenge with this option is to ensure that there is a balance in approach for the code to remain relevant to industry developments. A variation to this option is that Ofgem is supported by board members who represent end consumers large and small and in the industrial, commercial and public sectors. This is our preferred option.

The main issue with Option B is that the industry may perceive that the governance board is being dominated by a few large TPIs and suppliers who have the resources to populate the governance board. Confidence of the end consumers may be damaged or lost if the governance board comprises TPIs (and perhaps suppliers) as Ofgem has already highlighted that issues exist with this group. There may be undue influence from the TPIs and therefore it may be perceived that the governance board (i.e. Option B) is not independent.

Question 7: Do you agree that there is scope for improving complaints monitoring and information sharing? Do you have any further views?

The process for complaints monitoring should be fair and clear to the end consumer, the TPI and the energy supplier. To achieve this, the process needs to be simple. There should be a process map and timeline for what supporting information needs to be provided, how the complaint will be handled and by whom and how long it will take to receive feedback. Having a list of “do’s and don’ts” may be useful for the TPI and end consumer – for example, the TPI will always need a letter of authority (LOA) if it is claiming to be acting on behalf of a client. If the TPI does not have a LOA, then the supplier should not deal with them.

Complaints should be kept confidential in the first instance. Not all complaints will be supported by the information provided. If the complaint is upheld (unless it is subject to an appeal) then the TPI and directors should be named on the internet, with high level details of the complaint. If there is an appeal against the complaint, details should only be published on the Ofgem website if and when the appeal is upheld. All complaints and related details (such as parties involved) should be kept confidential until the complaint is upheld.

There should be a right of appeal by the TPI and/or supplier in the event of the complaint being upheld.

A key aspect of the complaints procedure is to have a clear investigation and assessment process. The complaint assessment needs to be independent.

A further point relates to the time it will take to process the complaint and assess whether the complaint is to be upheld. It is our view that the process would be managed by Ofgem, and that all complaints should be processed and resolved within 2 months.

Question IA1: Do you agree with our assessment of likely impact consumers? Is there any other issue/s we should consider?

Generally we are in agreement with the likely impact on consumers. Whilst the code of practice will not eliminate all complaints, it will provide greater transparency to the TPI/end consumer relationship due to the TPI being mandated to work within the regulations.

The impact on end consumers should not change if their TPI already operates good business practices. Business confidentiality will continue and, for example, the end consumer should be aware (assuming that the end consumer wishes to know) from either the TPI or supplier, of the level of commission that is being charged on the energy purchases being made on its behalf. There is no need for commissions between contracting parties to be in the public arena when good business practice is being followed.

There is a cost to the TPI in meeting the code requirements, setting up and monitoring its processes, training its staff and dealing with complaints. Larger TPIs will have the resources to manage these needs, but there will be a significant time and cost burden on a small TPI under Option 3.

These costs may be absorbed by some TPIs, but others will try and pass on the costs to their clients. If the additional costs cannot be covered in this way, there may be a number of smaller TPIs that cease trading.

There are already a small number of very large TPI's. Reducing the competition may lead to higher costs for the end user. There is a potential issue that the market over time will be dominated by the larger TPIs who have the resources to manage the code of practice.

A potential issue for consumers may be due to working with a TPI who is not based in G.B. and is contracting with G.B. end consumers, or if the TPI has contracted with an end consumer who is based outside G.B. but has a business site here. Will these regulations still offer protection and clarity to the end consumer in these and similar situations?

Question IA2: Do you agree with our assessment of likely impact on industry? Is there any other issue/s we should be considering?

We would refer to our response to Question IA1.

Question IA3: Do you agree with our assessment of likely impact on competition? Is there any other issue/s we should be considering?

Whilst we support Option 3, we disagree with the likely impact on competition. The mandatory nature of the code may lead to a number of smaller TPIs moving away from this market. This would lead to less choice the consumer with a risk that more of the market will be concentrated on fewer TPIs. This may lead to higher costs to the consumer.

This also would have impact on the governance board structure. As detailed earlier, our preference is for Option A for the governance board, amended to include representatives who represent end consumers.

Question IA4: Are there any distributional effects that our policy proposal could cause?

We do not have any further comments on the distributional effects of the policy proposal

Question IA5: To better inform our cost benefit analysis, please provide us with financial/cost data on the following:

Initial (one-off) costs: including costs to your business models and costs for familiarisation to the code of practice (this includes, costs to understand your obligations and relevant staff training and any costs to change internal processes as necessary).

On-going costs: this includes resourcing implications of the introduction of a code of practice to your organisation and any other expenses that you think may be incurred (for example, monitoring compliance).

The costs to a TPI will depend on the size of the TPI in terms of numbers of staff and number of clients. For a medium to large size TPI (in excess of 20 personnel) the cost may be in the region of £50,000 to £150,000. However we do not have any empirical information to support this – it is an assessment based on training costs and introducing and validating systems. There will be also ongoing costs to ensure compliance and that the systems introduced remain fit for purpose and auditable.

Question IA6: Do you have any additional comments on the risks and unintended consequences outlined in section 4? Are there any other risks or unintended consequences that have not been considered? Please provide as much information as possible.

The code of practice supports transparency of fees from the TPI to the end consumer. We are surprised that some TPIs view confidentiality of information as a barrier in their relationship with the end consumer and therefore appear to be potentially reluctant towards a transparent relationship.

The code of practice should support full disclosure of fees, whether the end consumer is charged by the TPI, or the TPI fees are coming from the energy supplier in any form (for example, from services that are provided by the energy supplier that would normally be chargeable) or from another third party.