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9th May 2014

Response to Ofgem's consultation: Proposals for regulating non-domestic Third Party Intermediaries (TPIs)

Dear Meghna,

I am pleased to attach Energy UK's response to the above consultation. It is not confidential.

If you have any questions, please do not hesitate to contact me on 020 7747 2963 or daisy.cross@energy-uk.org.uk.

Yours sincerely

Daisy Cross
Policy and External Relations Executive

Ofgem's proposals for regulating non-domestic Third Party Intermediaries (TPIs)

Energy UK response

9 May 2014

1. Introduction

- 1.1. Energy UK is the trade association for the energy industry. We represent over 80 members made up of generators and gas and electricity suppliers of all kinds and sizes as well as other businesses operating in the energy industry. Together our members generate more than 90 per cent of the UK's total electricity output, supplying more than 26 million homes and investing in 2012 more than £11 billion in the British economy.
- 1.2. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

2. Executive summary

- 2.1. Energy UK welcomes the opportunity to respond to this consultation. Energy UK's members are committed to delivering improvements for non-domestic customers.
- 2.2. Government, suppliers and TPIs agree that problems exist in the non-domestic TPI market, and Energy UK has been pleased to see Ofgem consulting a wide range of stakeholders as it develops its proposals.
- 2.3. Energy UK is keen to see prompt action to address these problems, as an under-regulated TPI market affects confidence and trust in the energy industry as a whole. The majority of TPIs who treat customers fairly in all interactions should not be inhibited, nor their reputations indirectly tainted, by the actions of the minority of rogue operators. Ultimately direct regulation of the TPI market will be the most effective way to enhance customer trust and experience, and will also ensure that the risks of non-compliance sit with the party whose behaviours are being regulated.
- 2.4. The underlying principle of the code of practice should be to ensure that all parties within the TPI market always act in the best interest of the customer and not TPIs or suppliers.
- 2.5. The code must ensure transparency on price and commission. Transparency is key to ensuring that TPIs are not inappropriately incentivised when advising a customer, for example by selectively promoting products based on the commission the TPI will earn, rather than the benefit and/or price to the customer.
- 2.6. The licence condition should be explicit in stating when and how suppliers should ensure that any TPIs they work with are accredited. Our understanding is that suppliers will be required to check their TPI relationships against Ofgem's list of accredited TPIs, and that they will not be expected to audit each TPI they work with to check compliance with the code (which would be onerous for all).
- 2.7. Energy UK urges Ofgem to take leadership around its proposals to monitor and enforce the code of practice to ensure swift progress. This includes how to ensure that accredited TPIs are complying with the code. Members are keen to support Ofgem in enabling this.

- 2.8. To ensure consistency in complaints handling, suppliers feel that a customer should have the ability to complain directly to their TPI.

3. Responses to individual consultation questions

- 3.1. *Question 1: Do you agree with the definition of TPIs? Please provide any suggestions along with supporting information.*
- 3.2. Members seek clarification from Ofgem on whether the definition set out in paragraph 2.6, or that set out in 2.7 is Ofgem's preferred definition of a TPI. Members feel that the latter better reflects Ofgem's intended remit, as it confines TPIs considered to those with relationships with an energy supplier, while the definition in 2.6 could potentially refer to relationships with metering agents.
- 3.3. Members are keen to understand how third parties or agents contracting with a supplier not captured by this definition should be dealt with. Instances such as this support our view that direct regulation of TPIs would be the most appropriate regulatory option.
- 3.4. *Question 2: Do you agree with our list of proposed TPIs that could be covered by any regulation we introduce?*
- 3.5. Members broadly agree with Ofgem's list set out in table 2.1. However, some members wish to see managing agents - who are named in the contract with the supplier, and who include these energy costs in a combined service charge for the end customer - included in the list. An example is a property agent renting business units in a shopping mall or similar who buys energy on behalf of its tenants. Equally, collectives and buying agents should be captured in the list.
- 3.6. Members also believe that primary sales and supplier agents should be removed from this list to avoid duplication of regulation as direct sales agents selling a single supplier's products would already be covered by existing licence conditions. Members do, however, believe that 'Secondary Agents' (i.e. those sales agents not directly employed by a supplier or agents that sell multiple suppliers' products) should be captured by the definition.
- 3.7. Ofgem should define what it means by "working with TPIs". For example, some TPIs contract with the customer and receive payments directly. Energy UK is keen to understand whether suppliers will be prevented from giving a price quote to such TPIs if they are not on the list of accredited TPIs or is the restriction limited to handing over commission or signing contracts with their involvement?
- 3.8. *Question 3: What types of organisations should be exempt from our TPI scope definition and why?*
- 3.9. Energy UK believes that no party captured by an agreed definition of a TPI should be exempt from the code of practice. The definition of non-for-profit or charitable activity is broad, and excluding these activities could result in risk to the consumer. Equally, there is no clear reason why any party falling within any of the definitions of a TPI proposed this far should find the principles set out in the code of practice to be unfairly burdensome or inappropriate to adhere to.
- 3.10. *Question 4: Do you agree with our recommended option for regulating non-domestic TPIs?*
- 3.11. Members broadly agree that direct regulation of TPIs would best reflect the allocation of responsibility in the relationship between the supplier, agent and consumer. Direct regulation would be the most effective way of ensuring transparency of commission and would foster competition between brokers on offers to customers.
- 3.12. However, Energy UK acknowledges that this option would take time and involve resource. Given the urgent need for regulation in this area, we believe that the option of a code of practice backed by a licence condition on suppliers, overseen by Ofgem using its existing powers, is the most

appropriate course of action in the interim. Given time constraints, direct regulation could potentially be sought in parallel to the interim solution.

3.13. One member believes that direct regulation of TPIs should be a backstop option to be initiated if the code of practice option proves less effective than hoped.

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

3.15. Energy UK members have a strong preference for governance option A, under which Ofgem would be responsible for all aspects of governance and enforcement of the code of practice.

3.16. Ofgem has experience in managing such codes and would be the most appropriate candidate for governing the code, given its independence and experience coordinating a balanced relationship with suppliers, TPIs and consumer groups.

3.17. Energy UK is concerned that no proposals for monitoring and enforcement procedures are mentioned under either governance option - or within the code itself - and urges Ofgem to provide details here as soon as possible.

3.18. Members are keen to understand what would happen, for instance, where a pence-per-unit price had been agreed between a TPI and a customer, and the TPI lost its accreditation during the contract. Specifically, would the surplus commission be reallocated to the supplier or to the customer?

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

3.20. Members agree unanimously that TPIs themselves play a role in the code and its administration, and are keen to see them involved in the policy making process. Should Ofgem elect governance option B (the formation of an independent board responsible for code of practice governance with Ofgem as an approval body) Energy UK would like to see a mix of supplier, TPI, government and consumer representation on the panel.

3.21. However, Energy UK is unable to recommend an industry body which currently adequately represents the full spectrum of TPIs covered by Ofgem's proposed definitions.

3.22. Members believe that any governance structure or body should follow some key principles:

- Decisions around the code should serve the majority of consumers by analysing trends and understanding the totality of the consumer experience rather than basing assumptions on a small number of incidents. Full engagement of suppliers and TPIs is necessary to provide the necessary evidence to provide a balanced view.
- The governance body needs to be impartial, independent and transparent, and parties involved should be able to clearly exhibit that their objectives stem from consumer welfare rather than commercial, political or other interests.

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

3.24. Based on the evidence available, it is clear that there is considerable room for improvement here. Suppliers find it difficult to deal with complaints involving TPIs as they rarely have the entire paper trail or call sequence available to them to be able to compile enough evidence to resolve a complaint satisfactorily. The strides being made in consumer confidence by supplier complaint handling procedure improvements will be undermined if the same standards are not held by an accredited TPI.

3.25. Customers must have clarity on what to do if they have a complaint with a TPI – this should be addressed within the code. We expect the TPI code of practice to ensure:

- honest and accurate marketing and promotion of services;
- clarity on what to do if a customer has concerns or a complaint about a TPI;
- fair and robust comparisons; and,
- robust training of TPI staff.