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Dear Meghna

Proposals for regulating non-domestic Third Party Intermediaries (TPIs)

Please find attached our response to the above consultation.

Yours sincerely

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Ofgem Consultation on regulating non-domestic Third Party Intermediaries (TPIs)

Response by E.ON

Executive summary

E.ON supports Ofgem's proposal to require suppliers to only work with TPIs who operate to an industry code of practice ("the Code").

We support the proposed definition of a TPI but feel that sales agents (such as outsourced sales partners) who are directly contracted by suppliers to provide services should be excluded as they are captured by the supplier's licence conditions. To aid assessment by an organisation of the scope of the Code it would be useful to include a table which contains activities which fall within scope and those which fall outside of scope.

We feel Ofgem need to be more fully engaged with the governance of the Code than is proposed. To ensure impartiality we recommend that Ofgem is the body responsible for enforcement action.

We recommend that the proposed arrangements for complaints handling are enhanced by providing micro business customers with access to an ombudsman in the event of reaching deadlock with their TPI. This will ensure that micro business customers using TPI services will receive the same level of protection as those that go direct to a supplier.

The process of accreditation is currently opaque but we recommend that TPI's signing up to the Code;

- go through a "due diligence" process to ensure that their capabilities are compatible with the requirements of the Code
- are periodically monitored to ensure that those capabilities remain compatible with the Code.

To provide customers of reasonable assurance of the standards of TPI operating to the Code performance monitoring and auditing of TPIs should fall within the remit of the Independent Board. This will provide the most consistent assessment of standards and be the most cost effective. To help understand the value of conducting audits we have attached a summary of our audit of TPI's compliance with Independent Code (Annex 1 (confidential))

Finally, we urge Ofgem to take action soonest by;

- conducting a short consultation to ratify the Code as a set of principles, inviting TPIs to sign up to those principles and a defined timetable (by 31 March 2015) for finalising the Code and governance arrangements.

- appointing an interim Chair of the independent board with responsibility to finalise the Code and governance arrangements. To aid this we have attached a review of Ofgem’s Code against the Independent Code originally developed by E.ON (Annex 2). We recommend that as part of the consultation Ofgem outlines potential changes to the Code so that TPIs can take a view of the direction of travel.

E.ON Response

Consultation Questions

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

We support the definition

“an intermediary between a non-domestic customer and an energy supplier, providing advice and assistance to the customer in relation to their energy supply needs”

The definition should be supported by a table of activities which shows the types of organisations captured by the Code and those that aren't.

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

We propose a slightly amended list which excludes companies employed directly by suppliers (who are already captured by a suppliers licence) but also which shows for the avoidance of doubt those types of organisations not captured.

Type of TPI	Brief description	Captured
Broker or consultants (including sub-brokers or sub-consultants who may work through an Aggregator)	Research and present offers from a range of suppliers to the consumer. Consultants are similar to brokers, but may also provide information on energy efficiency measures.	✓
Sales/Supplier agent	These companies may be employed directly with the sole interest to represent the supplier to the consumer. Some agents work for a single supplier, known as primary agents, whereas others may represent multiple suppliers, known as secondary agents.	X
Price comparison website	Service to help consumers search and compare energy deals online.	✓
Bundled services providers	Where consumers purchase multiple services from a single provider. For the purpose of this code we refer to bundles that include but are not limited to energy.	✓
Umbrella/Franchise sites	Organisations that operate under a large brand name (not their own)	✓

Aggregators	Companies who manage or work with a number of third parties for arranging energy contracts for a volume of consumers. They may also interact with consumers as a TPI.	✓
Energy advice companies	Offers energy advice to consumers	✓
Buying Co-operatives	Companies who jointly purchase energy contracts	X

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

We don't believe there is scope for any organisations which meets the definition to be excluded. Misleading advice and information is always misleading irrespective of whether organisations providing the advice is receiving recompense for their services or not. Misleading advice can lead to a business customer being locked into an inappropriate or more expensive contract for a number of years.

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

Yes, we support Option 3 a licence condition to only work with TPIs who meet Ofgem's Code. A list of all TPIs working to the code should be on a publically available register to enable both Suppliers and customers to be certain that the TPI they're dealing with is operating to Ofgem's standards; as Ofgem's preferred approach is the introduction of a Licence Condition on Suppliers to only do business with TPIs accredited to the Code, the publication of such a list would mitigate the risk that Suppliers inadvertently find themselves in breach of the SLC. Direct licensing of non-domestic TPIs should remain a backstop provision.

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

Not fully. We support an independent board consisting of TPIs, suppliers and customer representatives. The group can help shape the development of the Code and be the forum for stakeholders and TPIs to discuss operational issues. The governance proposals are light in the area of enforcement. We don't believe that the independent board should be the enforcement body. It is important that a TPI subject to potential enforcement action can be confident of a fair and impartial treatment. This cannot be guaranteed where a TPI is being judged in part by a body involving one or more of his competitors.

We believe there are two options, enforcement by Ofgem or enforcement through an independent and impartial tribunal involving representatives from the legal system. Our preference is enforcement by Ofgem, as the authority of the wider energy industry.

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

The Independent Code Board should be a mix of suppliers, TPIs and customer representatives. If practical the Board should have TPI representatives from each sector (i.e. sales contracts, energy advice, energy management) so that the Code and its development remains relevant for all sectors.

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

Yes. All TPIs need to have a transparent customer complaints process with clear timelines and clear escalations. As it is proposed that the scope of the Code is TPIs offering energy services to all non-domestic businesses. The complaints process does need to reflect the different capabilities of the end customer. For instance, defining a complaint as an "expression of dissatisfaction" may be appropriate for micro businesses where they may feel disempowered in their relationship with a large TPI but is not appropriate for a large corporate customer who has the wherewithal to deal on equal terms with the TPI.

A further protection micro businesses require is access to a complaints ombudsman in the event of reaching deadlock with the TPI. It would be illogical that a micro business customer seeking a contract through a third party has less protection than a customer going direct to a supplier. If that were not to be case it would be appropriate for the Code to require TPIs to warn customers that dealing through them carries additional risk to a contract direct from a supplier.

Complaints information should be monitored and the results published in a similar fashion to complaints information regarding supplier performance. As some TPIs may not have websites it would seem sensible that this information is published on an industry website.

The process of accreditation to the Code is not clear. To maintain credibility it is important that TPIs signing up the Code are subjected to some form of "due diligence" otherwise it will become a form of club which is only managed by exception. TPIs should be required to provide some basic information about their organisation and capabilities to allow an assessment that they are "fit and proper" organisation. This would not put a barrier to the size or scope of a TPI but would help to assess whether they were appropriately balanced e.g. a single consultant providing advice to a small group of micro business customers could be accredited to the Code providing they could demonstrate that they meet the Code requirements.

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

We support the likely impacts on customers set out in section 2.3 of the Impact Assessment. Option 3 not only strikes the right balance between customer protection and speediest implementation it is also the most “joined up” as it establishes a firm regulatory link between suppliers and TPIs.

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

As E.ON’s SME business already only works with TPIs accredited to a CoP there will be little or no additional cost if option 3 is adopted.

Currently, it is not clear under the proposals who will be responsible for performance monitoring and auditing. Under the Independent Code of Practice developed originally by E.ON the supplier is responsible for the majority of the auditing activity. This allows a supplier to be confident that the sales of their products are compliant with the requirements of SLC 7A. However, some aspects of the procurement process are hidden to the supplier e.g. product/supplier selection by the TPI so additional monitoring is required by the Code Manager. This two stage approach is robust but is likely to be sub-optimal in terms of overall cost effectiveness and consistency of assessment where TPIs work with more than one supplier. We therefore propose that the Code Manager under the governance of the Independent Board is responsible for the initial assessment of TPIs for accreditation and thereafter all aspects of performance monitoring. The process of auditing should be risk based so can range from self-assessment through to on-site visits. The overall cost of this activity to the industry (we have provided Ofgem with E.ONs costs in the Annex 3 (confidential)) will not be trivial but will be proportionate and necessary to provide confidence to customers of the effectiveness of the Code.

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

Yes, we don’t envisage any competition issues under option 3.

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

We don't envisage any distribution effects under option 3.

Question IA5: *To better inform our cost-benefit analysis, please provide us with financial/costs 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);*

One off training costs but we don't envisage these to be material.

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

We don't anticipate any additional costs for working to the Ofgem Code (we have attached our current ongoing costs for the Independent Code in Annex 3).

However, whilst in our SME business we have costs at the moment of taking enforcement actions and monitoring compliance our recommendation is that these activities in the future are undertaken centrally rather than by individual suppliers to ensure consistency and fairness.

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

We believe that the biggest risk is of further delays from prolonged discussions to finalise the Code and governance arrangements.

We urge Ofgem to take action soonest by;

- conducting a short consultation to ratify the Code of practice as a set of principles, inviting TPIs to sign up to those principles and a defined timetable (by 31 March 2015) for finalising the Code and governance arrangements.
- appointing an interim Chair of the independent board with responsibility to finalise the Code and governance arrangements. To aid this we have attached a review of Ofgem's Code against the Independent Code originally developed by E.ON. We recommend that as part of the consultation Ofgem outlines potential changes to the Code so that TPIs can take a view of the direction of travel.

Annex 1

Audit Summary of TPI's operating to the Independent Code

See separate confidential attachment for summary of the findings and the checklist used for carrying out audits.

Annex 2

Comparison of Ofgem Draft Code of Practice to the Independent Code originally developed by E.ON

TPI Code of Practice	OFGEM DRAFT	Comparison
Section 2, Recruitment: TPI to have robust processes to recruit the right people and protect customers (CRB check requested for field based TPI's)	Not covered	Protects customer and TPIs by outlining what is required for all customer-facing associates
Section 3, Staff Records: minimum expectations for details retained	Not covered	Supports customer complaint handling and any queries raised by industry bodies – also breach addressing and mitigation
Section 9, Change of Tenancy (COT)	Not covered	Trends of miss-use of COT have been found, with or without customer awareness – dedicated section to mitigate this risk to customer and suppliers
<p>Section 3, Training: effective training refers to induction and minimal requirements (also update as required), product awareness also</p> <p>assessment required as proof of learning before customer contact and periodically thereafter (annually)</p> <p>records kept of training completed and when (including assessments)</p>	4.1 Training: responsible for “appropriate training” to adhere to the Code and legal obligations	<p>Ofgem code requires training on Code and legal obligations; no reference to relevant products</p> <p>TPI Code ensures TPIs are trained regularly on requirements to be competent.</p> <p>No assessment or ongoing training in the OFGEM draft</p> <p>Supports staff and customer complaint investigations and query</p>
Section 12, Commission: includes principle that where a fee or commission is received then services are not marketed as “free”	4.4 Commission and Fees: must make consumers aware before service agreed; detailed breakdown on request	Ofgem code is more explicit in the disclosure of commissions

n/a	4.6 Complete and accurate notification of contract terms: post agreement: requests TPI to provide in writing express terms and conditions of contract and responsibilities lie with which party	TPI Code of practice does not request this as it is the supplier's responsibility under Supply License.
Section 13, Complaints: as OFGEM, in addition training expectations, principles on logging (24hr and longer), at least one correspondence to customer, escalation to Code Manager (set timeline), re ombudsman, complaint types defined	4.7 Dispute Resolution: complaints handling procedure in place at all times, steps to take, contact availability, support available to customer, escalation to appropriate independent body, records kept for 6 years	TPI Code offers further principles on the handling of complaints as well as an escalation point within a set time period (7days); OFGEM allow the TPI to set appropriate timelines in their procedure
Section 14, Systems and Controls: responsibility on TPI to monitor compliance to the Code, annual self assessment requests, suppliers to audit TPI's, also TPIs may be subject to independent audit as directed by the Code Manager	4.8 Monitoring: to be confirmed	
Section 15, Roles and Responsibilities: set out for TPI, Suppliers, Code Manager, Code Panel and Independent Auditor Section 16, Breaches and Sanctions: minor and major breaches defined, possible sanction listed includes written warnings, suspension and/or expulsion from the Code	4.9 Enforcement: to be confirmed	
Section 7, Relevant laws & regulations: lists key relevant energy sales laws & regs and TPI awareness evident. TPI business practices are not risk suppliers breaching the relevant laws & regs . Section 8, Data Protection: full section to set principles on data handling and use by TPIs	5.0 Relevant Regulation: to be confirmed	



Annex 3

E.ON's costs of operating the Independent Code of Practice

See separate confidential attachment.