

Meghna Tewari
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Ofgem
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1 April 2014

Dear Meghna,

Re: Proposals for regulating non-domestic Third Party Intermediaries (TPIs) – Consultation Response from Opus Energy

Please find below the response from Opus Energy Limited to the above consultation.

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?

The definition of TPI should be drafted such that it (i) does not sweep unnecessary parties into regulations, and (ii) does not allow for a supplier to arrange its TPI arrangements in such a way as to avoid the regulations.

- (i) We suggest two amendments to the definitions proposed in the consultation, as stated below. These would ensure there is no ambiguity over whether agents such as metering agents, debt referral agencies, credit reference agencies, or demand reduction / energy efficiency advisors are covered by the regulations:.

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

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

- (ii) We agree that all of the types of TPI listed in the table are appropriate. We feel that one important type is missing from the list:

Type of TPI	Brief Description
Outsourced Sales / Call Centres	Third party organisations who carry out sales activities on behalf of a supplier under a bilateral outsourcing arrangement

If this type of TPI is not included it is possible that TPIs could convert their business model to this arrangement and hence avoid the regulations.

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

We do not think that TPIs should be excluded based on either their commercial model (eg charity / not for profit / for profit) or based upon the type of interface with customer (ie face to face / phone / web).

We believe that customers should be provided with an equal level of protection across all these types of organisations.

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

Yes, we agree with the recommended option for regulating non-domestic TPIs. We recommend that Ofgem ensures TPIs are fully engaged in the drafting of the Code of Practice and its governance arrangements. This will promote understanding of the Code amongst TPIs, will ensure it is fit for purpose, and will assist with a smooth transition to the new arrangements.

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

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

Whilst we agree with the activities identified, we do not consider that either of the proposed governance options provide a governance structure which is sufficiently independent. Of the two options, our preferred governance option is definitely A. We do not consider that governance option B will enable effective decision making.

The expulsion of a TPI from the code is likely to terminate that party's ability to participate in the industry. This will have a serious financial impact on that organisation. The removal of a competitor could provide a financial benefit to a competing TPI. According to which supplier the expelled TPI primarily worked with, there could also be a financial benefit / financial loss to certain suppliers. Hence a code board made up of representatives from suppliers and TPIs will never be independent and will certainly not be able to make unfettered decisions on whether to penalise or expel any one TPI.

To ensure a robust process, we would feel strongly that the following set up is more appropriate:

- (i) Changes to the Code should be carried out by industry consultation through a modification process with Ofgem determining outcome; and*
- (ii) The following activities should be carried out by a body which is independent of both suppliers & TPIs: assessment of new TPIs, monitoring compliance, evidencing breaches, recommendation for sanctions for serious or persistent breach; and*
- (iii) The following activities should be carried out by Ofgem: Investigation of serious or persistent breach, imposing penalties, expulsion of TPIs from the code, hearing appeals.*



In summary we agree with Ofgem's proposal to set up a Code of Practice combined with a licence condition to only work with TPIs accredited under the code. TPIs acting as outsourced call centres should be included in the list of TPIs. And finally, we consider that an independent body can be used to monitor compliance and investigate breaches of the code, but that a governance body cannot be considered independent if it is made up of suppliers and/or TPIs.

Please do not hesitate to call me on 01604 673179 with any queries.

Yours sincerely

Gemma Trembecki
Regulations Manager