

Ofgem
9 Millbank
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Attention Meghna Tewari

Date: 08.05.14

Ref: **Proposals for regulating non-domestic Third Party Intermediaries (TPI's) issued 14/02/2014**

Dear Ms Tewari

Please find our response to Ofgem's consultation – Proposals for regulating non-domestic Third Party Intermediaries (TPI's) issued 14/02/2014

Power Efficiency is and has always been fully committed to the principles enshrined within the work carried out by Ofgem in relation to the introduction of a Code of Practice for TPI's working in the non-domestic energy sector. We are and will remain fully transparent in our dealings with our clients that contract to work with us. We therefore share Ofgem's principle objective in wishing to protect the interest of both existing and future energy (non-domestic) consumers.

Our response to this consultation reflects this shared objective; however, we believe that our answer to Question 1 regarding the definition of a TPI is integral to this objective.

We acknowledge Ofgem's observation in the consultation document referring to miss-selling involving TPI's; however, we believe that the majority of such complaints refer particularly to those TPI's operating in the micro business sector. Whilst we believe that the clients within the industrial and commercial sectors generally understand the service they are receiving and the costs they pay, we do believe that all TPI's should be fully transparent – as we are.

Question 1 – Do we agree with the definition of TPI's? Please provide any suggestions along with supporting information.

We do not agree with the current definition as included in the Consultation and draft working Code.

We believe that as proposed, this definition and description of those to be covered, risk capturing organisations that were not intended to be caught by such energy regulation. Ofgem's principle objective is stated to be to protect the interests of both existing and future energy consumers.

A particular sector that we strongly believe should not be caught by this regulation is Managing Agents. Many TPIs, mostly in the larger sector (energy consultants), have significant business in this sector. Managing Agents are strictly regulated as to how they operate under the Royal Institute of Chartered Surveyors (RICS) regulation and are not structured to carry out the function of an Energy Consultant (TPI) in terms of the procurement and management of energy. Many use TPIs to source energy contracts, using their expertise and professionalism. Forcing fresh layers of organisations to become regulated TPI's when their business is focused elsewhere and currently contracts to use an accredited TPI, will not benefit consumers. Indeed service delivery will be compromised and the consumer will incur significantly higher costs. Ensuring that TPIs working in these and the wider non-domestic sectors are professional and provide the best service over all areas of energy procurement will best achieve our shared objectives to provide the best and most cost effective service to the consumers.

Ofgem suggests that when looking at suppliers of 'bundled services', such as Managing Agents it only wants to regulate the activities connected to energy. However the consequences of doing so do not appear to have been recognised. Ultimately the consumer under the current arrangement (with a fully transparent and accredited TPI) will be provided with the best and most cost effective energy procurement solution, one that benefits from a highly competitive price gained by the TPI being able to bring significant contract volumes to the market as well as benefiting from the TPI's own economies of scale.

A definition that we would suggest is as follows:

“A non-domestic TPI is an intermediary engaged in energy contract negotiations between a non-domestic procurer of energy and an active energy supplier however it may be paid”

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

In your **table 2.1** the reference to Bundled Services Providers causes concern: Our definition as above in answer to **Question 1** would satisfy our concern in this area.

Ofgem poses the question “whether the proposed regulatory approach risks not covering those TPI's who do not contract directly with a supplier”. In general TPI's do not contract directly with a supplier; they facilitate a contract between a supplier and customer. All TPI's acting as an interface between the procuring body and the supplier will be covered by the Code.

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

Any central body that procures energy using the services of a TPI should not be classified as a TPI, given that the service it offers will be delivered by a fully accredited and regulated TPI and will therefore be transparent in its dealings with the customer.

The TPI through the intended accreditation process will be fully regulated through Ofgem, therefore providing its consumers with the best, most cost effective and professional level of service.

The Code should only apply to energy supplier contract negotiations and not advice outside of that remit.

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

No we do not:

We believe that the best option for regulating the Code would be via option 4: Licensing non-domestic TPI's. We are not convinced that licensing TPI's in itself will provide a barrier to entry for smaller TPI's, providing the definitions of a TPI is refined as we have suggested. The cost implications referred to by Ofgem in the consultation will be mainly in the area of ensuring that the TPI can meet the conditions and stipulations of the Code of Practice, however it is regulated.

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

PE believes that governance option A should be adopted. Ofgem will be responsible for all aspects of governance of the Code of Practice.

We do not believe that suppliers as such should be involved in the governance of the Code anymore than TPI's are involved in the governance of supplier licensing.

Ofgem's role in managing the governance would ensure that the Code and its management are fully independent.

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

Code board members should be recruited by Ofgem using suitable energy industry 'experts' to carry out this function. Board members would be appointed to represent the interests of the broader energy community and consumers rather than the businesses that they may have previously operated within.

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

Under the Code of Practice there will be a requirement for TPI's to ensure that they have a complaints procedure in place and that such complaints are monitored.

We do not believe that complaints should be published other than through the auditable complaints procedure log, which would be open to inspection by the authorised body. Complaints may be either substantiated or non substantiated and might be expected to vary in number dependent on size of the TPI. A wider publication of this information would be anti competitive.

Appendix 1

Question 1A1: Do you agree with our assessment of likely impact on Consumers? Is there any other issue/s we should be considering?

Ofgem is right in assuming that there is likely to be a cost impact on consumers as TPI's seek to pass on additional costs imposed by the new regime. It is for Ofgem to consider the value of the benefits to the consumer in relation to these additional costs; however PE strongly believes that TPI's must be transparent in their dealings with customers. The level of the cost increases will depend on the final scope of the Code and definition of those to be covered under the regulation as well as the level of professionalism being currently demonstrated by individual TPI's.

Question 1A2: Do you agree with our assessment of likely impact on Industry? Is there any other issue/s we should be considering?

There will be an additional cost burden on TPI's as they introduce or formalise measures required under the new Code of Practice. These costs will depend on the final shape that the Code and its definitions take and the current level of professionalism of the individual TPI's. If the definition of a TPI is not refined so as not to include additional layers of organisations classified as TPI's, the additional cost to industry – and therefore consumers will be far greater. Forcing fresh layers of organisations to become regulated TPI's where they currently contract to use what will become an accredited TPI, will not benefit consumers. As previously highlighted, service delivery will be compromised and the consumer will incur significantly higher costs.

Question 1A3: Do you agree with our assessment of likely impact on Competition? Is there any other issue/s we should be considering?

We believe that it is inevitable that some, largely smaller TPI's will cease to operate under the new regime, however, with the provisos we have already made, all TPI's being covered by the same set of rules of engagement and regulation should provide a level playing field and assist true competition in this sector.

2.7 Impact on sustainable development and the environment

PE believes that larger TPI's with a broader customer offering will continue to grow and develop, offering a wide range of services around energy efficiency and demand side management, taking an increasingly innovative approach. This will be the largest area of growth for TPI's and this in itself will reduce the number of TPI's that will be able to be competitive in the future. This will be to the benefit of energy consumers and will provide increased and much needed focus on reducing energy emissions whilst at the same time reducing costs for business. The Ofgem regulation will add further pressure on this market development.

Question 1A4: Are there any distributional effects that our policy proposals could cause?

N/A

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

- 1. Initial (one- off costs)**
- 2. Ongoing costs**

- There will be one off costs of ensuring that our procedures fully comply with the Code requirements. We will be clearer on this element once the Code is finally defined
- Likewise, there may be on-going costs and again we will be clearer once the code has finally been agreed

4 Question 1A6: 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.

The potential unintended consequences that cause us major concerns relate to the following:

- The definition of a TPI needs to be clear as to not capture those businesses that contract out to other TPI's that are fully compliant with the code, therefore adding unintended cost burdens on all parties including the consumer
- The code should only apply to those TPI's that carry out or advise on the procurement of a an energy supply contract

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