

OFGEM

Proposal for regulating non domestic Third Party Intermediaries (TPIs)

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Consultation Response from Zenergi Ltd . 9<sup>th</sup> May 2014

General Response:

As a member of the working group Zenergi have been involved in the discussions around the whole subject of regulating TPIs. The progress has been steady and the Code of Practise looks appropriate to the point it has reached. Unfortunately, the code is missing the fundamental area of monitoring and enforcement, make the code incomplete and unusable. Any comments to the consultation cannot be full and complete without any drafting of the monitoring and enforcement section.

Our responses below are given on the basis the Code of Practise is incomplete.

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

Yes we agree with the definition. **‘an intermediary between a non-domestic consumer and an energy supplier, providing advice and assistance to the customer in relation to their energy supply needs’**

The all-encompassing definition of TPIs is very wide and needs to be backed up by the table (list as defined in Question 2) that defines the types and the scope of the TPIs.

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

No, the types of TPIs need to split Broker and Consultant into separate types as backed up by the glossary of TPI definition.

The definition (in the Glossary) of the Broker is good and narrow, restricted to an organisation that deals with the contract selection and negotiation with no other services.

The Consultant should have a separate definition in the table to include brokering definition and energy service activities that help in the management of the customers supply. It includes but not confined to energy efficiency measures.

Bundle Services definition is to wide and not restricting the definition to business that are claiming to be knowledgeable in the energy market. Bundled services would include Landlords.

(NB These glossary definitions are not followed throughout the consultation document . as the term Broker is used throughout this consultation document, any comments should be restricted to TPIs.)

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

We do not agree with then general sentiment of that the definitions should be narrowed further. In essence, any business that provides a service as **an intermediary between a non-domestic consumer and an energy supplier, providing advice and assistance to the customer in relation to their energy supply needs’** is a TPI regardless of how the business is set up or receives payment (commercial, not for profit, charity, advisory).

Based on this premise the suppliers are fully involved in the code of practise. Any business that influences the non-domestic consumer as per the TPI definition is covered. That includes telephone based, web based and non-profit organisation. Landlords who deal with the suppliers and negotiate on behalf of their tenants (tenants pay their own bill to suppliers) fall into the TPI definition.

We agree that current official data collectors and smart metering products fall outside of the scope at present.

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

In simple terms we agree with the option 3 (Code of practise underpinned by suppliers only working with CoP TPIs). But this is dependent on the code being complete and finalised with the Monitoring and Enforcement section of the code being complete and concise. Without this there is no Code of Practise.

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

We agree with Option B . the independent board would be more effective but would need to have the code finalised including the Monitoring and Enforcement elements. The purpose of the board would be to manage the code, not to finish writing the CoP. (OFGEM have managed the Code so far and need to manage the process of finishing it).

Once the full Code is approved then the makeup of the Board could be finalised to ensure adequate representation from suitable sections of the industry. The structure looks good after the code is finished. Voting rights and vetoes are not detailed.

There is a concern over how this is funded, passing the cost to the suppliers and TPI means more cost to the consumer.

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

Simple answer depends on the requirements of monitoring and enforcement. If the code is finalised there only needs a small monitoring and enforcement team independent of TPI or Suppliers, the Change Advisory Group needs to be made up of TPIs and Suppliers and OFGEM. The top level governance depends on voting rights (most needed at times of change) which must be even handed across the mix of interested parties. If OFGEM require a veto this could be making the rest of the governance board toothless.

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

We see no reason to pull this bit out of the code and report to the market before the code is finalised.

You would like to think complaint monitoring is handled by every business whatever the size. To bring forward any reporting on the complaints monitoring and information sharing would require a categorisation of the complaints being reported. This must be part of the monitoring section of the code so until this is finalised there would be no consistent basis on which to make any reports or useful benchmark. The definition of types and areas of complains has to be the first step, so we come back to the missing areas of the code of practise.

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Impact Assessment-

Appendix 1 Draft Impact Assessment:

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

Speaking from Zenergi's prospective we already operate our business in such a way that matches the proposed Code of Practise to provide open and transparent dealings with our customers. Our 98% retention rate backs this up. So the CoP will have no impact on our customers. Other Consultants would probably say the same. The main concern is our customers will not see any benefit and there is a likely hood the Code of Practise will add cost to the whole process, which ultimately is paid for by the end user. The cost of doing business across the market will increase as more compliance is required.

Question 2: *Do you agree with our assessment of likely impact on industry? Is there any other issue/s we should be considering?*

As above – concern on the cost of additional policing of a CoP.

Question 3: *Do you agree with our assessment of likely impact on competition? Is there any other issue/s we should be considering?*

The monitoring and enforcement could have the effect of creating a barrier to entry and penalise the smaller TPis. If this happens the level of competition reduces. The market was deregulated to promote competition, putting regulation in, risks reversing the process.

Question 4: *Are there any distributional effects that our policy proposals could cause?*

As above.

Question 5: *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);*

We are unable to comment as the code is incomplete, we would be plucking figures from thin air.

*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, monitoring compliance).*

The cost for implementation will depend on the detail and regularity of the reporting. If our systems can output the required information the cost might be small but without the detail on CoP it is impossible to make a financial assessment. Never the less, there would need to be a company representative to monitoring and managing the CoP, reporting process, additional data gathering etc. all of which we do not do at present. (As a significant consultant in mid-size business we would envisage some involvement in the Advisory Committee, which would cost dependent on commitment requirement.)

*Question 6: 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.*

All TPIs have been clumped into one large group and the information on the need for some form of regulation has been driven by hearsay and ineffective surveys creating a knee jerk reaction. We know there are some practises carried out by unscrupulous businesses but there is a feeling amongst the consultation groups that problem is confined to a very small section of the industry. The document quotes the 'Quantitative Research into Non-Domestic Consumer Engagement in and Experience of the Energy Market', quoting 31% of respondents had a negative view of brokers, yet only 12% used a broker. So out of 1300 surveyed they all had an opinion of a broker but only 156 had the experience of using a broker. The opinion of the 1300 surveyed was based on the telephone sales approach of the Broker which is an indication of a problem marketing and nuisance phone calls not on broker capability. This is evidence of a knee jerk reaction to a perceived problem with TPIs. By taking a different statistic from the same survey, of the users of broker service between 80 and 85% were highly satisfied with the TPI service, including transparency of costs, it could be concluded that TPIs are running well without regulation.

Never the less creating a Code of Practise has it merits but will incur inevitable cost in adhering to the code and has the potential to reduce competition, put the costs up to the end end-user. From Zenergi's prospectus we currently operate in such a way that matches the proposed CoP consequently incurring cost to achieve our high standard of service. To add an additional administration cost to achieve the same outcome would penalised Zenergi from a competitive aspect and effectively, help finance other brokers who are not as effective. We feel this will punishing the good guys.

Finally, we have a major concern that it has taken a year to get to this point and the difficult section of Monitoring and Enforcement has not be tackled. The market place is well served by TPIs with only a few problems in the sales and marketing approach, do we really need the level of regulation introduced by the Code of Practice?