

# Final proposals on the treatment of white label providers in the domestic retail market

## Statutory consultation

**Publication date:** 20 February 2015

**Response deadline:** 20 March 2015

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### Overview:

A white label provider is an organisation that does not hold a supply licence and instead partners with a licensed supplier to offer gas and electricity using its own brand.

In September 2014, we consulted on a package of proposals applying to new and existing white labels to replace the existing temporary arrangements. After considering the consultation responses, we think those proposals strike the right balance by upholding the key protections afforded to consumers by our Retail Market Review (RMR) reforms, while allowing room for white labels to develop.

We are now consulting on changes to the supply licences to give effect to our proposals. We welcome responses by 20 March. Subject to the outcome of this consultation, we are aiming for these new arrangements to apply from July 2015. More broadly, we are keeping the effectiveness of the RMR under review and its impact is also being considered by the Competition and Markets Authority in the context of their ongoing market investigation. These white label arrangements may be revised following either of these reviews.

## Context

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We introduced the Retail Market Review (RMR) reforms between August 2013 and July 2014 to make the retail energy market simpler, clearer and fairer for consumers. During the development of the domestic RMR rules, we recognised that white labels have the potential to benefit consumers. At the same time, however, we noted the risk that suppliers could use white labels to undermine our aims.

Alongside the RMR reforms, we therefore created temporary arrangements for white labels that existed on 1 March 2013. Those arrangements have allowed us to consider how to fit white labels within the RMR rules in a way that is in consumers' interests. We now want to put in place arrangements that apply to both existing and new white labels.

## Associated documents

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All documents are available at [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

- White Label Providers – Consultation, 11 September 2014
- White Label Providers – Cover Letter for Directions, 13 August 2014
- White Label Providers – Stakeholder Event Minutes, 13 August 2014
- White Label Providers – Call for Evidence, 7 March 2014
- The Retail Market Review – Implementation of Simpler Tariff Choices and Clearer Information, 27 August 2013
- The Retail Market Review – Statutory consultation on the RMR domestic proposals, 20 June 2013
- The Retail Market Review – Final domestic proposals, 27 March 2013
- The Retail Market Review – Final Impact Assessment for domestic proposals, 27 March 2013
- The Retail Market Review – Updated domestic proposals, 26 October 2012
- SPA Future Thinking, Options for cheapest tariff messaging on customer communications, Report of qualitative research, 26 October 2012

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## Executive summary

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Ofgem's principal objective is to protect the interests of existing and future energy consumers. One of the ways in which we aim to do this is by promoting competition and consumer engagement, while providing for appropriate consumer protection. As part of this, we are actively considering how to facilitate retail market entry through alternative business models. One such model is a white label arrangement, where an organisation does not hold a supply licence but instead works in partnership with a licensed supplier to offer energy using its own brand.


We created temporary arrangements for pre-existing white labels as part of the Retail Market Review (RMR) - our package of reforms to make the retail energy market simpler, clearer and fairer for consumers. We recognise that the benefits of these temporary provisions, which expire at the end of 2015, are currently not available to licensed suppliers that did not have white labels on 1 March 2013. As such, we are acting now to put in place regulatory arrangements as soon as possible so that they apply to all suppliers.

The retail market is characterised by a significant proportion of 'sticky' consumers, who are unable or reluctant to shop around and switch to get a better deal. Most of these sticky consumers are with the incumbent larger suppliers. White labels can play a role in engaging these customers through the offer of distinct tariffs, higher levels of customer service and different sales channels. However, the existence of white labels may discourage partner suppliers from competing as strongly on price or quality of service as they might otherwise. Instead, they may rely on white label brands to attract more active, engaged consumers through cheaper tariffs.

Without any changes, the end of the current temporary arrangements would severely constrain the ability of white labels to operate in the market and limit the potential benefits they offer. On the other hand, allowing white labels to have exactly the same flexibility as suppliers could undermine the aims of our RMR reforms. For example, it would enable incumbent suppliers to 'hide' their most competitive deals on white label tariffs, so helping to segment the market between active and sticky consumers.

In the light of responses to our September 2014 consultation, we consider that our proposals strike the right balance by upholding the key protections afforded to consumers by the RMR, while allowing room for white labels to develop:

- **On tariffs:** We propose to apply the tariff cap for each white label separately and not to set a limit on the number of white labels that a supplier can have. We also propose to allow white labels to differentiate themselves from their partner supplier in the other RMR tariff rules, including on discounts and bundles. This extends the current flexibility in the temporary arrangements to new white labels and facilitates the benefits we have seen around consumer engagement.
- **On information:** We propose to require suppliers to inform customers about their white label tariffs when they are the cheapest via the Cheapest Tariff Message (CTM). For white labels, we propose that the CTM includes the partner supplier's tariffs, but not the tariffs of its other white labels. This supports



## Final proposals on the treatment of white label providers in the domestic retail market

transparency around the relationship between supplier and white label so that consumers are told what their cheapest deal is with their licenced supplier, whatever brand it is marketed under.

Subject to the outcome of this statutory consultation, we want to introduce these changes as soon as possible so that they apply to all suppliers equally. As such, we propose implementation would be 56 days after the publication of our decision document. At present, we envisage the arrangements applying from July 2015.

We are keeping the effectiveness of the RMR reforms under review and their impact is also being considered by the Competition and Markets Authority in the context of their ongoing market investigation. These new white label arrangements may be revised following either of these reviews.

# 1. Introduction

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1.1. A white label provider works in partnership with a licensed supplier to offer gas and electricity to consumers using its own brand. The white label does not have a supply licence of its own.<sup>1</sup>

1.2. This document sets out our final proposals for regulating suppliers with white labels in the domestic retail energy market.<sup>2</sup> Alongside this document, we have produced two supplementary appendices that contain the proposed changes to the gas and electricity supply licences.

1.3. Our proposals aim to facilitate the development of business models that can increase consumer choice and engagement in the domestic retail energy market. We seek to do this while ensuring consistency with the aims of our domestic Retail Market Review (RMR) reforms.<sup>3</sup>

## Retail Market Review and white labels

1.4. The RMR reforms aim to make the retail energy market simpler, clearer and fairer for consumers. We implemented them in a phased way between August 2013 and July 2014.

1.5. During the development of the domestic RMR rules, we recognised that white labels have the potential to benefit consumers. For example, a white label partnership could help household brands enter into the retail energy market. At the same time, however, we noted the risk that suppliers could use white labels to undermine our aim of a simpler, clearer and fairer market.

1.6. In the domestic RMR decision document, we said we would examine the regulatory framework for suppliers with white labels. To do this, we introduced a temporary supply licence condition, which applies only to white labels that already existed on 1 March 2013. This has allowed those white labels to continue to operate while we consider their treatment.

1.7. To inform our policy development, we had a call for evidence in March 2014 and a stakeholder workshop in July 2014. We then consulted on proposals for regulating suppliers with white labels in the domestic retail energy market in

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<sup>1</sup> In chapter 3, we present a list of white labels in the domestic retail market, as identified by their partner suppliers in May 2014.

<sup>2</sup> In this document we use the terms 'market' and 'markets' as shorthand for referring to different segments of the energy sector. For the avoidance of doubt these terms are not intended to describe or otherwise suggest the approach that we may take for the purposes of market definition in competition law investigations.

<sup>3</sup> White labels also exist in the non-domestic market. However, non-domestic RMR rules do not raise the question of the treatment of white labels. On that basis, we have decided not to examine the arrangements relating to non-domestic white labels at this stage. This does not prevent us from doing so at a later date.

September 2014.<sup>4</sup> The consultation closed in November 2014. We received 16 responses. We have now published the non-confidential responses that we received together with this document. In chapter 2, we provide a summary of the responses.

## Review of arrangements

### Energy market investigation

1.8. In June 2014, we referred the energy market to the Competition and Markets Authority (CMA) for a full independent investigation.<sup>5</sup> This decision followed the competition assessment that we carried out with the CMA and the Office of Fair Trading.

1.9. The temporary arrangements that are in place only provide flexibility to white labels that existed on 1 March 2013 and do not apply to new white labels. We want to correct this at the earliest possible date. This is why we have developed our proposals while the CMA investigation is ongoing. We have kept the CMA informed of our proposals, so that they can be considered as part of their ongoing investigation.

### RMR evaluation

1.10. We are committed to review the RMR rules by 2017. We have already published our evaluation framework and baseline results.<sup>6</sup> We plan to review our proposals for the treatment of white labels together with the RMR rules.

## Structure of the document

1.11. The document works as follows:

- Chapter 2 contains our proposals. It explains the relevant RMR rules, the responses to our consultation and our conclusions.
- Chapter 3 sets out the expected impact of our proposals. We provide an overview of the current situation, as we think this will help stakeholders understand our assessment.
- Chapter 4 presents our next steps, including our plans to increase our monitoring of white labels.

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<sup>4</sup> <https://www.ofgem.gov.uk/publications-and-updates/white-label-providers-consultation>

<sup>5</sup> <https://www.ofgem.gov.uk/publications-and-updates/consultation-proposal-make-market-investigation-reference-respect-supply-and-acquisition-energy-great-britain>.

<sup>6</sup> <https://www.ofgem.gov.uk/publications-and-updates/domestic-retail-market-review-%E2%80%93-evaluation-framework-and-baseline-results>

## 2. Final proposals on white labels

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### Chapter Summary

Having considered the responses to our consultation, we have concluded that the proposals in it provide an appropriate treatment of white labels in the domestic retail market. Our proposals aim to facilitate the development of white labels and at the same time provide consumers with information to assess whether a white label tariff is in their interest. We would like our proposals to be implemented at the earliest possible date.

### Questions in this chapter

**Question 1:** Do you think the implementation date of our proposals is appropriate? If not, please explain your reasoning, suggest an alternative implementation date and provide evidence to support it.

**Question 2:** Do you agree that the amendment to the white label definition captures the policy intent of our proposals? If not, please explain your reasoning.

**Question 3:** Do you have any comments on our proposed supply licence condition changes in the supplementary appendices?

### Current assessment of white labels

#### Features of white labels and benefits to consumers

2.1. In our September 2014 consultation we set out the features of white labels, informed by the responses to our call for evidence. We explained that partner suppliers are usually responsible for the billing of white label customers. White labels are typically involved in customer-facing activities, such as marketing and the handling of non-billing related enquiries.

2.2. We also set out our assessment of white labels. We said that white labels might bring non-price benefits to the retail market:

- More choice for consumers: white label tariffs can be designed to meet the needs of particular customer groups, which suppliers might otherwise choose not to focus on in their core offering. The example we provided in our previous consultation is the gas tariff of Ebico, which has a zero standing charge and hence might be of interest to low gas users.
- High levels of customer service: some white labels might put the emphasis on enhanced customer service as their unique offering. For example, research undertaken by Which? in November 2013 and October 2014 shows Ebico as having the lowest average call waiting time. Moreover, white labels have



performed strongly in terms of customer satisfaction relative to their parent suppliers.<sup>7</sup>

- More consumer engagement: some white labels have well-known brands, such as Sainsbury's Energy and M&S Energy. In addition, they might also have marketing channels typically not available to suppliers, such as their own retail outlets.

2.3. However, we noted our view that white labels have a limited benefit on price competition as informed by our March 2013 call for evidence. This is because white labels tend to decide jointly with their partner suppliers the price of white label tariffs, hence exercising a lower competitive pressure than a new supplier.

### **Consultation responses**

2.4. The majority of respondents agreed on the potential non-price benefits of white labels. However, an academic group was not convinced of those benefits. They questioned the extent to which white labels provide "real" choice. They also questioned why suppliers cannot offer the same high level of service and marketing.

2.5. White labels and their partner suppliers disagreed on the limited benefit of white labels on price competition. They pointed to the price differences between some partner supplier and white label tariffs as evidence of price competition between them, as well as with the rest of the market.

### **Conclusion**

2.6. We are satisfied that white labels can have non-price benefits. We do not wish to imply that all white labels will deliver all the benefits that we have identified. Instead, the specific examples show that different white label models have the potential to deliver each of those non-price benefits. How white labels compare to their partner suppliers on non-price aspects depends on commercial decisions.

2.7. We remain of the view that the potential benefits of white labels for price competition are more limited due to the role of partner suppliers in pricing decisions. Indeed, the existence of white labels may discourage partner suppliers from competing as strongly on price as they might otherwise. Instead they may rely on using white label brands to attract more active, engaged consumers through cheaper tariffs.

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<sup>7</sup> <http://www.which.co.uk/news/2013/11/energy-companies-keeping-you-on-hold-340389/>, <http://www.which.co.uk/news/2014/12/which-energy-firm-takes-30-minutes-to-answer-its-customers-calls-387477/> and <http://www.which.co.uk/switch/energy-suppliers/energy-companies-rated>

## Tariff proposals

### Existing requirements and exemptions

2.8. The RMR reforms introduced rules on supplier tariffs. These rules aim to make it easier for consumers to engage with the market. A number of them make reference to all the tariffs of the supplier. This has a potential impact on white labels, as white label tariffs are offered under the partner supplier's license. The rules include the following:<sup>8</sup>

- Tariff cap: a supplier can have up to four domestic core tariffs per fuel and meter type in each region.
- Surcharges and discounts: a supplier must have the same level of surcharges and discounts across all its tariffs.
- Optional bundles and reward points: a supplier must make any optional bundle and reward point scheme that it offers available across all its tariffs.
- End of fixed-term tariffs: a supplier must move customers at the end of a fixed-term contract to the cheapest variable price tariff<sup>9</sup> (unless the customer expresses a different preference).
- Expensive 'dead' tariffs:<sup>10</sup> a supplier must move customers on dead tariffs to the cheapest variable price tariff, if this is cheaper for the customer than the dead tariff.<sup>11</sup>

2.9. During the RMR, we noted the potential for white labels to deliver more choice and promote consumer engagement. At the same time, we recognised the risk of suppliers undermining the simplicity aim of our tariff rules by creating additional white labels. In order to give this issue further consideration, we introduced temporary exemptions. The exemptions are as follows:

- Temporary exemption from the tariff cap: the white label tariffs that a supplier had on 1 March 2013 do not count towards its tariff cap. Any white label tariff that was launched after this date counts towards the tariff cap.<sup>12</sup>

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<sup>8</sup> For a comprehensive and accurate description of these rules and the temporary exemptions discussed later on, please see the supply licence condition 31D and the references to other supply licence conditions within it. The summary of the conditions in this document should not be relied on as an accurate or up-to-date statement of the rules in the supply licence.

<sup>9</sup> This tariff must be selected based on the customer's consumption, compatibility with the meter in the customer's premises, the customer's current payment method and the customer's existing choice of online or offline account management.

<sup>10</sup> A dead tariff is a variable price tariff that is not open to new customers.

<sup>11</sup> The same considerations as with the end of fixed-term tariffs apply to this case.

<sup>12</sup> Where a white label tariff which existed on 1 March 2013 (and hence is exempted from the

- Temporary exemption from other RMR tariff rules: where white label tariffs already existed on 1 March 2013, other RMR tariff rules (including those listed above) treat those tariffs as separate from the other tariffs of the partner supplier. For example, white label tariffs of the same white label must have the same level of surcharges and discounts, but the level can be different to that of the other tariffs of the partner supplier.

## Reasons to intervene and proposals in our previous consultation

2.10. We want to facilitate existing and new white labels, so that they can provide more consumer choice and engagement. To this end, we propose to allow existing and new white label tariffs outside the tariff cap for all domestic suppliers. We also propose to extend to all domestic suppliers the temporary arrangements on the other RMR tariff rules.

**Proposal 1:** Every white label can have up to four domestic core tariffs per fuel and meter type in each region.

**Proposal 2:** No restriction on the number of white labels that a supplier can have.

**Proposal 3:** White label tariffs treated as separate from their partner supplier in the RMR tariff rules on surcharges, discounts, optional bundles and reward points, end of fixed-term tariffs and expensive dead tariffs.

## Consultation responses

2.11. Our tariff proposals received broad support. Among industry respondents, only one independent supplier without white labels expressed a negative view. The supplier argued for all industry participants to be licensed in the interests of transparency and accountability. An academic group thought that our tariff proposals would negate the tariff cap.

## Conclusions

2.12. We consider that the tariff proposals in our previous consultation are in consumers' interests. We are proposing changes to supply licence conditions that will reflect them.

2.13. We disagree with the view that our proposals negate the tariff cap, as we are not providing suppliers with additional flexibility to market their own tariffs. Later in this chapter we explain our proposal to make a minor amendment to the definition of white label tariff. We hope this will clarify any misunderstanding, and are inviting views on it. Nevertheless, we recognise the risk of white label partnerships that are not in the spirit of our proposals. In chapter 4, we set out our intention to monitor the situation closely and keep these arrangements under review.

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core tariff cap) is replaced with another white label tariff of the same white label, this new white label tariff is also exempted from the core tariff cap of the partner supplier.

## Information proposals

### Existing requirements and exemptions

2.14. As part of the RMR reforms, we introduced rules to ensure that consumers receive, and have access to, clear information that allows them to engage with the energy market. One of those rules, the Cheapest Tariff Message (CTM), aims to raise awareness of the biggest savings that consumers could achieve by switching to another tariff of their supplier. It requires consideration of all the tariffs of the supplier:

- CTM: the supplier must present this information on page 1 of the bill and in other regular customer communications. It contains two savings messages, expressed in pounds per year and based on the personal usage of the customer:
  - The first, 'narrow' message, informs customers of any savings that they could achieve by switching to the cheapest similar tariff of their supplier. By similar tariff we mean a tariff compatible with the meter in the customer's premises and that has the same contract nature (variable price tariff with or fixed price tariff) and account management (online or offline) as the tariff that the customer is in.
  - The second, 'wide' message, informs customers of any savings that they could achieve by switching to the cheapest overall tariff of their supplier.

2.15. Consistent with our approach on the RMR tariff rules, we opted for a temporary exemption in order to consider the treatment of white label tariffs further. The temporary exemption is as follows:

- Temporary exemption on the CTM: where a white label already existed on 1 March 2013, the narrow and wide CTM treat white label tariffs as separate from their partner supplier. That is, customers on white label tariffs do not see tariffs offered under the partner supplier brand and customers on tariffs offered under the partner supplier brand do not see white label tariffs.

### Reasons to intervene and proposals

2.16. White label tariffs are offered under the license of the partner supplier. We think that suppliers should be transparent with their customers about the cheapest tariff they offer regardless of the brand they use. We are concerned that a supplier could 'hide' its cheapest tariffs on a white label, and propose to end the temporary exemption for the wide CTM.

2.17. For white labels, we think the wide CTM should work in the same way, with customers on white label tariffs being told if the partner supplier offers a cheaper tariff under its own brand.

2.18. In the RMR we prescribed the content of the CTM, to make sure that suppliers do not include additional information that might detract from its purpose. We think it is important that suppliers and white labels explain to their customers why the wide CTM presents information on a tariff that may have a different brand. Hence we propose to require a statement saying that they work in partnership every time they display each other's tariffs in the CTM.

2.19. We have considered the case of suppliers that have more than one white label. We previously recognised that there may not be a direct relationship between white labels of the same partner supplier. This would make any messaging more difficult to explain and understand. Hence, we proposed that white labels do not need to include in the calculation of the CTM the other white label tariffs of the same partner supplier.

**Proposal 4:** Every partner supplier to include its white label tariffs in the calculation of the wide CTM.

**Proposal 5:** Every white label to include the tariffs of its partner supplier in the calculation of the wide CTM, but not the tariffs of any other white label of its partner supplier.

**Proposal 6:** Partner suppliers and white labels to include a statement explaining their relationship when they display each other's tariffs in the wide CTM.

2.20. Our proposals on the CTM refer to the wide CTM. For the avoidance of doubt, we propose that customers on tariffs offered under the partner supplier brand would not see white label tariffs in the narrow CTM. Similarly, customers on white label tariffs would not see tariffs offered under the partner supplier brand in the narrow CTM.

2.21. Our position reflects the fact that the narrow CTM provides the savings that a customer would achieve by switching to a similar tariff. For example, the narrow CTM would not tell a customer to switch to a tariff that involves managing the account online when the customer is not currently doing this. Moving to a white label tariff might involve, for example, a different level of customer service, so we think our position is consistent with the aim of the narrow CTM.

## Consultation responses

2.22. Our CTM proposals received mixed views:

- Supportive, some asked for further intervention: seven respondents expressed support for our proposals. This includes a consumer group, five suppliers (one of them with white labels) and third party intermediary. We received several suggestions for our proposals to go further. In the interest of transparency, there was a suggestion that white labels should inform their customers of the cheapest tariff available across the partner supplier and all of its white labels. In addition, one respondent would like our CTM proposals to apply to both the wide CTM and the narrow CTM. Finally, another respondent asked us to

consider actions to prevent white labels from raising their prices in response to our proposals.

- Not supportive, proposed amendments or separate CTM: eight respondents disagreed with our proposals. This includes two partner suppliers, three white labels, two suppliers without white labels and an academic group. Some of them argued that the CTM proposal will generate customer confusion and does not take into account the non-price differences of white label tariffs. There was also a view by some of these respondents that our proposals may make some white labels consider their continuity in the market, as well as limit the entry of new white labels. Finally, some also added that the CTM proposals will reduce price competition.

## Conclusions

2.23. We remain of the view that suppliers should be transparent with their customers about the cheapest tariff they offer regardless of the brand they use. We developed our CTM proposals in a manner that we consider proportionate, intervening only where we had a specific concern. We have explained our concern that suppliers might use white label tariffs to avoid telling their customers about the savings that they could achieve by switching to the cheapest tariff that they offer.

2.24. We recognise that price is not the only element that consumers may want to consider when comparing tariffs. Indeed, suppliers are already required to tell their customers in the CTM that changing tariffs might involve materially different terms and conditions. We think that this, together with the additional statement explaining the partnership, should mitigate any customer confusion or excessive focus on price. We therefore intend to monitor the statements in the CTM to ensure consumers are not misled, and we would remind suppliers of the need to comply with relevant consumer protection law on misleading statements, and the requirement in the Standards of Conduct that they should treat their customers fairly.

2.25. A white label partnership provides a possible route to market entry. We have tried to facilitate the non-price benefits through our package of proposals. If an organisation wants to be treated as a standalone supplier, then it should consider obtaining its own supply licence.

## Implementation of our proposals

2.26. The temporary arrangements do not apply to new white labels. In order to address this, we aim to have our proposals implemented at the earliest possible date. We expressed this intention in our September 2014 consultation.

2.27. We also stated that we plan to revoke the temporary arrangements at the same time as we introduce our proposals. That is, we want the new arrangements to apply to all suppliers from the same date, regardless of the date that they start a white label partnership.

2.28. The tariff rules provide flexibility to suppliers, so they do not need any implementation time. It is only the CTM proposals that might necessitate some implementation time.

### **Consultation responses**

2.29. White labels referred us to their partner suppliers for views on the time necessary to implement our proposals. The two large suppliers with white labels said that the implementation of our proposals would require IT system changes, and that there are a number of incoming policies from Ofgem and the Department of Energy and Climate Change that would need to be implemented at the same time. One of them added that the implementation of the CTM proposals would require a redesign of supplier communications and training for call centre staff.

2.30. One large supplier without white labels wanted to see the tariff flexibility available as soon as possible to suppliers that do not benefit from the temporary provisions. The supplier also said that, based on similar IT projects, it would be reasonable to expect our CTM proposals to be implemented within six months.

### **Conclusions**

2.31. Our proposals work as a package, so we intend to have the tariff and information rules effective from the same date. Subject to the outcome of this statutory consultation, we would like our proposals to come into effect at the earliest possible date. Following due process, this would be 56 days after the publication of our decision document. At present, we anticipate the arrangements would apply from July 2015.

2.32. From the implementation date, suppliers would have to make sure that their customers are informed on relevant communications (eg bills) of the cheapest tariff available, irrespective of the brand used to offer it. We recognise that full implementation of our proposals is likely to involve some IT system changes for existing partner suppliers. We have been disappointed at the level of detail and ambition of submissions received on this subject. We understand, for example, that existing white labels use the same billing systems as their partner suppliers. As such, the necessary changes are less onerous than if they used separate systems.

2.33. We acknowledge that there might be a special case where it is in consumers' interest to allow additional time for a partner supplier and its white label to implement our CTM proposals via IT system changes. In that instance, we would consider a derogation request for a longer implementation time. We would assess any requests in line with our published derogations guidance.<sup>13</sup> For example, we may consider derogations for social tariffs targeted at vulnerable consumer groups.

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<sup>13</sup> <https://www.ofgem.gov.uk/publications-and-updates/guidance-derogation-requests-domestic-retail-market-review-rmr-licence-conditions>

## Definition of a white label tariff

### Existing definition

2.34. The definition of white label tariff in the temporary arrangements was based on the principle that white labels need to be sufficiently distinct from their partner supplier. It excluded any tariff that uses the brand name of a company within the corporate group of the licensed supplier. This exclusion aimed to ensure that suppliers did not create fake partnerships for the purpose of undermining our RMR tariff rules. For example, a tariff offered using the brand name of a subsidiary company of a licensed supplier would not be considered a white label tariff. Hence, it would count towards the tariff cap of the licensed supplier.

2.35. The definition of white label tariff in our previous consultation was as in the temporary arrangements, except for the removal of the requirement that a white label tariff needed to exist on or before 1 March 2013.

### Minor amendment to the definition

2.36. We propose to make a minor amendment to the definition of white label tariff, consistent with our policy aims. We want to make sure that the opportunities provided by our proposed rules are only available to genuine white label partnerships. Hence, we propose to consider a tariff to be a white label tariff only when the partner supplier is not involved in its marketing. For example, a tariff proactively marketed in a licensed supplier's website would not be considered a white label tariff regardless of the brand name used. Therefore, it would count towards the tariff cap of the licensed supplier.

2.37. We do not seek to prevent suppliers from associating their brand with the brand of another organisation. A supplier might wish to do this, for example, by offering a tied bundle with one of its tariffs. Our proposed amendment to the white label tariff definition does not constrain this or similar practices. It simply clarifies that if the supplier is marketing this tariff then we consider it to be one of the supplier's tariff, not a white label tariff.

2.38. For the avoidance of doubt, our proposed amendment of the white label definition does not remove any regulatory requirement. For example, there is an existing licence requirement for suppliers to take all reasonable steps to ensure that domestic consumers can readily identify the supplier whenever contacted by the supplier or its representatives.<sup>14</sup> For white labels, this means they must identify who their partner supplier is. A white label can market its white label tariffs and at the same time make it clear who the partner supplier is, without involving the partner supplier in the marketing activities.

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<sup>14</sup> This requirement is part of standard condition 25 of the supply licence.



## 3. Impacts of our proposals

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### Chapter Summary

We present some information on the pricing of partner suppliers, white labels and large suppliers without white labels to make it easier to understand the possible impacts of our proposals. In line with good practice, we then set out our assessment of the impact of the three main options for the regulatory framework covering white labels. This includes their potential impact on consumers and competition.

3.1. We have a statutory duty to carry out an Impact Assessment (IA) for proposals that we consider to be “important” within the meaning of section 5A of the Utilities Act 2000. Our approach to determining what is “important” within the meaning of section 5A is set out in our Impact Assessment Guidance.<sup>15</sup> This includes, for example, significant impacts on consumers or on people involved in the supply of gas and electricity in Great Britain.

3.2. Our proposals will have impacts on consumers and competition. However, we do not consider those to be significant enough to trigger our statutory duty to do an IA. We have nevertheless undertaken an IA in line with good practice. We think that this is a proportionate approach given the expected limited impacts of our proposals.

### Overview of the current situation

3.3. In this section, we first provide a list of white labels as identified by their partner suppliers. We then present some pricing information of partner suppliers, white labels and large suppliers without white labels. We think this data will make it easier to understand the possible impacts of our proposals.

### Existing white labels

3.4. As part of our policy development, we wrote to all domestic suppliers asking them whether they offered white label tariffs as of 21 May 2014. For those that answered yes, we asked them to tell us the name of their white label(s) and the date the arrangement commenced. The latter is relevant to identify which white labels are covered by the temporary arrangements, as these apply to white labels that existed on 1 March 2013.

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<sup>15</sup> <https://www.ofgem.gov.uk/publications-and-updates/impact-assessment-guidance>

**Table 1:** Partner suppliers and white labels

<b>Partner supplier (on 21 May 2014)</b>	<b>White label (on 21 May 2014)</b>	<b>Covered by the temporary arrangements</b>
British Gas	Sainsbury's Energy	Yes
OVO Energy	Woodland Trust Energy	No
Opus Energy	LoCO2 Energy	No longer applicable*
SSE	Ebico	Yes
	M&S Energy	Yes

\* LoCO2 Energy became a licensed supplier. It was covered by the temporary arrangements.

3.5. Table 1 below should not be considered an exhaustive or an up-to-date list of white labels. We have refrained from providing our own list, among other reasons, because of our proposed amendment to the definition of white labels. We will consider whether it is appropriate to publish a complete list of white labels once our new arrangements are in place.

### **Our tariff monitoring**

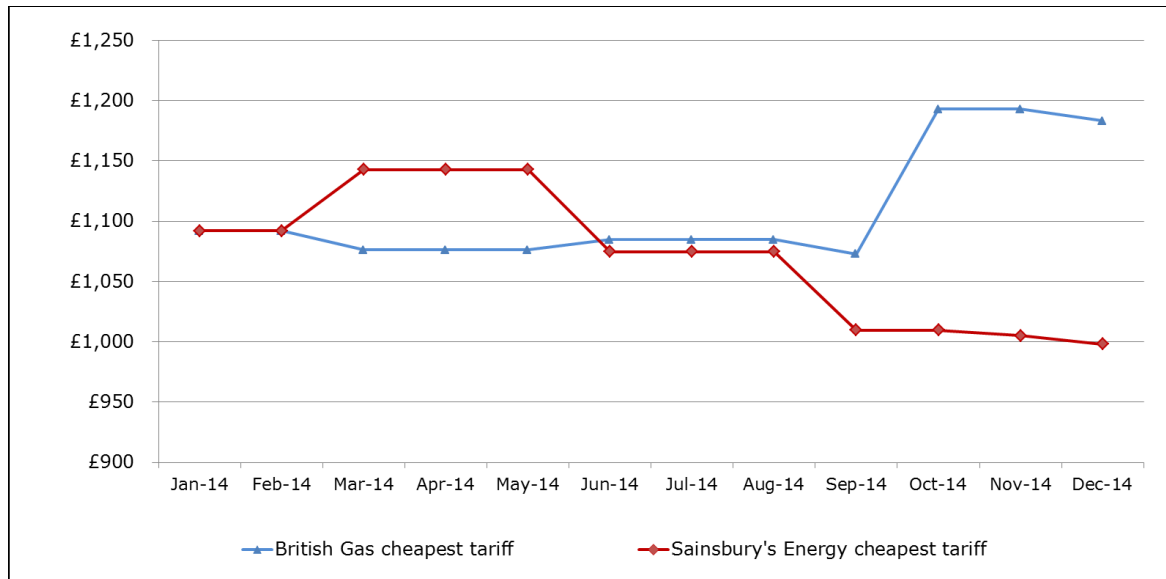
3.6. The tariffs offered by suppliers, both through their own brand and their white label's brand, typically have more elements than the price of energy.<sup>16</sup> For example, some tariffs might come with free shopping vouchers. There might also be related energy products that are only available through some of the brands used by a supplier. In addition, the level of service might be different across the brands.

3.7. Having said that, we consider the comparison of prices, across the brands used by partner suppliers, to be particularly relevant when assessing the impact of our proposals. The white label tariffs of British Gas and SSE benefit from the temporary arrangements. Among other things, this means that these partner suppliers do not have to inform their customers through their CTM on whether their cheapest tariff is a white label tariff.

3.8. In Figures 1 and 2 below, we show the cheapest tariff by partner supplier and white label on a monthly basis in 2014. The cheapest tariffs tend to be fixed-term tariffs. The movements in prices are typically driven by fixed-term tariffs being closed to customers and replaced with new ones available at a different price.

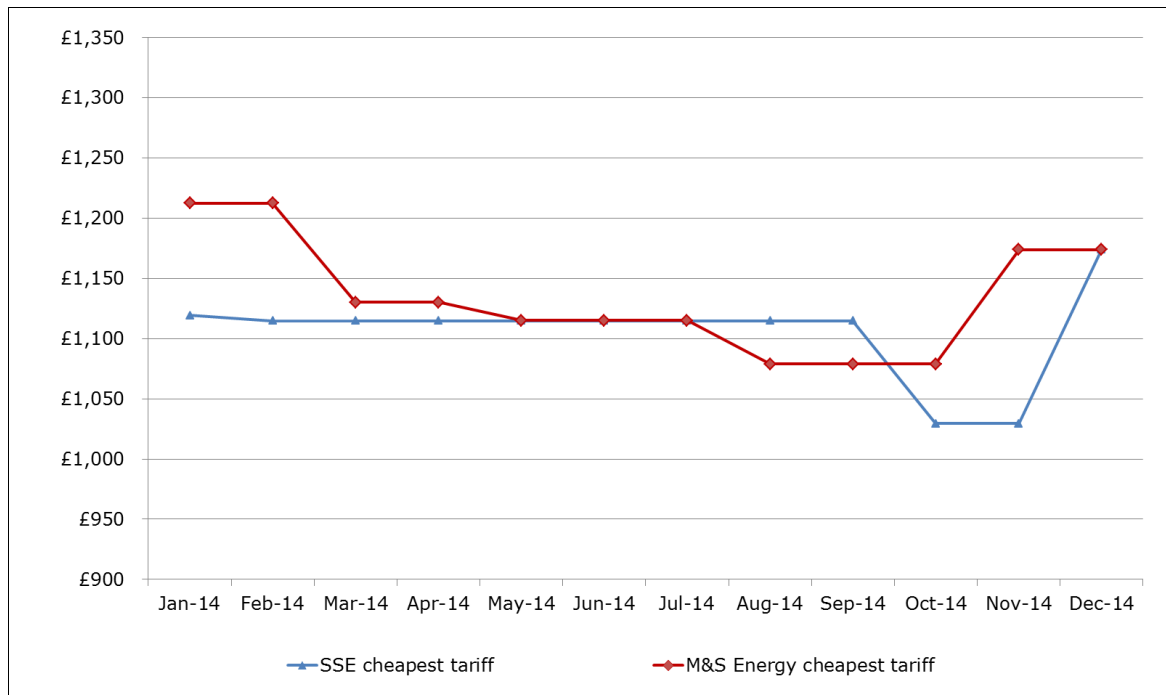
<sup>16</sup> As part of the RMR, we introduced a requirement for suppliers to produce a Tariff Information Label (TIL) for all their tariffs, including white label tariffs. The TIL presents the key tariff features in a standardised format. It is available on the websites of suppliers and white labels, as well as free of charge upon request. It is also provided before a consumer enters into a contract.

**Figure 1:** BG and Sainsbury's Energy - Dual fuel direct debit bills in 2014 (£/year)



Source: Ofgem analysis using Energylinx data for consumption values of 3,200 kWhs for electricity and 13,500 kWhs for gas. It includes any dual fuel discount and online account management discount.

**Figure 2:** SSE and M&S Energy - Dual fuel direct debit bills (£/year)\*



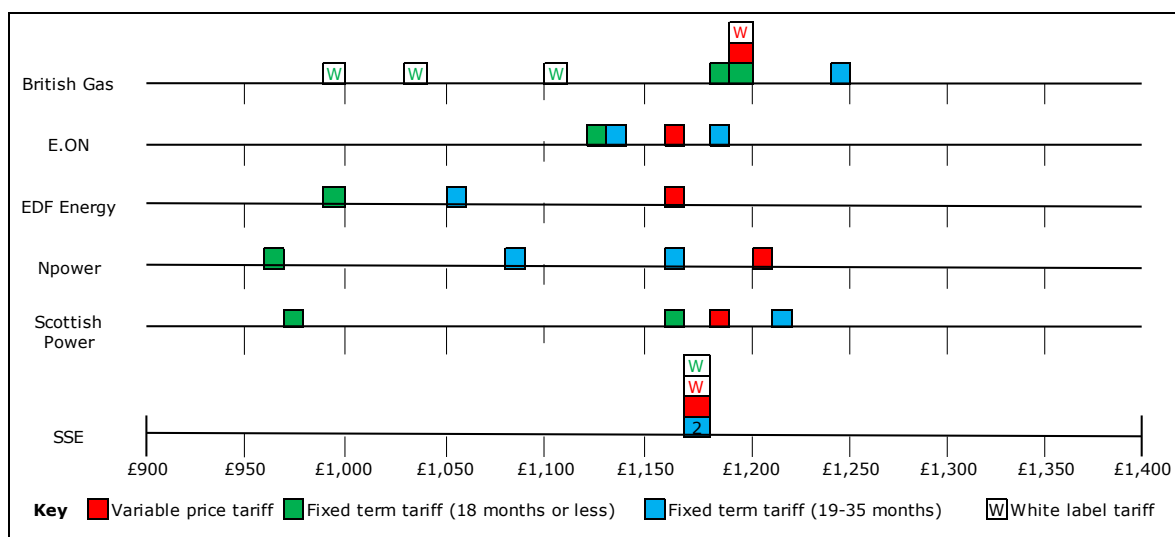
Source: Ofgem analysis using Energylinx data for consumption values of 3,200 kWhs for electricity and 13,500 kWhs for gas. It includes any dual fuel discount and online account management discount.

\* We have not included the white label tariff offered by SSE under the Ebico brand. Ebico's proposition involves the same price for every payment method. This offering is unlike any other presented in this figure thus making comparisons dependent on the chosen payment method.

3.9. Both British Gas and SSE have at some point throughout 2014 had the same cheapest price on tariffs offered under their brand and that of their white label. However, in some instances they have also had significant differences in prices. This is most notable in the case of British Gas. Figure 1 shows that British Gas' cheapest tariff was around £180 more expensive than that of Sainsbury's from October to December 2014.

3.10. To complement this time-series description, Figure 3 presents a snapshot of the prices of larger suppliers at the end of 2014, including white label tariffs.

**Figure 3:** Prices of larger suppliers - Dual fuel direct debit bills (£/year)\*



Source: Ofgem analysis using Energylinx data for consumption values of 3,200 kWhs for electricity and 13,500 kWhs for gas on 31 December 2014. It includes any dual fuel discount and online account management discount.

\* For the reason given in Figure 2, we have not included the white label tariff offered by SSE using the Ebico brand.

3.11. At the time of the snapshot, both British Gas and SSE both offered their standard variable price tariff at the same price regardless of the brand they used. They also had a price difference of no more than £20 between their standard variable tariff and the most competitive fixed-term tariff offered under their own brand.

3.12. However, British Gas and SSE differed in the pricing of their fixed-term white label tariffs: British Gas offered fixed-term white label tariffs that were significantly cheaper than the tariffs offered under the British Gas brand. This was not the case for SSE, but there might be non-price elements, such as free vouchers, that might make their white label fixed-term tariffs more attractive than the tariffs offered under the SSE brand.

3.13. When taking into account white label tariffs, the price difference between the variable price tariff and the cheapest fixed-term tariff of British Gas was comparable to that of the large suppliers without white labels.

## Options that we considered

3.14. The main options that we considered involve the RMR rules that may have an impact on white labels. The relevant rules were already covered by our temporary arrangements. This provided our starting point:

- Option A: 'Do nothing' - Let the temporary arrangements expire
- Option B: Our proposals - Flexibility on tariff rules, not on the CTM rule
- Option C: 'Treat as a separate supplier in all the RMR rules' - Flexibility on the tariff rules and on the CTM rule

3.15. We now discuss the possible impacts on consumers and competition for each of these options.

## Impact on consumers

### *Impact on customer service*

3.16. We discussed in our current assessment of white labels the potential for them to bring high levels of customer service. For example, research undertaken by Which? in November 2013 and October 2014 shows Ebico as having the lowest average call waiting time.<sup>17</sup>

3.17. We think this positive impact applies to both options B and C, as they both provide flexibility for suppliers to have white labels. Under option A the tariff rules would limit the scope for suppliers to offer white label tariffs, and as a result these positive impacts are less likely.

### *Impact on consumer choice*

3.18. White labels might also bring more consumer choice. We think this might have both positive and negative impacts. The positive impact is that some white label tariffs might cater for the needs of particular groups of consumers. In chapter 2, we gave the example of low gas users offered a zero standing charge white label tariff. However, more choice may also have the negative impact of making it more difficult for some consumers to compare tariffs.

3.19. As before, we expect the same impact under options B and C, as they both provide flexibility for suppliers to have white labels. We also expect a limited impact under option A, given the limited scope for suppliers to offer white label tariffs.

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<sup>17</sup> <http://www.which.co.uk/news/2013/11/energy-companies-keeping-you-on-hold-340389/> and <http://www.which.co.uk/news/2014/12/which-energy-firm-takes-30-minutes-to-answer-its-customers-calls-387477/>

3.20. Overall, we expect the net impact under options B and C to be positive. Our RMR tariff rules sought to address the concern that some consumers do not engage with their supplier because they find the choices too complex. We put in place rules that apply within the tariffs of a supplier. Options B and C apply the rules within the white label tariffs of a white label. For example, the same level of discounts will be available across the white label tariffs of any white label. We expect this consistency to mitigate the negative impact on complexity.

#### *Impact on consumer engagement*

3.21. We introduced the RMR rules to make it easier for consumers to engage in the market. The CTM aims to achieve this by providing consumers with a personalised price comparison of the tariffs offered by their supplier. The CTM is about pricing information, as awareness of price differences between tariffs is a key determinant of consumer engagement.<sup>18</sup> As far as we know, there is no comparable regulatory intervention in other industries.

3.22. Partner suppliers and white labels are free to explain to their customers what aspects, other than price, they should consider when choosing tariffs.<sup>19</sup> To support this, the CTM already includes a statement noting that switching tariffs might involve materially different terms and conditions.

3.23. In options A and B all the tariffs of the supplier are included in the calculation of the CTM. In option C a supplier can leave outside the calculation of the CTM its cheapest white label tariffs. As a result, the savings displayed might be smaller. Therefore, we think that option C has a negative impact on consumer engagement.

3.24. In options A and B, our CTM proposals require suppliers with white labels to be transparent with their customers on what their cheapest tariff is, regardless of the brand used to offer it. We consider this transparency to have a positive impact in rebuilding consumer trust. It would prevent the perception that some suppliers are 'hiding' their most competitive deals on white label tariffs.<sup>20</sup> We think that for option C the lack of transparency is a negative impact. In the RMR, we identified a lack of trust on suppliers as one of the issues limiting consumer engagement in the retail market.

3.25. Some consumers might be unaware that their supplier offers white label tariffs, and this might impact their engagement.<sup>21</sup> In options B, consumers would see

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<sup>18</sup> <https://www.ofgem.gov.uk/publications-and-updates/options-cheapest-tariff-messaging-customer-communications-research-spa-future-thinking>.

<sup>19</sup> The content of the CTM is prescribed, but suppliers and white labels have discretion over their marketing activities.

<sup>20</sup> For example, under the temporary arrangements, the CTM for a British Gas customer on the variable tariff with the parameters in Figure 3 would feature a savings figure of under £20. Under our CTM proposals, the same customer would see savings in the CTM of around £180, with the cheapest tariff available under the Sainsbury's brand.

<sup>21</sup> We explained in our previous consultation that an existing supply licence condition requires white labels to take all reasonable steps to identify who their partner supplier is. Hence, we do not expect customers on white label tariffs to be surprised if they received a CTM that refers them to the cheapest tariff of the partner supplier.

a statement explaining the relationship between partner supplier and white label when they display each other's tariffs in the CTM. We think this is a simple sentence that can be easily understood by consumers, as white label partnerships exist in other markets (eg supermarkets). If suppliers communicate clearly, we do not expect a negative impact in terms of customer confusion.

### *Conclusions*

3.26. We consider option A provides very little room for the positive impacts of white labels on consumer choice and customer service to occur. Option C would enable these benefits, but has the major drawback of its lack of transparency on the cheapest tariff offered under the license of a partner supplier. We think this would have a negative impact on consumer engagement, including on trust. We consider that option B would have the highest net positive impact on consumers and can be delivered in a way that does not lead to customer confusion.

## **Impact on competition**

### *Impact on non-price competition*

3.27. White labels might bring more competition in customer service, for their partner suppliers as well as for the rest of the market. For example, research by Which? shows that British Gas and SSE performed worse than their respective white labels in average call waiting times in November 2013. They then performed better than them (with the exception of Ebico) in October 2014.

3.28. As before, we expect the same impact under options B and C, as they both provide flexibility for suppliers to have white labels. We also expect a limited impact under option A, given the limited scope for suppliers to offer white label tariffs.

### *Impact on price competition*

3.29. Suppliers that benefit from the temporary arrangements are having a competitive advantage. By using white label tariffs, these suppliers can attract active consumers without telling their less engaged customers of the savings that they could achieve if they switched to their cheapest tariff.

3.30. In options A and B, suppliers with and without white labels will compete in equal ground. They will have to tell their customers in the CTM about the cheapest tariff they use regardless of the brand they used to offer it. However, option C would distort competition in favour of suppliers that have white labels. It would make it easier for them to segment their customer base by keeping their sticky customers uninformed.

3.31. Option A indirectly constrains the pricing of white label tariffs, as the white label tariffs come under the tariff cap of the partner supplier. Options B and C do not constrain the prices of white label tariffs. However, it is possible that under option B partner suppliers may respond to the increased transparency by changing the prices

of their tariffs. We cannot predict what it will mean for their cheapest tariffs, as this is their commercial decision. We however expect that competition will result in suppliers offering price-competitive tariffs regardless of the brand used.

#### *Impact on market entry*

3.32. A white label partnership is a possible route to market entry. Recent developments in community energy schemes suggest that this might be an attractive route if the regulatory framework facilitates it.<sup>22</sup>

3.33. Options B and C open up this route to market entry, option A does not. We consider that option B provides sufficient room for product differentiation between white label and partner supplier for white labels that consumers value to enter and expand. If a white label were to exit, it would be a commercial decision between those parties.

3.34. While option C might encourage more entry of white labels than option B, we do not think this is necessarily positive. Indeed, option C might have a detrimental impact on the entry of new licensed suppliers. Unlike incumbent suppliers, new suppliers do not have legacy customers. They typically compete for active consumers by offering price competitive tariffs. If incumbent suppliers use white label tariffs as their 'acquisition arms' to segment the market without being transparent with their sticky customers, then it becomes more difficult for new suppliers to attract customers.

#### *Conclusions*

3.35. Option A limits the scope for white labels to exist and therefore makes any positive impacts on non-price competition less likely. Option C would enable greater entry of white labels but would risk distorting competition. It would facilitate a greater degree of customer segmentation and disadvantage smaller suppliers that might be less able to enter into white label partnerships. We consider that option B would have the highest net positive impact on competition by enabling existing and new white labels in the market and, at the same time, providing a level playing field for competition.

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<sup>22</sup> <https://www.ofgem.gov.uk/publications-and-updates/decision-grant-ovo-energy-limited-temporary-derogation-sub-paragraph-22b.2b-slc-22b-their-respective-gas-and-electricity-supply-licences-respect-plymouth-energy-community-tariffs> , <https://www.ofgem.gov.uk/publications-and-updates/decision-grant-ovo-energy-limited-temporary-derogation-sub-paragraph-22b.2b-slc-22b-their-respective-gas-and-electricity-supply-licences-respect-cheshire-east-council-tariffs> and <https://www.ofgem.gov.uk/publications-and-updates/decision-grant-ovo-energy-limited-temporary-derogation-sub-paragraph-22b.2b-slc-22b-their-respective-gas-and-electricity-supply-licences-respect-community-energy-south-tariffs>



## 4. Next steps

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4.1. This consultation will be open until 20 March 2015. Subject to the outcome of this statutory consultation, we want to introduce these changes as soon as possible so that they apply to all suppliers equally. As such, we propose that implementation would be 56 days after the publication of our decision document. At present, we anticipate the arrangements would apply from July 2015. As part of this, we plan to revoke the temporary provisions that are due to expire on 31 December 2015.

4.2. As indicated in September 2014, in advance of these arrangements coming into force, we are willing to consider granting a derogation, akin to the temporary provisions, to any supplier with new white labels or existing ones not covered by the temporary provisions. In making an application for a derogation, suppliers should have regard to our published RMR derogations guidance.

4.3. We are also committed to monitoring the impact of our new rules. We will continue to engage with industry to understand the extent to which it is feasible to obtain regular market monitoring information separated by partner supplier and white labels. We expect that, at a minimum, this will include customer numbers on white label tariffs. We will also be exploring with suppliers whether we can obtain separate complaints data. Finally, we also expect to be informed of any new white label arrangements.

4.4. We are keeping the effectiveness of the RMR under review and its impact is also being considered by the Competition and Markets Authority (CMA) in the context of their ongoing market investigation. These white label arrangements may be revised following either of these reviews. We will intervene earlier if we detect that the arrangements are in any way being abused.

## Appendices

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## Appendix 1 - Consultation response and questions

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1.1. We would like to hear the views of interested parties in relation to any of the issues set out in this document.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of chapter 2.

1.3. Please send your responses by 20 March 2015 at 5pm to:

[white.labels@ofgem.gov.uk](mailto:white.labels@ofgem.gov.uk)

1.4. Alternatively, please send a written response to:

Domestic Retail Market Policy (c/o Adhir Ramdarshan)  
Ofgem  
9 Millbank  
London  
SW1P 3GE

1.5. Unless marked confidential, we will publish all the responses by placing them in our library and on our website [www.ofgem.gov.uk](http://www.ofgem.gov.uk). Respondents may request that their response is kept confidential. We shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.6. Respondents who wish to have their responses remain confidential should clearly mark the document(s) to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.7. Any questions on this document should be directed to Adhir Ramdarshan in the first instance, using the contact details provided above.

## Appendix 2 - Glossary

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### C

#### Cheapest tariff message (CTM)

Suppliers of domestic consumers must present this information in page 1 of the bill and in other regular customer communications. It contains two savings messages, expressed in pounds per year and based on the personal usage of the customer. The first, 'narrow' message, informs customers of any savings that they could achieve by switching to the cheapest similar tariff of their supplier. The second, 'wide' message, informs customers of any savings that they could achieve by switching to the cheapest overall tariff of their supplier.

#### Community energy

Community energy covers aspects of collective action to reduce, purchase, manage and generate energy.

#### Core tariff

The charges for supply of electricity/gas combined with all other terms and conditions that apply, or are in any way linked, to a particular type of contract for the supply of gas/electricity to a domestic consumer. This excludes certain matters such as dual fuel discounts, variations in charges relating to payment method, appropriate surcharges and optional additional services or products.

### D

#### Dead tariff

A variable price tariff with no end date that is not open to new customers.

#### Derogation

A regulatory arrangement that relieves a licensed supplier from its obligation to comply with a requirement in its supply licence, in specific circumstances and to a specified extent.

#### Domestic consumer

A consumer that uses energy for non-commercial purposes.

### L

#### Licence Lite

A regulatory arrangement that relieves a licensed supplier from its obligation to be a direct party to certain industry codes, provided that commercial arrangements are in place with a fully licensed supplier to discharge code compliance on its behalf.

## **P**

### Partner supplier

A licensed supplier that works in partnership with a white label to offer gas and electricity to consumers using the white label's brand.

## **R**

### Retail Market Review (RMR)

Ofgem's reforms to make the retail energy market simpler, clearer and fairer for consumers.

## **S**

### Standards of Conduct

A set of principles-based rules introduced as part of the Retail Market Review to ensure suppliers treat their customers fairly and honestly and do not give them misleading information.

### Supply licence conditions

The legally binding conditions that licensed gas and electricity suppliers must meet to supply to domestic and non-domestic consumers, in accordance with the Gas Act (1986) and Electricity Act (1989).

## **T**

### Tariff

The charges for supply of electricity/gas, combined with all other terms and conditions that apply, or are in any way linked, to a particular type of contract for the supply of electricity/gas to a domestic consumer.

### Tariff cap

A limit to four core tariffs per fuel, metering arrangement and region for each supplier.

### Tariff Information Label (TIL)

A table, in a standardised format, that contains a summary of all the tariff features. It is available on suppliers' websites and free of charge on request.

## **V**

### Variable price tariff with no end date

A tariff which is for an indefinite length of time.

## **W**

### [White label](#)

See the next definition.

### [White label provider](#)

An organisation that does not hold a supply licence, but instead works in partnership with a licensed supplier to offer gas and electricity to consumers using its own brand.

### [White label tariff](#)

A tariff offered by a white label in partnership with a licensed energy supplier. The legal relationship between the customer and the licensed energy supplier remains unchanged irrespective of the identity of the white label.

## Appendix 3 – Statutory consultation notices

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**The Statutory Consultation Notices and supporting Schedules for Gas and Electricity supply can be found in the supplementary appendices to this document.**

## Appendix 4 - Feedback questionnaire

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1.1. We are of the view that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand or could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Do you have any further comments?

1.2. Please send your comments to:

**Andrew MacFaul**  
Consultation Co-ordinator  
Ofgem  
9 Millbank  
London  
SW1P 3GE

[andrew.macfaul@ofgem.gov.uk](mailto:andrew.macfaul@ofgem.gov.uk)