

Adhir Ramdarshan
Domestic Retail Market Policy
Ofgem
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London
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20 March 2015

Dear Adhir,

Statutory Consultation: Final proposals on the treatment of white label providers in the domestic retail market

We are pleased to respond to Ofgem's Statutory Consultation on its final proposals on the treatment of white label providers in the domestic retail market.

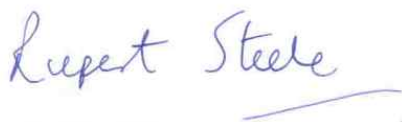
We agree with Ofgem that white labels have the potential to deliver greater consumer choice, engagement and competition and we therefore broadly welcome Ofgem's proposals as a way of accommodating those aims within the RMR tariff rules. For the purposes of this consultation, we have taken the RMR tariff rules as a given and have refrained from commenting on the wider detriments to competition which we think may arise from them.

We appreciate that Ofgem is seeking to address the competitive imbalance between white label arrangements which are allowed under the temporary provisions and those which are not. For that reason, we support the proposed implementation timescale and the proposal to revoke temporary provisions when the new proposals are introduced.

We have provided answers to the consultation questions in Annex 1 to this letter, together with suggested amendments to the licence drafting. Our main concern relates to the revised definition of white label. We understand the policy intent behind the revised definition but are concerned that it does not take sufficient account of partner suppliers' obligations under SLC 25 and does not reflect current practice whereby partner suppliers contract with PCWs to facilitate the marketing of white label tariffs.

We would be pleased to discuss these points with you in more detail.

Yours sincerely,



Rupert Steele
Director of Regulation

**FINAL PROPOSALS ON THE TREATMENT OF WHITE LABEL PROVIDERS IN THE
DOMESTIC RETAIL MARKET
SCOTTISHPOWER RESPONSE TO CONSULTATION QUESTIONS**

- 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.**

Yes, we believe that the proposed implementation date of Ofgem's proposals is appropriate.

We previously suggested that an implementation timescale of 6 months might be reasonable to allow IT changes to be completed. However, we understand Ofgem's ambition to bring in these changes as soon as possible, to allow new white label entrants to take advantage of the opportunities already afforded (for the most part) to white labels which are subject to the temporary arrangements.

The proposed implementation date allows white label arrangements which can be more responsive to the IT changes to take advantage of these rules at an earlier date, while redressing the balance with white labels which have continued under the temporary arrangements. As the consultation document notes, Ofgem will consider derogations from the provisions where necessary.

- 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.**

We understand the rationale for this amendment and appreciate Ofgem's intention. We agree that it is helpful to distinguish between tariffs offered by a supplier which may feature a tied bundle associated with a third party and genuine white label tariffs. However, we have two concerns about the drafting.

Our first concern is that the amended definition does not take account of the licensee's obligations under SLC 25 (Marketing electricity/gas to Domestic Customers). The amended definition prevents the licensee engaging in activities that are "directed at or incidental to identifying and communicating with Domestic Customers for the purposes of promoting the tariff to them". Under SLC 25 the licensee has obligations to ensure that Representatives (which would include the white label¹) behave in an appropriate way. We are concerned that the monitoring and quality assurance activities that we would be required to carry out under SLC25 could be reasonably be regarded as incidental to the white label's marketing activity.² This could create practical difficulties for licensees in negotiating terms with prospective white label partners which allow for sufficient monitoring and quality assurance.

¹ Representative, in relation to the licensee, means any person directly or indirectly authorised to represent the licensee in its dealings with Customers

² For the purposes of SLC 25, Marketing Activities and Telesales Activities specifically relates to "any activities of the Licensee that... are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the licensee's Domestic Supply Contracts to them..."

The ‘for the avoidance of doubt’ statement at SLC 31D.25(c), does not appear to address the point, because it deals with the continued applicability of the various obligations rather than their effect on the definition. In addition it relates to ‘obligations to provide information to Domestic Customers’, rather than the wider activities of promoting tariffs to them, which will include ensuring suitable agents are in place and establishing appropriate training and monitoring.

Our second concern relates to the promotion of tariffs via Price Comparison Websites (PCWs). It would currently be normal practice for the licensee to negotiate terms with PCWs for displaying its own tariffs and those of the white label, and probably also to provide updated white label tariff details to the PCW. It seems to us that this could fall within the definition of ‘activities that are directed at or incidental to identifying and communicating with Domestic Customers for the purposes of promoting the tariff to them’. As far as we are aware, it is not Ofgem’s policy intent to stop such practices.

We suggest that the two issues above could be addressed by amending the drafting as follows:

“White Label Tariff” means a Tariff ~~in existence as at 1 March 2013 which is:~~

(a) offered by virtue of an Electricity Supply Licence of the licensee or an Affiliate Licensee; ~~and~~

(b) which uses the brand name of a person that does not hold an Electricity Supply Licence (excluding any Subsidiary, Holding Company, or Subsidiary of a Holding Company of the licensee which does not hold a Electricity Supply Licence); and

(c) in respect of which the licensee does not engage in activities **(other than in relation to third party intermediaries)** that are directed at ~~or incidental to~~ identifying and communicating with Domestic Customers for the purposes of promoting the tariff to them. For the avoidance of doubt, this paragraph (c) does not in any way relieve the licensee of any obligations to a Domestic Customer arising under any relevant provisions of legislation, law or other licence conditions.

The motivation for these changes is that:

- Inserting the words ‘(other than in relation to third party intermediaries)’ addresses our concerns over PCWs.
- Removing the words ‘incidental to’ addresses our concern over the licensee engaging in activities relating to SLC25 compliance (eg approving, training and monitoring agents engaged in marketing or telesales activities under the auspices of the white label brand).

3. Do you have any comments on our proposed supply Licence Condition changes in the supplementary appendices?

Ofgem intends to implement its proposals through amendments to transitional Licence Condition 31D. In our response to the September 2014 consultation³ we highlighted our concern about the additional complexity that this could bring to the licence. Ofgem's approach means that all specific proposals relating to white labels would be within that single licence condition, although the requirements within that licence condition may qualify other conditions, in the same way that SLC 22B may do. Similarly, in any condition referring to cheapest tariff messaging, the reader will have to refer both to the definitions in SLC 1 and the revised definition for White Labels in SLC 31D.

In particular, the effect of the amended SLC 31D is to replace the requirements in the relevant sections in SLC 1, SLC 22B and SLC 31E with the alternative provisions within SLC 31D. As far as we can tell, this does not change the effect of these original conditions, other than to carve out specific exemptions and alternative rules for White Label tariffs. In terms of user accessibility of the Licence Conditions, we continue to think that this could be better captured by deleting those provisions from the current draft SLC 31D and inserting the changes within the relevant enduring licence conditions. While this would make the enduring SLC 22B (and other associated conditions) longer, it would avoid duplication of requirements within the licence and avoid the need for cross-referencing between different conditions.

Notwithstanding that point, we have some minor suggested amendments for the draft licence conditions, which are set out in the table below:

Reference	Suggested Amendment	Rationale
Paragraph 31D.2: replacement paragraphs 22B.5A(c) and 22B.5A(d)	We suggest adding the words " <i>of the same White Label Provider</i> " following the words "Dead Tariffs" in each of these paragraphs	To make it clear that a Dual Fuel Discount offered with White Label Tariffs must be of the same terms and conditions and monetary amount across Live Evergreen Tariffs, Live Fixed Term Tariffs and Dead Tariffs for that White Label Provider's White Label Tariffs, and to distinguish this from the generality of the Licensee's tariffs.
Paragraph 31D.3: replacement paragraphs 22B.6A(c) and 22B.6A(d)	We suggest adding the words " <i>of the same White Label Provider</i> " following the words "Dead Tariffs" in each of these paragraphs	To make it clear that an Online Account Management Discount offered with White Label Tariffs must be of the same terms and conditions and monetary amount across Live Evergreen Tariffs, Live Fixed Term Tariffs and Dead Tariffs for that White Label Provider's White Label Tariffs, and to distinguish this from the generality of the Licensee's tariffs.

³ Treatment of White Label Providers in the Domestic Retail Market – 11 September 2014

Reference	Suggested Amendment	Rationale
Paragraph 31D.4: replacement paragraph 22B.7A(c)	We suggest adding the words “ <i>of the same White Label Provider</i> ” following the words “Dead Tariffs” in this paragraph	To make it clear that any differences in Charges between payment methods for White Label Tariffs must be of the same terms and conditions and monetary amount across Live Evergreen Tariffs, Live Fixed Term Tariffs and Dead Tariffs for that White Label Provider’s White Label Tariffs, and to distinguish this from the generality of the Licensee’s tariffs.
Paragraph 31D.5: replacement paragraphs 22B.10 and 22B.10A	<p>Amend paragraph 22B.10 as follows:</p> <p>With the exception of White Label Tariffs, for the purposes of paragraphs 22B.12, 22B.14 and 22B.15, a Bundled Product (including a Bundled Product which constitutes a Discount) would not be regarded as having similar Features to another Bundled Product <i>used with the Licensee’s Core Tariffs</i> where the Bundled Product also includes one or more distinct additional Features.</p> <p>Amend paragraph 22B.10A as follows:</p> <p>With the exception of White Label Tariffs, for the purposes of paragraphs 22B.12AA, 22B.14AA and 22B.15A, a Bundled Product (including a Bundled Product which constitutes a Discount) would not be regarded as having similar Features to another Bundled Product <i>used with White Label Tariffs for the same White Label Provider</i> where the Bundled Product also includes one or more distinct additional Features.</p>	<p>It is not immediately clear to us from the drafting as to why these paragraphs are separate, unless the intention is to distinguish between Bundled Products offered by the Licensee across its Core Tariffs and Bundled Products offered by White Label Providers across their White Label Tariffs.</p> <p>Otherwise, these paragraphs could be merged simply as follows:</p> <p><i>With the exception of White Label Tariffs, for the purposes of paragraphs 22B.12, 22B.12AA, 22B.14, 22B.14AA, 22B.15 and 22B.15A, a Bundled Product (including a Bundled Product which constitutes a Discount) would not be regarded as having similar Features to another Bundled Product where the Bundled Product also includes one or more distinct additional Features.</i></p>