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The future of retail market regulation

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy is supportive of the transition from prescriptive to principles based regulation (PBR). There are some significant benefits to be made from having a less prescriptive approach to regulation. We welcome the proposed lighter-touch monitoring approach for suppliers who put customers at the heart of their businesses.

Crucial to the success or failure of Ofgem's proposals for the reform of retail market is the degree of comfort firms have that they are complying with the principles, when compared with the degree of certainty firms have previously enjoyed with prescriptive regulation. In particular, without a constructive approach to compliance and enforcement, PBR runs the risk of creating substantial regulatory risk. Suppliers (and consumers) must believe that enforcement action is proportionate and fair. How it is implemented and enforced is critical to its success. We do not, however, think that these problems are so intractable that they prevent implementation of PBR.

An important source of uncertainty relates to understanding the nature of any negative outcomes for consumers. There are clearly areas where there is unanimous agreement that a particular practice is unfair but there may be cases where it might be more difficult to determine (or which may only become clear at some later time). Consumers in some cases may have divergent views as to what constitutes a fair outcome in part linked to their individual circumstances.

EDF Energy strongly believes that the uncertainty issue can be effectively addressed with the formal introduction of a due diligence defence in the regulatory framework as a gateway where it can be demonstrated that all reasonable steps were taken to interpret and apply principles in good faith. This solves many of the known problems of the PBR[1] that includes the risk of hindsight-driven enforcement, proliferation of guidance etc. The due diligence defence is well established in the UK law, regulated sectors such as food

[1] Identified by Black, J. Hopper, M. and Band, C. (2007), 'Making a Success of Principles Based Regulation' *Law and Financial Markets Review* 1(3): 191-206

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standards and regulation in other jurisdictions such as Canada. In fact this is entirely consistent with the sand box approach for testing new products and does not fetter Ofgem's discretion, but focuses the debate on firms attempt to comply. We believe that the diligence defence should be hard wired into the supply licence in the form of a recognised defensive gateway, as we find in EU competition law (Art. 105 TEU) though it is possible to use guidance as an alternative means of mitigating uncertainty.

Our detailed comments are set out in the attachment to this letter. If you wish to discuss any of the issues raised in our response or have any queries, please contact Sebastian Eyre on 020 7752 2167, or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

Paul Delamare
Head of Customers Policy and Regulation

Attachment

The future of retail market regulation

EDF Energy's response to your questions

Chapter 2: Reforming the rulebook

Q1. In what circumstances do you think that prescriptive rules are likely to be most appropriate? Which specific SLCs/policy areas should remain prescriptive in nature?

EDF Energy supports moves to reduce to adopt a less prescriptive approach to regulation, while at the same time ensuring consumers remain appropriately protected through an effective regulatory framework. Over the last ten years the level of prescriptive regulations placed on suppliers has increased significantly, resulting in a supply licence that is now over 450 pages long.

EDF Energy believes that the regulatory framework fundamentally shapes the competitive response of energy suppliers. There are some significant benefits to be made from less prescriptive regulation and simplification of the existing rules. It is therefore important to review the regulatory framework to see if the extensive prescriptive rules book, which has resulted from various interventions in the market, is producing the best outcomes for consumers and facilitating effective competition and innovation in the market.

We agree that it is likely that some level of prescription will remain appropriate and note that rules introduced for the smart metering programme, the Government's energy efficiency programmes and in response to EU requirements are not within scope of this review. Furthermore, it is important to acknowledge the clear interaction this work has with that of the CMA's current investigation and the potential for further prescription to be introduced as part of any remedies proposed.

We believe any transition away from prescription should be managed in a staged and controlled manner. It is important to its success that consumers and other stakeholders have trust in the regulatory framework and believe it is acting in their best interests. Identifying the right balance between principles and rules based regulation requires careful consideration. Such consideration should possess an economic dimension such as an assessment of the cost impact on both the regulator and licensees from opting for either a detailed rule or reliance on a principle. Such costs, for example, will include interpretation costs, application costs and the potential costs that would result from an overly risk averse compliance approach under a Principles regime. These should be assessed alongside the implication for customers.

As a principle, we believe that in instances where Ofgem has a definitive view of minimum standards or specific actions that should be undertaken by suppliers then these should be expressly prescribed. However, we believe that due consideration should be given as to

the potential for placing prescription that delivers standardisation across the market within industry codes rather than the supply licence. This could include, for example, arrangements that deal with customer transfer blocking arrangements as set out in Standard Licence Condition 14.

Q2. Should we supplement the principle of "treating customers fairly" with any other broad principles? If yes, please outline what these should be and why.

While we are not in principle against the adoption of additional broad principles in support of the existing standards of conduct, we are at this stage unable to support the broad principles set out in the consultation. Primarily, there is a lack of clarity on the scope of the broader principles to provide a definitive view. In addition to uncertainty on scope, we note that no rationale is provided for the need for such principles, including any evidence that supports a view that the existing legal and regulatory framework does not deliver appropriate standards in such areas.

Notwithstanding the concerns expressed above, we have the following observations on the specific principles:

1. **Constructive engagement with the regulator;** we believe the introduction of PBR will lead to an increased focus on engagement. Such engagement activities should seek to foster an open relationship that delivers positive outcomes for both parties and consumers. We believe there is a natural incentive on suppliers to aid the development of this relationship, but acknowledge that this will require a cultural change in the relationship which will evolve over time.

   On that basis, we do not believe it is appropriate that suppliers should be subject to the proposed broad disclosure principle, which could potentially require suppliers to report extensively on its activities in order to avoid potential enforcement action. We do not believe that would promote the kind of constructive relationship Ofgem and we wish to see. We believe that the required cultural change should be given time to develop within a regulatory environment which is fair and proportionate. In particular, it needs to be supported by a constructive approach from Ofgem to compliance and enforcement.

2. **Good record keeping;** we consider that we are already subject to a strong incentive to establish and meet good record keeping standards. From a regulatory perspective, the primary incentive for achieving such standards is to ensure that we have established records that support all of our decisions that impact consumers and which can be used as evidence in any compliance monitoring/enforcement proceedings. EDF Energy's Trust Test is an example whereby we have established processes that record our assessment of whether a course of action is the right and fair thing to do for our customers.

   We are also not aware of Ofgem having identified systemic poor industry record keeping practices. A record keeping requirement in the context of a broad principle

that is wide in scope, with no materiality threshold, may lead to an increase in the regulatory burden and introduce additional compliance costs.

3. **Board-level assurance around embedding principles;** the role of Boards, and indeed suppliers' internal compliance functions under PBR will need to adapt to the new regulatory environment. A move from prescriptive rules to subjective broad principles open to wide interpretation will naturally negate a Board's ability to delegate to internal compliance functions and will instead involve greater senior management engagement with regulatory matters. As such, there is a need to recognise that the embedding of this culture change will need to evolve over time as the experience and skills are acquired under the new regime. The introduction of the Standards of Conduct led to the start of this transition and EDF Energy has successfully embedded these standards throughout its business functions, yet a more extensive move to PBR is likely to require further operational and cultural changes.

   In terms of the development of "accountability maps", it is unclear what purpose these would serve for Ofgem and in particular what the potential implications would be for named senior individuals. For instance, any scope of personal liability would go beyond existing law on cases which don't involve civil/criminal proceedings.

4. **Not putting consumer outcomes at risk;** we believe through the introduction of the Standards of Conduct suppliers are actively required to consider the impact on consumers of the decisions and actions it undertakes. We currently do not see the need for an additional broad principle in this area, in particular one that opens up the opportunity for enforcement action undertaken on the basis of perfect hindsight.

Q3. Where might narrow principles be more appropriate than broad principles or prescription?

In principle, we are supportive of the adoption of narrow principles in instances where Ofgem wants to prescribe a specific outcome and/or service to a specific subset of consumers, but provide suppliers with flexibility in the delivery approach. We believe suppliers are best placed to ensure such outcomes are delivered in the most effective and efficient manner and therefore support the avoidance of prescription in such instances.

However, at this stage it is difficult to predict where such narrow principles may be appropriate, particularly given the uncertainties surrounding the outcome and impact of the CMA investigation. Furthermore, the existing Standards of Conduct are broad in scope and it will be important that any new narrow principles do not simply apply similar principles to activities already captured.

Q4. What are your views on the potential merits or drawbacks of incorporating consumer protection law into licences?

Consumer protection laws, and in particular their enforcement provisions, have been established through due parliamentary process. During this process no justification was made for energy to be treated differently to other sectors in its application.

If breaches of consumer law were taking into account when investigating compliance with the principles based licence conditions this would unfairly subject the party to double jeopardy. We also note that there exist different appeal rights between licence and consumer law enforcement which need to be taken into account. We therefore do not consider there to be any justification for incorporating existing consumer protection law into energy supply licences. We believe Ofgem should focus solely on instances where existing consumer law is insufficient in protecting the interests of consumers.

Q5. How should we use principles and prescription to most effectively protect consumers in vulnerable situations?

On the whole, we are generally supportive of moves to a more principles based approach to regulation in this area and one that provides us with the opportunity to understand and serve our customers in ways that are practical and appropriate to their needs. We would urge Ofgem take this into account when finalising the proposals in its Priority Services Register (PSR) review.

We support the continuation of a minimum set of services and, beyond this, suppliers should be able to determine what services are appropriate. Ofgem should avoid the introduction of additional prescription via guidance or other means. However, if Ofgem considers a specific service to be required, it should introduce it under licence. Otherwise, suppliers should be free to innovate and differentiate to truly embrace the intent of principles based regulation.

As referred to above, Ofgem already has a number of related policy projects, such as the PSR review, that are looking to introduce a greater use of principles based regulation as a means of improving outcomes for consumers in vulnerable situations. In terms of further progressing changes in this area, we consider the best approach would be one that first allows these changes to be fully implemented. This will in turn provide the opportunity to monitor their impact and learn from the changes and the consumer outcomes that arise, prior to any consideration of further change.

Q6. Do you agree with our proposed approach to guidance?

Publishing regulatory guidance can be helpful regulatory tool that should be at Ofgem's disposal. It can be a valuable means by which licensees can gain a better understanding of Ofgem's approach to the relevant principles and how they will be interpreted and enforced, which will in turn facilitate compliance. However, under a principle based regulatory regime there is clearly a need to strike an appropriate balance between the

provision of clarity through guidance and avoiding the risks that are inherent in providing substantial informal and formal guidance.

Elaborating principles through a proliferation of guidance introduces a number of significant risks, many of which would run counter to Ofgem's Review aims and objectives. For instance, one of the primary aims of this review is to create room for innovation and allow supplies to be more flexible in how they meet their customers' needs. Achieving this aim will be at risk if a significant amount of guidance is produced that has the effect of increasing prescription and complexity. In terms of compliance, suppliers are likely to take a risk adverse approach and perceive guidance as part of the rule book. As such an expansion of the rule book in this manner is likely to diminish the room for innovation and flexibility in approach.

Furthermore, simply reintroducing rules through guidance circumvents the established rule making checks and balances that exist for formal licence modifications and would have the effect of introducing prescriptive rules via the backdoor. We are therefore supportive of Ofgem's proposed approach to limit the degree to which formal guidance is produced, in response to the risks identified above.

We believe guidance should be produced in instances where Ofgem has come to a definitive view on how a principle should be applied to deliver particular consumer outcomes. Where it is established that guidance would be of benefit, it is essential that such guidance is effective and is consistent with the overall sum of guidance that has already been produced. We would expect in most instances the guidance should be concise and provide worked examples of both good and bad practices, which are ideally supported through case studies.

We understand the need to have a flexible approach in determining whether non-compliance with guidance in itself would constitute a breach and the need for enforcement action. We are of the view that this should be assessed on a case by case basis and will be dependent on a number of factors, including the form and scope of the guidance provided and the extent to which specific consumer outcomes were clearly defined. However, we agree that in instances where those outcomes have not been achieved and the party is unable to demonstrate that due consideration of the guidance was made, such facts should be appropriately considered in any enforcement action and penalty application.

Awareness and the accessibility of issued guidance will be important. While we agree that using highly visible areas of the Ofgem website, together with alerts to all stakeholders would be of benefit, we believe that creating links to guidance within the rule book itself would also be of benefit. For example, this could be achieved through the provision of links to relevant published guidance within the consolidated standard licence conditions that are placed on the licensing section of the Ofgem website.

Chapter 3: Operating the rulebook: engagement and monitoring activities

Q7. How can we best engage with suppliers in the context of principles?

We fully support the adoption by Ofgem of more enhanced and focussed engagement activities that promotes trust from both sides and leads to positive outcomes for suppliers and ultimately consumers. Operating under a principles based regime will be a learning exercise that requires a shift in mind-set, attitude and skills for both Ofgem and licensees. Expanding meaningful engagement will aid this change and promote stakeholder trust in the new regime.

The focus of such engagement should be twofold, firstly to enhance and improve Ofgem's understanding of the realities of business in order for it to be able to make appropriate judgment calls that principles based regulation will require it to make; and secondly to effectively develop a shared understanding between the regulator and regulated as to the role and purpose of principles that enables suppliers to get it right first time.

Regular one-to-one meetings, stakeholder panels and industry workshops are all useful engagement tools. It is essential that the level of engagement is not simply increased, but that it is effective and productive to achieving the aim of delivering positive outcomes for consumers. For example, we are supportive of the adoption of an effective 'Innovation Hub/Sandbox' that facilitates the testing of innovative approaches with Ofgem's interpretation of the principles.

Q8. What specific support may be needed for new and prospective entrants?

As mentioned above, the development of a more principles based regulatory regime will be a learning exercise for all. The enhanced engagement activities Ofgem undertakes should be equally beneficial to existing suppliers and potential new entrants. Nevertheless, more targeted engagement may be required for those parties who have little experience in operating under a principles-based regulatory model.

Q9. Do you have any views on how best to approach monitoring in the context of principles? Specifically, which indicators and approaches should we use to catch potential problems early?

In conjunction with engagement activities (discussed above), appropriate monitoring will also foster a better understanding by Ofgem of suppliers' businesses. We also agree that a primary aim of Ofgem's monitoring approach should be one that seeks to identify issues early so that any consumer detriment can be minimised.

We agree that an approach that relies simply on customer complaint data would not be appropriate as this would only provide a one-sided view of performance. We accept that monitoring complaints data and trends can assist suppliers in identifying and resolving deficiencies in service. EDF Energy actively performs such an activity and has achieved real progress in this area over recent years that has led to falls in complaint levels. However,

such an approach has its limitations in terms of monitoring overall performance. For instance, it would not truly reflect the extent to which a supplier is successfully delivering positive consumer outcomes through the successful adoption of the principles throughout its business.

In developing its approach, we believe Ofgem should consider the following:

- Proportionality; data and performance gathering through requests for information should be proportionate and targeted, recognising the impact and burden extensive requests can have on suppliers.
- Consistency; a consistent approach across all suppliers should be adopted to ensure a level playing field. In addition, we would not wish to see a benchmarking approach adopted that made comparisons between, for example, new entrants/independents/incumbents etc.; which did not reflect the significant differences in approach adopted by suppliers in competing in the market and serving their customers. Monitoring should reflect that suppliers are not a homogenous group.
- Resource; in order to identify issues effectively and efficiently it is important that Ofgem allocate appropriate internal resource to this activity.
- Duplication; Ofgem should look to build on existing relationships with other independent stakeholders who already effectively monitor and understand consumer concerns and supplier performance. This will not only avoid the potential for duplication but be an effective use of external skilled resource.
- Identification; it is important that in terms of monitoring supplier performance, that Ofgem is able to distinguish between one-off issues and systemic failures.
- Priority; key common performance indicators used in the past may no longer be available/appropriate under a principles based regime, as suppliers are given greater freedom in the approaches they adopt in meeting customers' needs. A proportionate monitoring framework may therefore be one where Ofgem prioritises key areas where the risk of consumer detriment/impact is high. Such an approach would also provide time for suppliers to react to the challenges and opportunities of the new regime. Lower priority areas and individual supplier issues can still be effectively monitored via regular one-to-one meetings.

Q10. Do you have any views or comments on the following proposals?

We will expand our engagement with suppliers to enhance our understanding of their businesses and help them better understand our rules so they can get things right first time.

We will collaborate closely with the Citizens Advice Service and the Ombudsman Services: Energy to ensure we maximise the effectiveness and impact of the monitoring activities across our organisations.

Please see our response to questions 7-9 above.

Chapter 4: Operating the rulebook: compliance and enforcement

Q11. Do you have any views on how best to approach compliance in the context of principles?

Acknowledgement by Ofgem of the need to establish an appropriate constructive balance between supervision (compliance activity) and enforcement is required. If such a balance is not established, and recognised by suppliers, this will have the effect of inhibiting suppliers' freedom to innovate and develop solutions that better meet customers' interests.

In establishing its compliance approach, Ofgem needs to adopt fair and proportionate processes which promote trust and facilitate open dialogue between Ofgem and suppliers resulting in positive outcomes for both, and ultimately consumers. There is a clear distinction between certainty and predictability; we can, as a supplier, accept a degree of uncertainty, which is inevitable under the more subjective principles regime, if predictability of how the regulator will respond can be established. Such predictability, which will take time to develop, can be established through various engagement channels (e.g. regular bilateral meetings) and through limited published guidance and judgments/interpretations established through investigations. However, as part of this engagement process, we would need to see Ofgem commit to judgements on our interpretations of the principles in order to establish a level of confidence in the regulator response.

Ofgem's compliance approach should be flexible enough to recognise that suppliers are likely to have differing assessments of risk and will establish differing approaches in how to achieve compliance with the principles. However, it is important that Ofgem's interpretation of the principles and the compliance and enforcement approach that is followed is consistently applied in a transparent manner, so as to ensure a level playing field is maintained and avoid market distortions.

Q12. Do you have any views or comments on the following proposals?

- **We will retain our current flexible and discretionary approach to escalating issues to enforcement. We will prioritise compliance activities where possible and appropriate.**
- **We will increase the links to the level and impact of harm when deciding whether to open a case.**
- **Engaging early with Ofgem may reduce the likelihood of later enforcement. Information from engagement and monitoring activities may be shared with enforcement where appropriate.**
- **We will continue to apply our full range of enforcement tools to principles-based rules.**
- **We will make it easier for all suppliers to learn lessons from enforcement outcomes.**
- **Enforcement action will continue as usual throughout the transition to principles.**

Ofgem's enforcement of principles based regulation needs to explicitly allow for a due diligence test defence when determining whether to undertake formal enforcement action. The subjective nature of principles, together with the potential for Ofgem to interpret such principles with perfect hindsight, poses potentially significant risks for suppliers. In order, to mitigate these, and avoid stifling innovation, a supplier needs to have confidence that it can robustly defend its actions by demonstrating that it duly considered the principles and consumer outcomes and acted in good faith in undertaking its activities.

We believe the acceptance of such a defence would not fetter Ofgem's discretion but would focus the debate on a supplier's attempts to comply and respect efforts that had been taken to construct a reasonable interpretation. The due diligence defence is well established in UK law, regulated sectors such as food standards and regulation in other jurisdictions. We would see this as a more established version of the reasonable person test that is currently used with respect to the existing Standards of Conduct, and should ideally be translated directly in to the supply licence. The lack of availability of such a defence would seriously compromise the delivery of the reform objectives, including the delivery of positive consumer outcomes through innovation.

One way in which we see this approach working would be in conjunction with Ofgem's proposals for an innovation hub/sandbox. We support proposals that provide the opportunity to test new proposed processes and services and gain understanding of how Ofgem would interpret whether such proposals are consistent with the principles. A key part of this process for the supplier will be presenting the due diligence it has performed including, for example, evidence of positive consumer outcomes gained through any trials undertaken in support of the new approaches.

We welcome Ofgem's proposals to adopt a 'light touch' approach with those suppliers who are committed to putting customers at the heart of their businesses. EDF Energy's Trust Test which has been in place for a number of years was designed to demonstrate our commitment to achieving this aim. We agree that Ofgem should continue to adopt a flexible and discretionary approach when deciding on whether to escalate issues to enforcement. Ofgem's focus should be on those suppliers who do not proactively embed the principles and on instances where consumer detriment has been significant.

We fully support the continuation by Ofgem of applying a range of enforcement tools, including the use of warning letters etc. However, there is clearly a judgement to be made by Ofgem as to which tool is appropriate for each case and what is in the best interests for consumers overall. In terms of transparency, we would welcome additional clarity on the decision-making process Ofgem will adopt in deciding which tool is appropriate under a principles-based regime.

We are supportive of measures aimed at aiding supplier's understanding of how Ofgem interprets the principles following enforcement or compliance investigations. Early publication of outcomes, including any lessons learned, would be of benefit. However, it is important that case law does not lead to an expansion of the principles. Any expansion of the rulebook should follow due statutory process and be subject to the appropriate regulatory checks and balances.

Chapter 5: Managing the transition effectively

Q13. How would you like to engage with us on our proposals and the broader work programme?

EDF Energy believes that the regulatory framework fundamentally shapes the competitive response of energy suppliers. We therefore want to see a strong and stable framework that facilitates competition and empowers consumers which we believe is the most efficient and effective way of delivering benefits to consumers. Consequently, we are keen to work with Ofgem to develop its proposals in a manner that meet such aims and avoid the known risks associated with operating a principles based regime. We believe effective engagement can be achieved through a combination of one-to-ones, industry workshops, public consultations and challenger panels.

Q14. Do you agree with our proposal to take a phased, priority-driven approach to reforming the supply licences.

As recognised by Ofgem, and a view supported by EDF Energy, the transition to a principles based regime will be a learning exercise that requires a shift in mind-set, attitude and skills for both Ofgem and licensees. There is a clear need to recognise that the embedding of this culture change will need to evolve over time as the experience and skills are acquired under the new regime. It is also important to take account of the extensive amount of industry change that is already in progress, and the likelihood of

additional change following the completion of the CMA's market investigation. We agree therefore that a phased introduction, that allows experience to be gained and new cultures and mind-sets to be established for both the regulator and licensee, is the right approach.

Furthermore, we agree that an approach that initially focusses on the domestic sector is appropriate. However, if and when a principles approach is applied to the non-domestic sector it is important that this is not simply a transition of the domestic arrangements and that the specific characteristics of the non-domestic sector are duly considered.

Q15. Which areas of the licence should we prioritise? In particular, please provide examples where existing prescriptive rules may be causing problems or where market developments are leading to new risks to consumers.

The CMA is currently assessing the extent to which regulation itself is resulting in an adverse effect on competition. Such assessment includes consideration of a number of the regulations that were introduced as part of Ofgem's Retail Market Review (e.g. tariff cap and simplification). We are therefore of the view that prior to the completion of the CMA's investigation, Ofgem should not be seeking to prioritise other areas of the licence, until such time as the CMA has pronounced on whether specific regulations are not acting in the best interests of consumers.

Q16. Can you provide any initial views on potential costs and benefits (eg avoided costs) of regulation via principles versus prescription to your organisation? Please explain which parts of our proposals (eg rulebook, operations) these costs relate to.

The costs and benefits of a move to a greater reliance on principles will, to a large degree, be dependent on the supplier response and the perceived regulatory risks of operating under the new principles regime. We have identified throughout this response the challenges and risks that arise through principles based regulation and the extent to which these are addressed in the design of, and operation under, the new regime will dictate the success of the changes and the supplier response.

For example, a reduction in regulatory certainty and predictability, together with a tough enforcement approach, could result in the adoption of an overly conservative approach to interpretation and compliance that would dampen the incentive to innovate and lead to 'over compliance' costs being incurred.

Despite these concerns, we do acknowledge there is the potential for greater freedom to be provided in the approaches suppliers take when prescription is removed. For example, we believe that better outcomes can be achieved through the use of principle based regulation for call scripting and customers' bill content, rather than the current mandatory prescriptive approach which does not provide for any innovation in approach. In particular, we believe our regulated telesales call scripting is onerous, lengthy and

ultimately is a barrier to customer engagement. We believe a more flexible approach that better focussed on the information that customers need to make an informed decision, while at the same time ensuring standards/principles were met, could reduce call length times and operational costs.

Chapter 6: Exploring priority areas for reform

Q17. Are the existing provisions of SLCs 25.1 and 25.2 the right ones for regulating sales and marketing activities (or are any additional principles needed)?

We welcome Ofgem's review of SLC 25 and believe it is important to address instances where regulations (and their interpretation) are restricting or distorting competition and not meeting the needs of all customers. Reforming sales and marketing regulations provides an opportunity for suppliers to improve the customer experience by introducing more effective and targeted engagement activities that promote customer engagement and help customers make well informed decisions. Retaining a requirement to meet principles should ensure that such sales and marketing activities continue to be conducted in a manner that protects customers' interests i.e. are fair and appropriate etc.

We consider the existing principles set out in SLC25.1 and 25.2 are appropriate and do not believe there is a requirement to include any additional principles. However, we would welcome greater clarity on the need to retain an explicit principle based licence condition in relation to sales and marketing activities. For instance, the current standards of conduct (as set out in SLC25C) appear to capture already the objective and all of the standards in SLC25.

While we support reform of SLC25, we believe this should coincide with reform to the regulation of third party intermediaries (TPIs), including price comparison websites (PCWs). In order to establish a level playing field and promote consumer confidence and trust in such activities, it is important that both TPIs are PCWs are directly regulated and subject to the same Standards of Conduct/Principles expected of suppliers with respect to sales and marketing activity. We believe this current review is an opportunity for Ofgem to make further progress in establishing an appropriate regulatory framework for such activities. However, we are aware that the CMA may potentially propose remedies that affect TPI/PCW activity and so it is important that any Ofgem work in this area does not cut across such remedies.

Q18. What, if any, prescriptive rules are needed in addition to the principles in SLC 25 to deliver good consumer outcomes?

It is currently unclear the extent to which any remedies proposed by the CMA will impact on the existing customer information provisions set out in the supply licence, in particular those that relate to provision of standard information that facilitates consumers

comparing tariffs. We are therefore unable to determine whether there will be a need for any additional prescriptive rules at this stage.

Q19. What engagement and monitoring process might be required to best operate SLC 25?

We fully support Ofgem's plans to undertake further Challenge Panels focussing on sales and marketing activities. Conducting such Panels in advance of any changes being implemented would aid a joint appreciation of how compliance with the SLC25 principles can be maintained, whilst at the same time providing the freedom to innovate and establish more effective consumer engagement activities.

Previous Challenge Panels have proved a useful engagement tool. Firstly, in terms of providing an opportunity to highlight to Ofgem (and other stakeholders) the business challenges suppliers face in operating in the energy market; and secondly provide an opportunity to demonstrate how standards/principles have been appropriately considered in the development of services and processes. Such engagement promotes a culture of trust and openness and can mitigate the regulatory risk associated with developing new services/processes and facilitate better informed regulatory decision being made.

To be effective, results of the Challenge Panels would need to be published in advance of the new arrangements being implemented. This would allow suppliers to understand any examples of sales and marketing activity that would be of concern. This would be particularly relevant in relation to doorstop selling where it will be vital that consumer trust is maintained in the event that this sales route becomes more prevalent following SLC25 changes.

In terms of monitoring, we agree that Ofgem should look to maximise existing monitoring arrangements, including the use of complaints data and that produced by Citizens Advice. Furthermore, Ofgem should seek to undertake more enhanced monitoring of TPI/PCW behaviour and the extent to which this is resulting in consumer complaints.

EDF Energy
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