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18th November 2016

Statutory Consultation on the introduction of SLC 32A: Power to direct suppliers to test consumer engagement measures; Open letter: Proposed selection criteria for mandatory supplier testing of measures to promote domestic consumer engagement

Dear Fiona,

I refer to the above statutory consultation and open letter and am pleased to respond on behalf of the gas and electricity supply licensees within the Npower Group PLC.

For context, npower supported the CMA's recommendation that Ofgem establish a programme to identify, test and implement measures to provide domestic customers with different or additional information to increase awareness and promote engagement.

As set out in our response to the CMA, we consider the prescriptive regulation imposed by RMR with regard to certain customer communications has restricted the ability of suppliers to engage customers by sending the right information at the right time. Whilst we agree that Ofgem is best placed to lead the type of programme envisaged by the CMA, we think it will be important that suppliers and other parties (such as consumer groups) are consulted on the content of any trial to ensure the best result for customers. Further, the trials should test a principle with a view to providing suppliers with a framework and some flexibility in how a change is implemented rather than prescribing exactly how to implement a change.

npower has already demonstrated a willingness to participate in certain trials and believes that Ofgem should encourage supplier participation on a voluntary basis, with SLC32A as a back-stop only.

Draft SLC32A

We do have some significant concerns with the proposed SLC32A.

- 1) **Scope:** As drafted, we believe that the references to "consumer engagement measures" within the definition of "Relevant Matters" are inconsistent with and beyond the scope of the policy intent within the CMA's final report (see extracts in Appendix 1, with key words emboldened).

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The ultimate aim of this remedy is to address (in whole or in part) two of the features that give rise to the Domestic Weak Customer Response AEC found by the CMA i.e. that domestic customers have limited awareness of, and interest in, their ability to switch, and that certain customers face actual and perceived barriers to accessing and assessing information. The purpose of SLC32A should be limited to giving effect to the CMA's recommendation in its final report, which revolves around the provision of information to domestic customers to facilitate switching tariff or supplier.

Accordingly, SLC32A and in particular, 32A.8 a) and d), should refer solely to measures to provide domestic customers with different or additional information with the aim of promoting engagement in the domestic retail energy markets. It should not extend to wider supplier activities or behaviour, under the umbrella of "consumer engagement measures". Neither is there a proven case for future proofing. We do not see how the example given, that smart meters may affect consumer behaviour (e.g. consumers could change their consumption patterns), is relevant to addressing the AEC. Any wider scope and/or powers of direction should be considered on their merits in the future and subject to consultation, proportionate to any need, cognizant of the impact of the CMA's remedies, wider supplier initiatives to engage and market developments.

- 2) **Reasonableness:** An absolute obligation i.e. "must comply" effectively provides Ofgem with a blank cheque to direct a supplier (large or small) to conduct a particular trial, with potentially uncapped resource and system costs. In keeping with the better regulation principle of proportionality, a reasonableness test should be incorporated within the SLC e.g. a requirement to test information measures that are proportionate and reasonably practicable.
- 3) **Notice period:** In our experience of conducting trials, including work with the Behavioural Insights Team, a minimum notice period of one month is unrealistic. There will be a need to secure appropriate business (and possibly IT) resource, for adequate planning and preparation, to ensure a robust trial and the integrity of the results. The required notice period will largely depend on the nature and complexity of a particular trial, for example if system changes are required, and the need to dovetail with other commercial and regulatory priorities. Typically, 3 months would be more realistic, although a shorter period could be agreed for less complex testing.
- 4) **Confidentiality:** The information a supplier could be required to provide under proposed SLC 32A is very wide-ranging, including any documents, accounts, estimates, returns, records or reports and data of any kind specified by Ofgem, whether or not prepared specifically for the request. Further, as part of the testing and trialling, a supplier will be required to share all the information relating to results and underlying data with Ofgem (and any other persons specified in the direction). We seek assurance that Ofgem would apply the usual statutory confidentiality provisions to safeguard a supplier's commercial interests. This would extend to information published by Ofgem about a trial, with the detail limited to principles rather than specifics of the trial, in order to maintain competitive differentiation.

We would also seek assurance that in terms of commercial interests, there will be provision to cease a trial that is having an unduly negative impact on a supplier and/or customers.

The selection criteria

What do you think about the proposed selection criteria? Do you think we should consider any others? If so, what are they and why?

We agree that to make the testing and trialling successful, Ofgem needs to select the supplier(s) in a manner which is proportionate and targeted to the particular type of test or trial being considered and the focus of that test or trial. We also agree with the proposed high level criteria, namely, customer base, capability and a proportionate burden.

In considering whether a supplier has the capabilities to undertake a trial, we think that the criteria should explicitly acknowledge other mandatory requirements, business activities, IT release schedules, with flexibility around the timing of any trial to accommodate these and minimise the burden.

We note Ofgem's statement that in the selection of the supplier(s) to conduct a trial, they will look to control the impact on systems and costs, keeping it proportionate to the potential benefit to consumers. However, where a supplier may not currently have the necessary infrastructure to undertake specific tests and trials, Ofgem would still expect them to implement system changes, for example, as and when necessary. Ofgem may also expect a supplier to build, develop or buy-in particular skills or capability where they do not currently have them. This reinforces our earlier point about the need for a reasonableness test to be incorporated within SLC32A, in order to minimise risk for suppliers.

Improving consumer communications and the future of regulation

Finally, we would welcome clarification of how SLC32A sits with Ofgem's letter 7th March 2016 and work on principles based regulation. Our assumption is that Ofgem also remains open for suppliers to voluntarily trial changes in the format, placement and wording of information on bills and other communications, to improve the customer experience. The outputs of which would flow into reforms to the licence e.g. less prescription and reduced volume of information.

I trust that Ofgem will take full account of our comments in the final drafting of SLC32A and the selection criteria. If you wish to discuss any particular point, please contact me on the above details.

Yours sincerely,



**Paul Finch
Regulation**

Cc: Chris Harris, Regulation Director

Enc: Appendix 1, Extracts CMA's final report, scope of trial programme.

APPENDIX 1: Extracts CMA's final report, scope of trial programme

"224. ...In particular, the remedies provide for: (a) the establishment by Ofgem of a programme **to provide customers – directly or through their own suppliers – with information to prompt them to engage;**

13.20 Accordingly, our remedy is a recommendation to Ofgem to:

(a) establish an ongoing programme to identify, test (through randomised controlled trials (RCTs), where appropriate) and implement (for example, through appropriate changes to standard licence conditions) **measures to provide domestic customers with different or additional information** with the aim of promoting engagement in the domestic retail energy markets;

Aim of the remedy

13.26 **The aim of this remedy is to identify the most appropriate form of information received by domestic customers in communications** with suppliers (eg bills), reducing or minimising the complexity of such **information**, and providing domestic customers with **different or additional information** or messaging that will prompt them to switch tariff or supplier.

13.27 The measures to be identified and tested by Ofgem relate to **what, how and when information is presented to domestic customers in communications with suppliers**. This remedy will ensure that the approach for identifying such measures is responsive to changing market conditions, and will encourage **the testing and development of particular measures related to customer information** that have been identified by us during the investigation.

15.26 First, we recommend that Ofgem establish a programme (the Ofgem-led programme) to identify, test (through randomised controlled trials (RCTs), where appropriate) and implement (for example, through appropriate changes to gas and electricity suppliers' standard licence conditions) **measures to provide domestic customers with different or additional information with the aim of promoting engagement in the domestic retail energy markets.**