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Dear Clem

Statutory Consultation: Enabling consumers to make informed choices – E.ON response

Thank you for the opportunity to comment on the above consultation. Our responses to the questions posed are below.

Question 1

Do you have any specific concerns with our proposal to remove prescription from standard licence condition 25 and rely on the proposed package of principles?

1. Yes. We would stress that we support Ofgem's objective to rely more on principles to regulate the retail energy market; however, we do have some concerns about the narrow principles proposed and some of the policy decisions that Ofgem is making. Below we discuss each in turn.

'Must ensure'

2. Our main concern is the level to which suppliers are to be held, i.e. moving from 'all reasonable steps' to 'must ensure', a change which we feel is potentially counterproductive because it is likely to lead to suppliers taking a more cautious approach in all their undertakings. 'All reasonable steps' requires each supplier to examine each activity it undertakes to determine what steps it could take and which of those steps are reasonable or unreasonable. The 'must ensure' threshold, on the other hand, is an absolute. Therefore we believe suppliers will tend to err on the side of caution, which could result in them taking the same type of

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undifferentiated approaches to developing products and services. 'Must ensure' is likely to result in the 'box ticking' exercise that Ofgem is trying to avoid.

3. 'All reasonable steps' is itself a very high standard to hold suppliers to and we do not see any benefit in moving to 'must ensure'. Far from giving suppliers "the flexibility to achieve positive consumer outcomes in a way that is less constrained by regulatory burden and more accommodating of innovation"¹ we believe that it will stifle innovation, suppliers being wary of the threat of enforcement action for failings caused by circumstances the supplier had no means of anticipating and could not therefore mitigate against.
4. For example, SLC 25.1 will require that: "Suppliers must ensure that the terms and conditions of its Tariffs (including their structure) are clear and easily understandable". A supplier might develop a new tariff and carefully test its understand-ability with a stratified sample of customers and potential customers. However, once the tariff goes live, if some customers complain they do not understand it, despite receiving the same information as the sample group, the supplier may be at risk of enforcement action for failing to 'ensure' the tariff was clear and easily understandable, despite being able to demonstrate that it had worked hard to ensure customers could understand the tariff, and that it took 'all reasonable steps'.
5. Similarly with respect to SLC 25.5: "The licensee must only Recommend, and must ensure that its Representatives only Recommend, to a Domestic Customer products and/or services which are appropriate to that Domestic Customer's characteristics and/or preferences." A supplier could put in place excellent recruitment, training, procedures, scripts, monitoring and enforcement activities and yet may find that one of its staff, or Representatives' staff, used wording that could potentially, and may have in fact, misled a customer into thinking the supplier was 'recommending' a particular product or service to them. The supplier would have taken 'all reasonable steps' but had failed to 'ensure' and therefore could be liable for enforcement action from Ofgem, despite having in place robust, well considered processes that worked effectively in the vast majority of cases. In order to mitigate this, suppliers might consider that it was inadvisable to 'empower' its workforce, preferring to require staff to use only the script they are provided with and not to ad lib under any circumstances, thus stifling their ability to use common sense in particular circumstances, and giving the customer a poorer experience.
6. We welcome assurances by Ofgem that it will "take into consideration the nature of a supplier's relationship with a representative." (paragraph 2.17 of this consultation). Nevertheless, we think the 'must ensure' threshold is particularly problematic where it relates to representatives. Ofgem states that suppliers should look at its track record when using existing principles; however, those are based on 'all reasonable steps'. Ofgem may intend to adopt an approach of considering whether a supplier has taken all reasonable steps as part of its enforcement process; however, at any point in the future it could choose to take a more inflexible stance and strictly apply the 'must ensure' threshold. We appreciate Ofgem's statement that it will deal proportionately with small or minor breaches; we believe this should be captured within the licence to provide greater reassurance to suppliers.
7. We would draw comparisons with the principles used by the Financial Conduct Authority ("**FCA**"), where there are just 11 principles with prescriptive rules under those principles. The principles in the FCA use words such as 'due regard' and 'reasonable care': this ensures a fair balance between the rights of

¹ Executive Summary, Statutory Consultation: Enabling consumers to make informed choices, Ofgem, 30 January 2017.

customers to fair outcomes and the rights of a commercial organisation to make commercial decisions.

8. We have also looked at other regulatory regimes and legal instruments and have been unable to find an example of such a high threshold as 'must ensure' except where there are prescriptive rules with simple outcomes. As we will point out in our response to the SoCs Consultation, even the Health and Safety at Work Act 1974 only requires owners of commercial premises and employers to take 'all reasonably practicable steps' to ensure the safety of customers and employees.
9. We will discuss this issue more fully in our response to Ofgem's consultation "Standards of Conduct for suppliers in the retail energy market", published 30 January 2017 ("**SoCs Consultation**"), where Ofgem is proposing similar changes to the standards suppliers are expected to achieve.

Duplication

10. As stated in our response to Ofgem's August 2016 consultation², we believe that the narrow principles duplicate the requirements of the SoC. We are pleased to note Ofgem's assertion that, once the narrow principles proposed in this consultation are bedded in, it may wish to move to a single broad principle. We agree that the narrow principles will provide a good transitional framework for suppliers but should not be needed in the longer term.

Policy objective

11. We agree with Ofgem's proposal to include the policy objective proposed in its previous consultation within the SoCs². We will comment further on this in our response to the SoCs Consultation as stated in paragraph 9.

Narrow principles

12. In respect to SLC 25.2, Ofgem states that the aim is to ensure tariffs are easily distinguishable by all features, including name, so that consumers are able to determine the difference (paragraph 2.46 of this consultation). Where a supplier withdraws one version of a tariff and replaces it with the next version where the only other difference is prices, as is currently common practice, we consider that they are 'easily distinguishable', as only one version at a time would be on sale. Similarly with different versions of the same tariff for different meter types or for different prices depending on the region. It would be ridiculous for suppliers to be forced to create differences between versions of the same tariff (e.g. different exit fees or discount amounts) to ensure compliance with this licence condition and could be detrimental to customers to do so - a customer who had previously selected a particular tariff might be confident in selecting a new version of that same tariff, having been satisfied with it previously.
13. In respect to SLC 25.3, our interpretation is that comparison is only necessary for tariffs available through the particular channel the customer is using. For example, if a customer contacts us by telephone it will not be necessary to provide information about tariffs that are only available exclusively via a price comparison website. We believe this is consistent with recommendations made by the Competition and Markets Authority as part of their recent investigation into the energy market.
14. We believe that the principle in SLC 25.5 stretches the definition of 'recommend' somewhat. We believe the appropriate approach is as it is for financial services: suppliers should provide full and fair information but it is for the customer to decide. Ofgem has acknowledged that customers may have particular preferences, and these may not appear to be logical when viewed against their characteristics; therefore a supplier should only be required to provide customers with information that

² Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing, Ofgem, 3 August 2016.

is complete, accurate and not misleading (SoC, SLC 25C.4(b)(i)). Any decision the customer makes is their own and not one 'recommended' by the supplier. Thus, in advising a customer about a particular product or service a supplier could not be said to be 'recommending' that product or service providing all the information was made available to the customer to help them make an informed choice, including the fact that other products or services are available that may be more appropriate for them.

15. Our view, therefore, is that the essence of this principle is already included in the SoC, particularly if Ofgem decides to include an 'informed choices' policy principle in the SoC Consultation.
16. We agree with Ofgem that the fourth principle in its August 2016 consultation is not required as it duplicated requirements in the SoCs. As we stated in our response to that consultation, it is our belief that the current SoCs adequately cover the elements of SLC25, even without the inclusion of the policy objective in the SoCs..

Question 2

Do you have any specific concerns with our proposals to amend the RMR Clearer Information tools?

Removal of the Tariff Comparison Rate ("TCR")

17. We agree with the proposal to remove the requirement from licence for the TCR and all relevant references in supply licences to the TCR.

Amendments to the Tariff Information Label ("TIL")

18. As we explained in our response to the August 2016 consultation, we have concerns both about the content of the TIL and the provision of all TILs, Live and Closed, on suppliers' websites, and we reiterate our concerns below.
19. We believe that the TIL is a useful tool for customers as a source of key information delivered in a format that ensures consistency; however, we believe that the FAQ section distracts from the main purpose of the TIL and therefore should be removed.
20. With respect to provision of TILs on suppliers' websites, we believe that amendments to SLC 31B.4-6 should be considered to require only Live tariffs to be shown on suppliers' websites. Annual summaries already provide customers with a TIL relating to their current tariff, and bills provide basic information about their tariff. The only benefit of having all Closed Fixed Term Tariffs and Dead Tariffs on the website would be if a customer wanted to see what tariffs they had missed an opportunity to switch to. Showing long lists of old tariffs they cannot choose only leads to confusion and frustration in an energy market which many already struggle to make sense of. These lists are likely to get even longer with the removal of the 'four tariffs' rule.

Removal of transitional provisions covering rollovers, end of fixed term notices and existing fixed Term Supply Contracts

21. We are not aware of any unintended consequences of the removal of these arrangements, therefore we fully support and welcome the proposal to remove them from the supply licence.

Personal Projection ("PP") and Cheapest Tariff Message ("CTM")

22. We would welcome the opportunity to work with Ofgem in developing the PP calculation and the changes to the CTM. In the industry workshop in November 2016, we proposed an option for the PP calculation, and would be happy to expand further on this.
23. Our option proposed was an equation that details the items required but allows principles to determine the value of each item. For example:

$$\begin{aligned} & (\text{sum of (consumption for period x unit rate for period)}) + (\text{relevant standing charge(s)}) - \\ & (\text{sum of all discounts and benefits}) + (\text{sum of all other charges}) \end{aligned}$$

Depending on the circumstances, consumption could relate to:

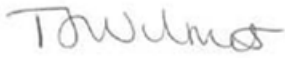
- consumption for the previous 12 months;
- predicted consumption where the tariff promotes energy reduction;
- consumption for different time periods, e.g. Economy 7 or other time of use;
- consumption for a period shorter than 12 months where tariff is for less than 12 months.

This would allow the personal projection to be relevant for each customer.

24. In respect of the CTM, we reiterate what we said in our response to the August 2016 consultation. While we agree that some customers find it useful, we feel there is some confusion in having both a cheapest similar tariff message and a cheapest alternative tariff message. Our customers have repeatedly told us that they find the CTM confusing.
25. There is currently little opportunity for suppliers to give sufficient information on tariffs identified as the cheapest similar or cheapest alternative. There should be greater flexibility as to what information can be provided within the CTM to enable suppliers to explain what behaviours might be required to achieve particular savings.
26. We believe Ofgem should undertake research to establish which message customers find most useful. There are complexities in describing the difference between the two savings messages; the more detailed an explanation, the less inclined many customers are to read it. Long explanations take up more space and increase the length of communications, making them more daunting for customers who have reading or language difficulties.
27. There are likely to be increasing difficulties in explaining savings messages with the introduction of behavioural tariffs, as it will be important to caveat the fact that the savings are only likely to be achievable if the customer behaves in a particular way.

If you have any queries or wish to discuss our response in more detail, my contact details are provided above right. If you email me, please copy in regcomms-external.com as this mailbox is regularly monitored.

Yours sincerely

A handwritten signature in grey ink that reads "Tracey Wilmot". The signature is written in a cursive, flowing style.

Tracey Wilmot
Head of Regulation