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*sent via email to:* FutureRetailRegulation@ofgem.gov.uk

13 March 2017

Dear Mr Thomsen,

**Standards of Conduct for suppliers in the retail energy market**

I am writing in response to the consultation on the above to set out Haven Power Limited's (Haven's) views on the above consultation.

Haven Power is a Drax Group company and is a non-domestic electricity supplier that has been supplying Small Medium Enterprises (SME) since 2007. In 2009 we entered the Industrial & Commercial (I&C) sector and have been steadily growing our customer base in both areas and currently supply ~25,000 and ~9,600 MPANs in the SME and I&C sectors respectively.

Our responses to the points relevant to the business market raised in the consultation are attached.

I hope this response is useful. Please contact me using the details below if there is any aspect you would like to discuss further.

Yours sincerely

June Mallett  
Regulation Manager

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(By email)

**Question 1:** *Do you agree with our proposal to retain a Fairness Test for all the broad principles within the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.*

Yes, it is very important to retain a Fairness Test given the overarching importance of the concept of fairness in the Standards.

**Question 2:** *Do you agree with our proposed wording for a revised Fairness Test: "the licensee or any Representative would not be regarded as treating a Domestic Customer/Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer/Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances"?*

We welcome the proposed simplification of the Fairness Test. Framing the test in terms of customer outcomes is both easier to apply and ensures the focus remains on the impact on the customer.

**Question 3:** *Do you agree that the changes to the Fairness Test should be made to the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?*

Yes.

**Question 4:** *Do you agree with our proposal to remove the all reasonable steps threshold from the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.*

**Question 5:** *Do you agree that all reasonable steps should be removed from the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?*

The difficulty with "all reasonable steps" is that it places a large administrative burden on suppliers to record all the steps taken in every instance so that the detailed information is available in order to evidence that reasonable steps have been taken. We believe this sends the wrong signal – that the supplier should focus on evidence collection for compliance purposes. In removing the phrase the emphasis is placed on achieving a good outcome for the customer.

Importantly, to make this work and to deliver the intended outcomes, Ofgem will need to develop its own approach. Given recent high profile enforcement outcomes, and Ofgem's generally aggressive stance, suppliers are naturally reluctant to engage with the regulator. Yet the ability for suppliers to hold open and far reaching discussions with Ofgem is central to providing confidence that suppliers can progress with changes to products and operating models without the threat of enforcement investigation. We hope the development of the Innovation Link facility is a sign of a behavioural change in Ofgem to provide assistance and advice on novel ways of putting broad principles into practice. However, it is disappointing that in the long consultation document little attention was given to the need for open bilateral dialogue and we feel the statement on proportionate application of Standards through enforcement practice will do little to allay suppliers' concerns in this.

The consultation, and earlier working paper, make it clear that Ofgem is considering carefully the approach to enforcement under the Standards. Until there is greater clarity on this approach, particularly how Ofgem intend to apply customer outcomes as a means of

initiating enforcement proceedings and the extent to which well-intentioned steps taken by the supplier are considered in the determination, we believe that on balance it is better to retain the “all reasonable steps” as the compliance threshold.

**Question 6:** *Do you support our proposal to introduce a broad “informed choices” principle into the domestic Standards of Conduct?*

**Question 7:** *Do you agree with the proposed drafting of the broad “informed choices” principle we have set out?*

**Question 8:** *What, if any, additional guidance on the domestic and non-domestic Standards of Conduct do you consider would be helpful in light of the changes we are proposing?*

Much more could be done in this area. Practical examples illustrating the regulator’s view of good customer outcomes across a range of situations and scenarios would be very helpful in interpreting the Standards. Concerning the approach to enforcement it would be helpful to understand, again using practical but hypothetical examples, how Ofgem intends to apply the Standards proportionately.

**Question 9:** *Do you consider that the “Treating Customers Fairly” statement has a valuable role to play and should be retained as an obligation in the domestic and non-domestic Standards of Conduct? Please provide an explanation for your answer.*

Yes. The statement has proved to be a useful tool for embedding Treating Customers Fairly into our culture by helping staff understand how to relate the Standards of Conduct to the decisions they make in their daily working lives, and to their behaviour. We are less certain of the value customers place on the statement. We have never received a request for a hard copy and this section of our website draws little interest.

**Question 10:** *Do you agree with our proposal to include a broad vulnerability principle in the domestic Standards of Conduct? If not, please explain why with supporting evidence.*

**Question 11:** *Do you agree with our proposed definition of ‘Vulnerable Situation’? If not, please explain why with supporting evidence.*

**Question 12:** *Do you have any comments on the proposal to amend SLC 5?*

We understand the reasons you are seeking to extend the information gathering powers and in particular to monitoring compliance with licence conditions. The extended powers must be exercised thoughtfully otherwise this will add to the already considerable burden on suppliers to provide responses to information requests from Ofgem and other official bodies. This is a cost on businesses but more importantly it distracts key business resources from actually delivering the innovation and good customer outcomes we are striving to achieve.

On extending the information powers we would urge you to please consider the following points;

- a) That you provide advance notice indicating the data you intend to request so that suppliers can take action to prepare, for example in raising the necessary IT change requests
- b) That consideration is given to the timing of key RFIs so that they do not coincide with information requests from other organisations and peak holiday periods, such as Christmas. Greater coordination between Ofgem and other industry bodies would be appreciated, as suppliers are sometimes asked for the same information from different parties in a variety of formats. Particularly in relation to suppliers' smart meter rollout plans.
- c) That you consult on the intended questions and data requirements where feasible so that suppliers can indicate to you what information can be more easily obtained
- d) Allow a reasonable time for the information to be obtained, assimilated and the response provided
- e) Provide an appeals process for mandatory information requests in which a supplier can set out the reasons why particular information requests cannot be satisfied in practice or explain why a prescribed time limit is infeasible and a longer period should be granted
- f) That the rationale behind the information request is made explicit so that supplier understands how the resulting data will be used.

The consultation document states (section 4.7):

*“As is the case when applying principles, we will have regard to our Better Regulation principles when considering whether it is necessary and appropriate to issue a request for information under the proposed new SLC 5. The degree of scrutiny companies receive will be influenced by how well individual suppliers demonstrate to us that they are focused on achieving good consumer outcomes.”*

We believe this is the wrong approach and sets the wrong tone because it suggests either the supplier spends time in persuading the regulator that it has the right focus, or it is compelled to spend time completing information requests for the regulator. Either way, what is missing in this is actually delivering the good customer outcomes. We would suggest a more appropriate expression would be:

*“The degree of scrutiny companies receive will be influenced by how well individual suppliers are achieving good consumer outcomes.”*

**Question 13:** *How would your processes change if our proposals are implemented? Can you provide evidence of what costs you think you will incur to a) implement the changes and b) comply with these?*

We don't anticipate significant additional costs or process changes as a result of the proposed changes to the Standards.

We are concerned that the proposed extension of the information gathering powers in SLC 5 would result in considerable additional cost, especially in supporting systems and data analysis work, and potentially disrupt the business by placing increased burden on key IT and business resources.

**Question 14:** *Can you provide evidence to support any alternatives to our proposals?*

**Question 15:** *Can you provide evidence of how the proposal will benefit your business? As an example, these could include greater efficiency and coordination among internal processes, development of new business models etc.*

**Question 16:** *What wider benefits do you think our proposals could deliver?*

**Question 17:** *In a year, how much time (in full-time equivalents/month) on average does your business spend responding to requests for information (RFIs) from Ofgem? How does this compare with the time spent responding to other organisations' RFIs (eg from BEIS, CMA)? Please provide evidence and indicate whether this is half the time or less, or twice the time or more.*

The ad-hoc RFIs from Ofgem are very time consuming. We also receive ad-hoc requests from other parties such as MRA and Citizens Advice, but they are usually voluntary, shorter and less complex. The two most time consuming RFIs last year were the "monitoring of non-domestic regulatory frameworks" and the "non-domestic objections". Because of the fixed response windows given by Ofgem, these RFIs took up a very significant amount of the total regulatory team.

We had wanted to respond to the information request on switching but the size and complexity of the RFI meant it was simply not possible to provide a meaningful response in the time allocated by Ofgem.

The RFIs for BEIS, DCC, MRA, Citizens Advice and DCUSA don't tend to be as time consuming because the information requested is often the same or similar each time, so we can set ourselves up to respond. However, it is rather frustrating when some of these bodies request the same information in different formats (e.g. smart meter rollout plans). Even though we receive numerically more RFIs from other organisations, in combination they take up less resource time than Ofgem RFIs.

**Question 18:** *Can you provide evidence of any unintended consequences that could arise as result of our proposals?*