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By email: Clement.Perry@ofgem.gov.uk

Dear Clem,

Helping customers make informed choices – statutory consultation

Thank you for the opportunity to comment on Ofgem's revised proposals to ensure customers can make informed choices and the introduction of principles for comparability and sales and marketing. This response is submitted on behalf of the Centrica group, with the exception of Centrica Storage. It is not confidential. Appendix 1 provides our answers to Ofgem's consultation questions.

Centrica continues to support Ofgem's move to principles-based regulation and the focus on customer outcomes. In relation to the principles proposed in this consultation, we agree that:

1. Customers should be able to make informed choices about their energy and suppliers should make these choices as easy as possible.
2. Customers should be able to choose an energy product without being mis-sold to.

To help suppliers achieve these customer outcomes, we support Ofgem's proposal to introduce three principles for comparability and two principles for sales and marketing. We believe these five narrow principles should, together with the Standards of Conduct, produce good customer outcomes such as tariff innovation, informed choices and clear and consistent selling practices. The principles should also protect against negative outcomes such as mis-selling or inappropriate tariff choices.

We welcome Ofgem responding to stakeholder feedback in the policy consultation by making drafting changes to the principles. Appendix 2 summarises the changes and clarifications we welcome from Ofgem. However, we remain concerned by some of the proposed drafting because we think it will lead to negative unintended consequences.

Comparability principles

While mainly supportive of the comparability principles, we are concerned that the drafting of one of the comparability principles will have serious negative unintended consequences for consumers and competition. We ask that the drafting be revised.

Distinct brands, including white labels. We are concerned that the ambiguity of the third comparability principle may give rise to unintended consequences that potentially work against the adoption of principles-based regulation. As drafted, this principle could be susceptible to retrospective interpretation in a way that contradicts the policy intent and effect. Specifically, we are concerned that in future it might be argued that the principle requires licensees to include all of the tariffs offered under each brand that it operates or partners with on the websites (and other customer communication channels) of all brands that it operates and partners with.

We are confident that it would not be correct to argue that the principle imposes such a prescriptive obligation because:

- Ofgem has not mentioned such an intent or effect in its policy consultation, statutory consultation or impact assessments.
- Principles are inherently flexible in application and the responsibility of suppliers to interpret in a way that is consistent with the policy intent and good customer outcomes.
- Ofgem recognises the value that white label partnerships bring to both consumers and competition in terms of choice, price and customer service. In this context Ofgem, recognised the importance of distinct brand identity.
- If Ofgem had intended such a prescriptive effect it would need to achieve it through a prescriptive rule, as it did through the cross-brand Cheapest Tariff Information (CTM) obligations for written correspondence.

The CMA has also recognised the importance of distinct identity and separation in the positive contribution that different brands make to consumers and competition. The Explanatory Note to the Microbusiness Order, the CMA states¹:

“For the avoidance of doubt, where a supplier operates more than one brand, Article 3.1 would not require the supplier to disclose the prices for each brand on all of its websites (including those of all its brands), provided that all such prices were disclosed either on each relevant brand’s website, or on the supplier’s own relevant website or on one or more third party online platforms”.

If there was a licence condition that created an obligation for cross-brand advertising beyond the current prescriptive Cheapest Tariff Messaging (CTM) requirements, then it would undermine the customer and commercial rationale for having white label partnerships. Whilst we believe that this is not the intent or effect of the principle, it would provide additional regulatory certainty if Ofgem amended the drafting of the third comparability principle in the following way:

*The licensee must ensure that it puts in place information, services and/or tools to enable each Domestic Customer to easily compare and select appropriate Tariffs **from the offering of each individual brand that it operates or partners with**, taking into account that Domestic Customer’s characteristics and/or preferences.*

As stated above, it is not an obvious interpretation of the third comparability principle that Ofgem intends for the principle to cover white labels and sub-brands. Ofgem has not explained this policy intent to stakeholders during the consultation process. If Ofgem intends for the comparability principles to cover white labels and sub-brands, Ofgem should:

- a) Consult on that prescriptive proposal, taking into account the impact on competition and the potential detriment to consumers.
- b) Explain why Ofgem is proposing prescription and departing from a principles-based approach.

Sales and marketing principles

We are supportive of the sales and marketing principles and welcome Ofgem removing the sales principle (formerly Principle 4) that duplicated the Standards of Conduct. We agree with Ofgem that the Standards of Conduct should be the foundation of principles-based regulation in the energy retail sector. When deciding to introduce a principle, Ofgem should first determine if the Standards of Conduct already provide sufficient direction to achieve that outcome. Narrow principles should only be introduced to supplement the Standards of Conduct if they provide greater specificity and clearer direction as to what positive customer outcomes look like.

¹ <https://assets.publishing.service.gov.uk/media/58513f1040f0b60e4a0000a4/energy-market-microbusinesses-order-explanatory-note.pdf> Footnote 27

While we support the intent behind Principle 5 (formerly Principle 6), we remain concerned by elements of Ofgem’s proposed drafting. In particular,

- **Definition of “recommend”**. The proposed definition of “recommend” in Principle 5 is too broad and we believe would inadvertently capture supplier-customer conversations that do not amount to recommendations. As currently drafted, a customer only needs to be left with the impression that a tariff or range of tariffs might be suitable for their characteristics or preferences for the supplier to be deemed to have made a recommendation. This is a very low threshold for what counts as a recommendation. For example, a supplier could be seen as making a recommendation just by mentioning a range of Fixed Term Contracts during the course of a conversation with a customer about available tariffs. We believe that a recommendation has only been made if the supplier promotes a single individual tariff as particularly suitable to the customer in an affirmative way. We recommend that Ofgem tightens the drafting of the definition so as to avoid capturing the neutral provision of information about tariffs, as set out below.
- **“Products and/or services”**. Ofgem should be consistent in the drafting of the principles. Ofgem currently refers to “Tariffs” in Principles 1-3, with “Tariffs” a defined term in the energy supply licence which covers both the energy tariff and any bundles tied to the tariff². In contrast, Principle 5 refers to “products and/or services”, an undefined term and one that could potentially cover a range of different products and/or services beyond energy supply. We can see no obvious reason for Ofgem introducing a different term in Principle 5. The current scope of SLC 25 is clearly aimed at marketing and sales activities relating to “Domestic Supply Contracts” and we do not believe Ofgem has the vires to regulate other marketing or sales activity conducted by the supplier. For instance, Ofgem has no authority to regulate the marketing of our Hive Active Heating product. To avoid confusion about the scope of Principle 5, we recommend that Ofgem removes the reference to “products and/or services” and amends principle 5 to refer to “Tariffs”, as set out on the next page.

We believe that suppliers are more likely to deliver positive customer outcomes if Principle 5 is amended to read as follows:

5. The licensee must only Recommend and must ensure that its Representatives only Recommend, to a Domestic Customer Tariffs which are appropriate to that Domestic Customer’s characteristics and/or preferences.*

Recommend means actively and affirmatively promoting (whether in Writing or orally) a single Tariff to a Domestic Customer which gives, or is likely to give, the Domestic Customer the impression that the Tariff is particularly suitable for their characteristics and/or preferences

Finally, we do not believe Ofgem has justified that requiring suppliers to keep records of sales for 24 months is necessary or proportionate. We do not believe that Ofgem has provided evidence of the benefits of the change or the proportionality of the costs associated. We remain of the view that customers are highly unlikely to contact a supplier about a sale more than 18 months after that sale has taken place. However, we accept that Ofgem is unlikely to change the proposal at this stage and are taking steps to retain sales call for 24 months, rather than 18 months as is our current practice.

Fixed term contract roll-offs

In our response to Ofgem’s “Helping Consumers Make Informed Choices” policy consultation in autumn 2016, we supported the proposal to allow Fixed Term Contract (FTC) customers to be offered another FTC to roll onto, provided that the customer was able to exit this tariff at any time with no

² “Tariff...means the Charges for the Supply of Electricity combined with all other terms and conditions that apply, or are in any way linked, to a particular type of Domestic Supply Contract or particular type of Deemed Contract”, Definitions, Ofgem Electricity / Gas Supply Licence

penalty. Ofgem has dropped this proposal from the statutory consultation without explanation or justification and despite many stakeholders supporting the proposal. We encourage Ofgem to reintroduce the proposal to allow suppliers to roll customers from a FTC to another suitable FTC (without exit fees). Such flexibility could facilitate supplier innovation and improve customer satisfaction. Suppliers can ensure, e.g. via Terms and Conditions and customer communications, that a customer understands that they will roll on to another FTC if they make no decision. If Ofgem does not intend to take this proposal forward, Ofgem should explain why.

“Must ensure” principles

We no longer object to Ofgem making the principles “must ensure” obligations. We particularly recognise the importance of consumers having confidence in the sales process. We recognise that Ofgem’s Enforcement Guidelines and general duties to Better Regulation mean that any compliance or enforcement discussions should be proportionate and consider whether customer detriment occurred. However, we caution Ofgem against assuming that all principles should be “must ensure” obligations. Ofgem should review each principle according to the issue it is trying to address.

If you have any questions about this response, please contact Thomas Lowe by calling 07769 548 906 or emailing Thomas.Lowe@centrica.com. We will also be responding to Ofgem’s consultation on the Standards of Conduct.

Yours sincerely

Alun Rees

Director, Retail Market Policy

Centrica

Appendix 1 – Consultation questions

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?

No, we have no concerns about Ofgem regulating sales through principles rather than the current prescription in SLC 25.

We agree with the objective that customers should be able to choose an energy product without being missold to. As highlighted above, however, Ofgem will only achieve this positive customer outcome if the sales and marketing principles are clearly drafted and of appropriate scope. In particular, Ofgem should ensure that the definition of “recommend” is sufficiently tightly defined and the scope of the principle does not exceed Ofgem’s statutory powers. We propose improved wording to Principle 5 above.

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

No, we have no concerns with Ofgem’s proposed approach to amending the RMR Clearer Information tools. We support Ofgem removing prescription from the licence conditions and welcome the removal of the Tariff Comparison Rate (TCR) and the amendment of the Tariff Information Label (TIL). We are taking steps to remove the TCR from all correspondence and customer conversations and to amend the TIL as required.

We look forward to engaging with Ofgem further on the Personal Projection and Cheapest Tariff Messaging in the spring.

Appendix 2 – Clarifications and changes that we support

We support Ofgem responding to stakeholder feedback by making a number of changes to the drafting of the principles.

Principle	Change welcomed
<p>3. <i>The licensee must ensure that it puts in place information, services and/or tools to enable each Domestic Customer to easily compare and select appropriate Tariffs within its offering, taking into account that Domestic Customer’s characteristics and/or preferences.</i></p> <p>5. <i>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.</i></p>	<p>We support Ofgem amending “needs or preferences” to “characteristics and/or preferences” Customers should be free to determine whether to make a tariff choice based on their characteristics or preferences (where those differ).</p> <p>We agree with Ofgem that “characteristics” and “preferences” may be different for a customer. It is entirely possible that, while one tariff may best serve a customer’s characteristics, the customer may prefer a different tariff. Ofgem successfully captures the difference in the example of a customer who would be better off with a low standing charge product but prefers a 100% renewable tariff with a higher standing charge.</p>
<p>5. <i>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.</i></p>	<p>We welcome Ofgem confirming that Principle 5 “does not introduce a new requirement on suppliers to make recommendations”³.</p>

We also welcome the clarifications provided by Ofgem on the policy intent of the principles.

Area	Change or clarification welcomed
Scope of comparability principles	We welcome Ofgem’s confirmation that the comparability principles do not mean that all tariffs must be comprehensible to all customers. We agree that “Principle 1 does not require suppliers to ensure that <i>all</i> tariffs can be understood perfectly by <i>all</i> customers at <i>all</i> times.” ⁴ Suppliers should be able to target sophisticated tariffs, e.g. involving load shift and Time-of-Use, to customers with the characteristics and/or preference for this type of tariff.
Targeting and segmentation	We welcome Ofgem’s recognition that consumers are “heterogeneous” and some will be “better equipped to engage with certain products” ⁵ . Suppliers should be able to offer different tariffs to different customer groups depending on their characteristics and preferences.
Supplier ability to control “representatives”	We welcome Ofgem’s recognition that suppliers have much less control over certain types of “representative” than others. We agree with Ofgem that “the level of control and influence a supplier is able to exert on the conduct of a TPI depends on the proximity of the relationship” ⁶ . Suppliers will find it easier to exercise controls over firms that are subcontracted to sell on their behalf than Price Comparison Websites (PCWs).

³ 2.88, Pg.25, Ofgem statutory consultation, Helping Customers Make Informed Choices

⁴ 2.38, Pg.17, Ofgem statutory consultation, Helping Customers Make Informed Choices

⁵ 2.37, Pg.17, Ofgem statutory consultation, Helping Customers Make Informed Choices

⁶ 2.17, Pg.13, Ofgem statutory consultation, Helping Customers Make Informed Choices