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13 March 2017

Standards of Conduct for suppliers in the retail energy market

Dear Andrew,

SmartestEnergy welcomes the opportunity to respond to Ofgem's Consultation on Standards of Conduct for suppliers in the retail energy market.

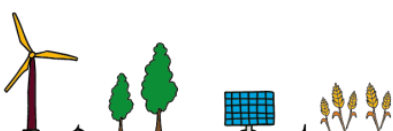
SmartestEnergy is an aggregator of embedded generation in the wholesale market, an aggregator of demand and frequency services, and a supplier in the electricity retail market mainly serving large corporate and group organisations.

Please note that our response is not confidential.

Overview

On the whole we believe that the detail of the changes Ofgem are proposing is not focused on the right areas. We wholeheartedly agree with the concept of broad principles such as treating customers fairly and we agree with the need for a greater level of trust between Ofgem and suppliers. However, the current proposals appear to give Ofgem greater discretion without any quid pro quo for a supplier like SmartestEnergy. We would be very keen to see a reduction in the amount of microbusiness rules, which are unnecessary in the competitive market space we operate in. However, Ofgem's focus on reducing the rulebook appears to be on the domestic side.

As stated above, we agree with the need for a greater level of trust between



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Ofgem and suppliers whereby Ofgem have more discretion and suppliers have more freedom to innovate and ensure fair treatment in different ways. However, this consultation in isolation gives the impression of an ongoing process of unbalancing the relationship between Ofgem and suppliers in relation to fairness principles (to the point of being more and more unfair to suppliers). There is also an unproven assumption on Ofgem's part that there would be significantly greater engagement if the market were seen as being "more fair" i.e. tilted more in favour of the consumer. The impression is also given that a major driver of the changes is such that there is less of an onus on Ofgem to demonstrate that unfair treatment has taken place.

Answers to Specific Questions

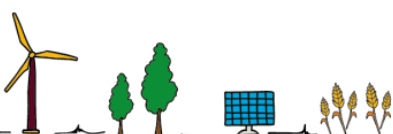
Question 1: Do you agree with our proposal to retain a *Fairness Test* for all the broad principles within the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.

Yes, we agree with the proposal to retain a *Fairness Test* for all the broad principles within the domestic Standards of Conduct. However, whilst we also agree customers need to be assured that they will receive fair treatment if they are to engage confidently in the market, it does not necessarily follow that substantial numbers of customers will engage with the energy markets as a result of greater levels of perceived fairness for the customer which in reality means tilting the balance to the supplier's detriment.

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 do not understand the concept of the *Fairness Test* adapting to stay relevant as the licence, and the energy markets, evolve. The *Fairness Test* should be timeless and reflect both sides. Indeed, a fairness test which is adaptable is much more likely to be abused by changes in political thinking.

We are also not convinced that introducing the concept of a "material imbalance" is in any way a better way of defining "fairness." The proposal introduces greater ambiguity over the relative size of the supplier and the



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customer. However, we take some comfort from the words “unless the detriment would be reasonable in all the relevant circumstances.”

We understand why the focus of this new test is on whether the nature of any detriment to the domestic consumer is reasonable in all the relevant circumstances and not on whether a supplier has taken reasonable steps to avoid causing the likelihood of detriment.

However, we would also note that if Ofgem are genuinely seeking to make the Standards more focused on consumer *outcomes* then the standard should not refer to *likelihood* of detriment but *actual* detriment. Using the term “likelihood” implies Ofgem have less of a need to prove detriment. If this is to remain, it would be better (and fairer) if it referred to “significant detriment.”

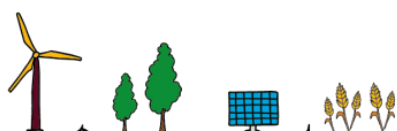
Question 3: Do you agree that the changes to the *Fairness Test* should be made to the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

No. The non-domestic market is characterised by contracts which businesses should be responsible enough to assess.

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.

No. We agree that a greater focus on achieving the Standards, rather than the steps taken to achieve them, would be more likely to ensure positive effects for consumers while still enabling innovation. However, there is a danger that Ofgem are opening themselves up to the criticism that they are merely motivated by a wish to remove the obligation on them to prove that one or more reasonable steps had not been taken in order to establish that there has been a breach. Therefore, we do not agree with the proposal to remove the all reasonable steps threshold from the domestic Standards of Conduct.

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?



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No. Even if Ofgem choose to remove the wording, it is still very important that they take this factor (i.e. that all reasonable steps have been taken) into account when assessing instances of customer detriment. It is not fair to punish energy suppliers if they have done all they can to prevent detriment, successfully or not.

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

No comment.

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

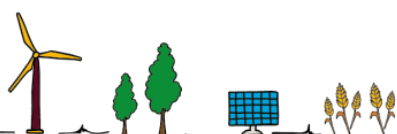
The drafting appears to achieve Ofgem's aim. It is the principle itself we are uncertain about. An ‘informed’ choice does not necessarily mean a rational one but it could be argued in the future that if a customer does not make a rational choice they were not well enough informed.

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?

No comment

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.

We think that the “Treating Customers Fairly” statement on our website complements our Customer Charter and we believe it provides customers with comfort as to the level of service we provide. As such, we are more than comfortable maintaining the obligation. However, Ofgem should not expect this to have such a massive effect on customer confidence on its own.



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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.

No comment.

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

We agree with the change of wording to clarify that this definition applies to Domestic Customers only.

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

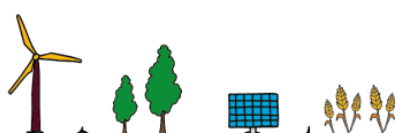
It is important that the Information which Ofgem can compel a supplier to provide must already exist or be capable of being collated from within the supplier's systems. It is not acceptable that Ofgem should have the powers to enforce suppliers to conduct costing exercises for fundamental market developments which have not been implemented. Without this clarification we are not able to agree with the proposed change to the licence.

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 do periodic reviews of licence requirements and processes. The changes suggested in this document would imply little additional cost to implement and bed in.

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

No



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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.

As a non-domestic supplier, we do not consider the proposed changes to be too onerous.

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

No comment

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.

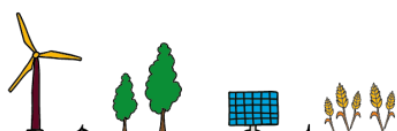
Approximately 25 days FTE per annum is spent responding to RFIs from Ofgem. In recent years, RFIs from Ofgem have required the production of increasingly complex reports in order to be able to provide the information at the required granularity. Some RFIs, such as those for "non-domestic objections" and the Switching programme need to become mini projects. It is therefore critical that Suppliers are given adequate lead time to prepare and secure resource from the business to support these requests. Half as much time is spent on RFIs for BEIS.

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

We can provide no further information over and above what we have outlined in our answers above.

Should you wish to discuss any aspect of this matter, please do not hesitate to contact me.

Yours sincerely,



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