

## ENERGYHELPLINE COMMENTS HIGHLIGHTED IN YELLOW.

### ANNEX 2

#### Topic 1 - Guiding criteria to evaluate a successful supply market.

We want a market where competition and innovation deliver good outcomes for consumers, including lower bills, lower environmental impacts, improved reliability and safety, better quality of service and better social outcomes. We want our regulatory framework to be fit for purpose over time. To ensure the regulatory framework is best placed to enable delivery of these outcomes, it will be important to set out guiding criteria to frame any future supply market arrangements. This will allow us to keep focused on our goals, and to make sure any reform options we develop are in line with the supply market that will deliver the best outcomes for consumers.

Guiding criteria could include:

- a) Consumers can access energy supply and energy services however they choose to do so, without undue restriction.

It's not obvious what this means. Currently consumers can go directly to suppliers, or use a wide range of different types of intermediaries. Consumers can engage using online services, over the phone, or through face-to-face channels.

Can Ofgem be specific about other developments they see that consumers could benefit from, or specific restrictions they are concerned about?

- b) Consumers that do not actively engage in the energy market still receive a good quality of service and pay a reasonable price for their energy.

This statement is potentially damaging to consumer welfare; interventions in markets have unforeseen and/or negative consequences.

Markets by definition work to provide the best outcomes for consumers who engage in them. If consumers do not engage, markets cannot work for them.

The focus on all regulatory work should be to create a transparent market where consumer rights are protected and encourage engagement in the market. Regulatory work should never include elements of price regulation including for disengaged consumers. Distortions from this type of regulation will always lead to lower overall consumer welfare.

- c) Consumers, including the vulnerable, are adequately protected no matter how they access energy services.

Agree.

- d) Bearing in mind relevant data protection regulations, there are no undue barriers for consumers and wider market participants seeking to share access to their energy system data with other market participants.

This principal is good. However, the industry needs to do more to support consumer understanding in this area.

Consumers need to be supported in understanding that data from Smart meters belongs to them and not their supplier.

Suppliers do not adequately explain the issues around data ownership to their customers.

- e) Firms offering intermediary and other services to consumers can compete on an equal basis.

Agreed

- f) Costs of operating the energy system are recovered in a cost-reflective manner, and risks allocated and managed effectively. It is important that the set of criteria are consistent with our aim to: promote competition, including for disengaged consumers, enable innovation in business models, products and services, where this is in consumers' interests, and ensure protection for all consumers, particularly the vulnerable.

Agreed

## Q1

**What are your views on the above criteria? Are there other criteria that should guide our assessment of current and possible future market arrangements?**

The obvious way for Ofgem to achieve this is to implement the full removal of WoM as envisaged by the CMA. The principal is correct but Ofgem's continued feet dragging, since May 2015 when we had this remedy clarified, is the problem.

## Topic 2 –Barriers to innovation

We know from our Innovation Link that new business models are seeking to break into the energy market, and offer new energy services to consumers. For example, new opportunities are presented by smart meters providing access to more granular and timely data on consumption patterns, the increased value of flexibility across the energy system, greater penetration of

distributed renewable generation and battery storage reducing in cost and increasing in capacity. The proliferation of new technologies and business models has the potential to address the two-tier retail market by providing new products (such as local energy, energy management or multi-utility billing) that encourage new groups of customers to engage and by making it easier for customers to switch (e.g. via intermediaries that act on customers' behalf to switch supplier). However, in many cases, firms find their business models are not compatible with the regulatory framework and have to adapt. This often means needing to partner with a supplier, become a supplier or scaling back altogether the services they are able to offer consumers. There are also questions around how new retail entities can interact effectively with wider energy system and back-office arrangements in a decentralised, electrified, smart and flexible world. For example, a challenge with peer-to-peer models is the inability to have multiple suppliers servicing a single consumer, and knock-on challenges with balancing and settlement. A similar challenge exists for the provision of 'roaming billing', where a consumer may wish to access their supply account from different supply points at different points in time. At the same time, it is important that all firms, including innovators, pay their fair share of the cost of participating in the energy market. This includes ensuring efficient allocation of costs associated with network operation and with environmental policy costs, for example.

## **Q2**

**What are the most significant barriers to disruptive new business models operating in the retail market? Please draw a distinction between regulatory barriers and commercial barriers (e.g. there may not be enough potential consumer demand to justify market entry).**

The implementation of SMETS1 smart meters should be stopped.

It is important that Ofgem takes a vigorous stance on this with BEIS.

Unless full interoperability can be guaranteed on all new smart meter installations consumers will feel let down yet again by the industry.

Full interoperability is a key requirement for many of the innovations that could benefit large numbers of ordinary consumers.

## **Topic 3 –Alternative default arrangements**

By 'default arrangements' we are referring to the market arrangements in place to protect consumers when they do not engage in the market (e.g. suppliers' contractual obligations to consumers and the essential service requirements). We are also referring to protections from events outside the consumer's control (i.e. their supplier exits the market, and the consumer requires a new mechanism to access supply). In other words, these are the arrangements in place to ensure that consumers are always able to access supply and protected regardless of their level of engagement. In the current GB supply market arrangements, consumers can only access the energy system through a licensed supplier. As a

result, the supplier is the primary intermediary between consumers and the energy system, with suppliers competing for consumers' energy accounts. Because energy is an essential service, there is a high bar for a supplier to refuse to supply a domestic customer, and suppliers are subject to a range of obligations to treat consumers appropriately. More broadly, we consider suppliers to have a duty of care towards these customers, including where the customers are inactive or vulnerable.

Currently, customers who do not make an active choice of supplier are placed onto a 'default' tariff. This is most commonly a standard variable tariff (SVT), which means that it is evergreen with a unilateral right to change terms, including prices, given suitable notice. These default arrangements are a fundamental feature of the retail energy market, because it would clearly not be acceptable for a supplier to terminate supply at the end of a contract period. This makes energy supply different to most other commercially-provided consumer services.

Around 12million non-prepayment domestic customers are currently supplied on these default tariffs, and a significant proportion of these have never switched or do not switch regularly. Most of these consumers remain with the six largest suppliers, all of whom are the successor companies of the former monopoly providers. Evidence from the CMA shows these customers are paying significantly more for their essential energy service than they need to. That's why the Government has brought forward draft legislation to implement price caps for this section of the market –to protect disengaged consumers from detriment. We have also sought to prompt increased consumer engagement in the market, most recently through trialling various interventions.

Nevertheless, there will inevitably be some consumers that do not engage. Current default arrangements have entrenched the role of the consumer's current supplier in providing safeguards for the disengaged, but this has been at the expense of innovation and competition. We want to explore if there are alternatives to the current default arrangements in the longer term.

Everyone should have access to an essential service, however there are questions around the universal supply model being the right one. For example, should all suppliers continue to be obligated to provide default arrangements, or is there the potential for a smaller group of traditional suppliers to hold this responsibility?

Or there is a way for non-traditional suppliers to provide default supply arrangements?

We would want any alternative approaches to deliver appropriate levels of protection for the disengaged, and ensure that those on default arrangements are not unduly disadvantaged. For example, can we set default arrangements that promote more effective competition for the disengaged and so avoid having to regulate prices for some customers in perpetuity? This could include some form of opt-out collective switching, where groups of customer accounts are auctioned centrally unless a customer chooses to opt out. Such a reform would likely require legislative change. An alternative could also include default arrangements provided by a party other than a traditional licensed supplier, by a smaller range of nominated suppliers, or even one in which consumers access the energy system directly rather than through an intermediary.

**Q3**

**What other supply market arrangements would provide a better default for disengaged consumers, whereby they are protected adequately and are able to access the benefits of competition?**

This complex topic is not straightforward.

A key element of getting the best outcome for all consumers has to be to challenge the current assumptions around discontinuation of supply.

For the market to work efficiently all suppliers should have the same obligations and all consumers should have the same rights. This means there should not be some suppliers (smaller?) who do not have the same duty of care obligations as others. It also means there should not be some consumers (the disengaged) who have decisions made about their accounts (such as Opt out Collectives) in a way that is not done to other consumers.

More detailed assessments should be made to categorise consumers identifying the truly vulnerable. Vulnerable consumers should only include those who are assessed as not able to make informed buying decisions. The definition shouldn't include "old" or "poor/on benefits" as the majority of people in these groups can make informed choices.

Truly vulnerable consumers should be supported by government social welfare policies not by the energy industry.

These circumstances should be worked through to ensure that there is no threat to life.

#### **Topic 4 -Consumer protection**

There is a set of standard licence conditions for each licensable activity, including supplying gas and electricity to consumers. Suppliers are obliged to comply with the standard supply licence conditions from the day the licence is granted, and must understand the duties and obligations imposed by these conditions. The licences also set out that the licensee must become party to and/or comply with certain industry codes. As we see an increasing variety of services offered to consumers in the energy market, we (and other regulators) will need to consider how best to protect consumers from any associated risks. One way to do this is to make sure our supply licence obligations are fit for purpose, and enable greater innovation and flexibility in how consumers are served. This has been a key focus of our work to transition towards an increased reliance on principles-based rules for suppliers, and a reduced reliance on detailed prescriptive rules.

The supply licences are based largely around one definition of 'supply'. We are also considering whether this is the best way to ensure consumers receive a quality service from other types of energy 'suppliers' (and associated service

providers) as the supply market evolves over time. Protection from new risks might be required. Relying on the current supply licence may not be the best way to ensure consumers are protected in a future where how –and from whom – consumers access their supply and associated energy management services looks very different from today. Regardless of who consumers may engage with for their energy needs in the future, including any default supply arrangements, there will be a need to protect consumers from harm.

Consumers could still experience harm from intermediaries entering the market and not providing appropriate levels of service or care. One option could be a general authorisation regime with graduated obligations depending on the scope and/or scale of supply-related activities being performed. Other options might be to change the scope of current licencing arrangements, or to rely more heavily on wider consumer protection powers. We are interested in views on how we can ensure consumers remain protected, however they access supply and engage in the market.

#### **Q4**

**How big an issue is it that we do not currently regulate intermediaries in the energy market? Is there a case for doing so? If so, how would we best do it? We are especially interested in frameworks that enable a wider variety and increased number of market participants to provide supply.**

General consumer protection legislation is far reaching and means that consumers using intermediaries are already well protected and have means of redress should something go wrong.

There is no need for Ofgem to go further than regulating energy suppliers. The move to principles based regulation should provide the opportunity to get the balance right in terms of supporting innovation while protecting consumers.

To get a fair outcome for consumers using intermediaries the full CMA remedy for the Confidence Code should be implemented immediately.