Statutory Consultation: Domestic supplier-customer communications rulebook reforms
E.ON response

Executive summary

E.ON welcomes the proposed reforms to the rules relating to supplier-customer communication and we appreciate the opportunity to provide our comments. We remain of the view that Ofgem could purely rely on Standards of Conduct (SLC 0) to deliver its policy intent and that where Ofgem has opted to keep specific prescription it has not been clear as to the reason why.

We welcome Ofgem's confirmation that it does not expect to see changes to communications from day one of the new rules (paragraph 8.5) and we agree that compliance and enforcement following their introduction should be based on whether there is consumer harm (paragraph 8.8). We believe there should be a similar approach where a supplier takes advantage of the new rules prior to their implementation. We therefore seek assurances from Ofgem that it will not take enforcement action under the current prescriptive customer communication rules that Ofgem proposes to remove, providing there is no consumer harm.

We have significant concerns regarding Ofgem's proposals to use directions to move the rules around prompting engagement. The licence should be a single point of reference for all regulations and any change to rules should be the subject of a full consultation process. We discuss this further in our answer to question four.

In our response to the policy consultation, we sought assurances from Ofgem that those suppliers who continue to use existing prescriptive rules for their communication would not be at risk of enforcement action. Ofgem has now confirmed that it is likely these suppliers would be compliant in the near term, but that Ofgem stands ready to act where it sees evidence of consumer harm. Of course, suppliers should always strive to achieve good outcomes for customers but, post price-cap, suppliers' ability to invest in trialling and implementing changes will be seriously limited, particularly with the level of investment already required to deliver on other regulatory obligations such as CMA database remedy, switching reforms, smart and other changes that Ofgem is currently consulting on such as mandatory HH settlement and compensation for switching issues.

Delivering innovative new ways of communicating with customers will be a result of trial and error and it is likely that suppliers will make mistakes, despite taking steps to mitigate as best they can. We would like Ofgem to be open to this and take a flexible approach to compliance where suppliers act quickly to resolve these issues.

We provide answers to your specific questions below.

Question 1:

Do you consider that a direction is required to enable suppliers to make changes to existing fixed-term contracts, so that those customers can benefit from our rule changes sooner? If yes, please:

(a) provide examples of specific clauses in your T&Cs that would require such a direction (suppliers only); and/or

(b) provide suggestions for how the scope of the direction should be drafted to achieve our policy intent (set out in paragraphs 2.37-2.41 of this document).

Yes, suppliers would need a direction to be able to amend the terms of existing fixed term contracts but an individual supplier should be free to decide whether to make any changes or not.

We have the following clause in our fixed term contracts:

> "11.1 About this tariff
>
> Your prices are shown in your confirmation letter. These prices and your terms and conditions will stay the same until the end date shown in your confirmation letter, unless:
>
> - you stop paying by Direct Debit, or a Direct Debit payment fails (see 4.3)
> - you owe us money and we switch you to paying in advance (see 4.1)
> - a law or regulation means we need to make a change (like VAT changes)
> - the government or our regulator (Ofgem) tells us to change our prices or terms and conditions."

Question 2:

Are there any other consequential amendments to the licences that we haven't proposed in annexes 1-2 that you consider would be needed in light of our proposed changes?

We do not consider that any other changes need to be made.

Question 3:

Do you agree that our proposals reflect our policy intent relating to encouraging and enabling engagement?

We do not think that Ofgem has been clear as to the rationale for requiring suppliers to send specifically the Cheapest Tariff Message, Estimated Annual Costs and "About Your Tariff" Label once a year. We do not think this prescription is necessary for Ofgem to be able to achieve its policy intent or for suppliers to achieve good outcomes for their customers.

Question 4:

What are your views on our proposal (set out in paragraphs 3.35-3.36) to move the rules around engagement prompts into a direction separate from the supply licences?

We have significant concerns about this proposal as it introduces regulation without proper consultation and scrutiny. We accept that lessons may be learnt from the trials suppliers are conducting under Ofgem's programme; however, we believe the most appropriate way to mitigate against any unintended consequences is the consultation process:

- The consultation process provides transparency. Ofgem sets out its policy intent upfront and a broad spectrum of parties then have the opportunity to provide a response, such as suppliers and consumer groups. For suppliers, it is the opportunity to provide Ofgem with information about any difficulties there might be with implementing the proposals and to provide any information which might not have been considered by Ofgem. Without this process, there is a risk that potentially costly and time-consuming changes could be implemented with little notice and without prior consultation, particularly given Ofgem's intention to act quickly.
- The use of directions undermines Ofgem's ambition to move to principles-based regulation – introducing prescription "by the back door". It will add additional layers of regulation on top of the supply licence and create confusion and ambiguity for both new entrants and established suppliers,
- Suppliers may be unwilling and unable to innovate due to the uncertainty presented by the use of directions. For example, if there is a chance that Ofgem might direct suppliers to do something in a particular way, suppliers may be reluctant to invest in their own innovation due to the risks that Ofgem forces suppliers to do it another way, which would not only have a negative impact on innovation but also prevent suppliers from being able to compete and differentiate themselves from one another.

Question 5:

Do you agree that our proposals reflect our policy intent relating to assistance and advice information?

Yes, we broadly agree.

Ofgem advises that part two of the Assistance and Advice principle is to enable customers to access advice and assistance that is relevant to them and their circumstances, but we interpret the wording of 31G.2 is such that the customer would be sent both dispute and debt/energy efficiency advice at the same time in all instances. We would suggest that 31G.2 (*a)* should read: "(*a) what their rights are as regards to the means of dispute settlement available in the event of a dispute, including how to identify and contact the Relevant Ombudsman for the circumstances;* ***and/or*** *…*" (emphasis added).

This will prevent customers from receiving information that may not be relevant to their circumstances, preventing unnecessary confusion and ensure customers are only receiving information that will be of help.

Question 6:

Do you agree that our proposals reflect our policy intent relating to Bills and billing information?

Yes, we agree.

We would suggest that SLC 31H.1 is amended to make it clear that there are additional requirements under SLC 21B.5 with regards to the frequency of bills for traditional credit customers who have requested quarterly bills or have an online account.

Question 7:

Do you agree that our proposals reflect our policy intent relating to contract changes?

Ofgem has opted to prescribe that a Domestic Statement of Renewal Terms must be separate to any other document including marketing material (31I.6) as opposed to Notices issued under 31I.4 which should not be issued in conjunction with any other material. This suggests that suppliers are able to include other information such as marketing messages *within* the renewal Notice. We would like Ofgem to clarify if this is intentional. If the "primary" Notice is the first thing the customer sees and any secondary marketing is sent in line with GDPR principles, it would be in a customer's interest to understand what other products and services are available to them when they are coming to the end of a fixed term contract, so that they can make a fully informed decision, as there will be other products and services available which may be of value to them.

<u>General feedback</u>

The way in which the licence conditions changes are presented is confusing and it is difficult to track whether a clause has been deleted entirely or has been moved elsewhere in licence. We would suggest adding an additional key, such as a blue strikethrough, for clauses that have been moved from one location to another.

Other comments are:

- 23.2 (a) Form should be a defined term
- 23.9A (b) and (c) should be the other way around
- 23.9A (d) references 31I.3(b) which doesn't exist
- 31F.15 the definition for Relevant Change is in the wrong place.