

Third Package Consultation Team
Department of Energy and Climate Change
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Re: Consultation on the Implementation of the EU Third Internal Energy Market Package

Cornwall Energy hosts a monthly forum for independent energy suppliers¹ operating in gas and electricity markets and serving business and household customers to share information on regulation, policy and legislation developments that may impact on their businesses. The forum is a non representative body, but as Chair of the forum I wish to convey my views on this consultation, which were discussed with members at the last forum meeting on 13 October. Some members will be submitting their own response, but this response does reflect the discussions from our last meeting. It will focus on the consumer protection proposals where new supply licence obligations are to be introduced to ensure the UK is compliant with the relevant Directives from 3 March 2011.

As noted in the consultation document, the Third Package was published in August 2009, and came into force on 3 September. It was not until April 2010 that a call for evidence was published by DECC seeking views from interested parties to raise any concerns with the implementation of the new European legislation. The tone of the document implied that consumer protection measures were aimed at household consumers only as it made no mention of business customers or suppliers—which gave comfort to gas and electricity suppliers only operating in the business (non-domestic) markets.

Independent suppliers are aware of the aims of the Third Package, to varying degrees, but given the large swathe of other regulatory and policy developments occurring at present, and the fact that a cursory glance at press statements and the call for evidence suggested any changes impacting on suppliers would be a) relatively immaterial and b) would only apply to suppliers holding domestic licences, the forum has focussed its efforts on other areas of work.

It therefore came as a surprise that the consultation, published 27 July, following the call for evidence suggested that non-domestic suppliers could be subject to new licence conditions related to: notifying customers of complaint procedures; provision of consumption data; cooling off periods; and switching timeframes. Since

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consultation was published the supplier community (large and small) has sought clarification from DECC on which proposed licence conditions, aimed at protecting the consumers, would apply to which type of suppliers—domestic and/ or non-domestic.

A meeting of suppliers, DECC and Ofgem in early October heard from a DECC representative that the proposed new licence conditions would only apply to domestic suppliers, with the exception of giving consumers the right to switch supplier within 15 working days. The uncertainty has caused significant concern for non-domestic suppliers in particular as they are not wholly sure if new licence conditions will apply to them.

This is an entirely inadequate consultation process for suppliers, and in particular smaller, less well-resourced suppliers. Given that the Third Package was published nearly a year before DECC published its proposals for implementation should have afforded sufficient time to clarify if the Directives capture all types of consumers (i.e. business and household). I can only conclude that the team within DECC responsible for this consultation has little understanding of the energy supply market, particularly the split between domestic and non-domestic markets where different licence regimes exist to reflect the different needs of customers.

Independent suppliers perpetually struggle to keep abreast of industry developments, be they governance modifications, policy proposals, draft legislation or a changing regulatory landscape and it should be incumbent upon Government departments issuing consultations to recognise the diverse mix of suppliers in the market and the ability they have to assimilate everything and respond accordingly. In this case due diligence has not been applied.

As I understand it, as sufficient clarity has not been communicated in the consultation document or during the time it has been open, only the licence condition pertaining to providing customers 15 working days to switch supplier is likely to apply to non-domestic suppliers. This in itself will be challenging for non-domestic suppliers, particularly in the gas market. Suppliers do not have full control of industry process that underpin the switching process and so may find themselves not being able to transfer a customer within the timeframe, and therefore in breach of a licence condition—which carries harsh penalties.

In the gas market the nomination and certification process makes it very difficult to achieve customer transfers within 15 working days in all cases. If industry process (by which I mean systems and governance arrangements) need to be changed to meet Third Package obligations then it is likely that this cannot be achieved in time for the 3 March 2011 deadline, and indeed all suppliers may have to seek derogation to ensure they are not in breach of licences.

DECC has been aware of the Third Package for over a year now, yet has chosen to drive through implementation in a truncated timeframe and fragmented manner, which has left suppliers unsure of their responsibilities. Even if certainty is provided soon, many suppliers are unlikely to be able to comply within the desired timeframes. It is therefore essential DECC fully understands the timescales necessary to effect the required changes within the industry and for it to ensure household and business consumers are not confused about their rights. Inevitably it will be suppliers that face the criticism and reputational risk should this issue not be clarified quickly and efficiently.

