

Corporate Response Form 'Third Package' Consultation
URN 10D/727 Open: 27/07/2010 Close: 19/10/2010

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Consultation Questions

Chapter 1 – Consumer Protection

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| 1 | Consultees are invited to comments on Government proposals to implement the consumer protection measures of the Third Package. |
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AEP deals with electricity generation and the wholesale market and will therefore leave it to others to respond on the energy retail issues.

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| 2 | In respect of the requirement to switch customers within three weeks, subject to contractual terms, we propose to put in place a new Licence Condition requiring the new supplier to give new customers a 14 calendar day period after the contract has been entered into, to consider whether they wish to proceed with this. Unless the customer notifies the supplier they do not wish to proceed, the Licence Condition will require the new |
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	<p>supplier to give customers the right to change their mind within 14 calendar days and then be switched within three weeks, subject to outstanding debt (and, in the case of non-domestic customers, contractual conditions). Do consultees agree with this proposal?</p>
	<p>No comment.</p>
<p>3</p>	<p>Do consultees consider that the requirement on supply undertakings which are not registered in Great Britain, to provide a GB address for the service of the documents, poses any difficulty for these suppliers? Evidence of costs to these suppliers would be particularly welcome.</p>
	<p>No comment.</p>

Chapter 2 – Transmission and Distribution Networks

4 Do you have any comments relevant to our consideration of which unbundling models should be available in the GB market?

AEP supports the Government's view that the ISO model and Art. 9.9 derogation should be available as potential alternatives to ownership unbundling for existing transmission companies. AEP believes that the ITO model is incompatible with aspects of the GB regulatory regime and does not see any prospect of it being used in the GB market. We therefore see no need to make this option available.

5 Do you have any views or concerns with how we intend to apply these new Third Package requirements on TSOs and DSOs?

AEP will leave it to individual companies to comment on the detail of the unbundling arrangements. We would, however, like to make two general points:

- unbundling in the UK and elsewhere in the EU must clearly be shown to meet the standards set out in the Electricity and Gas Directives;
- given the very large investment requirements in the UK transmission system going forward, it is essential that certification is undertaken with a sense of urgency and that risk and uncertainty are kept to a minimum.

In relation to interconnectors, AEP supports the view that existing exemptions from the unbundling requirements should be maintained. It is also important that merchant interconnection remains an option for the UK market in the future and that companies other than TSOs can build interconnectors, as provided for in Art. 17 of the Electricity Regulation and Art. 36 of the Gas Directive.

Chapter 3 – Gas Infrastructure

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| 6 | Should the Gas Directive requirements for storage and LNG operators be introduced through a new licence regime or by amending existing legislation? Please provide evidence of costs and benefits wherever possible. |
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AEP has no strong view on whether the provisions should be implemented by licence or legislation. Nevertheless, the resulting regime must be both fair and proportionate, given the relatively few facilities which are affected. It is also vital that investment in the UK storage and LNG facilities is not made less attractive. The UK has a developing role as an importer of gas not only for the UK but for North Western Europe and this brings with it enhanced security of supply for the UK.

AEP supports the proposal to maintain a negotiated access regime, as this has worked well to date. It is also important to maintain an exemptions regime where access is not technically and / or economically necessary. This will ensure that investment in such facilities is not deterred.

AEP welcomes the proposal to make Ofgem responsible for publishing the criteria according to which the access regime for storage and potentially linepack will be determined, as well as the storage facilities and linepack to be made available. Clarity over this framework will provide some certainty to the market and potential investors.

AEP welcomes the clarity that unbundling provisions will only apply to storage facilities that are not exempt from nTPA. Clarity is required on exactly what the conditions are for gaining exemption; for example, is an open season mandatory and if so what proportion of capacity has to be offered?

Chapter 4 – Role of the National Regulatory Authority

7 Implementing binding decisions

For the reasons we have set out in the consultation document, the Government proposes to replace the current collective licence modification objection arrangements with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body. This would reinforce Ofgem's power to make decisions in accordance with their powers and duties under the Third Package, and would give all licensees the same right of appeal. Ofgem's decisions, as now, would need to be reached following consultation and subject to the principles of better regulation. This proposal would include all Ofgem licence modification decisions and not only those covered by the Third Package. We would be grateful for your views on these proposals.

AEP takes the view that the Third Package does not require major changes to the GB regulatory regime. The GB electricity and gas markets remain among the most competitive in the EU, as confirmed by a variety of independent sources, e.g. the 2006 Sector Investigation and the regular Commission benchmarking reports. Of all the EU regulators, Ofgem appears to have the most comprehensive set of powers.

AEP does not accept the assertion that, because Ofgem is not able to impose changes to licences, the collective licence modification process does not comply with the Package. Modifications to licences often reflect policy decisions (which in other Member States would be dealt with in legislation) and it should not be for the national regulator to impose these unilaterally. If the Regulator is able to modify licences readily, this will increase uncertainty and damage confidence in the energy sector at a time when massive investment is required to maintain supply security and meet environmental targets.

The current licence modification and industry code processes are based on a balance between market players and the Regulator, and have in our view worked well. AEP would be extremely concerned if this balance were to be upset by allowing the Regulator to impose arbitrary changes, subject only to consultation and to an appeal process (which industry will be reluctant to use except in the most extreme circumstances). To redesign the GB processes for all modifications (whether arising from EU legislation or not) would in our view be "goldplating" and we question whether Regulations under the European Communities Act could be used for this purpose.

The power to take binding decisions mentioned in Art. 37.4 of the Electricity Directive relates only to those duties set out in Art. 37.1, 37.3 and 37.6. It should be noted that these duties relate primarily to the monopoly network businesses and that there are few references to the wholesale and retail markets, other than monitoring functions. Moreover, public service obligations, which are often implemented through licences, are not covered.

The Art. 37.4 powers are therefore clearly narrower in scope than those issues covered in GB licences.

Art. 23.7 of the 2003 Electricity Directive requires that regulators should be able to carry out their duties in an “efficient and expeditious manner”. It also requires Member States to create efficient mechanisms for regulation. The Commission has never indicated that the GB regulatory regime does not meet these requirements, and indeed the current infringement proceedings against the UK relate neither to lack of regulatory powers nor insufficient competition. If the licence modification process has met the “efficient and expeditious” criteria up to now, it is unclear why this should now have changed. AEP would acknowledge, however, that there may be a case for reviewing the blocking threshold if this is felt to advantage some players over others.

Para 4.43 of the DECC consultation states that Ofgem should be able “to initiate code modifications where essential for the implementation of ACER or Commission decisions”. However, few arguments are provided to support this proposal. AEP recognises that EU Guidelines and Network Codes are likely to require changes to aspects of the UK regulatory regime and that these will need to be implemented in a timely fashion. Market players have in the past been cooperative in delivering licence and code changes in response to both national legislation (e.g. NETA and BETTA) and EU requirements (e.g. fuel mix disclosure). We believe that this will continue to be the case and do not accept that Ofgem should be able to impose a particular vision of how EU legislation is implemented. At most, AEP would see the need for a “backstop” power for Ofgem to raise modifications if the industry process does not deliver a timely and effective solution to implementation.

If DECC were to decide to alter the GB regulatory regime as suggested in the consultation, AEP does not see why licensees’ rights to challenge regulatory decisions should be confined to the licence modification process. Logically, all Ofgem’s decision-making powers flowing from the Third Package and GB regulation should be reconsidered in the light of the Package’s requirements. This would mean, for instance, that there should be an appeal on the merits rather than procedural or vires grounds for final or provisional orders for securing compliance (Electricity Act 1989 s.27 and Gas Act 1986 s.30).

Chapter 5 - Cross border co-operation

8	Do you have any views or concerns with how we intend to introduce the regional co-operation elements of the Third Package?
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AEP emphasises that, as far as possible, consistent approaches should be used for implementation in both Great Britain and Northern Ireland. In particular, unnecessary divergences between the GB and All-Island market should be avoided.

Impact Assessment Questions

These are partial Impact Assessments containing our initial qualitative assessment of the costs and benefits. We therefore would welcome any quantitative evidence to support the further development of these impact assessments. Any information provided will be treated with sensitivity and anonymity.

Consumer Switching

9	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with this measure?
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10	<p>The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: supplier systems changes, monitoring costs, administrative burdens, the number of extra erroneous switches which may occur as a result of our proposals, the cost of manually stopping the switch and any information regarding the number of customers that currently fall outside the 3 week switching period defined (excluding the cooling-off period).</p>

Consumer Information	
11	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?

12	<p>The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: whether the record keeping requirement imposes additional costs (system costs and administrative costs) on industry; an estimate of the scale of these costs; and any evidence regarding the costs associated with passing on consumption and metering data to another supplier.</p>
13	<p>What would be the additional costs to the industry for providing the additional information to consumers in terms of complaints handling/dispute settlement arrangements available by the supplier?</p>

National Regulatory Authority

14	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?
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15	We would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding; the monitoring, enforcement and administrative costs involved and any evidence regarding the indirect costs on industry of these measures.
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Transmission and Distribution

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| 16 | Are the Impact Assessment assumptions on the costs to TSOs of complying with the new TSO certification process realistic (both for those seeking derogations and those not doing so)? |
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| 17 | The Impact Assessment assumes that ensuring the independence of the compliance officer for DSOs requires little additional action on the part of the affected DSOs. Your views including evidence of costs would be appreciated. |
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Gas and LNG Operators

18	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?
19	What specific changes to current practice will be required to comply with articles 15 (unbundling) and 16 (confidentiality) of the Directive? What are the likely costs of making these changes?
20	Articles 15, 17 and 19 of the Gas Regulation specify that certain operational information must be made publicly available by 'technically and economically necessary' LNG and storage sites. What are the likely costs involved in making this information publicly available?

21	<p>Article 22 of the Regulation outlines the requirement for contracts and procedures to be harmonised at 'technically and economically necessary' LNG and storage sites. What changes to current practices will, in your view, be required to achieve this and what are the likely costs of making these changes?</p>
22	<p>We would welcome evidence on the costs and benefits of introducing a licensing regime for LNG and storage as opposed to introducing the measures through changes to legislation.</p>

