

Retail Energy Markets and Consumers Team
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15 November 2024

Dear Sir or Madam

Regulating Third-Party Intermediaries in the Retail Energy Market

EDF is the UK's largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. EDF also has a large and growing portfolio of renewables, including onshore, offshore wind and solar generation, and energy storage. With over five and a half million electricity and gas customer accounts, including residential and business users, EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

EDF welcomes this consultation and the progress this work represents in introducing better protections for consumers using the services of Third-Party Intermediaries (TPIs) in the retail energy market, as well as establishing a more level playing field for TPIs. EDF supports DESNZ' core proposal to develop a general authorisation regime to enable the direct regulation of TPIs.

The proposal sets out a pragmatic approach for introducing necessary consumer protections, balanced against the practical constraints on ensuring full regulatory coverage of the diverse and sizeable TPI market in a reasonable timeframe. We recognise that while a specific authorisation regime, or some of the options set outside the scope of this consultation, may be more fundamentally robust than the preferred option, in terms of the level of regulatory scrutiny which can be applied in the first instance, these alternatives would represent a significant resource challenge to the appointed regulator, be disruptive for TPIs, suppliers, and consumers, and would likely take too long to develop and implement.

We recognise the value TPIs provide as a legitimate route to market for consumers and the retail energy market as a whole, and as providers of ongoing energy services to some consumers. A general authorisation regime would better support continuity for existing market participants, albeit with some impacts to current business practices, depending on the minimum standards introduced by the regime.

We note that the introduction of a general authorisation regime does not preclude the government or appointed regulator from deploying further regulatory interventions throughout the operation of the regime, as circumstances require. It is likely further intervention will be required as monitoring reveals previously opaque pockets of poor consumer outcomes, and as future innovations change existing transactions or add new features to the market. It is crucial that the regulator can respond flexibly to such challenges to protect consumers, without constraining positive innovation.

A general authorisation regime does not require existing market participants to apply for authorisation. However, to assist the appointed regulator with enforcement, monitoring, and compliance assurance activities, we believe it is necessary for it to have full visibility of participants, particularly given the prevalence of smaller operations in this market. As such, we recommend that DESNZ requires that market participants provide notification to the regulator at the implementation of the regime, and for new market entrants on an ongoing basis. Doing so will create minimal administrative burden for TPIs and the regulator without representing a significant barrier to market entry, and would assist the regulator in monitoring the market and responding appropriately to potential consumer detriment.

As DESNZ notes with its 'achievability of adequate consumer protections' policy objective, we expect it will be necessary for the appointed regulator to establish a robust monitoring regime for market participants to ensure regulatory standards are adhered to, and to detect occurrences of consumer detriment or other poor outcomes. Energy suppliers provide an array of data to Ofgem by regular submissions, under licence obligations, to assist with monitoring, insight, and enforcement. We expect the appointed regulator for TPIs will have the powers to employ similar direct requests for information from TPIs, on a regular and ad hoc basis, to ensure it can proactively detect non-compliance and respond effectively to any potential consumer detriment. A reliance on consumer (or consumer bodies) reporting alone will not provide sufficient market transparency to ensure consumer protection.

Several supply licence conditions place obligations on suppliers' interactions with TPIs, e.g. SLC 20 which requires suppliers to only work with TPIs who are members of a Qualifying Dispute Settlement Service (QDSS). In the past, Ofgem has sought to mitigate poor consumer outcomes by making suppliers broadly responsible for certain TPI conduct. We expect that the introduction of direct regulation to govern TPIs will come with a review of relevant existing supplier obligations, as many of these requirements will become redundant, and their removal would lift implementation and administrative burdens that currently inappropriately fall on suppliers.

EDF supports the expansion of Ofgem's remit to include TPIs as the regulator of the proposed general authorisation regime. Ofgem can draw upon significant retail energy market experience as the regulator of complex interacting obligations in the form of licences, codes, schemes, and other statutory regulations. As such, Ofgem already has the necessary expertise and significant monitoring and enforcement resources at its disposal upon which it can build to meet its expanded remit.

Our detailed responses to the questions, where we are best placed to respond, are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Mark Hatton, or myself.

I confirm that this letter and its attachment may be published on DESNZ's website.

Yours sincerely

A handwritten signature in black ink that reads 'K. Watson'.

Keith Watson
Senior Manager Customers Policy and Regulation

Attachment
Regulating Third-Party Intermediaries in the Retail Energy Market

EDF's response to your questions

3. What are the main challenges with improving price transparency?

In the domestic retail energy market, suppliers are obliged by the supply licence to ensure domestic consumers are provided with sufficient information to make informed choices about their energy supply, including their tariff. This is predominantly set out in the Standards of Conduct (SLC 0) and Informed Choices – Tariff Comparability and Marketing (SLC 25) conditions. These principle-based rules sit alongside prescriptive definitions, information tools (e.g. Cheapest Tariff Messaging), and other customer communication and notification rules in the supply licence. Elements of these rules are reflected in Ofgem's Confidence Code for domestic Price Comparison Websites (PCWs). However, while the requirements of the Confidence Code are relatively robust, the Code itself does not cover the full domestic TPI market, and additionally, was last updated in 2017.

From a domestic market perspective, these licence conditions and the Confidence Code represent a good starting point for establishing price transparency measures for TPIs, and will provide more consistent outcomes for domestic consumers where TPIs are interacting with them in place of direct supplier engagement.

We note that energy tariffs are becoming more fluid, as the expansion of smart technologies enables greater pricing flexibility. This represents a challenge to the established regulatory methodologies for some core activities, such as the provision of cost projections. This is likely to continue as Market-wide Half Hourly Settlement (MHHS) embeds in the market over the next two years. MHHS is a prerequisite for suppliers developing mass-market flexibility products that maximise the benefits of low carbon generation. We expect addressing any regulatory barriers in this regard will be a priority for Ofgem in the future, and for the appointed regulator of the TPI regime.

As part of Ofgem's Non-domestic market review, the regulator cited reports from consumer bodies that non-domestic consumers can sometimes be left confused or otherwise unclear about billing and contract information. Ofgem has introduced several relevant measures, including a Non-domestic best practice guide on billing transparency, to set out its expectations for suppliers and to support consumer understanding. Additionally, Ofgem amended and expanded TPI commission transparency rules as part of this review. We expect the application of comparable standards will need to be applied to TPIs, as already exist for energy suppliers. The introduction of direct regulation to govern TPIs should come with a review of relevant existing supplier obligations involving TPI interactions, as many of these requirements will become redundant, and their removal would lift implementation and administrative burdens that currently inappropriately fall on suppliers.

4. Do TPIs currently identify consumers who are in vulnerable situation? If so, how do they do so?

In EDF's experience, some domestic PCWs will include a step in their customer journey offering the customer the opportunity to flag the existence of a vulnerable circumstance. The PCW will then provide this data to the relevant energy supplier. We note that while suppliers are obliged to seek to identify domestic customers in vulnerable circumstances (SLC 0), and those customers for whom the Priority Services Register (PSR) may be applicable (SLC 26), PCWs are not currently subject to a mandatory requirement in this context.

We support the introduction of a requirement for TPIs to seek to identify these categories of domestic consumer, treat these consumers in a manner which supports their engagement with the energy market, and to provide this information to suppliers.

5. Should the design principles for TPI regulation include a requirement to identify consumers in vulnerable situations? How could TPIs record and retain that information?

We support the introduction of a requirement for TPIs to seek to identify these categories of domestic consumer, treat these consumers in a manner which supports their engagement with the energy market, and to provide this information to suppliers.

This may be achieved by simple questioning at the point of sale, training to ensure staff with direct customer contact are able to identify key triggers, and by potential data-sharing between relevant parties (within data protection rules). We note that work continues to progress on the development of a single cross-sector PSR which will include data-sharing across various sectors with consumer contact. This will be a valuable tool to deliver essential support for vulnerable domestic consumers, which should include those engaging with the energy market via TPIs.

6. Should ADR services be expanded to domestic customers in line with existing provisions for non-domestic consumers?

Yes. Domestic consumers already benefit from the protection provided by Ombudsman Services: Energy, which provides binding resolutions for complaints made against suppliers. It is right that this protection is extended to cover the whole customer journey, including TPI activities, to ensure consistency. We note this will also provide the appointed regulator with an intelligence resource to assist with enforcement.

8. What are your views on the types of TPIs included in the first section of the scope table?

EDF broadly agrees with the types of TPIs listed in the consultation, and the prioritisation set out, with some exceptions.

As we set out in our answer to Question 19, the scope of the TPI roles and activities defined by this framework must be broad enough to capture all relevant market participants, and precise enough to prevent bad actors from seeking to set themselves outside the rules when transacting with consumers. We note DESNZ has provided a list of TPI business models in this consultation for the domestic and non-domestic markets, and we broadly agree these roles are suitable for inclusion in the scope. However, when setting the scope in legislation DESNZ must ensure the defined activities are described in a manner which will not be dependent on existing business models and will continue to be applicable as new areas of innovation expand.

With regard to Resellers, we expect including this category of energy consumer as a potential TPI will be a challenge and will require further investigation. Resellers are not consistently identifiable by energy suppliers, and in many cases the broad description provided will capture individuals and smaller businesses who lack the expertise to engage with market regulations, many of which will not be applicable to them, or for whom compliance with a regulatory regime may be unduly onerous. As noted in the consultation, Ofgem already enforces the maximum resale price rules, so should be a key contributor to any consideration of including this type of consumer in the scope of the regime. Additionally, we note DESNZ introduced pass-through requirements on these parties for Government schemes, such as the Energy Bill Discount Scheme, the enforcement experience of which may also provide insight on this issue.

Independent advanced meter data agents also do not easily fit in with the other TPI roles described in this consultation, insofar that they often operate separately to the supply contract in the non-domestic sector, and do not provide advice or direct services which generally interact with a consumer's energy tariff or other related charges. Further investigation and clarity is required as to whether there is a justification or value to including these parties in the scope of the regulatory regime.

11. Are energy suppliers aware which of their customers are resellers and, how many end-consumers the resellers serve?

No. Energy suppliers are not generally aware of customers who may be resellers within their portfolios. No specific industry markers exist which would enable suppliers to consistently identify these types of arrangements. Suppliers will have a record of a customer or business name against a supplier meter point, where that consumer is under contract (and under deemed contract, in some cases). But, this would not be sufficient to capture many reseller arrangements, e.g. sub-metered supplies, small landlords, park homes, ambiguous business names, etc. We expect many landlords do not inform their supplier of the nature of consumption at a property, and may, in some cases, hold a domestic energy contract which does not acknowledge the nature of the relevant arrangements with the end-user/tenants.

Standard Industrial Classification (SIC) codes cover activities which may be applicable to resellers; e.g. *Section I Accommodation and food service activities*, or *Section L Real estate activities*. But, we note that SIC codes are not consistently recorded for all non-domestic

customers across the industry, include other non-reselling arrangements, and won't capture resellers operating under a domestic contract.

As we set out in our answer for Question 8, we expect including this category of energy consumer as a potential TPI will be a challenge, and will require further investigation.

12. Do you have any views on how the number of TPIs within the market might change in the coming years?

We expect the introduction of a general authorisation regime will result in a degree of market consolidation. Some existing smaller participants may be unable to achieve the levels of service required to comply with regime minimum requirements, while maintaining a competitive position. Additionally, some participants who currently operate in a manner inconsistent with positive consumer outcomes may find their business model to be untenable under regulatory scrutiny. However, this will be to the benefit to consumers through better protections and outcomes as well as promoting a fairer and more level market for TPIs.

Depending on the out-turned regime, we expect new participants may choose to enter the market to take up roles enabled by incoming changes, such as Market-wide Half Hourly Settlement, and innovative product offerings in smart and low carbon technologies. We expect a stable and well-regulated market would serve to encourage investment of this nature, benefitting consumers.

13. How might the TPI market evolve in the next 5 years, particularly in the context of Market-wide Half Hourly Settlements, Net Zero ambitions and more innovative tariffs and low carbon technologies being introduced to the market?

EDF ultimately wants to see a retail market where everyone can save cash and save carbon, not just the tech savvy or the wealthy. We want a retail market where consumers can get the support they need, that makes Net Zero easy for all, and where low carbon energy is readily available at a fair price.

MHHS is a prerequisite for suppliers developing mass-market flexibility products that maximise the benefits of low carbon generation. We note many of the benefits of innovations such as demand-side flexibility will only be fully realised when MHHS has been implemented and all consumers have their energy settled on the basis of half hourly consumption data. The transition to the MHHS arrangements is not due to complete until Q4 2026.

Innovation will only happen if the retail energy market is an attractive market for investors. We must have appropriate regulatory regimes, rules, and infrastructure in place to support a healthy, well-functioning and resilient retail energy market which delivers fair value for consumers and supports our Net Zero future, but also allows retailers to make a sustainable, fair return, competing on a level playing field.

Innovation in the retail energy market will also be limited if there is a continued focus on the price of energy as the only or main driver for consumers to choose their retailer, for example driven by Price Comparison Websites (PCWs). There is limited incentive for retailers to innovate in a market where consumers are continually encouraged to switch to the cheapest deal. Instead, it encourages retailers to focus solely on price and adopt risky, unsustainable business strategies, rather than focus on areas such as innovation, customer service, carbon intensity or other factors which are more relevant to the achievement of Net Zero.

It can also be challenging for consumers and market participants alike to make decisions on which tariffs to sign up to, or which technologies to invest in, due to the use of vague terms such as 'green' to label such products. Consumers need clear, credible, and easy to understand information to allow them to make decisions about their energy supply and whether it is making a meaningful contribution to Net Zero. A tariff-level label applied consistently across all tariffs and all industry participants within the domestic retail energy market would promote clarity and comparability of carbon content for consumers when making purchasing decisions and drive further innovation in this space. It is essential that TPIs are included in any such requirements.

14. Do you agree with the list of policy objectives?

EDF agrees with the policy objectives identified in the consultation.

15. Do you support the government's proposition to directly regulate TPIs via a general authorisation regime? If not, what regulatory approach do you prefer, and what are the reasons behind your choice?

Yes. EDF supports DESNZ's proposal to introduce a general authorisation regime for the regulation of TPIs in the domestic and non-domestic retail energy markets. We see this as a proportionate approach, bringing in a robust regulatory framework to protect consumers while ensuring fair and equal regulatory conditions govern all TPIs within the market. We also recognise this is a pragmatic solution to ensure full regulatory coverage within a practical time frame.

A general authorisation regime should avoid placing overly prescriptive or unduly onerous regulation on market participants, which risks distorting competition and stifling participant engagement and market-led innovations. While a specific authorisation regime may be more fundamentally robust than the preferred option, in terms of the level of regulatory scrutiny which can be applied in the first instance, this would represent a significant resource challenge to the appointed regulator, be disruptive for the market and consumers, and would likely take too long to develop and implement.

A general authorisation regime can be flexible to adapt to evolving market conditions and technology, and future consumer needs, and does not preclude the regulator from introducing further regulatory interventions where necessary. It is likely further intervention

will be required as monitoring reveals previously opaque pockets of poor consumer outcomes, and as future innovations change existing transactions or add new features to the market. It is crucial that the regulator is able to respond flexibly to such challenges to protect consumers, without constraining positive innovation.

A general authorisation regime does not require existing market participants to apply for authorisation. However, to assist the appointed regulator with enforcement, monitoring, and compliance assurance activities, it is necessary for it to have full visibility of participants, particularly given the prevalence of smaller operations in this market. As such, we recommend that DESNZ requires that market participants provide notification to the regulator at the implementation of the regime, and for new market entrants on an ongoing basis. Doing so will create minimal administrative burden for TPIs and the regulator, without representing a significant barrier to market entry, and would assist the regulator in monitoring the market, and responding appropriately to potential consumer detriment.

16. Are there particular considerations and/or exemptions for some types of SME TPIs which should be considered?

No. EDF does not support exemptions or differential requirements for sub-categories of TPI, except where the characteristics of a specific activity may require distinct regulatory treatment to ensure good consumer outcomes. A core aim of the regulatory regime should be to ensure a level playing field for all market participants. By offering exemptions from regulatory obligations for some market participants, this would risk creating pockets of poor consumer outcomes in the market and could distort competition.

17. How might these proposals impact the size of the market or influence market consolidation?

As we set out in our answer for Question 12, we expect the introduction of a general authorisation regime will result in a degree of market consolidation. Some existing smaller participants may be unable to achieve the levels of service required to comply with regime minimum requirements, while maintaining a competitive position. Additionally, some participants who currently operate in a manner inconsistent with positive consumer outcomes may find their business model to be untenable under regulatory scrutiny. This will be to consumers' benefit.

Depending on the out-turned regime, we expect new participants may choose to enter the market to take up roles enabled by incoming changes, such as Market-wide Half Hourly Settlement, and innovative product offerings in smart and low carbon technologies. We expect stable and well-regulated market would serve to encourage investment of this nature, benefitting consumers.

19. Are there any unintended consequences you envision as a result of these proposals? I.e. could a TPI work around regulation and enforcement through certain activities or practices.

We do not expect that the introduction of a general authorisation regime will create significant negative consequences for consumers, or the broader energy retail market. However, there are several aspects of the potential framework which must be applied appropriately to effectively mitigate poor outcomes for consumers.

The scope of the TPI roles and activities defined by this framework must be broad enough to capture all relevant market participants, and precise enough to prevent bad actors from seeking to set themselves outside the rules when transacting with consumers. We note DESNZ has provided a list of TPI business models in this consultation for the domestic and non-domestic markets, and we broadly agree these roles are suitable for inclusion in the scope (see our answer to Question 8). However, when setting the scope in legislation DESNZ must ensure the defined activities are described in a manner which will not be dependent on existing business models and will continue to be applicable as new areas of innovation expand.

Elsewhere in this response, we have recommended that the implementation of the general authorisation regime should be supported by notification to the regulator by market participants. As we note, this will not be a significant administrative exercise or an undue barrier to market entry. Parties should not be allowed to operate in the market without submitting such a notification, and doing so should be met with effective sanctions. This will mitigate the risk of parties misrepresenting themselves or their status to consumers in order to operate non-compliantly. Similarly, the regulator must have sufficient powers to ensure it is able to effectively enforce against parties seeking to obfuscate their identities to avoid scrutiny. Effective monitoring of market participants and their activities will be the cornerstone a robust enforcement in the new regulatory regime.

20. How should the regulatory framework for TPIs be future-proofed and conducive to fostering innovation?

Innovation will only happen if the retail energy market is an attractive market for investors, delivers fair value for consumers, and supports our Net Zero future, but also allows retailers to make a sustainable, fair return. Innovation should be viewed through a consumer confidence lens and delivered via an outcomes-based regulatory regime. It should consider opportunities for simplification of the current regulation, and how this can be reflected in comparable obligations applied to TPIs.

The introduction of a regulatory framework for TPIs should provide robust protections for consumers against TPI activity which results in poor outcomes, while not being overly prescriptive or unduly onerous, thereby damaging competition within the market and inhibiting the ability of market participants to provide core services or innovative products to consumers.

The adoption of a general authorisation regime does not preclude the government or appointed regulator from deploying further regulatory interventions throughout the operation of the regime, as circumstances require. This flexibility will be important in combination with a robust monitoring regime of market participants, which can be used by the regulator to identify system shortcomings and take action against examples of non-compliance or poor consumer outcomes, thereby avoiding overreliance on consumers and consumer bodies (e.g. Ombudsman Services: Energy) to report misconduct.

As we note in our response to Question 19, when setting the scope in legislation DESNZ must ensure the defined activities are described in a manner which will not be dependent on existing business models and will continue to be applicable as new areas of innovation expand.

21. What do you think of these principles? Should any additional principles be considered and why?

We are broadly supportive of the proposed design of the general authorisation scheme. However, we have identified two specific changes DESNZ should make to these design principles:

First, we do not believe it is necessary to include **'Appropriate data protection arrangements'** as a core principle, given all market participants, including TPIs, are already obliged to follow the Data Protection Act (DPA) and other relevant legislation, subject to ICO enforcement and potential criminal sanctions in the worst cases. Ofgem already interacts with ICO under a Memorandum of Understanding and is able to make referrals where necessary. We are concerned the inclusion of this principle increases the risk of embedding subjective interpretations of the DPA in regulation which may not be representative of differing valid interpretations, may stifle innovation, and could even subvert the responsibilities of parties operating under DPA roles (e.g. as a Data Controller).

Second, in relation to the principle: **'Consideration of net zero and energy efficiency targets'**, while EDF supports mandating TPIs to signpost customers to energy efficiency advice (as this is broadly equivalent to supplier licence obligations for domestic consumers), and in particular, directing consumers to the advice provided by their energy supplier, EDF does not agree that TPIs should be compelled to directly offer energy efficiency and net zero products and solutions.

Energy efficiency is not a core activity for a large proportion of TPIs, in either the domestic and non-domestic markets, rather, these services and related products are predominantly provided by energy suppliers and other specialised market participants (e.g. insulation providers, heat pump installers, etc) in response to consumer demand and government targets. Additionally, we note that the majority of TPIs are unlikely to have the relevant expertise to directly provide expert advice. It would better serve consumers to ensure they

receive genuinely useful and robust energy efficiency advice from expert sources, such as suppliers, consumer bodies, environmental agencies, and other relevant parties.

We note that energy efficiency-based products, and especially those bundled with supply, or other additional products and services, can be complex, particularly in the non-domestic market. At the larger end of the market many energy efficiency and decarbonisation products are bespoke, structured to the specific needs of a particular consumer. This can be to satisfy government targets, or other external metrics, such as RE100. Most TPIs are not capable of delivering these kinds of complex, layered arrangements to consumers in a consistent and transparent way.

While certain TPIs may currently offer a valuable route-to-market for some of the simpler versions of these bundled products, particularly where they are linked to an energy tariff, mandating non-specialist TPIs to offer products in this market is more likely to have unintended consequences which could be detrimental to consumers and the market. For example, this could create a 'box-ticking' approach, whereby some TPIs offer low-quality energy efficiency products to satisfy the obligation, without necessary regard for additionality, or consumer and net zero outcomes. Additionally, accounting for likely commission structures will drive up the costs of nascent low carbon technologies and energy efficiency measures, which could stifle the necessary market expansion being pursued by government.

22. Specifically, do you agree with the design principle titled “clear route for dispute resolution” which would require TPIs to maintain clear and accessible complaints processes and signpost customers to out-of- court dispute resolution providers?

Yes. We agree this design principle entails a necessary mechanism to safeguard consumer rights, prioritising a robust framework to ensure accessibility for consumers when resolving a dispute, and accountability for TPIs who engage in activities which cause poor customer outcomes.

Moreover, we expect that the introduction of direct regulation to govern TPIs behaviour and ensure dispute resolution will also come with a review of existing licence conditions, which currently put the emphasis of responsibility on energy suppliers, by mandating that gas and electricity suppliers must only work with TPIs that are signed up to Qualifying Dispute Settlement Schemes. The introduction of direct regulation would make these supplier obligations redundant, and their removal would lift implementation and administrative burdens that currently inappropriately fall on suppliers.

23. Do you agree that TPIs, along with energy suppliers, should play a bigger role in raising awareness and educating consumers in GHG emissions reduction and energy efficiency practices?

EDF supports mandating TPIs to signpost customers to energy efficiency advice (as this is broadly equivalent to supplier licence obligations for domestic consumers) and, in particular,

directing consumers to the advice provided by their energy supplier. However, EDF does not agree that TPIs should be compelled to directly offer energy efficiency and net zero products and solutions.

Energy efficiency is not a core activity for a large proportion of TPIs, in either the domestic and non-domestic markets, rather, these services and related products are predominantly provided by energy suppliers and other specialised market participants (e.g. insulation providers, heat pump installers, etc) in response to consumer demand and government targets. Additionally, we note that the majority of TPIs are unlikely to have the relevant expertise to directly provide expert advice. It would better serve consumers to ensure they receive genuinely useful and robust energy efficiency advice from expert sources, such as suppliers, consumer bodies, environmental agencies, and other relevant parties.

We note that energy efficiency-based products, and especially those bundled with supply, or other additional products and services, can be complex, particularly in the non-domestic market. At the larger end of the market many energy efficiency and decarbonisation products are bespoke, structured to the specific needs of a particular consumer. This can be to satisfy government targets, or other external metrics, such as RE100. Most TPIs are not capable of delivering these kinds of complex, layered arrangements to consumers in a consistent and transparent way.

While certain TPIs may currently offer a valuable route-to-market for some of the simpler versions of these bundled products, particularly where they are linked to an energy tariff, mandating non-specialist TPIs to offer products in this market is more likely to have unintended consequences which could be detrimental to consumers and the market. For example, this could create a 'box-ticking' approach, whereby some TPIs offer low-quality energy efficiency products to satisfy the obligation, without necessary regard for additionality, or consumer and net zero outcomes. Additionally, accounting for likely commission structures will drive up the costs of nascent low carbon technologies and energy efficiency measures, which could stifle the necessary market expansion being pursued by government.

25. Are there types of enforcement activities within the energy sector or a similarly regulated sector that would be most appropriate for TPIs?

As we set out in our response to Question 26, Ofgem should be appointed as the regulator for this new framework. Ofgem should be empowered to apply the breadth of its existing enforcement powers, including the use of regular monitoring, compliance investigations and final orders, against businesses believed to be in breach of regulatory conditions, and the enforcement of financial penalties, redress payments and other commitments as a consequence of compliance breaches, with the aims of protecting consumers and ensuring participants are delivering a sufficient quality of service.

To assist the appointed regulator with enforcement, monitoring, and compliance assurance activities, we believe it is necessary for there to be full visibility of market participants,

particularly given the prevalence of smaller operations within the TPIs market. We therefore recommend DESNZ require market participants to provide notification to the regulator at the implementation of the regime, and for new market entrants on an ongoing basis. This would assist the regulator in monitoring the market, and responding appropriately to potential consumer detriment, at minimal administrative burden and without representing a significant barrier to market entry.

26. What are your views on a preferred regulator if a regulatory framework was established?

EDF supports the expansion of Ofgem's remit to include TPIs, as the regulator of the proposed general authorisation regime, given their history and experience of regulating the energy market.

Ofgem can draw upon significant retail energy market experience as the regulator of complex interacting obligations in the form of licences, codes and other statutory regulations. As such, Ofgem already has the necessary expertise and significant monitoring and enforcement resources at its disposal upon which it can build to meet its expanded remit.

Ofgem has demonstrated its insight and understanding of the scope of the TPIs impact on consumers and the energy retail market, the shortcomings of existing practices impacting consumer outcomes, and the justification for a regulatory framework, as set out in its non-domestic market review and the recommendation for direct regulation of the TPIs market.

27. We would like to seek views on considerations and/or exemptions for some types of SME TPIs within the regulatory proposals.

EDF does not support exemptions or differential requirements for sub-categories of TPI, except where the characteristics of a specific activity may require distinct regulatory treatment to ensure good consumer outcomes. A core aim of the regulatory regime should be to ensure a level playing field for all market participants. By offering exemptions from regulatory obligations for some market participants, this would risk creating pockets of poor consumer outcomes in the market and could distort competition.

EDF
November 2024