

The Modification Panel Secretary
Joint Office of Gas Transporters
31 Homer Road
Solihull
West Midlands
B91 3LT

Dear Bob,

We are pleased to respond to your consultation on UNC proposal 296, 'Facilitating a Supply Point Enquiry Service for Non-Domestic Supply Points'

Although this proposal does have some theoretical benefits when compared to the existing code arrangements, these potential benefits are considerably outweighed by deficiencies in other areas that materially aggravate the potential for consumer detriment.

Of particular frustration is that the detrimental aspects of this proposal are avoidable; we consider that a better designed modification could deliver a quicker Supply Point Enquiry service without the considerable risk of data abuse that exists with the proposal in its current form.

On balance, we oppose this proposal and urge Ofgem to reject it.

The positives

We welcome the clarification that Shippers would only be able to retrieve information on supply points where they have the customers' permission. We note that this is consistent with the requirements of the EU third package which makes it quite clear that the customer's explicit agreement is needed before a supplier can access their consumption data. We credit this benefit with nugatory weight however, because it is simply a clarification rather than a material change and because there is already binding governance in this area from other legislative tools (such as European legislation).

More materially, we acknowledge that there is a reasonable logic to the proposer's argument that facilitating quicker access to Supply Point Enquiry information should make the process of quoting quicker and cheaper. In principle, this could increase competitive intensity and mean that offers are better tailored to customers' circumstances, saving them money. This could be a material improvement to the existing arrangements if the system put forward were not in other areas so entirely conducive to systemic abuse.

The negatives

Unfortunately miss-selling remains a feature of the energy markets. At the time of writing, four of the Big 6 energy suppliers are under investigation by Ofgem for alleged miss-selling.

The legal text for 296 proposes that Shippers will be able to access Supply Point Enquiry information where it has obtained either the written or verbal consent of the consumer. Notably, the redline legal text included in the draft modification report issued on 18 November would mean this applied to all customers, not simply non-domestic customers (although we would find the verbal consents process proposed unacceptable even if it was purely applied to non-domestic customers).

Subject to the existence of a robust audit regime, we are comfortable with the release of consumer information where written consent is provided, because the existence (or not) of this consent could be subsequently demonstrated (in the first instance through audit checks conducted by the Transporters' agent, and in extremis by either Ofgem or Consumer Focus through statutory information requests). The presence (or absence) of written consent can be demonstrated and, as such, a written consents regime may provide adequate consumer protection.

However, we are not at all comfortable with the release of consumer information based on verbal consent because this is likely to be impossible to prove. Put bluntly, it is not enforceable. This is of particular concern because face-to-face sales are inherently the riskiest sales channel, and the one subject

to most historic abuse. For a verbal consents regime to be tenable we would need to be convinced that suppliers could credibly warrant that none of their sales staff will ever lie about the existence of consent in pursuit of a sale. Past experience suggests that such a belief would be catastrophically naive.

View on applicable code objectives

We consider that the absence of credible data controls in 296 is highly likely to facilitate abuse of consumer data by suppliers. By its nature, market abuse is anti-competitive: it creates perverse incentives rewarding those who transgress acceptable norms and penalising those who behave; and corrodes consumer confidence and engagement. We consider that this proposal would have a negative effect on the facilitation of code objective (d).

Wider observations

Consumption data is owned by consumers and supplier access to it is dependent on their explicit permission¹. The onus must therefore always be on suppliers to demonstrate that they have consumers' permission to use that data before they attempt to do so – suppliers have no default entitlement to this data; non-anonymised data-mining is utterly unacceptable.

There a number of specific and generic responsibilities on the regulator to protect consumers from miss-selling. These protections will only be further emphasised by the introduction of the EU 3rd package in to UK legislation which bluntly points out that one duty of national regulators is to ensure that *'Customers shall be protected against unfair or misleading selling methods'*. A regime that may allow suppliers' access to private data based on verbal consent that cannot be proven is highly unlikely to be compliant with such requirements and we fully reserve the right to seek EU enforcement action against UK authorities if this is necessary to ensure consumers are protected.

¹ There are a number of legislative provisions that make this clear. For example, Annex 1 1(h) of the EU 3rd package Gas Directive requires that customers *'have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any registered supply undertaking access to its metering data.'*

For the avoidance of doubt, we wish to highlight that our concerns on this proposal are confined to the absence of data safeguards. We have no objections in principle to facilitating quicker access to customers' information during the quoting process where the customer has given their permission – indeed, there are obvious consumer benefits from this.

We recognise that there is an existing audit regime around the use of Supply Point Enquiries, although we also note that there is a lack of clarity on what the consequences would be if the relevant Shipper could not evidence that they had consumers' permission to access their data. We consider that there may be benefit in clarifying what would happen in such circumstances. We would expect such an event to result in a referral to Ofgem and a suspension of the Shipper's rights to request such data until the regulator has investigated the matter.

Although not relevant to the UNC Panel's recommendation to Ofgem, we consider that this is a proposal where the regulator's wider statutory duties (i.e. those that are not effectively replicated within the code objectives) are particularly pertinent. In the event that it is positively minded towards this proposal we would expect to see a very clear explanation of how it reconciles such a view with its consumer protection duties in its letter, especially its principal statutory duty.

This response is entirely non-confidential and we are happy for it to be published on the gasgovernance.co.uk website or otherwise circulated by the Joint Office.

If you have any queries in relation to this submission please feel free to contact me on 020 7799 8042, richard.hall@consumerfocus.org.uk.

Kindest regards,



Richard Hall
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