



**Consumer
Focus**
Campaigning for a fair deal

**Consumer Focus response to DECC's call
for evidence on the implementation of the
EU third internal energy market package
May 2010**

About Consumer Focus

Consumer Focus is the independent champion for consumers across England, Wales, Scotland, and (for postal consumers) in Northern Ireland. We operate across the whole of the economy, persuading businesses and public services to put consumers at the heart of what they do.

We are a statutory organisation that works in a devolved setting, with work priorities varying across different parts of the country, but all working to common strategic goals.

Through campaigning, advocacy and research, we champion consumers' interests in private and public sectors by working to secure fairer markets, greater value for money, and improved customer service. We have a particular focus on the interests of consumers in markets that are 'designated' by Government as requiring additional consumer advocacy. Currently these include energy and postal service consumers.

Consumer Focus also has a commitment to work on behalf of vulnerable and disadvantaged consumers, and a duty to work on issues of sustainable development.

Our response

Consumer Focus welcomes the opportunity to respond to this call for evidence. We agree with DECC that in most areas the GB energy market is already in line with the spirit and specifics of these directives but in some areas action is needed to become fully compliant with the requirements.

We have noted that a more in-depth consultation on detailed proposals that may lead to changes to the UK's regulatory framework is due in the summer and that comments on some aspects of the new legislation may be more usefully provided at this stage.

Accordingly, our comments below highlight issues that are potentially useful to the Government's assessment of current compliance with the legislation and potential areas for change.

Smart metering and consumer protection

Consumer Focus supports the roll out of smart metering to every household in GB by 2020 and welcomes the spirit of co-operation between DECC, Ofgem, industry and consumer groups in this area.

However, while an economic impact assessment has taken place, we would seek clarification that this has been conducted according to Treasury Green Book guidelines. In particular, we have concerns that the impact assessment has failed to take adequate consideration of the impact on fuel poverty – low income and vulnerable consumers. Also, little consideration has been given to the potential social benefits and risks.

While Government has committed to mandate smart metering, there is an absence of detail on the timetable surrounding implementation. We hope that this will be addressed in the upcoming announcement. Issues around interoperability have yet to be resolved and the early roll out of smart metering by some suppliers means that ongoing problems with compatibility of technology raise concerns about barriers to consumer switching.

Going forward, further action is needed to improve consumer protections and to maximise the benefits; this in turn will build the consumer confidence needed to meet the roll out targets. These actions should include:

- A comprehensive review of the existing safeguards in place to protect consumers. New functionality will result in risks around remote disconnection and switching of consumers and data protection and privacy for example
- A Customer Charter covering supplier practices around installation of smart meters and setting minimum standards for activity and behaviour
- Steps to protect consumers from the financial risks: transparent mechanisms must be put in place to ensure that, if consumers foot the bill for smart meters, these prices are fair and proportionate. These should also guarantee that costs incurred are efficient and cost savings are passed on to consumers, particularly in the case of prepayment meter tariffs
- Adaptation of consumer protections to the potentially radical changes to the energy retail market: smart metering will facilitate a range of new tariffs (for example, time of use, seasonal, energy only, energy savings packages). While choice can be a good thing, we are likely to see greater complexity in this market and a growth in long-term contracts, potentially hindering switching.

This has implications for the minimum standards around consumption and billing information, as well as tools available to consumers to help them navigate this new smart market and find the best deal

- Actions to deliver the environmental benefits of smart metering and to help consumers act on information shown on their displays to change their behaviour and cut their energy bills. In particular, a coordinated communications and social marketing strategy is required
- Government initiatives to take the opportunity presented by smart meters to improve the quality of service provided to customers, particularly those who are vulnerable or on low incomes. For example, consideration should be given to:
 - the introduction of trickle meters (load limiting meters) as an alternative to self-disconnection for customers in financial difficulty
 - monitoring the worrying levels of self-rationing and self disconnection and quickly targeting help and assistance at those in need (see section on vulnerable protections below)
 - the provision of a greater range of top up methods, to provider greater convenience to prepayment meter customers

Consumption data

The UK is generally compliant with the new Directives as laid out in the document but further action is needed given the early roll out of smart meters. Consumer Focus welcomes the decision to ensure that all customers will have a separate standalone display with their smart meters, which will help customers to more effectively manage their energy consumption. However there are additional issues around smart meters that DECC should consider, with respect to minimum standards for displays and free access to detailed consumption data in both a hard copy and electronic format. This is essential to ensure that consumers can actively participate in the energy market and find the best deal.

Further action is needed around providing consumers with advice relating to their rights and choices regarding the collection, storage, and use of private data retrieved from smart meters. In the Netherlands, the collection of 15 minute consumption data was considered in breach of European Human Rights Legislation. Given that at least one supplier in GB is collecting half hourly data we would welcome an investigation to establish if this is appropriate, justified or even legal.

We assume that the cross-provision by suppliers of consumers' consumption data relates to the introduction of smart meters. We support the opening of access to the data only with explicit consent by consumers. We consider consent to be actively opting in.

Vulnerable protections

We agree that GB is broadly compliant with the Third Package's provisions for vulnerable consumers, although we would have wished the legislation to have provided more guidance on the implementation of the requirements and more precise definitions of certain terms, for example 'vulnerable', 'disconnection' and 'energy poverty'.

However, we still consider there are a number of areas in which the Government should take further action to become fully compliant with the Third Package.

These are outlined below:

- GB is compliant with the requirement to provide protection for certain vulnerable consumers against statutory disconnection during 'critical times' (winter in our case). However, there is no protection against so-called 'self disconnection' of vulnerable prepayment meter (ppm) consumers. Recent Consumer Focus research, based on a large scale representative sample, found that 16 per cent of ppm consumers had 'self-disconnected' at least once in the previous year, while nearly half rationed their energy on a regular basis (publication forthcoming)
- We note that ppm consumers in Northern Ireland are protected, to a degree, in that self-disconnection cannot take place in evenings or weekends. There is no similar requirement in GB
- We note that GB has not put in place, to date, any consumer protection against remote disconnections and remote switching, both of which become possible under smart meters
- We accept that GB is currently compliant with the requirement to provide 'support for energy efficiency improvements to address energy poverty', given programmes such as Warm Front and priority group element of CERT. However, Warm Front comes to an end in March 2011 and CERT in 2012. This suggests that unless the Government gives a commitment to maintaining and preferably improving these programmes, England would cease to be compliant with the requirement after these dates (the situation may be different in Scotland, Wales and Northern Ireland)
- We recognise both the previous and current Government's commitment to Pay As You Save (PAYS) and welcome the scheme's potential to facilitate the installation of energy efficiency measures in the homes of 'able to pay' consumers. However, DECC has acknowledged that the scheme is not suitable for low income/fuel poor consumers. We therefore do not consider PAYS would represent compliance with the requirement to provide energy efficiency measures to address energy poverty.
- As mentioned above, a review is needed of the protections in light of smart meters. This should include consideration of the distributional impact of time of use tariffs on low income and vulnerable households. In part of Australia for example they have introduced a moratorium on time of use tariffs because of concerns surrounding the impact on the fuel poor. While this potential problem has been recognised by Ofgem, no action has as yet been taken.

Energy efficiency incentive mechanisms

The Third Package requires Member States or regulators to strongly recommend that suppliers optimise the use of energy, for example by providing energy management services, developing innovative pricing formulas or introducing smart metering. We recognise that GB is compliant with the requirement on smart metering. However, we do not consider GB is compliant on the other examples given. For example, CERT does not represent an innovative pricing formula which we interpret as re-sculpting of tariff structures to incentivise consumers to save energy. Neither the Government nor Ofgem prescribe 'innovative pricing', despite a number of studies that have explored such an approach.

Similarly, suppliers are not required to offer energy management services, although some voluntarily provide this service to larger non-domestic consumers.

Provision to consumers of information on their rights

Consumer Focus's position with respect to the 'European Energy Consumer Checklist' has consistently been that any extra information going to consumers should be elaborated in the context of what is already provided; it should widen consumers' knowledge rather than confuse. We are concerned that, as structured, the checklist does not meet this objective.

Accordingly, we support DECC's approach in this consultation to review the compatibility of the checklist with current, and new, consumer information obligations. Consumer Focus is currently working with suppliers to ensure that the information they will be providing to consumers from 1 July is not only compliant with their new obligations but:

- Is presented in a way that is easily understood by consumers
- helps to achieve one of the stated objectives of this new obligation which is to remind consumers of their right to switch while also providing information about consumption and spend that enables consumers to make better informed switching decisions

Going forward Consumer Focus will monitor the effectiveness of this information, as well as carrying out consumer empowerment work such as information leaflets, media work and web based tools (eg our confidence code and pricing fact sheets). We will also be working with advice providers and frontline staff to help them help consumers.

Duty to provide independent redress arrangements

While we agree that mechanisms have been established to meet the complaint handling and redress obligations set out in the Directive, these arrangements – brought in by the CEAR Act 2007 – have now been in place for a little over 18 months. It is therefore important to understand: how effectively they meet the objectives of the legislation, how aware consumers are of where they can go for support and how accessible the advice and redress schemes are.

Consumer Focus is currently finalising a review of the new consumer redress arrangements for energy (and post) consumers established as a result of the CEAR Act 2007. This review aims to establish the 'consumer journey' and analyse whether there are any 'stranded consumers' who are unable to search out and obtain support in relation to energy or post complaints. The review takes account of:

- Consumer awareness of the redress arrangements for energy consumers and how well these are signposted
- Energy suppliers performance against licence conditions and industry wide complaint handling standards
- Access to support from Consumer Direct
- The Ofgem review of the energy ombudsman service
- The impact of the CEAR Act on other advice providers

The final report of the review will be published in July 2010. We would be happy to discuss the findings with DECC.

Gas storage

We note with some concern the section in the consultation document that seems to 'talk up' the price of wholesale gas with reference to being 'more dependent on imported gas' and sees increase gas storage as a solution to this (perceived) problem.

Unlike most other EU states we have natural storage in the form of the UK Continental Shelf, and take only a very small proportion of gas from unstable countries such as the Russian Federation. We believe that world markets are in the midst of a gas glut, at least for the short-term, and so are concerned that the approach in the consultation document serves to ‘talk up’ the price of gas beyond its fundamentals.

Artificial storage is one option however, principally to deal with price (as opposed to supply) shocks. Given the expense (with a Rough-type facility costing up to £5 billion) and that fact consumers will ultimately pay for them through higher bills, the case for them needs to be far more certain.

For example, increased interconnection and liquefied natural gas (LNG) facilities (of which we strongly support the right of third party access) would represent far better value for money for GB energy consumers, if security of gas supply is still deemed to be a problem. Alternatively the electrification of heat could be accelerated to resolve the problem in the long-term.

The role of Ofgem

Key for us is DECC’s understanding that Ofgem, as the national regulator referred to in the consultation document, does not need new powers; rather it needs to use the existing ones.

Consumer Focus has grave concerns that the wholesale electricity market in the UK, the most advanced EU state in liberalisation terms, is far too illiquid. The core of the problem, as we see it, is that the large vertically integrated companies undertake very little trading in the Over The Counter (OTC) intermediated market or on an exchange, especially of long-term contracts. It is these contracts, which because of hedging strategies, ultimately determine retail prices for consumers, preferring instead to trade off-market via bilateral contracts. This hinders the development of price discovery and thus creates a cycle of low liquidity and resultant higher retail prices for consumers.

Low liquidity might not discourage generation investment overall; rather, it is only a liquid wholesale power market that will help provide the necessary investment price signals to all market participants rather than a ‘closed shop’ of dominant market players. This is better for competition in generation capacity and thus keeping costs to consumers down to a minimum. In the long term it also ensures that the ‘animal spirits’ of market economics lead to a more competitive market in energy supply as non-incumbent firms are emboldened.

For example, in GB a low level of liquidity presents a very significant barrier to entry to smaller would-be suppliers as financial penalties are high if they fail to accurately predict supply at gate closure. In addition they face higher prices than would be the case in a market with proper price discovery due to increased trading.

While we acknowledge that some progress has been made by Ofgem on consumer issues in the past year or so – for example Ofgem has adopted a consumer interest toolkit and established a Consumer Challenge Group – we are concerned that consumer issues remain something of a marginalised activity at Ofgem. There remains a need to ‘mainstream’ the importance of consumer issues and more could be done to reach out to consumer groups.

Furthermore, we would recommend that Ofgem could usefully widen its current consultation practices to bring in a wider range of stakeholders with an interest in fuel issues (even if this is marginal). Examples include roundtable discussions linked to consultations, ‘teach-ins’, more accessible consultation documents and meeting directly with stakeholders.

Ofgem also tends to be fairly reactive and when action is taken, it occurs relatively slowly. There is great scope for the regulator to start thinking more about the long-term issues facing consumers and their likely needs as the market and technology develops. Ofgem could usefully try to anticipate issues before they arise and set about integrating solutions to policy development to pre-emptively prevent consumer detriment. An 'early warning system' or long-term planning group are examples of possible solutions to this issue.

With Ofgem E-Serve budgeted to cost significantly more than the remaining 'policy-based' Ofgem, consumers need to be sure that the costs of the former are efficiently incurred. We have the particularly strong view that no role should as of right be assigned to E-Serve without a competitive tendering process (even if this means sub-contracting, Ofgem having the statutory responsibility); the Feed-in Tariff arrangement sets a worrying precedent in this area.

Two further areas for action to strengthen the role of OFGEM are respectively provided by Articles 37(1)(j) and 40 of the Directive.

Article 37(1)(j)

We interpret this as strengthening the requirement of regulators such as Ofgem in referring failing energy markets to external competition authorities. However Ofgem already has such powers and in our opinion has unjustifiably failed to use them, despite indications of the market not operating in consumers' interest.

We would ask that a clear statutory definition of 'relevant cases' be produced to make it clear whether or not Ofgem is failing in the duties contained within this article. If one of these 'relevant cases' was identified then Ofgem would have a clear statutory obligation to invoke the Competition Commission.

Article 40

Consumer Focus has real concerns regarding the way the GB wholesale electricity market functions and believes that better transparency on trading would help tackle this problem. However the commitment in Article 40 is that national regulators (in this case Ofgem) 'may' disclose such data from market participants. While we understand this language cannot be strengthened in transposition, it would be helpful if Ofgem were to be given a much more precise understanding and thus obligation of when and how it would disclose such information to parties such as ourselves.

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