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29th October 2010

Dear Sir or Madam:

Re: Consultation on licence modification appeals

Which? is an independent, not-for-profit consumer organisation with around 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, and books.

Which? welcomes this consultation and the proposals to reform the current arrangements for appealing the introduction new licence conditions or amendments to existing licence conditions. We have highlighted our concerns with the current arrangements on a number of occasions and while we support the reforms it is disappointing that it has taken compliance with the 3rd Energy Practice to remedy the situation.

Appellants, Grounds for Appeal and Timelines

Which? supports the proposals setting out:

- > who has the right and is eligible to appeal decisions¹;
- > the grounds upon which they can do so²;
- > the timelines for making an appeal and resolution of them³;
- > outcomes of the appeal⁴;
- > recovery of the costs incurred⁵.

¹ 2.13 and 2.15, *Consultation on licence modification appeals*, Department of Energy and Climate Change (DECC), September 2010

² 2.10, *Consultation on licence modification appeals*, DECC, September 2010

³ 2.24-2.25, *Consultation on licence modification appeals*, DECC, September 2010

⁴ 2.18, *Consultation on licence modification appeals*, DECC, September 2010

⁵ 2.29, *Consultation on licence modification appeals*, DECC, September 2010

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Which? is the business name of Consumers' Association, registered in England and Wales No. 580128, a registered charity No. 296072. Registered Office 2 Marylebone Road, London NW1 4DF.

for all consumers

The Competition Committee as the Appeals Body

We recognise that the Competition Commission (CC) has a role in licence conditions relating to price controls and consequently has a history and understanding of energy licence conditions. However on the basis of the grounds for appeal⁶ and ensuring efficient process it is not clear why the CC would be best placed to form the Appeals' Body.

Ability to assess "an error of law"

The CC is not a court and as such we fail to understand how they would be able to effectively assess an appeal on the grounds of Ofgem's decision was based on an error of law. However the assessment of such grounds could be undertaken by the Competition Appeals Tribunal (CAT).

First assessment of appeal submissions

Which? recommends DECC explore the role the CAT could play in making a initial assessment of appeal submissions. Appeals on the grounds of error of law could remain with the CAT to be duly assessed. For the remaining appeals, should the CAT determine that there are potential grounds for appeal on the remaining substantive issues, these appeals could then be referred to the CC for due assessment.

Suspension of Ofgem's decisions

There is a need to further clarify the situation in which the Appeals Body would be able to suspend the effects of an Ofgem decision⁷. It is not clear for example how the assessment will be made in a case of for example expense to the appellant and or the need to disclose confidential information versus harm to third parties (other businesses or consumers).

Which?
October 10

⁶ 2.10, *Consultation on licence modification appeals*, DECC, September 2010

⁷ 2.27 - 2.28, *Consultation on licence modification appeals*, DECC, September 2010