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22 November 2007

Your Ref: Ofgem doc 251/07

Dear Nigel

Modifying the gas and electricity supply licences for the use of objections in the non-domestic market – final proposals and statutory consultation

energywatch welcomes the opportunity to respond to the proposed changes to the supply licences highlighted in this consultation. This response is non-confidential and we are happy for it to be published on the Ofgem website.

Ofgem is well aware of the concerns we have expressed in various correspondence about the impact of the Authority decision in April 2007 to allow BGT's appeal on re-contracting during the objections process when a non-domestic consumer has decided to switch energy suppliers. We continue to strongly believe that a large majority of non-domestic consumers, specifically small business consumers, who contract for their energy like domestic consumers but without the same level of protection, will not obtain effective regulatory redress through the proposed modifications.

We continue to believe that non-domestic consumers have been ill-served by the Authority decision. The use of the MRA process is intended to streamline and make transfers between energy suppliers more effective **once consumers have decided to switch**. The Authority decision will have encouraged suppliers to make switching unattractive to smaller non-domestic consumers in particular.

Ofgem has made no allowance for the potential for **existing** terms and conditions, which suppliers may have rolled out since the Authority decision, to significantly tighten the termination obligations of non-domestic consumers. While we note that contract terms can be made simpler and some suppliers may make some efforts to increase transparency of the terms to obtain a competitive advantage, this does not prevent the terms themselves from being potentially onerous. Ofgem has also not explained why consumers' interests are better served if a better offer is made by the existing supplier **after** the new supplier to whom the consumer may wish to switch has shown its hand. What prevented the existing supplier from making a competitive offer to the consumer during re-contracting? By concentrating on new objection rights only, Ofgem is only providing a partial solution to a bigger problem.

There could be a real and adverse impact on the ability of many non-domestic consumers to switch and the proposals do not create the level-playing field between suppliers and consumers' negotiating power that Ofgem envisages through the licence modifications. Ofgem must now monitor even more carefully how non-domestic consumers are treated through their current contracts and whether suppliers have made it considerably more difficult for consumers to switch. This monitoring must be detailed and not simply point to switching rates as evidence that open and effective competition is occurring. How consumers perceive their treatment with regard to contract terms and conditions is much more a matter of customer satisfaction than whether they have switched between suppliers.

We believe that there is scope for greater visibility and accessibility of contract terms to non-domestic consumers through:

- the use of two part contracts, with key terms summarised and highlighted for ease of reference;
- the availability of all different contract types on suppliers' websites, with a brief description of each type;
- where contracts are updated, version control and dating, with changes highlighted;
- the highlighting of contract renewal and termination notice dates on each bill.

We do not consider these to be onerous for suppliers but an effective means for them to reach out to consumers and provide the kind of real clarity and ability to compare between providers which should be the hallmark of open and effective competitive markets. We commend these proposals to both Ofgem and suppliers as a positive way to address the outstanding issues we have already highlighted.

We fully support Ofgem's conclusion that the right to object should not be extended to customers on deemed contracts. We strongly believe that consumers should be encouraged to make an informed and independent choice of supplier at appropriate times. One key opportunity to do so is the right to choose when moving into new premises. To do otherwise would be further restrict consumers' ability to influence the performance of the retail market by exercising an effective choice.

We do not consider the licence modifications to be an improvement on the current wording as they do not address the wider issues which we have highlighted above. Our preference would be for Ofgem to address these wider issues and present legal drafting which is suitable in those circumstances.

We will continue to keep these issues under review as and when they are raised, always considering the possible impact on consumers.

We would appreciate being kept informed of the progress of the consultation and any related issues to enable us to comment as the need arises.

If you do wish to discuss our response further please do not hesitate to contact me on 0191 2212072.

Yours sincerely

Carole Pitkeathley
Head of Regulatory Affairs