

The Auditel UK Ltd response to the Energy Supply Probe – proposed retail market remedies

Auditel UK Ltd is a well established consultancy (over 14 years) with over 130 franchisees operating throughout the UK, most of whom are very active in the energy industry. Our main market is SME and some larger organisations. We become involved in domestic supplies only through housing associations and charities, etc.

This response is specific to this organisation but we have also participated in and support the response from, the UIA upon whose council the author sits. There may be some differences of emphasis and we may go a little further in some instances of TPI compliance but generally we fully endorse the UIA submission.

Overarching Standards

We welcome the move to include these standards in the licence preamble. It is something that is long overdue.

Specific Issues Affecting the Small Business Market

Availability, clarity and transparency of contract terms. Some suppliers will change their contract terms on a regular basis and seem to keep no record of which version the customer is on. These contracts can contain some very confusing clauses which we believe are designed to make changing supplier as difficult as possible, as difficult as they can legally get away with. This does not accord with what Parliament intended.

Objections and malpractice is an ongoing problem and the lack of any obligation of suppliers to keep the customer or his representative informed of any objection they have made or encountered caused difficulties for customers and places them in out of contract rates frequently through no fault of their own. Any Code of Practice should have 'teeth' and provide for penalties to be imposed on suppliers who ignore it or it will have no effect.

We support the introduction of an accreditation scheme for switching sites but are aware that the UIA already has one and question why this is this not being promoted or at least fully supported? There is no need to use public sector monies to re-invent the wheel!

The TPI code of practice already exists within the UIA. Our comments are as above.

5.6

The fact that 3 of the big 6 suggest that all is well when clearly it is not, reinforces our view that some suppliers are content to use methods that are lacking in integrity to retain customers and have at least a passive corporate policy of doing this.

5.7 Cooling off period.

We can see that there are problems with this for suppliers, agree it could increase costs and do not believe that it is of itself a problem that warrants any changes. The issue arises when a supplier or more often his agent or closely associated 'broker' agrees a verbal contract with a supply address employee, often using scare tactics, and NOT an invoice address manager. It is not difficult to obtain the correct invoice address and we believe it is a deliberate ploy by some suppliers/there agents/associated rogue brokers to gain business by disingenuous means. A subsequent written agreement to the authorised signatory at the correct invoicing address would solve much of this problem.

5.8 The Automatic Rolling of Customers

We fully support the proposal to outlaw this type of contract. It is much abused by ‘the usual suspects’ to disingenuously retain customers. If there are no rollover contracts the ‘phantom’ letters supposedly informing the customer of his renewal offer, his right to move supplier and the often erroneous procedure to do so will no longer be an issue. However, the issue of where a letter informing him of the end of a contract, the renewal offer, contract variations and any other important pieces of information remains. We suggest that it be made obligatory that such communications be sent to the invoice address and not to the supply address where this is different. This would not preclude sending a copy to the supply address nor would it preclude sending to the supply address if there was no reply or action from the invoice address after a predetermined time. This technique of sending it to one of many supply addresses is, in our view, a deliberate ploy by some suppliers to have the communication ‘lost’ and thereby rolling the customer over by disingenuous means. Making the letter look like junk mail is another technique used by the ‘usual suspects’ and also needs to be addressed. An obligation on suppliers to use recorded deliver for some of these categories of letters would go a long way to resolving these problems.

We are convinced there will be much resistance and lobbying from the ‘usual suspects’ in order to preserve this effective method of retaining customers by disingenuous means and thus reducing competition. We urge Ofgem to strongly resist this and to proceed with the abolition of these contracts.

5.9

Ofgem should do more to encourage customers to interact with only with TPIs who have signed up to a code of practice and are part of a redress scheme, as operated by the UIA. Ofgem should also publish and promote a list of questions that a small business should ask any potential TPI.

5.10

Within the context of the increased regulatory protection for non domestic customers the definition of a micro-business is a nonsense.

The proposed level is far too low and consequently will not achieve the objectives that Ofgem claim they wish to. We appreciate that it fits with the level of the Ombudsman scheme but this is also far too low as we have stated on many occasions. It is also disappointing that Ofgem have taken the easy option of slotting in with this level and slavishly following the existing ‘procedures’ rather than taking the initiative and robustly addressing the problem of all small businesses. By ignoring the problems of the majority of small businesses Ofgem have failed the small business customer.

Electricity, as you correctly state, is an essential commodity for ALL businesses and should therefore be considered in a slightly different way to many other business services. This is accepted in the domestic sector and now proposed to be accepted in the micro-business sector (because “They do not have the negotiating power”). It is no different for companies with 200 employees. It is only the very large organisations that have any negotiating power.

Some electricity companies (the usual suspects) routinely obtain court orders for disconnection when invoices or contracts are disputed and the supply company has refused to discuss the problem. This problem will be exacerbated by the introduction of smart meters through which the supply can be remotely turned off without the need for a court order. It leaves the situation open to abuse and is an issue for all business that Ofgem needs to address by providing protection and a set of standards for all businesses. This would not be allowed to happen in the domestic sector and as

stated small business (not only micro) are in a similar negotiating position. We predict that this will be the next ‘wheeze’ that (the usual suspects) will use to step right up to and over the line in a move to ignore bone-fide invoice disputes and bully small businesses.

5.11

We agree with most of this. However, we note that Ofgem does not specify the lead time for sending out a notice to the customer that his contract is coming to an end. Given the realistic time scales required to change supplier this need to be defined as a minimum of 2 months prior to the end (or as it currently may be, the anniversary date). We aware that this may be seen by Ofgem as becoming involved in contract terms and that it has always refused to do this but you are wrong to take this stance, it is necessary and as we have pointed out to Ofgem future proposed legislative changes under a new government, will start to require this in certain areas, so it is an opportunity for Ofgem to be ‘ahead of the game!’

5.14 -5.17

We strongly support this as a way of bringing energy contracts into line with most other commercial contracts. As previously stated energy and electricity in particular is different to other commodities and the supply is different in that the service continues to be supplied by the same company (albeit at a grossly over inflated price) even when the contract has expired. For that reason and for the ubiquitous and essential nature of the commodity there should be some element of ‘spoon feeding’ the customer in this.

5.20 -5.21

We support the UIA’s submission in this area. The activities of some TPIs are quite reprehensible. Unfortunately, in many cases some suppliers (the usual suspects) know of their activities and are content to turn a blind eye provided that obtain the business and can disown the TPI if they are caught. “We are genuinely surprised to learn that” or “Some training issues have been identified that have now been corrected” are the two most often used standard PR inspired responses from the suppliers. Insincerity oozes from them!

Whilst it would be wrong of us to all of the blame for this problem on to the suppliers, Ofgem has noted that it has no powers to regulate TPI, only suppliers. Therefore Ofgem can address that part of this issue where the suppliers are involved and by taking up our suggestions in 5.9, directly address the issue of the rogue TPIs.

Promoting Market Transparency

We find it difficult to believe that any of the big 6 does not know very clearly what each area of his business is costing, the turnovers and the profits that they are making. Separation of those businesses in some standardised form seems to us unnecessary, excessive regulation and an impediment to the free market. Last year’s price volatility and the excessively large volumes that are traded compared to the overall size of the market, suggest the market is in need of some reform but that is outside the scope of this probe.

We would welcome any move to improve transparency if made on the industry wide understanding that this will be re-visited in a relatively short time span to see how it is performing and what improvements and changes are needed to achieve the required goals.

Improvements to make the initial ideas work better in the light of experience gained and changes to take into account any counter measures implemented by the generators and suppliers as a result of those measures.

General Point

The method by which suppliers purchase energy on the wholesale market and price their own wholesale energy means, of course, that there is a real and a perceived/promoted risk element in this. The current credit crisis is providing some suppliers with a ready made excuse to pass as much of that risk on the clients as possible. For example; by giving a customer a poor credit rating, despite his excellent payment record, they are requiring an up front payment (inexpensive borrowing for them) or putting the customer onto OOC rates and tripling or quadrupling their income. We do not believe the wholesale buying directly reflects this OOC cost but that it presents a further opportunity to increase their margin at the customer's expense. As one of my clients put it "They have us by the balls." That situation is not compatible with a free, competitive market!

We see this as a problem that will be increasing and will become an issue that will be raised with the Ombudsman, Consumer Focus and Ofgem in an increasing large numbers of cases.

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