

Neil Barnes  
Ofgem  
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27<sup>th</sup> May 2009

Dear Neil

**Response to Consultation Paper Ref.41/09.  
Proposed Retail Market Remedies**

Haven Power has been actively involved in the discussions regarding the deficiencies in the competitive marketplace since the supply probe was launched in February 2008. We are pleased to comment on Ofgem's proposals for retail market remedies.

Haven operates in the SME market and we are therefore confining our comments to Section 5 of your consultation paper. Whilst we are supportive of many of the proposals, we anticipate problems with the definition of micro-businesses and we are concerned with the ongoing inadequacies of the objection arrangements. Our greatest concerns are in relation to the risks to customers and some suppliers which will arise from your proposals to prohibit contract roll over.

**Increasing availability, clarity and transparency of information**

In general we are supportive of these proposals. We agree that a full copy of contract terms and conditions should be provided each time a customer agrees a new energy contract. In our opinion it is reasonable that the key terms and conditions should be provided to customers before a contract is agreed.

We concur with your proposals for providing customers with advance notification that their fixed-term agreement is about to expire and for providing advice within the renewal letter what their course of action should be.

We anticipate that the requirements for clear information, including the provision of key contract terms, can be delivered verbally. We would not wish to see any reduction in our ability to conduct much of our business with existing and potential new customers using the telephone. In many instances it is both the customers' and suppliers' preferred means of communication. We were pleased to note Katie Brennan's understanding of this point at the recent Energy Suppliers Forum.

## Objections Processes

We have two issues regarding objections to switching.

Firstly, customers who are contracting with a new supplier should be made aware promptly when an objection has been raised. In our experience some suppliers do not promptly inform the customer that an objection has been raised and it is invariably the case that we, as prospective new supplier, break this news to the customer. The customer then has to face the inconvenience of contacting their existing supplier and attempting to find out why the objection has been raised. This leads to unreasonable delays, which are confounding the transfer process. We propose that the "...as soon as reasonably practicable.." requirement in standard licence condition 14 to advise the customer should be changed to "...within two working days of the objection having been raised..." (i.e. so that the customer is aware within two working days). This timing offers the opportunity for the customer to be able to respond to their old supplier to get the objection lifted within the 5 working days objection resolution period set out in the MRA. In addition we would support a regulatory reporting condition to capture information from suppliers about when and by what means the customer was notified of the objection and whether the objection was subsequently removed.

Secondly, we remain concerned regarding the circumstances under which an objection may be raised. This matter was discussed extensively in 2007 following which Standard Licence Condition 14.2(a) was modified to require certain terms to be included in the licensee's contract with the customer<sup>1</sup>. The licence modification does not define the specific circumstances under which an objection may be raised and the aims of achieving a neutral and orderly solution have not been met. It is our experience that the objections process continues to be used inappropriately to the benefit of the existing supplier. We would propose that this issue needs re-visiting within the proposed retail market remedies, and we re-state our suggested wording<sup>2</sup> for a much more explicit licence condition.

## Micro businesses

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<sup>1</sup> Ofgem document 251/07. Modifying the gas and electricity supply licences for the use of objections in the non domestic market.

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=Final%20proposal%20non%20domestic%20objections%20FINAL%20VERSION.pdf&refer=Markets/RetMkts/Compl/CustTransf>

<sup>2</sup> Haven response to Ofgem's letter ref. 191/07 Modifying the arrangements for the use of objections in the non-domestic market for gas and electricity supply

<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/CustTransf/Documents1/HAVEN%20Modifying%20Use%20of%20Objection%20v2.pdf>

Proposed replacement for licence condition 14.2 (a):

(a) a provision of the licensee's current contract with that customer for the supply of electricity to the premises allows the licensee to prevent the Proposed Supplier Transfer if the supply start date of the proposed transfer overlaps with the licensee's existing contract or the required notice of termination has not been given;

(b) a provision of its Contract with that customer for the supply of electricity to the premises allows the licensee to prevent the Proposed Supplier Transfer if the customer has an outstanding debt owing to the licensee relating to the supply of electricity;

We note Ofgem's view that very small business customers closely resemble domestic customers in their attitude towards energy procurement, and require additional protection. This may be the case for some, but we question whether your remedy of affording additional protection is really necessary, especially since it adds further complexity to the retail market rules and structures which are already too complex. In our experience, most SME businesses are well-organised and do not require additional protection.

However, if despite our representations Ofgem are minded to continue with these proposals for increasing regulatory use of this customer classification, then we believe that the proposed definition must be simplified. Currently the definition is impractical and has only worked because the commercial issues around its use (complaints handling) are minor. This means that it can be applied benignly. Whilst suppliers are capable of assessing customers' energy consumption, they are unlikely and unwilling to investigate and monitor numbers of employees and annual turnover both of which can change quickly. The costs of implementing the complex definition are unlikely to withstand the scrutiny of a cost-benefit analysis.

Also, it will be necessary to reduce the number of customers who will be defined as a micro consumer by the energy usage criterion. In examining national settlements data from 2003 for example, one can observe that there were nearly 1.9m out of 2.6m electricity business meters (profile class 3-8 and half-hourly meters) that had an estimated annual consumption of 50MWh a year or less. The proposed definition probably captures the vast majority of users operating from single premises. We do not believe that Ofgem was aiming to provide additional protection to all of these customers. We view this as unnecessary and not in accordance with standards of good regulation.

If Ofgem maintain their view that additional regulation is required for supply to very small business customers, then we would propose a simpler definition for electricity customers, i.e. any business customer using less than 12MWh of electricity per annum. This was the original limit that applied in the supply price control in electricity following the introduction of competition and was widely accepted as appropriate at that time.

A better solution is to abandon this proposal which seeks to create a class of customers which are then difficult to identify.

### **Automatic contract roll over**

Within your package of remedies, this proposal gives us the greatest concern. The prohibition of contract roll over is a disproportionate response to a problem which is caused by a minority of suppliers who impose restrictive terms of contract and make little effort to communicate the renewal process to their customers and who stick dogmatically to contract terms.

Your proposals are a rather blunt instrument to remove the unfair practices of a few suppliers to the detriment of most. The vast majority of our customers are happy with our contract renewal process and the flexibility that we offer to customers on a case by case basis.

The adverse impact on small suppliers and customers is four-fold.

Firstly our energy purchase hedging strategies and business model are based upon the confidence we have in our forward view of our customer demand. Supplying customers outside fixed-term contracts will lead to higher costs of energy purchased from the balancing market and other, inefficient, short term arrangements which will be passed to our customers. We can demonstrate that customers may get a worse deal rather than a better deal under your proposed remedy. Even a short period on out of contract rates could easily outweigh the savings that customers might eventually achieve. Provided the communication process is clear, customers already have this opportunity under the current regime. As time goes on the proportion of short term energy that we buy would increase leading to additional costs because the liquidity in short term power markets is poor.

Secondly, some smaller suppliers' financing and credit capabilities depend upon revenue certainty. Their financial exposure if rollover is prohibited is a significant threat to the cash flow of their business. Customers will be disadvantaged if the smaller suppliers were to cease business in the retail energy markets.

Thirdly, automatic termination would expose the supplier and the customer to more re-contracting commissions payable to third party intermediaries.

Fourthly, there will be substantial administrative costs associated with raising bills and adjusting direct debits on out of contract rates only to have to withdraw or adjust these when new prices are agreed. These costs should not be underestimated especially (in proportion) for smaller customers. It is quite possible that they will exceed for example the profit that a supplier might expect to make from a customer using say 10MWh pa particularly if rebilling is required.

The removal of suppliers' ability for contract roll over will have greater impact on smaller suppliers and new entrants, than is felt by the "Big Six" who have a larger and more diversified customer portfolio. An unwanted consequence of the current proposal is greater downside for a smaller, competitive, specialist SME supplier than is faced by the larger organisations who have large domestic customer bases.

I will write to you separately with further evidence of the quality of our communication with customers and with some numbers showing the potential higher charges which customers may incur if our rights to contract roll over are removed.

We understand that Ofgem's view is to seek to facilitate a good level of engagement with customers to ensure a smooth transition to a new or renewed supply contract at the end of contract term. We believe a better solution than what is currently proposed will be to require that suppliers should be obliged to operate to at least a minimum level of service which could be written as a set of guidelines by the supplier. This would allow suppliers to continue to differentiate themselves on service. A licence condition may refer to the guidelines which would indicate the timescales of notifying customers and reminding them of contract expiry, contract monitoring arrangements and follow-up procedures beyond the contract expiry date. The guidelines should also include some indication of what may or may not be considered as fair treatment and we would anticipate that the restrictive practices on renewals which some suppliers currently apply, will be explicitly addressed by this

process. There is a real risk that over prescription by Ofgem could prevent Suppliers differentiating themselves through service. This would be very bad for the market.

We are aware that there has been very little consultation with small suppliers on this matter and we will be pleased to discuss further.

As a final point on roll over, Ofgem is no doubt aware that this practice is quite prevalent in other markets including "domestic customers". For example, credit card insurance is sold on a roll over basis as are many domestic telecoms contracts. Both of these are heavily regulated markets. It would be remarkable if even micro businesses needed greater protection for electricity than domestic customers require for products with similar annual spends. (10MWh micro business spend is comparable with many domestic telephony spends).

### **Accreditation scheme for non-domestic switching sites**

We do not believe that these are anywhere near as effective in the SME market as they are in the domestic market as most prices are bespoke and are simply not available to the majority of switching sites.

### **Strengthen Code of Practice for Third Party Intermediaries**

We agree that there is a need to improve consumer confidence in the working practices and services of TPIs. We remain doubtful whether an improved code of practice will make a significant improvement in confidence, as very few TPIs are members of the Utilities Intermediaries Association.

Ofgem should explore other solutions in parallel with the current proposal for a strengthened voluntary code. Ofgem could regulate this activity by controlling suppliers' actions in respect of their dealings with TPIs if required.

Yours sincerely

Peter Bennell