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Dear Neil

Re: Energy Supply Probe – proposed retail market remedies: Ofgem consultation document

Thank you for the opportunity to respond to the issues raised in this consultation document. The comments contained in this response are offered on behalf of Shell Gas Direct (SGD) Ltd.

SGD holds both gas shipper and (non-domestic) supplier licences but is not active in the electricity supply market; as such, our response is limited to commenting on the proposals that would be expected to have an impact on an I&C-only supplier. SGD feels unable to offer any comments from the perspective of experience or expertise regarding any proposals in relation to the domestic supply market.

Prior to doing so, however, we would draw your attention to following general comments regarding the proposed definition of a small customer and also the need for further regulatory safeguards for this market segment.

At present, the proposed definition of micro-business customers is as per Article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008. This definition is based on satisfying one of the following three criteria:

- a) fewer than ten employees; or
- b) an annual gas consumption of less than 200,000kWh p/a (55,000kWh is the electricity equivalent); or
- c) an annual turnover of less than two million Euros.

At Ofgem's recent meeting with small suppliers to discuss these proposals, the practical difficulties for suppliers to ascertain whether a customer qualified on the basis of criteria (a) or (c) was made very clear. Unless Ofgem can state unequivocally how suppliers can overcome such difficulties, we would suggest that using an annual consumption figure is the most practical way forward.

SGD would question whether Ofgem's concerns regarding the way in which some suppliers may use the supply point transfer objections process to enforce a 'rolled-over' contract (see para 5.8) may in fact be missing the point with respect to the use of such a process. By way of explanation:

- it is not clear whether the transactional costs associated with Ofgem's proposals to terminate roll-over provisions will not in fact be greater than the perceived benefits. The extent to which some customers passively accept new rolled-over contracts is a moot point; some may actively want, on the basis of time-value, to accept such a situation (and these may be greater in number than those who have complained to Ofgem). Put another way, Ofgem's proposals will force such customers to find the time to renegotiate their contracts.

None of the above is intended to suggest that contractual terms and conditions should not be available, easy to understand and complete. To the extent that this is an issue with some suppliers, SGD would support a drive to rectify such shortcomings.

- a related, although not the same issue, however, is the extent to which erroneous objections appear to be raised with the aim of slowing down the switching process from one supplier to another. In such circumstances, the customer and the incoming supplier are disadvantaged, often financially, and this can damage the customer's expectation and experiences of the switching process.

Clearly, mistakes can happen in the switching process - a lot of data is not only kept but also flows between various parties. However, SGD would see little harm in:

- a) an audit of each supplier's operational processes used when raising an objection; and
- b) publishing the names of perhaps the worst performing suppliers. There may also be a case for investigating how practical it would be for financial compensation to be paid by such suppliers.

Chapter 2 – Standards of conduct for suppliers in the retail market

A point raised by SGD at the Ofgem/small suppliers meeting was whether these standards were, in effect, already in place (admittedly indirectly) given the existence of the statutory complaints handling scheme operated by the Energy Ombudsman? If so, there would appear little need to introduce them into the supply licence.

If the above interpretation were correct, any amendment of the supply licence under either Option 1 or Option 2 (see para 2.13), would lead to a degree of unwelcome regulatory uncertainty regarding the respective roles of the complaints handling scheme and the supply licence. The broad nature of the overarching standards could also be a problem in this context. However, to the extent that Ofgem is committed to introducing a change to the supply licence, SGD is ambivalent about the option.

With regards to the issue of complexity, it is worthwhile making the point that Ofgem has been urging the industry to offer more innovative products. However, what Ofgem has not done is explain where innovation becomes complexity and what constitutes unnecessary complexity? It would be worthwhile, therefore, if Ofgem could explain how suppliers could be advised on this point?

Chapter 5 – Helping small business consumers

With regards to the proposals in para 5.11, SGD would support the aim of ensuring that customers are provided with clear and unambiguous contractual terms and conditions; SGD can recognise much of what is being proposed in its own processes.

We note and support Ofgem's view regarding a mandatory cooling-off period. The risk associated with such a proposal would adversely impact on smaller suppliers rather than those with larger and more varied portfolios.

Automatic Rollover

The only additional comment to those already made is the impact that Ofgem's proposal will have when taken in conjunction with the limitations in the supply licence wrt to deemed customers and the objections process.

In the absence of automatic rollovers, increasing numbers of customers will be billed on deemed contract rates but this need not be an issue per se. However, the fact that the supply licence prohibits outstanding debt then being used to prevent a supplier switch will increase costs and risk for suppliers, especially small suppliers who may be less able to bear such costs than larger players. Putting that consideration to one side, presumably Ofgem does not want a supply market characterised by a trail of debt?

A note of realism also has to be introduced when considering the obvious option of pursuing legal action to recover outstanding debt; the amount of money involved in an individual case might not make this a practical strategy and yet the impact across an entire portfolio may be significant. Again, smaller suppliers are likely to be disproportionately affected. As such, if market concentration were indeed an issue, then we would have thought Ofgem would want to avoid contributing to such a situation?

If there is an introduction of a prohibition on the automatic rollover of contracts, SGD would advocate that greater safeguards accompany this proposal for suppliers who may be faced with increasing numbers of defaulting indebted deemed contract customers. Doing so, SGD believes, would help contribute to the provision of ‘...appropriate risk sharing between the two parties.’ (see para 5.4).

Conclusion

As a small supplier, we are supportive of targeted and focussed attempts to remove barriers to the smoother functioning of the market. Indeed, as we imply, we have ourselves experienced problems. However, SGD’s view is that, in certain respects, Ofgem’s proposals in relation to the micro-business market segment are an unhelpful one-size-fits-all solution.

To the extent that Ofgem nevertheless continues with all or any of its proposals, SGD would raise the issue of a proposed implementation date. Such a date has to take into the need for the required IT system changes and we would suggest a lead-time of six months.

I trust that you have found these comments helpful. Please do not hesitate to contact me should you have any questions or require further clarification.

Yours sincerely,



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