TOTAL GAS & POWER

Director General of Gas and Electricity Supply
Ofgem
9 Millbank
London SW1P 3GE

1 December 2008

Dear Sir

Energy Supply Probe

Response to Ofgem consultation document

We write in response to Chapter 10 and Appendix 7 of the Energy Supply Probe relating to retail energy supply to **small business consumers**, and in particular with regard to the use and transparency of our own contract terms and conditions, the use of contract roll-over, and compensation of third party intermediaries (TPIs) acting for SMEs. We also mention here the reason why cooling off periods are particularly difficult to apply in the context of energy supply contracts.

Clarity of contract terms and conditions

Total Gas & Power offers two forms of general conditions, namely a short version for small businesses, and a longer version for large businesses. The short version contains all necessary general conditions in an abbreviated form, on a single page, including minimal but necessary terms as to payment, metering, liabilities, termination of the agreement, and safety. The price is clearly stated on the front page or on a separate attachment to the contract that gives details of day and night rates (in the case of electricity supply), or details of a particular pricing product (in the case of gas supply).

These terms are no greater in number, nor more complex, than any commercial contract might reasonably be expected to contain, for the retail supply of energy. Furthermore any SME consumer may look at our website or contact our sales staff to obtain details of our pricing products in advance of entering into a contract. All our customers receive a hard copy of their terms and conditions upon entering into a contract, whether the contract was entered into in writing or verbally. We would expect all suppliers to be obliged to do this.

Automatic roll-over

This is a device that allows a fixed term contract to be extended where passive or unresponsive customers wish to retain their current arrangements. Total Gas & Power's contracts generally roll over automatically unless either party to the agreement gives notice of termination to the other, not less than 3 months before the end of the contracted supply period (in the case of gas supply) or not less than 1 month before the end of that period (in the case of electricity supply). In the case of contracts that are concluded by telephone, such provision of the contract is carefully recited to the Customer from a telephone script.

TOTAL

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Our customers may therefore terminate their gas or electricity contract at any time during the first 9 or 11 months, respectively, of the contract year where the contract is of one year's duration, and they have even more time to do this where the contracted period is longer. We would encourage all suppliers to allow their customers a similarly long termination window.

Where a customer terminates the contract within our notification window, we do not raise objections to a switch of supplier by that customer unless there is debt on their account. We would welcome any measure that prevents suppliers from wrongfully objecting to their customers switching suppliers where the customer has terminated within their termination window (and there is no debt), since this directly prevents other suppliers from winning business from those customers.

Where a customer's contract is not terminated then it is not unreasonable for a supplier to hold the customer for a further defined period in order to continue to manage hedging and market risks for that customer's expected consumption in the year ahead. Without a clearly defined consumption period, management of the market risk associated with the customer supply becomes very difficult and can result in higher fixed prices to the customer as a result of higher risk premia.

Supplier profit margins on SME business

It should be noted that SME margins are generally far from excessive due to:

a. High customer churn issues during contracted periods, due to many reasons such as change of premises or liquidation

b. Very high consumer debt risk

c. High market risk associated with the unpredictable demand of the consumers and often their weather sensitivity

d. High operating expenditure due to the inadequacy/inefficiency of much of the SME metering that still requires manual reads.

Third Party Intermediaries

It is our view that there should be more transparency for consumers relating to the remuneration of TPIs acting on behalf of SMEs. We would welcome measures that would require transparency for SME consumers relating to TPI commissions and any affiliations between such TPIs and particular suppliers.

Cooling off periods

The nature of energy markets is that they can fluctuate, sometimes widely, during the course of a day. Once a price offered by Total Gas & Power to a potential retail customer has been accepted, Total Gas & Power immediately procures on the energy markets the amount of energy necessary to fulfill that contract. If suppliers were to be required to allow their customers to cancel contracts after acceptance of the price by the customer, then a fall in market prices after the contract was entered into and before the contract is cancelled would mean that the supplier would incur an unacceptable loss selling the energy back to the market. Suppliers also cannot wait until after a cancellation period has expired before procuring the energy because of the possibility of market fluctuations during the cancellation period that can make the original offer price no longer viable.

Conclusion

1) All suppliers should send hard copy of their contract terms to their customers upon entering into the contract, whether such contract is entered into in writing or verbally (including over the telephone).

2) Customers' attention should be specifically drawn to the termination window that applies to their contract.

3) Contract termination windows should be as long as possible.

4) In order to encourage competition between suppliers, suppliers should not wrongfully object to a switch of supplier where customers correctly exercise their right to terminate within their termination window.

5) Often, despite many requests, we cannot engage customers to discuss their contract renewal. It remains a fact of life that energy is a 'low interest' purchase by many SME customers and, given this phenomenon, suppliers need measures to allow them to continue with supply arrangements even when the consumer chooses not to engage.

6) Market fluctuations mean that cooling off periods are not workable.

7) With regard to Third Party Intermediaries, more transparency is needed so that SME consumers are aware what commission is being taken by such intermediaries and the affiliations of TPIs to particular suppliers.

Yours faithfully

J. S. Shead

John Shead
Director