

Louise van Rensburg
Retail Markets
Ofgem
9 Millbank
London
SW1P 3GE

15th February 2012

Dear Louise,

Retail Market Review: Non-Domestic Proposals

Ofgem's Retail Market Review (RMR) comes at a time when British businesses face significant challenges, with a difficult economic climate and volatile energy prices. We recognise the need to ensure that non-domestic customers are able to fully engage with the energy market and secure the best deal for them. In particular, it is right for Ofgem to consider both whether small businesses are adequately served by the current regulatory framework and whether more can be done to improve the quality of information customers get at key times such as contract renewal.

British Gas is already at the forefront of delivering improvements for non-domestic customers, and has taken significant steps forward in providing businesses with protection over and above that currently required. We have recently committed not to "back bill" micro-business customers beyond three years for example, and have further committed to move this to a commitment not to back-bill micro-businesses beyond one year by 2014.

We welcome the RMR as a vehicle for further reform and are keen to ensure that the resulting change will secure lasting benefit for those who need it in a way which is both practical and minimises the cost of regulation for customers. Whilst we therefore agree with the intent behind the RMR proposals, we have some concerns that their effect is in part too wide and disproportionate, and in places impractical to implement. In its current form, it therefore risks not delivering meaningful benefit to those it seeks to protect.

Small business protection

We fully support targeted regulatory protection for genuine small businesses. We accept that these organisations are more akin to micro-businesses in the way in which they interact with the energy market and it is therefore reasonable to propose that they too have a similar level of protection as micro-business customers.

We have concerns however that the definitions proposed in the RMR go much further than just targeting small businesses and actually has the effect of defining some significantly larger organisations as "small businesses". The root cause is the proposed consumption and meter type elements of the definition. As these can only be practically applied at a site level, and not at an aggregate customer level as the other two tests are, it creates the perverse consequence of defining a customer as small when they either have at least one small site in a portfolio of many more larger sites, or has minimal consumption for one fuel and significant consumption on the other fuel. This is illustrated in Appendix One to this response where we provide case studies which look at how the proposals treat three different organisations.


British Gas
Looking after your world

Legal & Regulatory

Lakeside West
1st Floor
30 The Causeway
Staines
Middlesex
TW18 3BY
t: 01784 874000
f: 01784 878719

Regulatory protection comes at a cost, and Ofgem need to ensure that their proposals are both proportionate by targeting them at just those organisations that need it if we are to ensure the aims of the RMR are met. It is therefore important that Ofgem take this opportunity to remove the consumption test from the proposed small business definition, and focus purely on the aggregate view of a business' FTE and revenue.

Third Party Intermediaries (TPIs)

Whilst the majority of TPIs provide a valuable and professional service for businesses, we share Ofgem's concern that a small section of that market operates in a way that negatively impacts customers and damages the trust in the energy market. We have been at the forefront of calling for Ofgem to be granted the powers to regulate the market directly and therefore welcome the focus in this area.

We also believe Ofgem should seek to create a level playing field by requiring all suppliers to only use those TPIs who have signed up to an Ofgem accredited Code of Practice. This would have the additional benefit of providing customers with certainty that they will receive a minimum level of protection whichever TPI they engaged. We believe it would be appropriate for this obligation to be set out as a licence requirement.

We have real concerns regarding Ofgem's proposals to place a licence obligation on suppliers regulating the sales and marketing activities of our brokers. While we fully accept it should be a requirement for suppliers to take reasonable steps to ensure their brokers act responsibly, we do not believe it is reasonable to expose suppliers to the risk of licence breach for the actions of a third party. This is particularly true in the larger end of the market where the customer and TPI relationship is more complex and the supplier's role more detached. It is not even clear to us how we could achieve compliance with a strict interpretation of the proposals, given the number of TPIs in the market; British Gas alone deal with over 200. If implemented, we believe this proposal is likely to create a severe distortion in the broker market, with suppliers being particularly unlikely to want to contract with smaller TPIs.

Furthermore, it is unclear to us how the proposals will work in practice in relation to "umbrella" TPIs who in turn contract with other TPIs. How for example would a supplier ensure that a sub-TPI has adhered to the rules when they only have a contractual relationship with the "umbrella" organisation? Given there are approximately 60 different "umbrella" TPIs in the market, each representing around 30 sub-TPIs, this is a material concern.

Suppliers have existing controls in place to monitor broker behaviour and we would welcome confirmation from Ofgem that the proposals would not require suppliers to go further than this in future. We would also welcome confirmation that direct regulation of individual brokers would become a role for Ofgem themselves once they have been granted the necessary powers, in much the same way as Ofgem regulate suppliers today.

Standards of Conduct

We support a consistent application of the existing Standards of Conduct regulations by all suppliers to give businesses confidence that suppliers will treat them fairly and that they will be provided with full, clear and accurate information. However, we have concerns that a move to more principles-based regulation has the potential to create significant uncertainty in the market over precisely how suppliers can comply with their license obligations. It is

unnecessary to put subjective rules such as these in to Licence, however if Ofgem do proceed on this basis it is critical that they also provide clear guidance on how they should be interpreted. We also ask that such guidance is subject to detailed consultation so that the impact of the proposed changes is fully assessed.

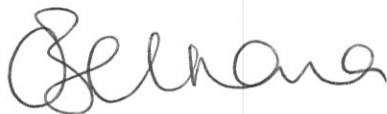
We have specific concerns regarding a new Standard of Conduct for "fit for purpose" customer service. Even with guidance, this requirement would lead to an implied "correct" level of service (and therefore resource), risking the homogenisation of service levels with potentially detrimental impacts on competition.

Conclusion

We agree with the principles and objectives of the RMR and believe that reform is necessary if we are to address the problems identified in the market. We are keen to work with Ofgem and consumer groups to develop ways in which this can be achieved, but believe that the proposed implementation approach will create some unintended consequences which can be avoided without undermining the eventual benefit to businesses.

Our detailed response to each of the questions Ofgem have asked in their consultation is attached as Appendix One to this letter.

Yours sincerely



pp

Tim Dewhurst
Director, Regulatory Affairs
British Gas