

TOTAL GAS & POWER

Louise van Rensburg/David Hunt
Retail Markets
Ofgem
9 Millbank
London
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14 February 2012

Dear Sirs

Retail Market Review: Non-domestic Proposals
Consultation ref. 157/11 published 23 November 2011

I write in response to the above consultation and in respect of the matters set out below.

SLC 7A expansion

With regard to the proposal to extend the definition of 'Micro Business' by creating a new definition of 'Small Business' to which SLC 7A would apply, we would point out that by including every Local Unit with an electricity profile class of 3 or 4, multi-site contracts with large businesses having multiple class 3 & 4 meters would be caught within the definition even though their aggregated consumption would otherwise be higher than the volume threshold, which would substantially increase the administrative burden and costs upon suppliers of giving extra protection to large businesses that was not the original intention behind SLC 7A.

We would propose instead that:

- a) the only definition that should be used for Small Business should be the volume thresholds for gas and electricity because suppliers have ready access to such information without the need to request it from customers;
- b) such volume thresholds could be increased above those currently used in the definition of 'Micro Business' of 200,000 kWhs for gas and 55,000 kWhs for electricity, for example to 293,000 kWhs for gas and to 75,000 kWhs for electricity (using your proposed threshold for gas, and a similar increase in the volume threshold for electricity);
- c) defining 'Small Business' by reference to electricity volume thresholds instead of profile class removes the risk of businesses which consume lower volumes of electricity falling outside a profile class; and that



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- d) customer staff and turnover levels should not be included in the Small Business definition because in order to obtain this information, suppliers must rely on customer responses which are often not forthcoming.

We are not in favour of any ban of automatic rollovers because this would inevitably lead to SME customers who are not proactive in managing their supply contracts being placed onto deemed rates after the end of the contracted fixed period unless they respond to their supplier's invitation to renew their contract. There is no need to ban automatic rollovers if this does not involve an increase in the price to be paid, or if a right is given to the customer to terminate their contract if the price is increased after the automatic rollover.

Customer transfer blocking

We disapprove of any supplier deliberately and systematically blocking a switch of supplier by its contracted customers otherwise than for an allowable reason. We would encourage Ofgem to continue to monitor the situation and to investigate any suspected misuse of the objections process. Alternatively this can be done by Xoserve on behalf of the industry.

Third party intermediaries

We are in favour of Codes of Practice for TPIs. ICoSS can advise on suitable key criteria for an accreditation scheme taking into account the views of its members, if this would be of assistance to Ofgem.

We agree with Ofgem's proposal to introduce a new standard licence condition requiring greater transparency of dealings with TPIs, but we consider that such a SLC should be aimed at ensuring transparency in relation to:

- (i) the services that are provided by the TPI to the Customer;
- (ii) whether a TPI has sufficient resources to enable it to provide such services; and
- (iii) the actual fees that the TPI is charging.

We would support recording of the entire telephone conversation between TPIs and Customers although this is difficult to impose on TPIs.

We welcome the proposal to give Ofgem enforcement powers against TPIs under the Business Protection from Misleading Marketing Regulations 2008 but do not consider that Licensed gas and electricity suppliers should be held responsible for the actions of TPIs where the TPIs consider themselves to be independent or representatives only of the consumer.

Standards of Conduct

In general we would comment that in a competitive market, customers will exercise their ability to switch suppliers if they do not find that their current supplier has provided adequate service. We feel that the proposed powers would be incompatible with a liberalised business-to-business energy supply market.

The Standards of Conduct appearing in the consultation document contain standards adopting such words as "fair" and "fit for purpose" which give Ofgem very wide-

reaching powers to declare that a given activity or interaction with Customers is in breach of the requirement without any method against which to assess the type or degree of alleged unfairness or lack of fitness for purpose. Such usage of these terms could lead to random decisions being made to relieve Customers of their obligations to pay for energy supplied (or other obligations), or to open up a contractual bargain already made between the parties on the ground that the product sold was unfit for the Customer's purpose even though such purpose was not made known to the supplier before the contract was entered into.

We also consider that such wider-reaching SoCs (wider than the existing SoCs) go beyond what is necessary to achieve the level of consumer protection required by the Gas and Electricity Acts without unduly restricting suppliers' interactions with non-domestic consumers, in particular in relation to:

- 1) suppliers' contractual rights to bill their non-domestic customers for energy consumed;
- 2) debt recovery; and
- 3) statutory rights of entry and the exercise of suppliers' disconnection powers.

In all cases, licensed suppliers must be able freely to exercise their statutory powers and to seek relief from the courts.

Yours faithfully



Andrew Green

Head of Industry Regulation and Compliance