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Dear Steve

RWE Npower Limited - response to consultation entitled “Modifying the arrangements for the use of objections in the non-domestic market”

Thank you for your letter of 17 April outlining the Authority’s decision in relation to the BGT appeal and your consultation of the same date seeking our views on the issues involved in Ofgem’s determination of the appeal. RWE Npower Limited, together with the majority of other industry respondents, has stated in previous correspondence on the issue that we do not believe the activity now permitted (that is, of re-contracting within the objections window) is in the best interests of customers and competition. We were therefore disappointed that your decision found in favour of BGT, and will set out in this letter why we believe the existing market arrangements relating to the use of objections in the non-domestic market should be amended. Our remarks are made in response to the specific questions posed in the consultation letter.

What set of arrangements in respect of re-contracting in the objections window best serves customers’ interests?

RWE Npower Limited believes that this question and its answer need to differentiate between short-term and long-term effects. Looking at the short-term, we can acknowledge that allowing individual customers to re-contract in the objections window could be seen to be in the best interests of individual customers, as such activity may procure them the “best deal” for that particular contract round. Taking a more long-term view, however, we do not believe that the practice would be in the best interests of customers as a whole, because of the following longer-term consequential effects on the market:

- all suppliers will have to undertake the activity in order to remain competitive; and as a result
- objections rates will increase throughout the market. Evidence we have gathered in the short period since the Determination was announced supports this view.

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Increased objection rates will inevitably lead to more uncertainty and risk for suppliers as they find it more difficult to convert sales into live contracts, which in turn will have a number of impacts, but in particular:

- an increase in costs for all suppliers; for example: costs incurred in purchasing volume which is subsequently not required as the sale does not convert to a live contract; and costs incurred in administering penalty clause payments. Customers will also experience increased “transfer” costs, as they will increasingly find that suppliers enforce the penalty clauses that they include (and/or introduce) into their contracts;
- a reduction in customer choice due to the stagnation and stifling of competition. The increased uncertainty over conversion rates could lead to some (in particular small) suppliers ceasing to trade and the closing down of the market would inhibit new entrants. Both would lead to a reduction in customer choice. The possibility also exists that some “losing” suppliers could elect to use the D0058 dataflow to target new registrations from particular “gaining” suppliers, thereby selectively attacking their competitor’s customer base and effectively blocking that player from participating in the market.

This is how we believe the market will develop in the long-term if the activity under discussion continues to be allowed. The increase in non-domestic objection rates, from 30 per cent to around 50 per cent, that we have experienced within the SME market in the short period of time since the Determination, supports our view. We expect that an increasing number of suppliers will commence this activity, as a failure to do so will not be in their commercial interests, and we therefore envisage that objections rates could increase still further over time. We do not see how such long-term developments can be viewed as being in customers’ best interests.

Are both sets of arrangements consistent with competition?

Of the two sets of arrangements described in the consultation letter, RWE Npower Limited strongly believes, for the reasons outlined above, that amending the industry rules to proscribe re-contracting activity during the objections window would be more consistent with competition in the longer term.

Contrary to Paragraph 18 of your consultation letter, we are not aware of any other commercial arrangement where a mandatory communication takes place between the customer’s current provider and their chosen “new” provider which gives the customer’s current provider (and **only** that provider) an opportunity to activate a competitive response. This arrangement is inconsistent with an open, competitive market.

Would transaction costs and customer inconvenience be greater under either set of arrangements?

RWE Npower Limited believes that both transaction costs and customer inconvenience will be greater under a set of arrangements that allows re-contracting activity in the non-domestic market during the objections window. Our rationale for this argument is outlined below:

Impact on customers

- If re-contracting in the objections window is allowed we believe that it will become common practice for customers to sign a contract with Supplier X only to be persuaded by Supplier Y (within the objections window) to break the contract with Supplier X and sign with Supplier Y. Given that this practice will lead to increased risk and uncertainty for Supplier X it is highly likely that, as envisaged within the consultation letter, suppliers will respond by amending contracts to introduce penalties for such behaviour. Customers could therefore increasingly find themselves being invoiced for penalty charges, which they will interpret as a “cost” associated with switching supplier; and although enforcement of penalty charges is not common at present, we believe that it

would become increasingly common in this scenario. This again will lead to a further adverse impact on the market.

- Customer inconvenience will increase as customers will continue to be contacted by suppliers even after they have signed a contract with their chosen supplier.
- Customers whose transfers are objected to by the losing supplier often experience a delay. As the number of objections increase it is therefore likely that an increasing number of customers will experience a delay in their transfer. As well as the inconvenience that such delays cause, they can also lead to increased costs for customers, who may find themselves being placed on “deemed” terms and charges for an interim period between contracts.
- From the above, we anticipate that the adoption of this re-contracting activity is likely to lead to an increase in customer complaints relating to the transfer experience.

Impact on suppliers

- There will be greater uncertainty regarding conversion rates because a lower number of sales will convert into live contracts than at present; however it will be difficult to predict what this conversion rate is likely to be and could result in suppliers purchasing cover for customers that never convert to a live contract. This will be an increased risk and cost for suppliers over and above that currently experienced, which will ultimately be transferred back to the end customer.
- Suppliers will look to offset their increased risk by introducing and enforcing penalty charges within their contracts. This will be a new process for suppliers to administer, and will lead to increased costs which will no doubt be passed on to customers.

Should existing market arrangements be changed, and if so should any such changes be left to the industry to make through raising changes to the MRA or should Ofgem seek to make changes to the supply licence to implement them?

For the reasons outlined within this response, it is our belief that the greatest long-term benefit to customers, and the non-domestic market as a whole, would be achieved if Ofgem were to seek to make changes to the supply licence to proscribe re-contracting activity during the objections window. This could easily be achieved by inserting the following wording into Condition 14.2 of the new Electricity Supply Licence (or into MRA Clause 16.1.2 as appropriate, subject to the timescale of the introduction of the revised licence conditions following the Supply Licence Review).

“For the avoidance of doubt, an Old Supplier may not contact the customer during the Objection Period, for reasons other than to advise such customer of the reasons for raising such objection, or at the explicit request of the customer. Where a customer makes such an explicit request, the Old Supplier shall not undertake any marketing activities or attempt to persuade the customer to return its supply to the Old Supplier, unless explicitly requested to do so by the customer”.

To conclude, RWE Npower Limited believes that:

- taking a long-term view, the introduction of re-contracting activity during the objections window is not in the best interests of customers or competition;
- amending the industry rules to proscribe re-contracting activity during the objection window would be more consistent with competition in the longer term;
- transaction costs and customer inconvenience would be greater under a set of arrangements which allows re-contracting during the objection window;

- Ofgem should seek to make changes to the Supply Licence to proscribe re-contracting activity during the objection window.

If you would like further clarification of any points in this letter please do not hesitate to contact me.

Yours sincerely,

David Mannering
Director,
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