



*(by email)*

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value for all customers*

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Date: 27 July 2007

Dear Colleague,

**Modifying the arrangements for the use of objections in the non-domestic market for gas and electricity supply**

I am writing to set out and seek comment on our views on the use of objections and re-contracting in the non-domestic market.

Non-domestic supply contract terms can vary considerably between suppliers and contract types and it is important that the customer carefully reads and understands the contract before signing. Terms which govern the process for the customer terminating the contract and switching to another supplier are particularly important. Examples of common terms include notice periods and fixed/minimum contract duration.

Other than rights which may be enforced as a matter of contract (which may involve disputes going to Court unless they can be settled) there is a mechanism in the industry arrangements to allow a supplier to prevent a customer switching by "objecting" to the transfer. "**Objection rights**" in the contract in principle avoid the need for parties to go to Court, and may relate to similar situations to those that would otherwise be enforceable as a matter of contract law (for example, the need to comply with notice periods, or the requirement to meet payment obligations).

The circumstance in which the supplier can use the industry arrangements to prevent a customer transfer is the subject of this letter.

We are proposing changes to the rules that govern these arrangements to clarify the circumstances in which a supplier can prevent a transfer and to ensure the switching process is simple and predictable.

By way of background, many (but not all) non-domestic contracts already provide suppliers with objection rights which prevent the customer switching supplier in certain circumstances. These circumstances may be quite narrow, for example where the customer has not provided the supplier with sufficient notice of termination, or where the customer owes the supplier money. Other contracts may provide for broad objection rights, for example giving the supplier the right to block the transfer on request of the customer. Finally, some contracts may not afford the supplier any right to object to the

transfer over and above the very narrow objection grounds which it has through standard conditions in the supply licence<sup>1</sup>. Similarly, where a customer is served through a deemed contract – the default contractual basis for supply when, for example, a customer first moves into a new premise – the contract does not afford the supplier any objection rights (and again, there will only be the very limited grounds set out in the supply licence).

To allow the supplier to establish whether it has grounds to object to a customer switching away, the transfer process contains an “objection window” which begins when the supplier receives a notification from the distributor that the customer wants to leave<sup>2</sup>.

There has been much debate in recent months over what legitimate action a supplier may take **during** the objection window to retain a customer. A specific issue is whether it is legitimate for the supplier to use the window to re-contract with the customer and use objection grounds in the *new* contract to prevent the transfer.

We have consulted on this matter and having reviewed the responses we propose to amend the licence conditions around suppliers’ use of objections. Our proposal would mean that suppliers can do nothing during the objection window to prevent a customer transfer, other than on the basis of contract provisions that apply *at the time they receive the loss notification*, or according to other rights set out in the licence.

We set out our proposed licence amendments in Appendix 2.

We have based our proposal on the principle that the switching process should be kept as simple and predictable as possible. The objection window was not intended to be used for commercial negotiation to allow the outgoing supplier to retain the customer.

Outside the objection window, the relationship between customers and suppliers is governed by their own commercial arrangements. But during the window our view is that it is in customers’ interests that the rules make clear that the transfer should proceed unless there are valid grounds to block it *at the time the switching process begins*. If the customer subsequently changes their mind or the outgoing supplier wants to make a new offer, the customer may be able to switch supplier again once the existing transfer has been completed.

Where a customer is on a deemed contract, or another form of contract that does not provide the supplier with objection rights, a supplier should not be entitled to re-contract during the objection window and then object to the customer transfer by virtue of a right contained in the *new* contract. Moreover, where the contract in place at the start of the objection window gives a supplier a right to object at the request of the customer, the supplier should not use the objection window to persuade the customer to ask for the transfer to be stopped.

However, where a supplier has the right to object at the time that the loss notification is received, the supplier may object and, having done so (or in parallel) it may re-contract with the customer during the objection window. This is consistent with our view because the transfer could be blocked, regardless of whether the supplier offers a new contract or not. Therefore this type of activity has no bearing on the transfer process and does not interfere with the simplicity and predictability we seek to encourage.

We are not, therefore, proposing a complete ban on re-contracting during the objection window; but we do think that suppliers should not re-contract, or in any other way alter their commercial position towards the customer during the objection window in order to prevent a transfer that would otherwise have gone ahead.

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<sup>1</sup> The relevant standard licence conditions are set out in Appendix 1. These are the rules that will apply in the new supply licenses from 1 August.

<sup>2</sup> In electricity, under the MRA, this period is set at “five working days”. For gas, under the Uniform Network Code, it is “seven business days”.

## Background to the issue

On 17 April 2007 we published the Authority's decision in respect of an appeal made by British Gas following a decision taken at the MRA Forum on 28 September 2006, upholding the MEC determination dated 25 July 2006, that British Gas was in breach of clause 38.1 of the Master Registration Agreement (the "MRA"). We concluded that BGT was not in breach of the MRA; however, we published a letter<sup>3</sup> inviting views on the issues raised by the case and whether further action was necessary.

We received 18 responses to this letter. Those that are not confidential, we have placed on the Ofgem website<sup>4</sup>. Appendix 3 to this letter reviews those responses.

Although this issue arose in the non-domestic electricity market, we consider that the issue may equally arise in gas. This letter draws on examples of rules and behaviour in the electricity market; however, we consider that there is no material difference between gas and electricity in respect of the use of objections and that it is appropriate to maintain consistency in the regulation of both markets. We therefore propose a modification to the standard conditions of both the gas and electricity supply licences.

Note that from 1 August 2007, the rules governing the use of objections in the gas and electricity markets will be contained in standard condition 14 of the gas and electricity supply licences. References in this letter to the supply licence discussing the rules relating to the use of objections are therefore based on the licence conditions that will be in place from that date. The relevant section of the supply licence is set out in Appendix 1 to this letter.

## The use of objections

To enable the transfer to take place, the new supplier must first register the supply point on the database maintained by the distributor. The existing supplier will consequently receive a loss notification from the distributor.

The existing supplier has a period of time (the 'objection window') in which to raise an objection that prevents the proposed supply transfer from taking place. A supplier is permitted to object to a non-domestic transfer only in the circumstances specified in the supply licence, the principal one being where the provisions of the contract (excluding a Deemed Contract) between the customer and the existing supplier permit an objection to be made.<sup>5</sup>

The question we raised in our consultation letter of 17 April concerns the situation where the existing supplier receives a loss notification, and it does not have a contract with the customer that would permit it to object to the transfer. In practice, there is an opportunity within the objection window for the existing supplier to contact the customer and offer to enter into a new contract. If the customer accepts that contract, the new contract typically gives the existing supplier permission to object to the proposed transfer; consequently, the supplier then will raise an objection based on the new contract and the customer will stay with them.

## General principles and objectives – Ofgem's current view

Our view is that a supplier should not take any action during the objection window that would unduly distort the transfer of a customer to a new supplier. In particular, it is not

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<sup>3</sup> "Modifying the arrangements for the use of objections in the non-domestic market"  
<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/CustTransf/Documents1/Objections%20Consultation%20Letter%20170407.pdf>

<sup>4</sup> <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=123&refer=Markets/RetMkts/Compl/CustTransf>

<sup>5</sup> Standard Condition 14.2 of the modified supply licences.

appropriate for a supplier to use the objection window to obtain and then rely on new rights to object, whether these new rights are obtained via a new contract or, where the current contract contains broad objection rights, by persuading the customer to request the supplier to stop the transfer.

The switching process (of which the objection window is a part) was intended to enable transfers to take place. As competing suppliers have no choice but to use this industry process, it needs to be a neutral and orderly process that provides certainty to all industry participants (customers and suppliers alike).

Without clear rules, there is a risk that the existing supplier has an advantage over the incoming supplier in the switching process. At present, the process means that the existing supplier:

- (a) gets systematic notification that its customer is switching away;
- (b) has time to contact that customer and offer the customer a new contract or seek to persuade the customer to ask the supplier to object to the transfer; and
- (c) can prevent the proposed transfer either on the basis of the new contract or by virtue of a broadly drafted right in the existing contract which confers the right to object because of activity undertaken during the objection window.

However, the purpose of the objection window is to provide time for the existing supplier to establish whether there are grounds upon which an objection may be made. It was not designed to provide an additional opportunity to obtain the right to object.

We have also considered the view that the practice of re-contracting in the objection window can, in some circumstances, be detrimental to customers. For example, customers may face termination fees for exiting the new supplier's contract if they choose to re-contract with the existing supplier. However, this is not an issue that arises principally because of the switching process. As with any contract, customers need to be aware of the obligations and commitments they are entering into when they agree to a new supply arrangement. However, the concern does highlight the need for clarity and simplicity in the rules governing switching and it is with this in mind that we are proposing licence modifications.

## **Our proposals**

In order to ensure that the switching process is kept neutral and to provide clarity as to the time at which and the basis on which objections may be raised, we currently think it is appropriate to modify the objections framework set out in the standard conditions of the gas and electricity supply licences. Appendix 4 of this letter discusses in more detail how this may be approached and the consequences of such a change.

Our proposal does not impact on a supplier's right to re-contract during the objection window where that supplier has the right to object at the time that the loss notification is received. We do not think that it would be appropriate to prevent a supplier from offering a customer a better deal in circumstances where the supplier is entitled to object to the transfer.

Our proposal would mean that suppliers would have no right to object or to block a transfer by other means where the customer is on a deemed contract<sup>6</sup>. There has been some

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<sup>6</sup> Where there is a deemed contract, the supplier may have some grounds for objection as provided for by the licence. Standard Condition 14.2 (b) of the modified licences allows the existing supplier to object on request of the incoming supplier if the transfer has been made in error. Standard Condition 14.2 (c) of the electricity licence also applies where there is a deemed contract in place.

suggestion that suppliers should be granted the right to object for debt on deemed contracts. When we consulted on this matter in 2005, we did not receive sufficient information from suppliers to demonstrate that a special case should be made for deemed contract objections. This matter is discussed more in Appendix 4.

### **Next steps**

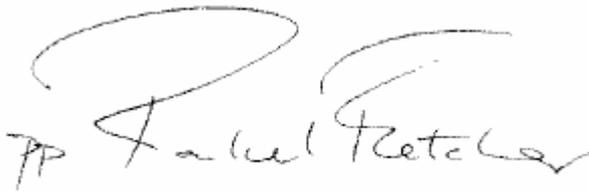
We invite feedback on the issues discussed above by 7 September 2007. Specifically we are asking for comments on:

- (a) our current view that suppliers should not use the objection window to obtain and then rely on new rights to object. An objection may only be raised where the contract in place at the time the loss notification is received allows the supplier to so object;
- (b) our proposed licence drafting; and
- (c) whether or not the new licence conditions should apply to Deemed Contracts as well as other Contracts.

Based on the responses that we receive, we will consider whether to propose a modification to the supply licences.

Responses to this consultation letter will be placed on the Ofgem website unless marked as confidential. Please contact Nigel Nash (020 7901 7065 [nigel.nash@ofgem.gov.uk](mailto:nigel.nash@ofgem.gov.uk)) should you have any queries.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Philip Davies', with a large, stylized flourish above the name.

**Philip Davies**  
**Director, Retail Markets**

## **Appendix 1: Electricity and Gas Supply Licence condition dealing with objections i.e. as directed pursuant to supply licence review; due to come into effect on 1 August 2007**

### **Electricity Supply Licence**

#### **Condition 14. Customer transfer blocking**

##### **General prohibition**

14.1. The licensee must not make a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer except in accordance with the provisions of this condition.

##### **Non-Domestic Customer transfer blocking**

14.2 The licensee may make a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer in relation to a Non-Domestic Customer at any Non-Domestic Premises at which the licensee is the Relevant Electricity Supplier in any of the following circumstances:

- (a) a provision of its Contract with that customer for the supply of electricity to the premises allows the licensee to prevent the Proposed Supplier Transfer;
- (b) the Electricity Supplier that initiated the Proposed Supplier Transfer has agreed with the licensee that the transfer was initiated in error; or
- (c) the Proposed Supplier Transfer relates to a Related Metering Point and the proposed new Electricity Supplier has not applied to transfer all the Related Metering Points on the same Working Day for the same Supply Start Date.

14.3 If the licensee makes a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer of a Non-Domestic Customer, it must give a Notice to that customer to inform him:

- (a) that it has made a request to prevent the transfer;
- (b) of the grounds for the request; and
- (c) how the customer may dispute or resolve such grounds,

as soon as reasonably practicable after making the request.

## **Gas Supply Licence**

### **Condition 14. Customer transfer blocking**

#### **General prohibition**

14.1 The licensee must not ask or allow a Relevant Gas Shipper to prevent a Proposed Supplier Transfer except in accordance with the provisions of this condition.

#### **Non-Domestic Customer transfer blocking**

14.2 The licensee may ask or allow the Relevant Gas Shipper to prevent a Proposed Supplier Transfer in relation to a Non-Domestic Customer at any Non-Domestic Premises at which the licensee is the Relevant Gas Supplier in any of the following circumstances:

- (a) a provision of its Contract with that customer for the supply of gas to the premises allows the licensee to prevent the Proposed Supplier Transfer;
- (b) the Gas Supplier that initiated the Proposed Supplier Transfer has agreed with the licensee that the transfer was initiated in error; or
- (c) in relation to a Contract entered into between the licensee and that customer before 5 January 2004 for the supply of gas to the premises which does not allow the licensee to prevent a Proposed Supplier Transfer:
  - (i) the customer has not paid Charges for the Supply of Gas to the premises or any other premises previously occupied by him which are due to the licensee, have been demanded in writing, have not been paid within 28 days after the demand was made and continue to be unpaid; or
  - (ii) the customer is bound by the provisions of that Contract and it will not end on or before the date of the Proposed Supplier Transfer.

14.3 If the licensee asks the Relevant Gas Shipper to prevent a Proposed Supplier Transfer of a Non-Domestic Customer, it must give a Notice to that customer to inform him:

- (a) that it has made a request to prevent the transfer;
- (b) of the grounds for the request; and
- (c) how the customer may dispute or resolve such grounds,

as soon as reasonably practicable after making the request.

## Appendix 2: Proposed modification to Electricity and Gas Supply Licence condition dealing with objections

### Electricity Supply Licence

#### Condition 14. Customer transfer blocking

##### General prohibition

14.1. The licensee must not make a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer except in accordance with the provisions of this condition.

##### Non-Domestic Customer transfer blocking

14.2 The licensee may make a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer in relation to a Non-Domestic Customer at any Non-Domestic Premises at which the licensee is the Relevant Electricity Supplier in any of the following circumstances:

- (a) **at the time the licensee receives Notice under the Master Registration Agreement that another Electricity Supplier will begin to supply the premises, the licensee's Contract with that customer for the supply of electricity to the premises includes a term which:**
  - (i) allows the licensee to prevent the Proposed Supplier Transfer; **and**
  - (ii) **may be relied upon in the circumstances arising at that time;**
- (b) the Electricity Supplier that initiated the Proposed Supplier Transfer has agreed with the licensee that the transfer was initiated in error; or
- (c) the Proposed Supplier Transfer relates to a Related Metering Point and the proposed new Electricity Supplier has not applied to transfer all the Related Metering Points on the same Working Day for the same Supply Start Date.

14.3 If the licensee makes a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer of a Non-Domestic Customer, it must give a Notice to that customer to inform him:

- (a) that it has made a request to prevent the transfer;
- (b) of the grounds for the request; and
- (c) how the customer may dispute or resolve such grounds,

as soon as reasonably practicable after making the request.

## Gas Supply Licence

### Condition 14. Customer transfer blocking

#### General prohibition

14.1 The licensee must not ask or allow a Relevant Gas Shipper to prevent a Proposed Supplier Transfer except in accordance with the provisions of this condition.

#### Non-Domestic Customer transfer blocking

14.2 The licensee may ask or allow the Relevant Gas Shipper to prevent a Proposed Supplier Transfer in relation to a Non-Domestic Customer at any Non-Domestic Premises at which the licensee is the Relevant Gas Supplier in any of the following circumstances:

- (a) **at the time the licensee receives Notice under the Network Code by way of the Relevant Gas Shipper that another Gas Supplier will begin to supply the premises, the licensee's Contract with that customer for the supply of gas to the premises includes a term which:**
  - (i) allows the licensee to prevent the Proposed Supplier Transfer; **and**
  - (ii) **may be relied upon in the circumstances arising at that time;**
- (b) the Gas Supplier that initiated the Proposed Supplier Transfer has agreed with the licensee that the transfer was initiated in error; or
- (c) in relation to a Contract entered into between the licensee and that customer before 5 January 2004 for the supply of gas to the premises which does not allow the licensee to prevent a Proposed Supplier Transfer:
  - (i) the customer has not paid Charges for the Supply of Gas to the premises or any other premises previously occupied by him which are due to the licensee, have been demanded in writing, have not been paid within 28 days after the demand was made and continue to be unpaid; or
  - (ii) the customer is bound by the provisions of that Contract and it will not end on or before the date of the Proposed Supplier Transfer.

14.3 If the licensee asks the Relevant Gas Shipper to prevent a Proposed Supplier Transfer of a Non-Domestic Customer, it must give a Notice to that customer to inform him:

- (a) that it has made a request to prevent the transfer;
- (b) of the grounds for the request; and
- (c) how the customer may dispute or resolve such grounds,

as soon as reasonably practicable after making the request.

## Appendix 3: Responses to the consultation letter issued 17 April 2007

1. We asked for views on whether re-contracting during the objection window was consistent with competition, the impact for customers and whether market arrangements needed to be changed.
2. We received 18 responses to the consultation letter.
3. We have identified two situations which should be distinguished for the purposes of this letter:
  - (a) the customer is supplied under a Deemed Contract or a contract which does **not** contain objection rights. The supplier re-contracts during the objection window enabling him to object to the customer transfer when he would not have been able to do so on the basis of the contract in place at the beginning of the objection window;
  - (b) the customer is supplied under a contract which contains objection rights. The supplier re-contracts during the objection window in order to save the customer and then objects to the customer transfer (in accordance with the terms of the contract in place at the beginning of the objection window).
4. It should be noted that our consultation letter did not distinguish between the two situations described in scenarios (a) and (b) above. Accordingly, responses to the consultation do not explicitly consider the appropriateness of raising objections and re-contracting in each of the two sets of circumstances. Rather, the responses are drafted in a more general way. Nevertheless, the responses highlight the concerns of industry players in terms of the effect of certain types of behaviour on the market. Given the nature of the concerns raised, it is possible to draw some conclusions on the appropriateness of raising objections in each of the two sets of circumstances.
5. It appears that all respondents oppose the practice outlined in scenario (a) above, that is: to use the objection window to negotiate a new contract and then to object to a customer transfer on the basis of a right contained in that new contract (i.e. where the supplier did not have such a right at the beginning of the objection window).
6. It was felt that an objection to a transfer should only be raised in accordance with the MRA/supply licence and where permitted under the terms of the contract in place at the beginning of the objection window (i.e. when the loss notification is raised).
7. Respondents felt that to behave otherwise could damage competition, and would not be in the best interest of customers. They identified a range of consequences to the market if the practice is widely adopted, including:
  - increased level of objections;
  - increased level of customer confusion, with the risk that small business customers will have reduced confidence in participating in the market if there is an increased risk of termination fees;
  - the practice confers an asymmetric advantage to the incumbent supplier, in particular with regard to the transaction costs. New suppliers will face higher costs if the old supplier is able to increase retention rates by concentrating marketing on those of its customers who have sought to switch to a new supplier;

- customers will generally face higher prices as the incumbent does not need to offer competitive rates to its existing customers unless customers enter into a contract with a new supplier;
  - new entry will be frustrated as the cost of acquisition will rise substantially, whilst the cost of retention will fall. This will severely damage competitiveness over time;
  - the practice is a distortion of the industry switching arrangements that should not discriminate between suppliers – the argument here is that the objection window was not originally intended to provide an additional opportunity for contract negotiation.
8. Respondents who considered that the industry arrangements should be clarified to prevent the practice described in scenario (a) suggested that a change should be made to the MRA or the supply licence to make it clear that an objection could only be made on the basis of a provision in a contract in effect at the time that the loss notification is received by the existing supplier.
  9. One respondent argued that the practice outlined in scenario (b) above is beneficial for the market. It stated that, outside the objection window, whether individual suppliers wish to impose contractual restrictions on customers' ability to transfer (to the extent permitted at law), and whether suppliers actually enforce such restrictions, is a matter for suppliers themselves.
  10. The respondent stated that where carried out in accordance with the provisions of a contract, re-contracting during the objection window promotes competition, increases customer choice and is in the best interest of customers. This is because it focuses competing suppliers' minds on price and services for the customer's benefit and enables customers to consider an offer that, if re-contracting were prohibited, they would not otherwise receive. The respondent considered that it is for customers to evaluate such offers and exercise their choice as they see fit; and that there should be no industry barriers which prevent a customer taking up a better offer. The respondent argued that there should be rules that made it clear that the new supplier should not be able to enforce a contract (in particular by charging a termination fee) until the customer had switched.
  11. However, some respondents appeared to be arguing for a wider prohibition on re-contracting during the objection window i.e. in the circumstances outlined in scenario (b). They said that it was inappropriate for the existing supplier to market to the customer once the loss notification had been received, with the aim of retaining the customer through the use of an objection.

## Appendix 4: Options for regulating objections

### ***Restriction on marketing activity***

1. Responses to our consultation indicate that some industry participants appear to consider that any marketing that would result in any re-contracting during the objection window would be inappropriate.
2. It is our view that a rule that would prevent the existing supplier from marketing and re-contracting during the objection window would be impractical and difficult to enforce.
3. Such a rule would also prevent suppliers from offering customers a better deal during the objection window where the supplier has legitimate grounds to block the transfer, by virtue of the contract in place at the time the loss notification is received. Such a restriction does not appear to be in customers' interests.
4. Moreover, such a rule does not address the principal concern expressed by respondents, namely the time at which and the basis on which an *objection* may be raised.
5. Finally, this approach represents an increased level of regulatory intervention which would arguably be inappropriate. Although we recognise the concerns that some respondents have registered, we have not been provided with conclusive evidence that such intervention is justified in a competitive market.
6. Our key concern is that the supplier does not use the objection window to prevent the transfer other than through objection rights it has at the beginning of the objection window. We do not intend to prevent marketing or re-contracting during the objection window, where the supplier has objection rights.

### ***Modification of the gas and electricity supply licences***

#### Specifying the circumstances in which a supplier can object to a customer transfer

7. We have considered the option of setting out in the supply licences an exhaustive set of circumstances in which suppliers are permitted to object to a customer transfer.
8. This approach would arguably provide transparency and certainty for both customers and suppliers. It would reduce the scope for debate and dispute as regards the scope of contractual terms. It would also ensure that all suppliers are on an equal footing since all suppliers would have the same objection rights.
9. However, we are of the view that regulatory intervention should be kept to a minimum; and our current view is that this level of prescription would not be appropriate in the circumstances. We would be concerned to propose regulations that unnecessarily limit the options available to customers and suppliers, as this would directly restrict the supplier/customer relationship and innovation in how contracts can be formulated.
10. We note that, under our proposed approach the standard contracts offered by suppliers could reflect a range of objection rights, some more extensive than others.
11. It is our current view that this does not suggest "unfairness"; instead it simply reflects suppliers' different commercial strategies. However, we are keen to hear the views of industry participants on this point.

#### Specifying the circumstances in which a supplier may object to a customer transfer on the basis of provisions contained in its customer contracts

12. In order to provide clarity as to the time at which and the basis on which objections may be raised, our preferred approach would be to make the amendments to standard condition 14.2(a) of the gas and electricity supply licence set out in Appendix 2.
13. We also intend to provide examples of the types of behaviour that are not, in our view, permitted, in the supplementary guidance that sits beside the supply licence conditions. This guidance will explain, for example, that marketing in the objection window would be permitted, as would re-contracting, where there are valid objection rights at the time the loss notification is received. However, suppliers should not seek to block a transfer by using a broad objection right in the contract which could not be relied upon on at the time the loss notification was received. The status of a contract should not be capable of being changed during the objection window.
14. The licence modification would ensure that once the loss notification had been received, the transfer must proceed unless there is an existing reason that would permit an objection to be made.
15. For example, if the contract required notice of termination that had not been provided by the customer (or where one had been provided but subsequently withdrawn) the existing supplier could properly object. However, if notice of termination had been provided before the loss notification was received, there would be no grounds for objection at that point, or at any point during the objection window.
16. We are aware that this approach necessarily restricts the supplier/customer relationship. This is because it restricts ability of the customer and supplier to undertake activity during the objection window which would enable the supplier to rely on a broadly drafted contractual right to raise an objection (i.e. which it could not rely upon on day one of the objection window). Whilst we are of the view that regulatory intervention should be kept to a minimum, in these circumstances, we consider that some intervention is an appropriate response to the problem which has been highlighted by industry participants.
17. Furthermore, it is notable that there is a consistent weight of opinion from market participants that the objection window should not be used to obtain additional rights to object.
18. As explained above, this approach would not prevent the existing supplier from delaying making a legitimate objection during the objection window (i.e. objecting on day five of the objection window rather than on day one), re -contracting with the customer during the objection window and subsequently objecting to the proposed transfer on the original, legitimate grounds that existed on day one. We do not consider that it is appropriate to remove legitimate rights to object, and accept that the existing supplier may elect whether or not (and when) to exercise those rights based on its relationship with the customer.
19. However, we consider that this is distinct from using the objection window to secure rights to object that were not present at the time that the loss notification was received.

## **Appendix 5: The distinction between Deemed Contracts and Contracts.**

1. Currently, suppliers are not permitted to object to transfers by customers on Deemed Contracts; the definition of "Contract" in the supply licence excludes Deemed Contracts. It is our proposal that the new rules in relation to objections should apply equally to all contracts. We would be interested to hear views on this proposal.
2. Ofgem has consulted on the narrow issue of Deemed Contracts and objections for debt. On 02 August 2005, Ofgem invited suppliers to provide information on whether suppliers should be allowed to object to a non-domestic customer, supplied under a Deemed Contract, switching its gas or electricity supplier where there is an outstanding debt. This allowed suppliers to submit quantitative evidence about the scale and cost of debt management and recovery in relation to Deemed Contract customers.
3. A total of sixteen suppliers responded to the request for information. Of these, seven supported allowing objections for debt whilst under a Deemed Contract and four did not. Five respondents did not express an opinion. Those who supported permitting objections for debt under Deemed Contracts argued that the direct and indirect costs of Deemed Contract debt and its management are significant and are typically smeared across the rest of a supplier's customer base. It was argued that the ability to object represented an appropriate way to minimise them.
4. However, the information received further to our request for information failed to provide a clear picture of the scale of Deemed Contract customer debt and how important the right to object would be to recovering it. The information provided was scant and gave a very wide range for the levels of debt associated with Deemed Contract customers (suggesting it could lie between £120 and £2000 per customer). There was very little data available to demonstrate the cost of debt recovery and debt management. Further, suppliers did not give a clear picture of the extent to which the cost of bad debt is factored into prices.
5. Our proposed licence modification would mean that suppliers would have no right to object or to block a transfer by other means by virtue of a provision in a Deemed Contract. Whilst it has been suggested that suppliers should be granted the right to object for debt on Deemed Contracts our consultation on this matter did not produce sufficient or clear information from suppliers to demonstrate that a special case should be made for Deemed Contract objections.
6. Accordingly, we do not propose to give suppliers the right to object for debt where a customer is on a deemed contract, unless interested parties can provide more and better information as to why those rights are required.