The following is the Auditel UK Ltd. response to The Retail Market Review: Non-domestic Proposals.

Auditel UK Ltd. is a cost management consultancy with over 200 consultants working on behalf of non-domestic organisations throughout the UK and the Republic of Ireland. We have been operating for over 18 years in addition to providing services covering all aspects of energy, procurement, energy auditing, energy management, etc. we also operate in the telecoms, water, sewerage and many company non-core overhead areas. This means we are able to compare the way other utility and non-utility areas operate with energy and offer the benefit of this experience to our clients.

Comments contained in this document are the views of the author and are based upon many years of experience of this industry and practicing within it.

The format we have used in this response is to answer the specific question posed by OFGEM and add paragraph numbers contained within the consultation text with specific comments. We have tried to add these paragraphs immediately following the question to which it is pertinent but this has not always been possible as they can relate to more than one question.

We believe there is a fatal flaw in OFGEM's preferred option for increasing the size of businesses subject to SLC7A and that this will have unintended consequences. This is detailed on page 2

Q 1. Are there other key issues that we should be looking into in the non-domestic sector?

Enforcement of supplier licence conditions in the non-domestic sector has been virtually non-existent. Suppliers are well aware of this and treat the regulator with contempt. An example is where meters go unread and uninspected for years and no attempt is made to rectify this situation as that would require resource being allocated and this would cost.

Deemed Rates and Out of Contract rates are excessive and very profitable for suppliers. A culture has grown up amongst suppliers whereby some will use any disingenuous method to put a customer on to these rates. It is these methods, such as failure to send out a renewal notification, send to to an address other than the contract address, send an incomplete list of supply addresses and MPANs and denying the receipt of cancellation letters that are in common use by some suppliers. There is a culture of dishonesty engrained within some suppliers which OFGEM needs to address.

Unfair contract terms are another area which OFGEM has always shied away from, to the detriment of small to medium sized businesses.

Q 2. What would stakeholders like to see on our website to help business customers support a competitive supply market?

I do not believe this would achieve very much! It is the sort of P.R. exercise much favoured by the previous government.

The only thing that you might usefully do in this area is have a complaints section where businesses could log problems with a supplier and OFGEM could then collate these and ascertain which suppliers are behaving in a way that is dishonest or contravenes their supply licence. This would, of course, require a fundamental change to OFGEM's operating procedures; receiving complaints about a particular supplier. As was the case some years ago.

Q3. Do stakeholders agree with our proposals to extend the scope of SLC7A to include a wider business definition, and do you agree with our proposed definition?

It has always been clear that the micro-business definition was flawed. It fitted in easily with an obscure E.U. definition and was obviously far too small. However, the proposed definition is still far too small and brings with it issues and problems.

Roll over contracts and very high rates are not a feature of the Irish (RoI) market. Roll over contracts are not allowed in the business sector and OoC rates that result from the un-actioned end of a contract are priced at unfixed but reasonable rates. If it can work in this much smaller market there is no reason why it cannot work here. I urge OFGEM not to believe the propaganda of the energy companies.

The unintended consequences of OFGEM's preferred option.

The following pertains to 2.13 – 2.26 but it is also covered, perhaps more clearly, in the Draft Impact Assessment 1.8 plus 1.12 & 1.13.

Entering a contract

Any and every reasonable person would consider that all organisations with any degree of integrity, operating in any market and entering into any contract would comply with this and that failure to do so would be extremely disingenuous behaviour. Thus it should apply to ALL contracts.

End of contract.

This is unnecessarily complex and could and will be made irrelevant if, as should be the case, roll-over contracts are banned. The UK suppliers' claims of the difficulties for them and the difficulties and unfairness for small businesses are bogus claims based entirely upon the self-interest of retaining customers by disingenuous means. This begs the question "Who were the respondents who did not want OFGEM to extend SLC7A to large businesses?" Suppliers with a vested interest in manipulating the market and continuing their disingenuous behaviour?

The unintended consequences

Under OFGEM's preferred proposals all 03 & 04 supplies will 'enjoy' the protection of SLC7A. Some larger supplies will also 'enjoy' this protection due to the organisation's turnover or employee numbers but most 05-08 will not. Generally, fixed price half-hourly contracts have no roll-over clauses and this situation is becoming more fashionable amongst the suppliers and so will increasingly be the case.

So, if OFGEM's preferred option is implemented, we will be in the position of small companies either having no roll-overs or enjoying the protection of SLC7A, Large companies not being in a position to be rolled over at uncompetitive prices for an extended period but the mid-sized companies having no protection at all. Is this what OFGEM intends?

OFGEM's view that larger companies are able to successfully and competently negotiate their energy supply does not fit with the fact that many need to use the services of consultants and brokers. The claim that larger companies are able to negotiate the terms of their supply contracts shows a poor

understanding of the energy market. It is not true, except for the VERY large companies who will be, in all probability, supplied via some sort of flexible contract, possibly covering an extended period, and the subject of a very different relationship with their supplier. Nowhere in the documents does it state that flexible contracts play no part in this exercise and this is an omission.

The solution

To overcome what I believe and sincerely hope, are the unintended consequences of OFGEM's preferred option, the following needs to be adopted:

- Contracts with any flexible pricing element (other than pass through costs and taxes) are not included in this review.
- Roll-over contracts are banned
- The SLC7A (as modified above) applies to all businesses.

This would be the very best solution to the problems and give much needed protection to large sections of British industry and commerce. It would give protection to the mid-sized companies as well as the majority of HH supplied companies who, notwithstanding OFGEM's thinking, do not have the muscle to negotiate contract terms with suppliers whilst leaving the very large companies the flexibility to negotiate and the suppliers the ability to develop new and innovative products. The "Any Flexible Element" definition offers one simple way to define this as a contract could be developed that is mostly fixed with (for example) a 0.01% flexible element. It would effectively be fixed but be defined to be free of these proposals and thus satisfy OFGEM's desire for encouraging innovation.

Q 4. No. Whilst here will undoubtedly much propaganda around this in responses from supply sources, it will be no more than that and a disingenuous attempt to justify price increases! Many suppliers include the provisions of SLC7A in all of their businesses and many more in their 03 & 04 business. This is done so that there is only one system in place which is to save costs.

Q 5. As a result of above this is a very difficult question to answer but the number is likely to be less.

Q 6. Emphatically yes, if OFGEM fail to ban 'roll-overs' and are <u>again</u> rolled over on this issue by the more disingenuous parts of the supply industry.

Q 7. If 'roll-overs' are banned much else becomes irrelevant. Many of the undesirable practices cease to be issues. Some of these, together with the relevant paragraph number are below.

2.6/7 EON for example, with their two pronged approach to cancelling the roll-over and the renewal offer are offering a disingenuous and in my view a deliberately, confusing solution designed to roll-over the customer on high rates against his intentions.

2.27/8/9 We know that the more disingenuous companies use the roll-over provisions to 'try it on'. They offer a very high rate in the hope (and in enough cases to make it worth their while) the actuality, that the renewal will be forgotten or lost. Therefore they can enjoy a very high, uncompetitive rate for an extended period. Not in my view the actions of organisation of integrity and perhaps one of the reasons why the Chairman of the H o C Energy Select Committee has

publically stated that there is a potential scandal in the energy sector bigger than that in the banking sector.

Q 8. What are OFGEM's conclusions? A lot of statistics and sampling which demonstrate a serious problem but no sensibly conclusion. Objections have been used by some suppliers as a disingenuous method of retaining customers on very high rates for many years and OFGEM has ignored the problem.

Many of us have been told, many times by suppliers' telephone staff "We always object, all suppliers do." This is a corporate culture issue. It is not a 'training issue', as you will no doubt be told. It is not staff going beyond their brief as it happens far too often for that to be the case. It may or may not be a specific policy of the company but it is an actively encouraged culture and this will be very difficult for Ofgem to pin point and deal with using their proposed remedies. Strict financial penalties for incorrect objections and enshrined full customer compensation is the only way to eradicate this inherent dishonesty.

3.2 "New supplier has not applied for all relevant meter points on the same working day." How do we/the customer find out who is at fault? Why have they been allowed to get away with not informing us? It is very difficult to obtain the facts when this happens and many suppliers are deliberately evasive and obstructive.

Verbal Save Teams have a bad track record. Remember BGB's use of the transfer data to provide 'prospects' to their Save Teams. It should be a requirement that they only telephone the contract address not the invoice or worse still (and common practice) the site. Only a contract address contact should be able to enter into and be liable for, a verbal contract.

3.4 one quarter is a very large amount, too large to not be indicative of a policy of disingenuous practice.

3.8 Termination procedures: Real termination reasons? Was the renewal letter sent to the correct contract address? Did it include all the MPANs?

3.9 The small number of objections that were made "In error" is not believable!

3.11 Sometimes not even the MPAN or site.

3.12 Normal disingenuous behaviour of the usual suspects.

3.14 Final paragraph: Standard procedure of some suppliers.

3.17 This needs to contain time scales in relation to window and OoC rates to make it meaningful.

3.19 The stable door is being bolted long after the horse has bolted!!! OFGEM should have investigated this 10 years ago. British Business has suffered far too long.

Q 9. No. The process is much abused by some suppliers and there needs to strictly enforced financial penalties for such abuse. Nothing else will work. Notification of objections particularly in a CoT

situation needs to be addressed and excuses around data protection need to be dismissed for what they are – disingenuous excuses.

Q10. Absolutely, yes.

Q 11. Yes. There are all manner of issues around CoT. OFGEM need to recognise that there are suppliers who will use any excuse to object and will always step up to and over the line, in the certain knowledge that there is no enforcement. Procedures are needed to address this and OFGEM needs to enforce them.

Q 12. Why has OFGEM limited this question to suppliers who have sent data? It is of interest and has implication for all of the market participants.

Q 13. This needs careful consideration in order to avoid suppliers further manipulating the market by controlling TPIs, who with their knowledge are able to significantly advance the OFGEM goal of promoting a competitive market. The term Representative, in particular, needs careful definition. A Representative may be working wholly or mainly on behalf of one supplier and may have a contract with that (and other) suppliers which state that he should promote that particular supplier. Other TPIs will be completely independent of suppliers and work on behalf of their client. A TPI's relationship with a supplier is a concern; does that relationship make him a de-facto agent? A TPI's association with a supplier (whether or not the business is ultimately put with that supplier) should be transparent. i.e. common directors or owners and constantly changing of TPI company names should be ringing alarm bells at OFGEM!

4.7A How transparent is the dealing via a B Gas super broker/aggregator that the client is obliged to pay commission fees to, without any agreement or perhaps even any knowledge of his existence.

4.7C This does not make it clear that this paragraph refers to verbal contracts. I assume this is what it is supposed to mean! Not every telephone call to a client.

4.13 Probably OK but need to examine the small print, as and when published, to make sure that it has teeth.

Q 14. We need to better understand OFGEM's thinking before answering this question.

Q 15. Only if there is some enforcement/encouragement to join. The TPI CoP would need to be effectively marketed by OFGEM so that all potential customers/clients were aware of it and recognised the benefits of entering into an agreement with such a TPI rather than a non-compliant one. Multiple CoPs, as OFGEM seem to be considering would confuse the market place and devalue to whole system to a point where it would be worthless. What assurance has the customer got? Is the TPI still a party to that CoP or has he changed to an easier one? It is unworkable.

Suppliers should be obliged, for their own ease of operation and deemed compliance with their SoC, to use such TPIs. Access to their portals, payment of fees, placing of contracts are all areas where this should apply. The 'one off' placement of a 'non-commission' contract by a TPI should be a matter for the client. He may, for example, want to use a retired member of his staff who has previously undertaken this task. Appropriate promotion of the CoP by OFGEM will make these TPIs increasingly rare.

4.15 The second bullet point in particular seems an odd statement. It suggests that OFGEM have a poor understanding of TPIs and how they operate. What is the issue here? A Supplier Sales Agent suggests to me a lack of independence that a Customer Sales Agent does not. I would like clarification on what OFGEM means.

Q 16. The key criteria are that it should independent of any supplier, protect the client and have an independent redress for that client if the relationship goes badly wrong. Without this it has no meaning and will have no credibility. We have already seen a number of attempts by suppliers to highjack a TPI CoP for their own interests. Their proposals should not be entertained.
It also needs to be professionally produced and compliant with advice from organisation with experience with CoPs, such as the OFT and others.
Above all it must be credible with the market place and this inevitably means that there should be only one OFGEM approved CoP that is easy to understand.

Q 17. Auditel has a requirement that all of our consultants declare any fees that they receive and the value of those fees and do so up front, whether or not the client asks about them. However, we understand why those TPIs who are remunerated exclusively by supplier fees are reluctant to do so. This is not common practice anywhere outside the personal finance industry and to be meaningful would need to also cover the details of all the services being provided for that fee. These vary enormously.

Q 18. If they are enforced.

Q 19. Yes.

Q 20. Yes

Q 21. Figure 5.1 is simply reasonable behaviour that all organisations of integrity would work hard to achieve. So, of course, it should apply to the whole market. Decent and honourable behaviour should be an overarching requirement for all but sadly, it needs to be spelt out and enshrined in a SoC in order for some suppliers to comply.

Q 22. Yes. A belt and bracers approach is necessary when dealing with many of the suppliers. Without it they will strive to find ways around it.

5.21 & 5.22 We know certain suppliers cannot be trusted and are inherently dishonest companies. This proposal is useless. Clearly any submission needs to be more measured than this! However, this will no doubt be picked by some suppliers etc. and it needs to be firmly and robustly dismissed as unworkable and useless.

5.23 Unworthy of comment!

5.26 Agreed. However it would be better to ban roll-over contracts.

5.29 We know that the major problem is the lack of real competition. An oligopoly exists. There is no cartel because there is no need to have one and that is the root of the problem. Add to this the fact that there is no effective sanction to deal with misdemeanours in this type of market situation and we see that the current status where the “We screw you because we can” culture of some suppliers has grown up and been allowed to continue, unabated.

Howard A Ward

Director