The Cursitor
38 Chancery Lane
London
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18 January 2023

Dear OFGEM,

Re Response to consultation on Non-Domestic Market Review September 2023

Background

ZTP is a non-domestic TPI working in the I&C sector with particular experience in real estate. As part of this contracted service to our clients COT's, COO's and COMA (change of managing agent) are part of the day to day work of the consultancy, ensuring these go smoothly and that the relevant energy (and water) suppliers are informed and have the documentation they need.

This response does not cover all the questions in the consultation but focusses on responses where we feel we can add to the debate by putting a customer perspective and a TPI view forward.

Q2 – "significantly exceeds" definition

The need to tighten up on the licence condition became very evident with the high energy prices seen in 2022, where deemed rates varied considerably by supplier, with no obvious reason as to why this should be. In some cases some suppliers deemed rates were over double other suppliers. This spread made little sense with the wholesale market movements, and all suppliers would be subject to the same pass though charges.

Where is the boundary of "Significantly Exceeds" and how can a customer know whether this line has been stepped over? Where is the avenue for arbitration if it has?

Perhaps this is a case for the publishing of the supplier's deemed rates in some form not only on their website, but compared side by side in one place, such as the OFGEM website, so that consumers could have a benchmark of whether a deemed rate is reasonable.

It is recognised that this would need to be very general, with all the intricacies of region, meter banding and profile, but it should at least provide a sense check of what is reasonable.

Q7 – What documents or combination of documents would provide a robust evidence to support a CoT/CoO

In a genuine change of tenancy or change or ownership there is likely to be a legal recording of the transaction, and so the relevant pages of a lease or a copy of a solicitors letter showing completion ought to be the primary evidence, and should be available close to the time of the transaction.
It is noted that leases can run to dozens of pages, and some of these may contain confidential information not related to energy supply, and so only the relevant portions of the lease should be required, the page showing the date, the property, and new owner, plus the signature page.

In the event of a retrospective COT, and they do occur where the energy company has not been informed, a council rates bill could be used.

Although not part of this question it is key that the communication between the energy supplier, the customer and their representative TPI, if one is engaged, should be efficient and not cause delays by letters posted to vacant sites, or suppliers refusing to communicate with a TPI where a signed letter of authority authorising CoT/CoO actions are provided.

There is also the case where an energy supplier causes a COT for their own credit risk protection where a building has not changed hands. This has been seen where a supplier has refused to supply energy to an occupied building where administrators were running the property, and preferred to disconnect the supply even where the administrators could prove ability to pay for the consumption, forcing the tenants to transfer the landlords contract into their own name in order to continue in business. Will these cases be exceptions? Tenants should not be forced out of business on the whim of an energy company not wanting to supply the landlord in cases where the landlord is able to pay.

Q11 – Complaints thresholds

The current ADR scheme with the Energy Ombudsman, is too limited, for both supplier and TPI issues. It is noted that voluntary TPI schemes with no limits exist in parallel.

Save for very large companies, energy suppliers will generally not negotiate on main T&C's, which is understandable given the volume of contracts, but this makes the contracts very one-sided and there needs to be some form of route to question the supplier's own complaints system where the supplier is believed to have acted unfairly, without excessive cost to the customer.

In our experience the dedicated relationship manager referred to in paragraph 3.35 would not be available for the standard fixed contract of most non-domestic supplies. It is a benefit of using a TPI that the TPI's relationship manager can be used to channel complaints, but that will only benefit a customer placing through a TPI.

We see no reason why all non-domestic supplies should not have an ADR route where the standard complaints process is deemed to be unsatisfactory, but that should have rules on scope of what queries they can deal with, not taking on frivolous or very low value cases, possibly with a charge to the customer if their claim is found unwarranted to deter an unregulated claims industry building up in this area.

Q12 – threshold of access to an ADR

As stated in Q11, aside from an economic argument of financing a scheme, it seems that excluding non-domestic consumers from access to an ADR has little logical rationale, and also creates ambiguity as there is little evidence of validation of customer size at contract stage, often relying on self-declaration by the customer or TPI on business size. The consumption threshold is often used without regard to group structures, with major corporates sometimes being classified as microbusiness by suppliers based on the consumption of one small site, yet any claim would be rejected by the Energy Ombudsman.

Even the financial and employee measures create issues, with foreign companies accounts often not being accessible, and major occupied buildings being owned by dormant companies with no employees.

Q19 & Q21– TPI commission disclosure

It would improve transparency and should be low cost to most if not all suppliers to implement as the changes are in place for microbusiness already.

Q20 – How TPI commission disclosure is presented

It is important that this does not show the false situation that less commission is payable on a shorter contract. This would also stop the customer potentially making a less than optimal choice of contract length based on whole contract commission showing, as three 12 month contracts would have a similar commission in most cases to one three year.

It is noted that in many cases a TPI may be providing a variety of services throughout the lifetime of a contract, and the commission fee may be the customers preferred alternative to fees. This particularly applies to larger, more sophisticated customers who have obligations to wider stakeholders.

For the above reasons we believe it is important to show this as a rate per kWh , or at worst as a percentage of the total contract cost before VAT, to provide some scale.

This is in line with the proposed TPI CoP that RECCo are developing as the basis for a mandated CoP.

An even better solution would be if the contract was fully transparent – with all the non-energy costs identified.

Yours Sincerely

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