



Ian Anthony
Electricity Infrastructure Manager
Ofgem

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Dear Mr Anthony,

Appeal Response - "Notice of an appeal by British Gas Trading ('BGT') against a decision of the MRA Forum regarding MCP 144"

I refer to your letter dated 3 September 2004, and this letter provides BGT's non-confidential representation in relation to the above.

BGT believe that the MRA Forum's decision not to overturn the approval of MCP144 disallowing transfer objections for all non-domestic deemed contracts, will unfairly prejudice BGT's interests and those of other Suppliers and will ultimately have a negative effect on all customers by increasing debt levels across the industry. The Briefing Paper previously circulated in support of this appeal (attached), summarises the adverse consequences of disallowing such objections.

Notwithstanding this, BGT support the principle of adding clarity to the objection process but prohibiting deemed contract objections, as proposed by MCP144, is unfocused and does not recognise the consequences of such an approach.

BGT is more than happy to attend any oral hearing convened in relation to this appeal.

I note the concurrent, wider Ofgem Consultation on the general principle of whether objections should be permitted under deemed contracts in both the electricity and gas non domestic markets. BGT will be providing views from both a gas and electricity perspective to this Consultation. The present appeal is closely linked to this issue and we strongly believe that consistent arrangements should be introduced across both markets.

If you would like any further information, please do not hesitate to contact me on 07979 563 580.

Yours sincerely,

Kevin Woollard
British Gas MRA Contract Manager

BRIEFING PAPER

British Gas appeal against approval of MRA CP 0144 'Clarify the scope of "contract" as referenced in clause 16.1.2.1' to be heard by MRA Forum on 29 July 2004

Background

The Non-Domestic Objections and Erroneous Transfer Working Group was formed to look at ways of developing "instructive documents in this market" as the escalation process and the treatment of customers "lacked clarity and consistency".

In parallel with this, an Ofgem consultation has been promised for both the electricity and gas markets on whether or not objections for Deemed Contracts should be permitted in the non-domestic market.

Prior to the Working Group concluding or the Ofgem Consultation being issued, MRA CP 0144 was raised by Opus Energy. This CP proposed that objections for Deemed Contracts be specifically prohibited for non-domestic premises. This was approved by the MRA Development Board (MDB) with the narrowest margin (4:3) on 27 May 2004. This pre-empted both the conclusion of the Working Group and the decision which may derive from the Ofgem Consultation.

Issue

British Gas believes, therefore, that implementing MRA CP 0144 is premature. The CP also unfairly prejudices our interests, as well as those of other Suppliers, and customers for the following reasons:

- By excluding customers on Deemed Contracts from the wider definition of contract, British Gas would be unable to object to customers on these contracts from moving to a new Supplier in an attempt to avoid paying legitimately levied and overdue¹ electricity supply charges. These resultant additional debt recovery costs would be smeared across all customers, including those that pay on time.
- Where customers are re-negotiating a new contract the customer may inevitably be on a Deemed Contract for a short period. During this time the customer may require a "customer requested objection" to prevent an erroneous transfer (ET) from occurring. If Deemed Contracts are excluded from the definition, British Gas would be unable to comply with customer's wishes and this will have a negative impact on the customer experience. Proposed ET correction mechanisms would prove time consuming and cause unnecessary and avoidable inconvenience to the customer.
- Those Suppliers with larger portfolios of customers on Deemed Contracts would be at a greater disadvantage than other Suppliers.

Appendix 1 provides further details on the background to this issue, the Licence requirements and the advantages / disadvantages of allowing / prohibiting objections for Deemed Contracts. British Gas does not believe that competition would be inhibited in any way; rather a practical and pragmatic solution is required to an inevitable industry problem.

Recommendation

On the basis that the Working Group has not yet delivered its full recommendations and that the Ofgem consultation is not yet underway, British Gas proposes:

- a) that Suppliers review their current position on MRA CP 0144.
- b) that Suppliers reject the approval of MRA CP 0144 at the MRA Forum on 29 July 2004.
- c) that Suppliers encourage Ofgem to initiate the Consultation in the near future, and respond to this.
- d) seeks support from Suppliers that the industry should seek a single and consistent modification for both fuels.
- e) following the conclusions of the Ofgem Consultation, Suppliers consider how best to implement the resulting recommendations in the Master Registration Agreement (or related product) in a way that ensures both consistency and harmonisation with any equivalent changes for gas.

¹ An overdue amount only arises following an invoice having been issued and failure to make the payment by the due date (including any period of grace).

Appendix 1

Objection Rights - the Issue

Non-domestic objection rights may be invoked only for the reasons specified in the formal supply contract (ie. a contract mutually agreed/negotiated between customer and Supplier).

Typically (but this would always be dependent on the grounds actually specified within the supply contract), there are 3 reasons for objections:

- Contract/term (ie. unexpired period)
- Debt (ie. billed and unpaid invoices)
- Request (at the customer's choice)

Application of this process to formal contracts is not at issue, but what about objections arising from Deemed Contracts? Deemed Contracts commonly arise from:

- Change of Tenancy (CoT)
- Post contract supply
- Permitted terminations for breach

Background

Electricity:

Contract and debt objections were not previously allowed by the Electricity Supply Licence or the MRA for any type of I&C supply contract.

Gas:

Contract and debt objections were always allowed by the Gas Supply Licence for all contract types (including Deemed Contracts).

Ofgem, supported by the industry, wished to harmonise both non-domestic markets and selected the gas model to do this. However, Ofgem also wished to ensure customers had an opportunity to negotiate the terms relating to objections. Following industry wide consultation, the Gas Supply Licence was modified to transfer existing objections rights to supply contracts and equivalent electricity objection rights were added to the MRA (ie. where the grounds were specified in formal supply contracts).

However, unforeseen consequences of the amended wording in the Gas Supply Licence were that:

- all objections for Deemed Contracts were prevented (including for debt).
- customer requested objections were, therefore, not introduced for this type of contract.

And, for electricity, this caused confusion about whether or not Deemed Contract objections were allowed by the new wording introduced in the MRA.

These consequences were not expected or discussed in the Ofgem Consultation documents.

Re-harmonisation Options

Full harmonisation and clarification on this issue is desired by all and is achievable by either:

- Allowing Deemed Contract objections (the expected gas model) where the grounds for this are clearly understood by all; or
- Prohibiting all Deemed Contract objections (the proposed electricity model of MRA CP 0144).

Ofgem has already promised industry wide consultation on the options to determine the most appropriate model to adopt.

The Current Situation

MRA CP 0144 was submitted in advance of the Ofgem Consultation and before the MRA Non-Domestic ET and Objections Working Group considering this matter and related issues had reached a conclusion. The CP was accepted at the MDB on 29 May 2004 by the narrowest margin (4:3).

British Gas has appealed this decision because it generally disadvantages both customers and Suppliers alike for the following reasons:

- Suppliers would not be able, in an efficient and economical manner, to prevent Deemed Contract customers, seeking to avoid or delay paying legitimate bills, by transferring to another Supplier.
- All customers would inevitably be smeared with the consequent costs of such abuses.
- Customer requested objections (eg to prevent an ET occurring) would similarly be prohibited.
- Those Suppliers with relatively larger SME based portfolios would be disproportionately disadvantaged because of the correspondingly greater incidence of Deemed Contracts associated with SME customers.
- MRA CP 0144 pre-empts the Ofgem Consultation and final selection of the harmonisation model that will ultimately apply; a single and consistent modification, as appropriate, should to be made for both fuels following the decision from the Consultation.

Main Disadvantages for Customers of Prohibiting Deemed Contract Objections

- Customer requested objections would be prevented.
- Otherwise avoidable ETs likely to increase and/or be unnecessarily complicated
- Continued exposure to unnecessary legal consequences of debt (eg costs, adverse credit rating, disconnection).
- Likely to encourage deliberate short term 'energy letting' and payment evasion by less reputable customers, resulting in all customers being smeared with the resulting cumulative costs of default.
- Perpetuates a poor customer experience of the industry.

Main Disadvantages for Suppliers of Prohibiting Deemed Contract Objections

- Requires operation of duplicate and conflicting operational processes, especially for those Suppliers operating tariff products in the I&C sector.
- Most formal contracts would allow objections but Deemed Contracts would not.
- Debt collection costs will continue to be unnecessarily costly, protracted and uncertain.
- The direct and indirect costs associated with this will increase and result in otherwise avoidable pass-through charges experienced by all customers.
- Suppliers with larger Deemed Contract portfolios (especially with relatively more SMEs) are unfairly disadvantaged.
- Creates opportunity for customer abuse (eg during CoT).
- Complicates formal contracts and could prevent normal terminations for breach (ie. such customers could not be placed on a 'default' Deemed Contract so isolation/disconnection rates could increase and/or unnecessarily complex clauses will be required to cover possible eventualities, however remote).

Main Advantages of Deemed Contract Objections

- As a debt control mechanism this is:
 - Economical
 - Transparent
 - Avoids legal cost/administration/delays/uncertainty
 - Allows a consistent process across all types of contract
- Equally fair to both small and large Suppliers (regardless of portfolio size or type).
- Similarly fair to all customers (including those on formal contracts as well as Deemed Contracts).

- More likely to facilitate development of competitive prices and payment risks that would otherwise apply to Deemed Contracts needed not be passed through to Customers.
- No adverse or unreasonable impact for the vast majority of customers.
- Most appropriate mechanism for managing this unique (and inevitable) market sector.
- All Suppliers have Deemed Contract customers so this is a way of managing the customer relationship prior to a formal contract being put in place.
- Facilitates the orderly transition to formal contracts and/or transfer to another Supplier for all Deemed Contract customers.
- Customer abuses are prevented.
- Appropriate safeguards already exist to prevent Suppliers using Deemed Contract objections anti-competitively (but these could be strengthened should this be considered desirable).
- Avoids the need for other (potentially less customer focused) alternatives eg:
 - Refusals to accept transfer of disconnected customers
 - Increased rates of disconnection/isolation
 - Development of other ways to manage permitted terminations eg. more isolations/disconnections, more complex contract provisions.
- Previously identified disadvantages would not apply.

Inherent Safeguards

Safeguards already exist which are likely to be adequate to protect the interests of customers and prevent Suppliers using Deemed Contract objections inappropriately. However, these could be strengthened or modified should this be considered desirable.

- All Deemed Contracts are, in effect, tariff products without term obligations therefore term objections would not be permitted.
- Suppliers must submit proposed Deemed Contracts to Ofgem for approval.
- Grounds for objection must be specified in Deemed Contracts (Suppliers could be required to highlight these for Ofgem's attention).
- Ofgem is, therefore, able actively to influence the objection grounds specified (but debt and customer request are likely to be the only grounds specified).

Conclusions

Objection rights for Deemed Contracts are in the interests of customers and fair to all Suppliers. British Gas does not expect that Deemed Contracts objections would deter Supplier competition; rather a mechanism is sought to address this inevitable industry problem.

British Gas seeks agreement to the recommendations included on page 1. This will ensure a single modification, consistency and harmonisation across both fuels.