

Centrica Business Services draft response to Ofgem's Consultation regarding Objections under deemed contracts for non-domestic customers

Introduction

Ofgem is seeking views from customer representatives and industry participants on the suitability of the following options:

1. suppliers in the non-domestic market, in both gas and electricity, should be permitted to object under any circumstances specified by the supplier in deemed contracts; or
2. objections where customers are being supplied under deemed contracts should be permitted only in defined circumstances specified by regulation; or
3. objections should not be permitted in any circumstance where a customer is being supplied under a deemed contract.

Comments have been invited on the issues raised above.

Centrica Business Services (CBS) represents the non-domestic energy supply business of British Gas Trading. CBS is pleased to comment on the issues raised by Ofgem in their consultation on transfer objections under deemed contracts in the non-domestic market.

Background

It is important to consider the above proposals within the context of how the current gas and electricity objection provisions in the supplier's licence and Master Registration Agreement (MRA) respectively came about. The history, and so the context, is outlined in Ofgem's consultation paper but to understand fully, it is necessary to appreciate the objectives behind the latest changes to the provisions that came into force on 5th January 2004.

These latest changes had two objectives:

- to transfer objection rights from the gas suppliers licence and MRA to provisions within the customer's contract in a way that was readily visible (transparent) to customers and enabled them to negotiate on the grounds specified, should they wish; and
- to harmonise objection approaches within the gas and electricity non-domestic market.

CBS wholeheartedly supported these objectives and the underlying principles.

It was not the intention to remove the objection provision in gas where a right to object for debt for any contract, including deemed, existed. This is supported by the fact, as acknowledged in the consultation paper, that deemed contracts were not raised in Ofgem's previous consultation¹ prior to the changes. Accordingly, CBS, and it is believed other suppliers, accepted these changes on this basis.

¹ Transfer objections: stronger rights for industrial and commercial customers.

However, the revised drafting to the provisions in the gas suppliers licence to implement the agreed objectives had the unintended consequence of removing the existing right to object for debt for deemed contracts.

Proposed approach

CBS agree that clarity regarding objection rights is important for the effective and equitable operation of the transfer process in the non-domestic market. As such, CBS understands the reasoning behind the MRA change proposal to define the term “contract” within its objection provisions. However, CBS believe the outcome of this unfocused proposal i.e. a blanket prohibition on objections for any deemed contract, does not recognise the adverse consequences of this approach including the benefits that would be lost.

CBS previously circulated a briefing paper that outlined these consequences to aid informed discussion at the MRA Forum. As a result, after weighting by market share, nearly three quarters of the supplier votes cast supported overturning the change proposal including support from a smaller supplier very active in the non-domestic market. While the full arguments will not be repeated here, the primary consequences are as follows:

- Non-payment – customers would have a perverse incentive not to enter an agreed contract and remain on a deemed contract to avoid or delay payment of legitimately levied energy charges by transferring supplier;
- Higher debt costs – debt recovery costs would be greater as alternative methods e.g. via courts, disconnection, would need to be employed more frequently;²
- Increased disconnections – there will be more disconnections, and they are likely to take place at an earlier stage as suppliers seek to reduce their potential debt exposure where a deemed contract applies and there is any doubt about payment;
- Cross-subsidisation - those customers who pay their energy bills would subsidise the increased debt and recovery costs incurred pursuing those customers who do not pay their bills; and
- Customer requested objections – suppliers would not be able to meet the wishes of customers on deemed contracts to stop a transfer happening for a legitimate reason e.g. an erroneous transfer.

For these reasons, CBS consider it is inappropriate to prohibit objections to all deemed objections. Conversely it is not appropriate to allow objections for any reason as this could be abused by “locking in” customers. Reference to the reasons above demonstrates that these adverse consequences could be avoided by allowing deemed contract objections where a debt exists or a customer specifically requests an objection to be raised. The application of objection rights in both these circumstances is evidently proper as in the former it is only right that a customer meets his responsibility to pay for a legitimately billed service he has used (to ignore this responsibility is to countenance theft) and in the latter, suppliers must not be

² This could lead to adverse credit ratings for some customers as suppliers utilise alternative routes to reclaim the monies owed to them.

unduly constrained from meeting a customer's direct wishes especially if the customer experience deteriorates as a consequence of not actioning that request.³

CBS considers that it would be most appropriate to define these reasons for objections in the deemed contracts themselves rather than on the face of the Gas Suppliers Licence or within the MRA. This approach is more in tune with the initial objectives of the most recent changes (as outlined in the Background above) as it provides a transparent mechanism in providing the relevant information to the customer and gives them the basis on which to negotiate revised terms i.e. enter a formal contract. While it is recognised that in circumstances where a change of tenancy (CoT) is not notified to the existing supplier⁴, a deemed contract would inevitably not have been sent to the new customer, this can be overcome by ensuring a copy of the terms and conditions are readily accessible on the supplier's website (notwithstanding the fact that a supplier has a licence obligation to send deemed contract terms and conditions to any person that requests them). It is worth noting that a customer is significantly less likely to have access to, or be able to navigate through, the Gas Suppliers Licence or MRA to establish appropriate objection reasons.

This approach also supports the definition of debt to form part of the contract terms. CBS believes that this definition should be framed according to the particular circumstances in which deemed commercial contracts arise. Accordingly, replication of the domestic definition of debt (28 days after bill raised) is not appropriate for the following reasons:

- higher consumption in commercial premises (significantly so in many circumstances) will mean higher outstanding amounts. Also due to the nature of CoT situations (which account for the majority of deemed contracts), a bill may not be raised for some period of time after occupation by the undeclared new tenant i.e. the supplier did not know the customer was in the premises;
- a longer period between the raising of a bill and the ability to object would give customers whose intent is to abscond by switching supplier, greater opportunity to avoid the outstanding monies legitimately levied.

While Ofgem does not formally approve deemed contract terms, suppliers have an obligation to send the terms and conditions to the regulator. This safeguard could be used to ensure additional inappropriate objection reasons are not added and CBS would be supportive of those terms and conditions relating to objections being subject to Ofgem's approval. If it is believed a further control is required, the licence and MRA could specifically exclude objections for defined reasons that are considered inappropriate e.g. insufficient termination notice.

CBS believe this balanced approach i.e. allowing objections for deemed contracts in limited circumstances, is in the best interests of customers and suppliers alike. This approach avoids the potential increase in costs being smeared across all commercial customers while allowing customers not in debt on deemed contracts to transfer freely (unless they expressly chose not to continue the transfer).

³ This was the primary argument used in the introduction of Customer Requested Objections in the domestic market and is perfectly valid to apply to the non-domestic market.

⁴ CBS, and we believe other suppliers; issue deemed Terms & Conditions (T&Cs) as a matter of course when a CoT is notified.

Potential Concerns

Ofgem's paper highlights a number of concerns that have been raised by other suppliers in allowing objections to deemed contracts:

- customers do not expressly agree deemed contract terms and a supplier could "lock in" a customer;
- deemed contract objections would negatively impact customers and their ability to transfer supply especially if suppliers are able unilaterally to decide the precise circumstances in which they could object;
- customers in a contract overrun situation⁵ may, by virtue of transferring to a deemed contract, be prevented from switching; and
- weaker incentive on suppliers to negotiate suitable terms and enter into a full supply contract with the customer.

These concerns, while validly raised, can be addressed by a focused approach to deemed objections i.e. allowing objections in the circumstances set out above.

The first two concerns are essentially the same i.e. a supplier would abuse the deemed contract provisions to lock in customers. First, customers will have ready access to deemed contract terms and conditions, either being sent them directly by the supplier or by requesting a copy (as stated earlier suppliers have an obligation to provide on request). Business customers should reasonably be expected to manage their obligations regarding energy supply in the same diligent fashion they show in maintaining continuity of all other services that continue to be required when moving to new premises. Second, customers on deemed contracts, at any point, have the opportunity to contact the existing supplier to negotiate terms i.e. move to a formal contract, or, if they prefer, to approach any other supplier of their choice to arrange transfer of the supply point⁶. Third, in the proposed approach above, the valid circumstances for objections would be limited to those specified in the deemed contract and so, while it is apparent that some customer's proposed transfers will be hampered, it will only be for appropriate reasons e.g. if a legitimate debt is outstanding (if the debt is paid, the customer would be free to transfer without hindrance) or if the customer himself requested the objection.

The third concern regarding contract overrun would not be likely in practice if the customer entered into an agreement with a new supplier sufficiently ahead of the expiry of the existing contract.⁷ This is because, in the case of a transfer delay, the objection window would have closed so the old supplier could not prevent the transfer even if it wished to do so.

Turning to the final concern, the most common event that leads to deemed contracts is a CoT. As previously indicated, CBS, and no doubt other suppliers, have processes integral to their procedures to make contact with a new customer as soon

⁵ Where a customer does not transfer to another supplier before the expiry of the contract with the existing supplier. This may be due to a delay in the transfer process or insufficient time is given to transfer.

⁶ In this way i.e. by contacting the preferred supplier to regularise the situation, or via the receipt of T&Cs, business customers will always be able to establish the current supplier for the premises.

⁷ Even then, an objection would only be raised in the limited prescribed circumstances e.g. debt and customer request.

as they become aware of such an event. This investment is made as it is in the interests of all suppliers to enter into a formal supply contract with every customer. It would not be correct to say that suppliers would have weaker incentives to agree a formal contract where deemed contract objections are permitted – the incentive is unchanged. Customers on deemed contracts can transfer at any time (once bills are paid), which may not be the case with formally agreed contracts. Formally agreed contracts provide security that the customer will remain with that supplier for a stated period unlike deemed contracts. Accordingly, it remains in the supplier's interest to encourage customers to agree to enter a formal contract.

Conclusion

CBS believes it is appropriate to reinstate for gas the previous right to object for debt in the case of deemed contracts and harmonise this approach in electricity. In addition, it could enhance the customer experience to add a customer-initiated facility to object where expressly requested by that customer; this would act as an effective mechanism for preventing erroneous transfers

Allowing justifiable deemed contract objections would be in the best interests of customers and suppliers as a whole and avoid the consequences of an unfocused blanket prohibition (which would result in increased debt and inevitable pass through to customers). By exercising appropriate safeguards it could be ensured that no customers are unfairly hindered from transferring to their supplier of choice and no supplier would be able to obtain an unfair competitive advantage.

To aid transparency, these circumstances should be clearly specified (including definition of debt) in the terms and conditions of the deemed contract, as this is likely to prove the most customer visible location for them. As currently required under the Gas and Electricity Suppliers Licences, deemed contracts must already be submitted to Ofgem and CBS would support those terms and conditions relating to objections being subject to Ofgem approval. If further safeguards are required, the circumstances where objections for deemed contracts are not appropriate e.g. insufficient notification of termination, could be specifically included in the MRA and Gas Suppliers Licence.