

Dear Ms Taylor

We have given some consideration to Ofgem's Consultation on the above subject, for which views are invited by this Friday 1st October. This has potential implications for SME's and multi-site consumers such as Local Authorities, retailers etc. who have large estates with a degree of constant 'churn' - taking on, for example, 'new' sites from previous owners.

Ofgem is seeking views on the suitability of the following options for the availability of objections on deemed contracts for the non domestic market, for both gas and electricity:

1. suppliers should be permitted to object to transfers under any circumstances specified by the supplier in deemed contracts
2. objections should only be permitted in defined circumstances
3. objections should not be permitted in any circumstance

This has apparently arisen because under the gas supply licence it is clear that following the changes effective from 5th January this year, transfer objections may not be made under deemed contracts, whereas the position under the MRA is less clear. Consequently one supplier (Opus) has raised an MRA change proposal which, if adopted, would have the effect that objections could not be made for deemed contracts for non domestic electricity customers. However, another supplier (BG) has appealed against this decision of the MRA Board, and the matter has been referred to Ofgem.

Among the reasons given for the appeal (and the reason for retaining the suppliers right to object on deemed contracts) was that *"this is an important tool in enabling a supplier to recover money owed to them when a customer is supplied pursuant to a deemed contract, e.g. on change of tenancy, but has failed to pay."* This was one of the arguments used by suppliers for the retention of their original right to prevent transfers, i.e. in the gas supply licence. At the time, gas was the only market in which an incumbent supplier could effectively take away a consumer's right to choose who should supply them. By removing the suppliers' automatic rights to prevent transfers, we believe BG's argument that this right is an important tool was effectively rejected.

We do not see any grounds for reinstating this right because;

- there are other methods of redress available to suppliers, as there are in other industry sectors/markets,
- it removes customer choice
- the right to object was in any event systematically abused, and used by some suppliers to prevent transfers on spurious grounds to effectively lock in customers (a cynic might suggest the timing of this is not entirely coincidental, given what has been happening to energy prices)
- it removes the incentive on suppliers to seek agreement with customers on suitable terms
- it could have a negative impact on customer ability to switch if suppliers were able to dictate circumstances under which customers could transfer and include them in contracts customers had not expressly entered into

Furthermore, by allowing suppliers to prevent customers on deemed contracts from transferring to another supplier, this would surely perpetuate the number of deemed contracts in use, since a customer seeking to transfer to the supplier of their choice is by implication seeking to enter into a contract (and one of the arguments proposed for retaining the objection facility given in the consultation document is that there is a high volume of sites on deemed contracts).

Finally, we do not believe to retain the suppliers' right to object under deemed contracts would be consistent with the wider practice adopted as a result of the changes effective from 5th January 2004, while such rights do not exist for other types of contracts except where they are explicitly agreed by the customer at the time of entering into the contract.

On this basis, ESPO DO NOT support Option 1; that suppliers should be permitted to object to transfers under any circumstances specified by the supplier in deemed contracts.

ESPO DO NOT support Option 2; that objections should only be permitted in defined circumstances

ESPO AGREE with Option 3: that objections should not be permitted in any circumstance.

regards

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