31st May 2007

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Ofgem
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Dear Steve

**MODIFYING THE ARRANGEMENTS FOR THE USE OF OBJECTIONS IN THE NON-DOMESTIC MARKET**

Thank-you for opportunity to comment on the issues raised in your letter on the above, published on 17th April 2007.

**Headlines:**

- **We are disappointed with the Authority decision on the BGT appeal. We consider the use of the loss notification data flow (D0058) by the existing supplier for purposes of re-contracting as entirely inappropriate.**

- **The widespread adoption of a policy of re-contracting during the objection window process will hinder supply competition and is clearly not in the long-term interest of consumers or suppliers.**

- **The uncertainty as to forward demand levels created by the existing arrangements introduces a commercial risk to suppliers that will inevitably be passed on to all customers through a Risk Premium.**

- **The market arrangements should be amended to remove any ambiguity as to the rights of suppliers in objecting to customer transfers and specifically should prevent the customer from being able to re-contract with the existing supplier within the five day objection window.**

*General Comments:*

We note that the publication of Ofgem's letter follows the Authority's decision on an appeal raised by BGT in respect of an MRA Forum decision on the use of confidential information dated 17th April 2007. Firstly, we would like to express our disappointment with the Authority decision on the BGT appeal. We, along with an overwhelming majority of all industry participants, consider the use of the loss notification data flow (D0058) by the existing supplier for purposes of re-contracting as entirely inappropriate. It was certainly not a market arrangement contemplated by the MRA. However, we note that in relation to the

BGT appeal, the Authority was asked to consider the narrow question of whether BGT could believe, on reasonable grounds, that the market arrangements set out in the MRA permitted the use of the D0058 in such a way. Whilst we do not support the Authority's conclusion on this matter, we welcome the recognition by Ofgem that there are now wider policy issues that need consideration in light of the Authority decision.

The MRA was designed to provide a framework for the smooth and efficient transfer of supply in accordance with consumers' choices. Within that framework there is a five-day objection window to enable certain checks to be made to ensure there are no legitimate objections to the customer transfer. However, following the Authority decision, there is a real risk now that the MRA arrangements set up to facilitate smooth customer switching will actually be used by existing suppliers to frustrate the switching process by re-contracting with customers during the objection raising period.

We consider the widespread adoption of a policy of re-contracting during the objection window process will hinder supply competition and is clearly not in the long-term interest of consumers for the reasons set out below:

*Competition:*

Ofgem argues that customers should have all the information available at their disposal about competing offers without any undue restrictions. We support this principle as a key element in the development of retail competition. However, once customers have evaluated all competing offers presented to them (including renewal terms from their existing supplier) and signed a contract for supply, we do not believe that the customer transfer process should then facilitate or in any way encourage customers (or suppliers) to routinely breach supply contracts. Furthermore, in the circumstances of re-contracting during the objection window the exercise of customer choice is restricted to a choice between the New Supplier and their Old Supplier. In fact, this practice is anti-competitive by uniquely providing the existing supplier with a second chance to retain a customer who has been fairly won by another supplier through legitimate competitive practices. In our view this potential "second round" should not be permitted or indeed facilitated under the MRA. Should the practice continue, this can only be detrimental to the development of supply competition, a view we note is also supported by energywatch.

*Risk:*

Currently, suppliers are only able to register customers within a 28 day window from supply start date. However, contracts between suppliers and customers may have been entered into some significant time before this window. Consequently, suppliers may now find themselves in a position where there is less certainty as to forward demand levels reflecting the risk that once the registration process commences the customer transfer may end up being blocked (following the Authority's decision) due to the existing supplier re-contracting with the customer following receipt of the D0058 flow. As this uncertainty will create a commercial risk to suppliers, through for example increased exposure to the Balancing Mechanism, inevitably this will be passed on to all customers through a Risk Premium. We see this as unnecessary and against the interests of consumers.

Furthermore, suppliers will be left to potentially seek redress from customers for breach of contract if they re-contract with existing suppliers despite having signed binding contracts with new suppliers. This may lead to potentially significant legal and contractual disputes which is likely to be time consuming and expensive for both customers and suppliers. Suppliers may construct contracts to provide protection in such circumstances, however, it would not appear that the MRA is fulfilling its defined purpose by facilitating customers to commit a contract breach either wittingly or un-wittingly. The ultimate outcome of this may be that the customer commits to paying twice for some or all of their consumption by the fact of signing more than one supply contract.

We consider that this issue can be addressed by explicitly clarifying the scope for re-contracting under such circumstance within the MRA. We do not believe this would in any way harm competition. In fact in light of the competition concerns expressed above we consider this would enhance competition and be in the long-term interests of both customers and suppliers.

*Conclusion:*

In summary, the interests of customers and suppliers are not best served by the existing MRA arrangements in respect of the objection process. The market arrangements should be amended to remove any ambiguity as to the rights of suppliers in objecting to customer transfers and specifically should prevent the customer from being able to re-contract with the existing supplier within the five day objection window. Given this is clearly in the interests of supply competition, we see no reason why these changes could not be made by Ofgem through licence modifications.

If Ofgem conclude that the existing arrangements do not require change, we would welcome a review of the current 28 day window for customer registration with a view to exploring the reasons for maintaining this window as opposed to allowing suppliers to register customer transfers as and when supply contracts have been entered into.

If you have any questions on this response please do not hesitate to contact me.

Yours sincerely

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