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Dear Mr Smith

Use of Objection in the Non Domestic Market

Haven Power welcomes the opportunity to respond to your letter of 17 April 2007 with regard to the use of objections in the non domestic market. As you will be aware, Haven Power is a new market entrant in the GB business power market. We market our supply products to smaller business customers, though our intention is to expand into the larger end of the market in future. As a new market entrant the ability to acquire customers without incurring excessive costs is vital for our business model and we believe best serves the interests of customers. We therefore hope that Ofgem will act quickly to stop the use of the objection process to allow suppliers to re-contract customers who are in the process of switching.

Throughout this response we have used the term "predatory re-contracting" in the same sense as the term "re-contracting" is used in your letter and in the

appeal decision. We feel it is important to differentiate the inherently predatory behaviour associated with using the change of supplier mechanism as a trigger to persuade a customer to renege on their new supply contract from the normal process of retaining a customer's business at the end of the contract period.

Predatory re-contracting allows the incumbent supplier to precisely target price reductions at those customers who have decided to change supplier, at the expense of the majority of customers who have not decided to change suppliers. This means that most customers would see higher prices on renewal than they would if predatory re-contracting were not allowed. We believe that BGT's behaviour has been detrimental to customers both in the short term and longer term and results in reduced competitive pressure and rising prices. We therefore believe that the arrangements for objections in the non domestic market should be changed as a matter of urgency.

In the decision in relation to the appeal by BGT the Authority has drawn parallels with other competitive markets. We do not believe that the comparisons made are valid because the electricity market is different from the majority of other markets in the following important respects;

1. There can only be one supplier to a metering point at any given time.
In most markets a customer contracting with providers of the same goods or services would receive two deliveries if they did not cancel one or the other. As this cannot happen in electricity an orderly market requires a clear decision point after which the customer is committed to his chosen supplier.
2. In the vast majority of markets the losing supplier is not informed that they have lost the customer's business unless the customer chooses to tell them. The new supplier would certainly not provide the losing supplier with advanced notice of the change, as they do in electricity by virtue of the mechanics of the transfer process. As a consequence in

most markets the transfer mechanism itself (or rather the lack of one) does not afford the incumbent supplier the trigger to try to re-contract.

3. The public service and monopoly background of the electricity supply sector means that small business customers may be much less wary of contractual terms than when buying other products, such as photocopier services, for example. They may well have an expectation that licensed suppliers will act in a completely even handed way. The scope to take ill-informed decisions or to be misled is therefore much greater. Customers who do decide to re-contract following an approach along the lines that BGT have been making may not fully understand the consequences of their actions on the acquiring supplier and, in particular, may not appreciate that the acquiring supplier could potentially have a claim against them.

The main consequence of these differences is that the commercial dynamic is entirely different from that seen in other industries and we believe that the conduct of suppliers during the transfer process needs to acknowledge this. Once the customer has entered a contract with his new supplier and the change of supplier process has commenced, the incumbent supplier should not be able to encourage the customer to reverse his decision.

Customer Protection

When the energy markets were opened to full competition there were significant problems with miss-selling and the behaviour of some suppliers led to investigations and fines. There were also problems in both the gas and electricity markets over the misuse of transfer objections with accusations that objections were incorrectly raised in an attempt to keep customers. Ofgem and its predecessor have worked hard to stop such behaviour but the damage done to the energy sector's reputation has taken a long time to overcome. It would be a mistake to allow behaviour that brings the energy supply market into disrepute to start again.

Haven Power believes that it is not in the interests of customers who have decided to change supplier to then be hassled by the incumbent attempting to keep their business and to be encouraged to breach their contract with their new supplier. A supplier wishing to keep its customer beyond the end of a contract will already have had many opportunities to make the customer a good offer and should not have the opportunity to rely on the loss notification as a trigger for further negotiation. The pressure to price keenly is removed, or at least reduced, if you can simply target your best prices to those customers you know are already switching supplier. A few customers may benefit from lower prices by getting last minute deals (only those that have entered into contracts with competitors), but the majority of customers will lose out if suppliers are not facing competitive pressures through the workings of the market more generally.

Indeed, by allowing predatory re-contracting we believe that customers renewal prices would generally rise as suppliers understand that they would have the final opportunity to reduce prices when they receive the loss notification (especially if a final refusal clause exists in the supply contract). This would result in higher prices for those customers that did not happen to have been targeted by competitors at the right time.

The use of the loss notification as a trigger to re-contract favours those suppliers with large numbers of customers, strengthening their hold on the market and making it substantially more difficult for other suppliers to gain market share. In addition it seems to us to be a fundamental flaw that the incumbent supplier should be given, by dint of the transfer mechanism, the opportunity to have the last conversation with the customer and the ability to discover information on competitors' prices.

The asymmetrical effect of permitting the use of predatory re-contracting is illustrated by the following observations on the likely effects on the incumbent and acquiring suppliers;

Effect on incumbent supplier

- Reduced cost of retention marketing arising from the ability to preferentially target customers who have already opted to leave.
- The prices offered to the leaving customers can be the highest possible, since these prices will often be offered after the customer has disclosed details of the prices that they are moving to.
- Increased revenues by imposing renewal prices higher than market rates, in the expectation that many customers will take no action and those that do will be intercepted by the predatory re-contracting process if the incumbent isn't given the opportunity before then.

Effect on acquiring supplier

- Increased cost of sales since a greater proportion of sales effort is effectively wasted. Over time we believe sales cost could double if predatory re-contracting becomes widespread.
- Increased customer services costs because of the abortive work associated with putting into effect the customers' contracts and commencing the meter point registration procedures.
- Management and legal costs involved in pursuing redress under the termination terms of contract.
- Increased power purchase costs arising from greater uncertainty that the transfer will in fact take place.

We feel that allowing predatory re-contracting to become the accepted standard will significantly damage competition and increase costs in this sector.

If the use of the objection period to attempt to re-contract customers becomes widespread a new element of risk will be introduced into the market.

Suppliers currently face a risk of objection when they sign up a new customer.

This is mitigated by sales staff asking a customer to check he is not in contract and confirming he has no outstanding debt, when signing up a new contract. Such checks give the incoming supplier a degree of comfort and help to ensure the customer experiences a smooth switch. If this risk is extended to cover predatory re-contracting, suppliers will need to respond.

Haven Power believes that suppliers are likely to introduce termination charges into contracts so that a customer failing to honour the contract will face penalties. It is unlikely that this would be pointed out by the incumbent supplier whilst attempting to re-contract the customer. Termination clauses will be introduced because of the need for suppliers to recover wasted sales, administrative and energy costs. Such contract changes will further reduce the intensity of competition as customers become disinclined to switch suppliers as word of termination penalties and their subsequent legal enforcement circulates within the sector.

There is a substantial risk that a customer approached for the purpose of predatory re-contracting would believe that it is in order to proceed to re-contract without further consideration of their recently signed contract. The scope for subsequent customer confusion is very great and will lead to increased customer costs and management effort as he attempts to defend the legal challenge brought by the acquiring supplier. This is not conducive to an orderly competitive market.

Customers do deserve to be able to contract with their supplier of choice at a keen price, but the impacts of predatory re-contracting during the objection raising window will lead to generally increased prices. By removing the right to object for reasons other than debt, existing contract, erroneous transfer or related MPAN, prices will be lower reflecting reduced risks. Customers will also experience an orderly and unpressured supplier transfer. Haven Power

therefore believes that the ability to object for the purpose of predatory re-contracting should be removed.

Codes vs Licences

Haven Power believes that the behaviour of BGT has already started to undermine the competitive market and the issue must therefore be resolved as quickly as possible. However, we are also keen to ensure that the remedy used is robust and enforceable. We therefore believe that the supply licence should be changed explicitly to rule out the right to object for the purpose of predatory re-contracting. The change must also ensure that predatory re-contracting is not facilitated by the back door route of inclusion in the customer contract. The response of the suppliers to the MRA appeal suggests that there would be widespread support for preventing behaviour that most are currently not engaged in. Such a change would also have the benefit of aligning electricity with gas.

Haven Power is considering raising a change to the MRA in order to try to stop predatory recontracting as quickly as possible, but we are concerned by the lack of an effective enforcement mechanism within the MRA processes. We feel that while changes to the MRA will encourage good practice amongst the already compliant suppliers, a change to the licence would provide a stronger signal to the market that this behaviour is not allowed.

It is unfortunate that the timing of the supply licence review may not allow a licence change to be implemented in the same timescales as other expected changes. However, the supply licence review will define the process for changing the licence so that implementing this refinement of the right to object could follow quickly on its heels. Haven Power believes the Collective Licence Modification process could be used to alter the licence as a matter of urgency.

We would welcome the opportunity to discuss with Ofgem the problems and costs that a continuation and growth in predatory re-contracting would impose on new market entrants such as ourselves. I will therefore contact Nigel Nash in the next couple of weeks to arrange a meeting. In the meantime, if there are any points raised in this letter that you would like to discuss further please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Bennell', with a large, stylized flourish at the end.

Peter Bennell
Chief Executive
Haven Power Limited