

29th May, 2007



Mr Philip Davies
Managing Director – Markets
The Office of Gas and Electricity Markets
9 Millbank
London SW1P 3GE

Dear Mr Davies

Modifying the arrangements for the use of objections in the non-domestic market

The Utilities Intermediaries Association is a Trade Association for third party intermediaries in the energy industry.

The facilitating of the purchase of 60-70% of energy is done by third parties. Our members have a letter of authority to work on behalf of a client. If the practice as described in paragraph 5 of your letter becomes commonplace the whole concept of Tpis could be undermined. The Tpi could award, on behalf of the consumer, business to a supplier who would then start the registration process in good faith. The incumbent supplier on realising that he is losing business will then offer an advantageous price direct to the consumer, who then accepts the revised price. The whole process then collapses because of the actions of the consumer who has agreed to two contracts. It could leave the consumer open to legal action from the Tpi and from the incumbent supplier who first had the contract.

Ofgem's position in your letter seems to suggest that the incumbent supplier may not have had the opportunity to quote and therefore it was a good thing that they did quote to enhance competition. Our experience is that because the service from a particular supplier has been bad, the consumer does not want them to offer a price. This is what really reflects a consumer being in control, not one who is persuaded by a subsequent price that is not market

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reflective but that reflects the knowledge that the supplier is likely to lose the business. He would not have known this in any other market but because of the processes in the energy market he is party to this information. Your letter of the 17th April seems to indicate that from the competitive position, Ofgem sees no advantage or disadvantage to this whichever action is taken. Because of the above and what follows we would want action taken to prevent this practice.

Most players in the marketplace criticise the level of knowledge of consumers (a reason that consumers employ third parties) yet, if now we are asking consumers to understand contract law as well, we should be able to foresee the problems that would be created. The market would also be encouraging legal contracts to be broken and then; aside from possible legal implications, will no doubt declare that the consumer should have known better!

The market itself will change to suit any outcomes from this consultation and at the very least, it should be expected that a supplier will not offer a firm price until the registration has been successful. Equally a consumer will not want to confirm a contract until he knows a firm price. We know which party will have the biggest influence here and the supplier will in effect quote whichever price he wants on the day because the consumer will have no way of proving it to be a fair price or not. Do we then have a situation where a number of suppliers try to register a piece of business and the first one successful is able to gain the business because he can offer a firm price (whatever that may be)? If a situation were to develop like this it is certainly detrimental to the consumer and competition.

If a supplier does offer a firm price and has a contract in being (albeit verbal), and the consumer does break the contract, it is in the suppliers remit to sue the consumer for Breach of Contract or, impose a penalty clause for breaking the contract, a debt that he can then pursue. This latter practice has already started to happen in some instances.

Even worse, suppliers could introduce clauses which enable them to charge for the whole contract if a consumer breaks a legal contract. The supplier could well have already purchased this energy at the price quoted.

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One of the main measures used by Ofgem in its review of competitiveness within this market is the number of consumers transferring supply. These figures would be meaningless should the practice in Paragraph 5 be confirmed.

In summary we would request that Ofgem takes all necessary action to stop the practice of suppliers taking the opportunity to quote a price once the registration process has commenced.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Sinden', is placed on a light-colored rectangular background.

R Sinden
Operations Director