auditel

Cost Management Consultants

Ms. Kersti Berge
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

26th November 2008

Dear Kersti,

Auditel UK Ltd. Response to Energy Supply Probe – Initial Findings Report

Please find enclosed the Auditel UK Ltd response to the report.

I have also sent this via e-mail.

Yours sincerely,

Howard A Ward
Facilities Service Director
Auditel UK Ltd.

Auditel(UK)Limited
St Paul's Gate Cross Street Winchester SO23 8SZ
Tel 01962 863915 Fax 01962 854420 www.auditel.eu.com

Registered in England No 2957303

Auditel UK Ltd is a well established consultancy (14 years) with over 120 franchisees operating throughout the UK, most of whom are very active in the energy industry. Our main market is SME and some larger organisations. We become involved in domestic supplies only through housing associations and charities, etc.

This response is specific to this organisation but we have also participated in and support the response from, the UIA upon whose council the author sits. There may be some differences of emphasis and we may go a little further in some instances of TPI compliance but generally we fully endorse the UIA submission.

It is not clear if the first and some chapters are general or aimed at the domestic. Auditel unless otherwise stated, has assumed the former.

1.11
The 'new' and so called innovative domestic products that feature en-con etc. and have been promoted by HMG for Domestics are longer term contracts and therefore discourage active participation. Yet more muddled thinking by HMG!

1.12
Long term relationships are the norm for this consultancy and Auditel is far from unique in this respect.

1.16
They do not need to. The mutually exclusive contract terms mean that customers find it very difficult and time consuming to move supplier. See 1.32 below.

1.19
Any conclusion and recommendation is likely to be overtaken by events. The global financial crisis and Britain's even more vulnerable position than other economies mean that any unbundling is going to be at the bottom of HMG and other EU countries priority list.

1.32
Contract terms are a disgrace. Ofgem would not allow domestic contract to be so disingenuous and they should not be so for SME. Some suppliers' contracts will have a cut off date for the prevention of roll over sooner than other suppliers are prepared to quote. Clearly this is intended to be an obstacle to competition and does prevent customers from obtaining several quotes and making a fair comparison. This is not what Parliament intended. In recent volatile markets this has been even more of a problem.

Ofgem have constantly backed away from the idea of standardised contracts or model ones. It is high time this stance was reviewed. Some suppliers (the usual suspects) are always looking for the next loophole and will exploit this to the full in order to frustrate the running of the free market and retain customers by disingenuous means.

This is expanded in later paragraphs.

Objections are much abused by some sections of the supply industry (again the usual suspects). We have been told many times by call centre Muppets "We object to transfers on principle, all suppliers do." Whilst we accept that statement is not true for all companies and probably not true for the specific company, it is indicative of these companies' culture and their cavalier attitude to

the rules to which they have signed up. Objections are raised for no bona-fide reason and will be done so if there is any doubt in the mind of the customer retentions team. Clearly they should be seeking to resolve the problem of their lack of relevant information as the first priority rather than block the transfer as a holding exercise, causing the customer problems and resolving the underlying issue as and when they feel like it. A financial penalty and automatic recompense to the customer (that was actually policed and enforced with further penalties for continuing non-compliance) would concentrate those supplier's minds.

1.33
In the light of the collapse of Bizz Energy this has acquired an even greater urgency.

1.36 & part of 1.39
Simplify the supplier switching process. Even a cursory examination of the process and the 'D flow' diagrams show that it is complex and bureaucratic. It demonstrates clearly the public sector pedigree of this industry! Reform that simplifies and discourages abuse is long over due.

Debt Blocking. This is again much abused by the usual sections within the supply businesses. We understand the supplier's concerns over un-collectable debts particularly in industries such as the public houses where there is a high turnover of tenants, a rapid turnover and 'track record' of bad debt. We have no doubt that this is exacerbated by poor and untimely billing which the suppliers could, if they so chose often rectify.

However, the abuse is not confined to these types of customers. Where there are disputes, particularly contractual disputes, suppliers will all too often refuse to negotiate and threaten disconnection for non-payment. For SMEs this is a worry as they can afford neither the loss of power nor the time to attend court and defend their position. Some suppliers debt collection agencies are quickly involved and attend the court to obtain a disconnection order. We have much anecdotal evidence that they will not actually send out the required letter notifying the customer of the court hearing and therefore the case will go through 'on the nod'. On the occasions when letters have been received and the consultant has arrived to argue the case, the collection agency has not seen the need to be equipped with ANY paperwork for the case and had been obliged to withdraw on that occasion, only to re-apply on numerous times in order to wear down the customer.

It is our view that letters are often not sent out and that collection agencies are quite prepared to perjure themselves in the certain knowledge that will not be taken to task as it is impossible to prove a negative. This abuse can be solved by making it a requirement that all such letters are send by recorded delivery. It would helpful if notification of changes of contract terms were similarly recorded but we recognise that this will be an expensive exercise, probably too expensive.

We have a considerable number of examples of this including that of a supplier's agent arriving at a church and a vicarage with a court order for disconnection during the course of a contractual dispute, this being the first the vicar knew of the court hearing. The supplier arrogantly refused to entertain the idea that no letter had been sent. We consider it highly unlikely that the vicar was lying! It is possible that the Post Office failed to deliver the letter but far more likely the supplier and/or his agent lied.

1.37
Smart Meters

Whilst Auditel applauds the introduction of these meters into the monthly non half-hourly arena and some of the 03/04 market as an effective method of achieving accurate invoicing and other benefits, we are concerned that it has been poorly thought through. There is evidence of incompatibilities between meters and suppliers billing systems. Meters supplied by one supplier or an independent cannot be 'read' by another's billing system. Not all DAs and DCs are 'accepted' by all suppliers. One leading smart meter operator has informed Auditel "That it will be two years before the problem is completely resolved." A sensible, industry wide, agreed communications format would have been an obvious prerequisite for a competent and smooth roll out. HMG seemed more interested in 'spinning' the green benefits as soon as possible!

1.38
Separate Regulatory Accounts (Supply & Generation).
We strongly welcome this improvement in transparency.

1.39
Some of our response to this is covered in 1.36

Key T & Cs for SME: This is long overdue

Objections: See 1.32 above.

Ofgem will be aware of the recent disgraceful activities of British Gas in using the transfer process data to sell verbal contracts to SMEs who were leaving them. Particularly for multi-site organisations this resulted in companies entering into two contracts at the same time for the same supply due to junior members of staff having undue and unfair pressure exerted upon them by B Gas. You will also be aware that this was not easily or quickly solvable. It is clear that some suppliers will be actively looking for the next loophole in this process as a disingenuous means of retaining customers so a code of practice with enforcement teeth is to be welcomed.

COP for TPI: We agree with this and go further with our clients proactively informing them of any payments we receive, how much they are and if remunerated by that client, sharing the commission with him. We do however appreciate that our full approach may not be appropriate for all TPIs and could put some TPIs who have agreed a COP at a commercial disadvantage.

Codes of Practice that cover all the points addressed in the paragraph are in place for members of the Utilities Intermediaries Association (UIA) and we urge OFGEM to fully support and promote that organisation.

1.40
Up front payments and bonds are areas of concern here. Some supplier's debt checking is somewhat arbitrary, lacks attention to detail and is simply incorrect. This has caused some of our clients unnecessary problems and costs. Delaying acceptance of contracts or refusing to accept one very late in the process, where the market is rising, can cause much distress for a customer.

2.23
Similar considerations for small SMEs would be an improvement to the system.

6.29
The concern of the small suppliers has been a suspicion of many consultants over the years. Frequently we have been in the situation of suppliers not responding to ITTs because their billing

systems cannot handle more new customers and we have seen suppliers unable to invoice our clients for over 12 months. Notwithstanding all manner of assurances before the contract has been signed and having other caveats confirmed on the contract. Why have Ofgem been so lax in enforcing this appalling behaviour by the suppliers? Re-accreditation might offer a solution but it would also mean additional cost which suppliers would undoubtedly want to pass on the consumer. A time limit on the presentation of correct and accurate invoicing similar to the domestic situation would offer a less expensive and more effective solution.

7.28
We are not surprised that Ofgem have found no evidence of a cartel amongst the Big 6 suppliers. With the current market structure, the small number of players and the ability to structure contracts in such a way as to frustrate the operation of a free market, they have no need to indulge in such practices. See also our responses 1.16, 1.32 & 10.25.

10.2
We agree with this. See also 10.40 below

10.19
We are of the view that there are profound differences between the various types of TPIs and that it perhaps falls to Ofgem to offer some further classification of them.

The retained or semi retained sales agent marketing himself as a broker is clearly not offering unbiased advice nor usually comprehensive advice.

The broker may or may not be driven by the level of his commission.

The independent consultant may or may not have access to the most competitive prices. This can be reserved for the retained agent offering the supplier the greatest volume of business, sometimes regardless of how he acquired it!

For this organisation if taking a very narrow point of view, it could be argued that rate complexity is to be welcomed. It makes life more difficult for the end consumer and therefore they need the services of a consultant. However, we strongly feel that misses the pertinent point. Confusion marketing may be good for consultancy services but it does not assist a competitive market, hinders British industry and that is something to be discouraged.

10.2
If Ofgem means Tariffs rather than Contracts there is an issue here. Tariffs are published rates Contracts usually are not. So if they are published why should they not be freely available – on ALL suppliers' web sites? Is 'published' defined in this context?

10.25
This is an area of much resentment, consistently poor service by some suppliers, contract terms that prevent active participation in the market, disingenuous behaviour all demonstrate a need for some consistency.

We have briefly commented on this above. The contract renewal or cancellation process starts, as Ofgem has noted, anywhere between 6 months and zero days (realistically 30 days) before the 'anniversary' of the contract.

Quite frequently potential suppliers will not offer a quotation before 60 days of the start date of the contract. If the current supplier requires a 90 day notice of cancellation there is an imbalance in the process that most SMEs will not understand as it is unlike any other commercial contract that they have encountered. As experienced consultants we know that it is not too complicated to manage this problem but again, as above, that is to miss the point about the operation of a free market that Parliament intended. We believe Ofgem needs to become more involved in facilitating/encouraging/cajoling more standardised contract terms, cancellation terms in particular.

It is far from uncommon for renewal offer letters to be sent our without leaving sufficient time for the customer to react. We question whether they are actually sent out on some occasions. Again proving a negative is impossible.

Verbal contracts are often the source of these and many other problems. Auditel believes this issue needs to be addressed urgently. It has been covered comprehensively in the UIA submission and we fully endorse this and have nothing to add to that.

Obtaining information about contracts when the customer does not have or has lost this is an issue. Suppliers will often give misleading and inaccurate information over the telephone and sometime refuse to give out any information. Thus the customer will be rolled over and this is an abuse of the market.

The Data protection Act is much abused by suppliers in order to retain (roll over) customers by disingenuous means. We have been told that a supplier will release information on contracts only to the named individual in a company. What happens if that person leaves? Suppliers will openly talk to anyone if they are owed monies and the customer's agent wishes resolve the issue but will refuse on the grounds of the Data Protection Act if the discussion is regarding contract terms that could reasonably lead to the customer changing supplier. This, in the author's view, is hypocrisy personified! Ofgem needs to liaise with The DPR and produce meaningful and enforceable guidelines for suppliers on this issue.

10.26
Contracts that roll over for a longer period.

SME customers have been surprised to find that a contract that they had signed covering a 12 month period has due perhaps to circumstances above, has rolled over for a period 24 or 36 months. This clearly is unfair and unethical. It should not matter what the suppliers preferred contract terms have now become. Roll over contracts should be for an absolute maximum of 6 months and ideally should be banned. When out of contract rates are then applied there should be a common format notification on all invoices that these are OOC rates and clear instructions on how to obtain better rates from that supplier.

Suppliers can and sometimes do withdraw an offer even when a contract has been correctly returned within the time scale. The "Contract can be withdrawn at any time" clause covers this. However, in a rising market this can leave a customer in an unnecessarily costly position through no fault of his own. We believe this ability of a supplier to 'dump' a customer if he sees a more profitable option for his procured electricity (or visa-versa) demonstrates an un-level playing field and needs to be addressed in order to facilitate and encourage competition.

10.28
We would agree with this.

10.30
This demonstrates clearly the difference in regulatory involvement in the domestic and SME markets. The figures are greater in the SME sector because some suppliers know they can get away with it.

10.40
We agree with this. The analogy we like to use is the small shop keeper living above the corner shop. Parliament and Ofgem have decided that his family's accommodation requires detailed regulatory protection but once he has descended the stairs he is currently deemed to have access to resources for his protection at the same level as Microsoft or Sainsburys! Clearly the situation is absurd and there is a pressing need for reclassification.

This does not necessarily mean a need for more regulation. A levelling of the playing field within the Electricity and Energy Acts could well achieve the desirable results.

11.10
Strongly agree.

General
The fact that some suppliers are willing and able to cease acquiring any new clients and sometimes arbitrarily drop existing one by declining to offer quotations, demonstrates that the market is lacking a competitive edge. Auditel were not aware of any instances of this in the early years of deregulation when there were more players in the supply market. We believe this issue needs to be addressed and genuine competition encouraged and facilitated.

Howard A Ward
Facilities Service Director
Auditel UK Ltd