



Gas or Electricity Supply Licence Holders, consumers and their representatives, and interested parties

Direct Dial: 020 7901 7068
Email: stefan.bojanowski@ofgem.gov.uk

Date: 15 July 2010

Dear Colleague

Transparency requirements on suppliers in respect of domestic customers

Ofgem recognises that incentives aimed at persuading customers to switch supplier can play an important part in a well-functioning electricity and gas market. To recognise this, our Guidelines¹, published alongside our new licence conditions on cost reflectivity and undue discrimination in respect of domestic customers, included specific reference to the correct use of initial tariff offers.

We acknowledged that the use of initial offers, such as "time-limited" discounts or fixed price tariffs² for the purpose of customer acquisition and/or to meet competitors' offers, may be objectively justified so long as suppliers make sure their customers are fully aware of the temporary nature of these deals and that their customers are clear on what happens at the end of any fixed term deal. Amongst other things, our Guidelines specifically require that:

*"a Supplier must specify expressly in advance in their marketing materials that any such price differential or bonus incentive is time limited, and that the said time limited offer will revert, after a reasonable period of time, to the terms and conditions offered to all other consumers."*³

We are monitoring the transparency of initial and fixed-price offers closely. In our recent Probe update report⁴, we highlighted a number of key strengths and issues we found on a range of online tariffs. These included strengths such as the ease of navigation of some examples of the webpages containing the tariff information and examples of coherent presentation of the tariff's key features. But also we observed examples of issues, such as tariffs with terms and conditions that were difficult to locate, or did not explain clearly what would happen once the discounted period ended.

¹ Guidelines on Cost Reflectivity between Payment Methods and the Prohibition of Undue Discrimination in Domestic Gas and Electricity Supply Contracts (102/09), 7 August 2009

² For fixed price tariffs, not for the purpose of customer acquisition, our Guidelines require that such tariffs are offered on specific terms for a certain period of time and are made available on a non-discriminatory basis to all comparable groups of customers at the time of offering.

³ Ibid. p. 10

⁴ Update on Probe Monitoring: tariff differentials and consumer switching (79/10), 1 July 2010

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=273&refer=Markets/RetMkts/ensupro>

We remind suppliers that failure to adhere to the transparency requirements, will lead Ofgem to treat initial and fixed-price offers as enduring offers and so will require an objective justification for any differential between this and comparable tariffs.

We also take this opportunity to remind suppliers of relevant obligations under licence conditions and relevant provisions of consumer protection law in respect of transparency with domestic customers. By way of non-exhaustive examples, we would highlight the following requirements:

SLC 23

SLC 23.1 provides that, before a Domestic Supply Contract is entered into, the supplier is required to take all reasonable steps to communicate the Principal Terms to the customer. Given that the definition of Principal Terms covers both the duration of the contract and the applicable charges, Ofgem takes the view that the effect of SLC 23.1 is that suppliers are required by licence to provide details on both the length of time applicable to tariffs with a pre-specified duration and the level of these charges throughout the relevant time period.

SLC 25

Ofgem take the view that the effect of the new objective in SLC 25 (the "Marketing licence condition") means that suppliers will need to maintain a high degree of clarity in the design of all of their tariff offerings and in the transparency of their marketing activities with domestic customers. This objective provides that:

*"all information which the licensee or any Representative provides (whether in Writing, by electronic display or orally) to Domestic Customers in the course of the licensee's Marketing Activities and/or its Telesales Activities is complete and accurate, is capable of being easily understood by Domestic Customers, does not relate to products which are inappropriate to the Domestic Customer to whom it is directed, does not mislead the Domestic Customer to whom it is directed and is otherwise fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);"*⁵

Unfair Terms in Consumer Contracts Regulations 1999

In respect of contracts entered into with consumers (e.g. domestic customers), regulation 7(1) requires a trader to "...ensure that any written term of a contract is expressed in plain, intelligible language" and therefore a supplier will need to ensure that "...not only that the actual wording of individual clauses ...be comprehensible to consumers, but that the typical consumer can understand how the term affects the rights and obligations that he and the seller or supplier have under the contract..."⁶

We will be closely monitoring suppliers' compliance with relevant licence conditions and provisions of consumer protection law and would therefore highlight that evidence of any suspected breaches is likely to result in Ofgem commencing investigations which could ultimately lead to enforcement action.

⁵ Electricity Act 1989, Standard conditions of electricity licence, condition 25

⁶ per Smith J in *OFT v. Abbey National plc & Others* [2008] EWHC 875.

Standards of Conduct

Finally, our Standards of Conduct require suppliers to take all reasonable steps to ensure that their customers understand the products that they are being sold. In particular, Standards 1 and 4 relate specifically to the design and marketing of suppliers' tariff offerings:

"You must not sell a customer a product or service that he or she does not fully understand or that is inappropriate for their needs and circumstances

You must not offer products that are unnecessarily complex or confusing;"⁷

We remind suppliers to consider carefully the extent to which the products they offer may be unnecessarily complex or confusing and therefore hinder, rather than help, consumers from making well-informed choices. We will have regard to these standards when considering our priorities for investigating any potential breaches of relevant licence conditions or relevant provisions of consumer protection law.

In light of this letter, without prejudice to any further action which may be taken, Ofgem expects suppliers to review their compliance with all relevant transparency requirements (including any requirements which are not specifically mentioned in this letter) and to take immediate steps to address any potential areas of concern.

Yours sincerely,

Andrew Wright
Senior Partner - Markets

⁷ Ofgem open letter on "Standards of conduct for suppliers in the retail market", 19 October 2009