

Retail Market Review Consultation Response from uSwitch for Business

For the attention of: Stefan Bojanowski
Retail Markets, 9 Millbank London SW1P 3GE

Question 19: Do stakeholders consider that Ofgem should strengthen licence conditions to prevent unfair contracting practices in the non-domestic sector?

We agree with Ofgem's intention to be more vigorous in ensuring supplier compliance with SLC7A. Furthermore we believe that the artificial categorisation of a customer as micro-business is a cause of Suppliers' failure to comply and as such we believe that this categorization requirement should be removed so that all non-domestic customers enjoy the benefit of SLC7A. This action will ensure genuine transparency on contract end dates and renewal options for all businesses large or small.

We also believe that the simplest and most effective way to provide the customer with the ability to make a key commercial decision in a timely manner is to mandate the printing of the contract end date on every non-domestic invoice.

To clarify, we believe 'Rollover' contracts should be banned from the non-domestic market, a customer should be free to inform the supplier of their intention to not accept a renewal contract at any point up to the end of the contract. If a customer fails to make alternative contractual arrangements and remains 'out of contract' with that supplier they should be charged an appropriate market based rate with full disclosure from the supplier. By providing the customer with total transparency of their contract conditions, end dates and contracting options the industry is providing the customer with the best protection to avoid such out of contract rates or similarly punitive rollover rates.

Question 20: In particular, would stakeholders welcome additional licence conditions surrounding the objections procedure?

Based on our experience more than half of all transfers require some form of manual intervention.

In our experience whether willful or otherwise there is suggestion of the misuse of the objection procedure by suppliers, this covers both obstructing the transfer process through unjustified objection, unnecessarily complicating the transfer process and proving a disincentive to future switching and providing the supplier with the opportunity to attempt to sell a contract to the outgoing customer despite them making their intention to transfer clear and being in a binding contract with their new supplier.

Ofgem should take strong action in this area, both in terms of significantly strengthening the requirement on suppliers to prove the validity of an objection, and to more vigorously enforce the obligation on suppliers to directly inform the affected customer of the reason for objection and the remedy available to them – including transparency of contract end date – within a reasonable timescale.

Additional licence conditions defining both the mandating of evidence in an objection dispute (including full supplier call recordings) and clear remedial action should be placed upon suppliers. An offence committed by a supplier in this area should result in clear auditable action as there cannot be a greater purpose for Ofgem than to ensure an unhindered competitive market.

Ofgem should also ensure that individual customers have a source of escalation from the energy ombudsman for where they believe they have been disadvantaged by supplier misuse of the objections procedure and against which Ofgem can launch an investigation of breach.

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Question 21: Would stakeholders welcome the extension of some elements of the Standards of Conduct into non-domestic supply licence conditions?

Whilst we welcome the move to publish factsheets for non-domestic customers we believe this is likely to fail in its ability to attract sufficient attention to change behaviours in the non-domestic market. The only solution to deliver a truly competitive supply market is to ensure full information provision from source – the supplier – to the customer.

If the above recommended courses of action are taken we do not believe that elements of the Standards of Conduct from the domestic supply licence need to be extended to the non-domestic supply licence

Question 22: Do stakeholders agree with our position, at this stage, not to extend our proposals on tariff simplification into the non-domestic sector?

The non-domestic market largely benefits from the varied tariff structures available, the requirements of non-domestic customers are more varied than that we see in the domestic market and it in our experience the range of tariffs available are neither seen as a barrier to switching or an unnecessary complication. Furthermore it would appear a perverse disincentive to move to tariff simplification against a backdrop of smart metering and the potential for bespoke tariffs and greater demand side management. The industry should keep a watching brief on this area but we agree that tariff simplification is an unnecessary undertaking at this point.

Question 23: Do stakeholders agree that Ofgem needs to look further at the role of third party intermediaries (TPIs) in the non-domestic market?

We believe that TPIs largely provide a positive contribution to the competitive market however we are aware of some organisations that are operating in a less than scrupulous way to the detriment of both customers and other TPIs

We welcome the work of Consumer Focus, Cornwall Consulting and Ofgem in bringing the issue of unscrupulous TPIs to the attention of the wider market however we believe that the market should be self-regulating.

We do not recommend any specific actions by Ofgem or any other body in this market whilst self-regulation is being established.

We are confident that a fit for purpose Code will develop that will regulate membership through strong criteria based on expected standards of behavior. This should be open to all industry players whether suppliers, agents or TPIs. We are minded that any move to specifically regulate the TPI market must be extended to cover all sales channels within the non-domestic market and must encourage genuine competition as well as remove the unscrupulous players from the market.

uSwitch for Business operate under a self enforced customer charter whereby commitments including full call recording and commission disclosure on customer request are made to our customers. We see no justifiable reason why the wider market should not operate under such a charter regardless of sales channel.

To reiterate in considering Ofgem's potential actions around TPI's, including self regulation, we strongly urge any review is extended to cover all sales channels in the non-domestic market to ensure that a competitive market place remains and that non-domestic customers are given confidence that they can use the market to their advantage.

Ofgem should fully consider the options available to deal with the over arching problem that

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may exist and not what some would consider to be symptom. We would expect that the outcome of such a review would deliver rules of engagement for all sales channels wishing to engage with non-domestic customers for the provision of energy. This should apply to TPI's and energy suppliers alike.

Taking an example from the domestic market. The online comparison services, which add great value to the competitive energy market, must be part of the Confidence Code in order to work with energy suppliers and in most cases this is a contractual stipulation. However the suppliers themselves do not work to any set standards or guidelines (except for door to door) and by their very nature do not give customers the best advice across a competitive market

Any rules of engagement should be developed to support the customer and not as a method to manipulate TPI's by energy suppliers. We strongly envisage that the aforementioned self-regulation Code will cover all sales channels and all market participants.

With regards unscrupulous activity, whilst we recognize recourse is limited, we strongly feel it is incumbent on us all as industry participants to make a stand. We therefore do expect Ofgem and any other body when reporting proven TPI misdemeanours to identify the culprit and activity to ensure all suppliers, TPIs and the public are aware. We should not allow these people the privilege of hiding behind our timidity and as an industry we should be concerned that the populist media is taking a greater stand than we ourselves are. Recognising the limitations of the actions available to the industry at the very least we should collectively hold a supplier's conduct in question where they continue to hold an active commercial relationship with a proven unscrupulous and unreconstructed TPI. There is no greater arbiter of behavior than the industry itself and we do not need regulation to tell us that if we continue to tolerate and excuse misbehavior such activities will be tacitly encouraged. It is imperative that we all clearly identify and distance ourselves from these behaviours.

Question 24: Do stakeholders have any comments on the costs and risks of any of our suggested policies under Proposal 4?

It is essential that any action taken does not further diminish the competitive nature of the market, therefore the costs and bureaucracy resulting from any of these policies should be kept to a minimum with the ultimate goal of a transparent, fair and truly competitive market being kept as the clear deliverable behind any action