9 February 2012

Response to **The Retail Market Review: Non-domestic Proposals** (published 23 November 2011) by Business Energy Solutions Ltd (BES Commercial Gas) and BES Commercial Electricity Ltd (BES Commercial Electricity)

1. Introduction

Question 1: Are there other key issues that we should be looking into in the non-domestic sector

Whilst we believe that the areas covered in the document are the main current priority areas in the non-domestic utilities supply sector, as a small supplier we also believe more generally that the areas of **SLC 7A**, **Customer Transfer Blocking (Objections)** and **Third Party Intermediaries** should also be considered by Ofgem as part of the wider issue of the ability of small suppliers to compete fairly in a market dominated by the "Big 6" suppliers.

We believe that non-domestic utilities supply sector stands alone in containing such wide variances (mainly in size) between the active market players (suppliers) and this raises unique issues to the industry. We also believe that the non-domestic market differs from the domestic market in so far as (a) there is greater customer antipathy towards their utilities supply arrangements in the non-domestic market (especially from current micro-businesses) and (b) Third Party Intermediaries are far more active in the non-domestic market.

Ofgem need to consider ways to break the current stranglehold the "Big 6" suppliers have over the non-domestic supply market, a stranglehold which stifles both the emergence into the market of new suppliers and the growth of existing small suppliers which in turn limits customer choice in the market place. The "cleaning up" of both the TPI market and the current abuse of the Objections process is a good start in our opinion.

Question 2: What would stakeholders like to see on our website to help business customers and support a competitive supply market?

Whilst we don't believe changes to the current Ofgem website are of any great priority in the wider scheme of things, we believe the current website is somewhat cumbersome, difficult to navigate around and is mainly relevant to industry participants rather than consumers.

2. Standard Licence Condition 7A: protection for smaller businesses

Question 3: Do stakeholders agree with our proposals to extend the scope of SLC 7A to include a wider small business definition, and do you agree with our proposed definition?

Our main criticism of SLC 7A is that the criteria applied in assessing a customer's status (as either a micro or non-micro business) are cumbersome, not appropriate to normal sales activity (and in many cases an unwelcome intrusion in the mind of the customer who does not always react positively when asked by a broker/sales agent what their business turnover/balance sheet value is – "what does that have to do with my electricity supply?").

We believe that there should be no differentiation in the treatment of any business customers by suppliers (see our response to Question 5 below) but if the differentiation of micro and non-micro business customers is to continue, we believe the defining criteria should relate purely to energy consumption and not to non-energy related criteria.

Many individuals acting on behalf of a particular business in arranging energy supply contracts are either not necessarily party to that business's financial criteria (balance sheet value/ turnover) or they simply don't know it. There is also confusion regarding employee numbers on many occasions (eg – do part time staff count as "half a person", do casual staff count etc?). Brokers/sales agents, who currently are being asked to identify whether a business is a micro business or not, are in no way best placed to do so (nor are they particularly interested as they are not ultimately personally culpable in any way). This inevitably therefore leads to the "wrong answer" being arrived at on many occasions.

Another possible (and very straightforward) measurement could be whether a customer has responsibility for a single site or for more than one supply site. For example, all single site consumers could be considered as micro-businesses whilst all multi site consumers (whose total gas and/or electricity consumption also exceeds a specific threshold) could be considered as non-micro businesses.

We are aware that at least one 'Big 6' supplier works on an "opt out" basis (probably unofficially) in assessing the status of a business customer (ie – they treat the business customer as non-micro unless that customer can satisfy the supplier that they are a micro-business customer). We believe all customers should be regarded as micro-business customers unless it can be **clearly** shown that a specific business clearly does not meet the criteria applicable to a micro-business customer.

Our company took the decision from the launch of SLC 7A to treat all business customers as micro-business customers. This was in part because of the difficulty we foresaw at the point of sale in a broker/agent acting on our behalf clearly being able to identify the status of a new customer.

There are clear risks to the supplier if they are relying on a Third Party Intermediary to assess the status of a business customer as either a micro or non-micro business at the point of sale.

Question 4: Do stakeholders foresee significant costs or complications if we were to introduce our proposals? If so, please provide details and cost estimates.

We are not aware on any additional costs that would be incurred by suppliers if Ofgem's proposals were introduced. The only suppliers who would suffer "complications" in this regard would be those who are not already robustly assessing the status of a business customer as either a micro or non-micro business customer.

Question 5: Do stakeholders agree with our estimates on the number of extra businesses covered by our proposed definition?

We are unable to comment specifically on Ofgem's estimates but we would support a move to treat all business customers as micro business customers (by removing all reference to the term 'micro business" and subjecting every business consumer to all aspects of SLC 7A). Failing that, we would support any proposal to broaden the criteria to include a greater number of businesses in the micro business category.

Question 6: Do stakeholders agree that we should review termination procedures and our current position that allows automatic rollovers?

In principle we broadly support the abolition of automatic rollovers but we do agree that if this were to happen, because of the apathy prevalent amongst many smaller business consumers, many would find themselves paying expensive out of contract rates if they failed to take appropriate action and suppliers would have a commercial reason (namely a much higher supply charge) not to pro-actively resolve such situations. On balance therefore, we feel that the continuation of a maximum 12 month automatic rollover is the best way forward.

Question 7: Are there other clauses that stakeholders believe we should be reviewing, in light of our expanded definition proposal?

We are concerned that, per para 2.5, Ofgem consider it is "positive" that the majority of suppliers appear to be working "within the spirit of SLC 7A". The requirements of SLC 7A are laid out in black and white and include a number of licence conditions and compliance therefore is mandatory not "best endeavour". A supplier working "within the spirit" of 7A is nowhere near enough in our opinion if they are also breaching clearly laid down licence conditions.

3. **Customer transfer blocking – 'Objections'**

Question 8: Do stakeholders agree with the conclusions we have drawn in this chapter?

Yes (see our more detailed responses below).

Question 9: Do stakeholders agree that we do not need to make changes to SLC 14 governing objections to supply transfer for non-domestic suppliers?

Yes. In our opinion SLC 14 is perfectly adequate and gives Ofgem sufficient powers to deal with the current abuse by many suppliers of the Objections process. This clear abuse (see our response to Question 11 below) should be dealt with far more readily by enforcement of both SLC 14 and also by Part IV Clauses 15 & 16 of the Master Registration Agreement (MRA).

Question 10: Do stakeholders believe that we should publish our data relating to supplier objections on a regular basis?

We do not wholeheartedly support the requirement for suppliers to provide objections related data to Ofgem as we believe this places an additional unnecessary burden on those suppliers who do not abuse the objections process (and that burden is always felt more keenly by smaller suppliers). That said, we accept that the provision of such data to Ofgem (assuming the data submitted was accurately and honestly provided and was subject to audit where required by Ofgem and not just taken at face value) would clearly highlight those suppliers who use the objection process for their own commercial benefit. We feel it is likely that if all suppliers objected to incoming applications only as specified in section 3.2 of the document (namely existing contractual agreements or Erroneous Transfers), then objection rates would be fairly consistent across all suppliers. Any variances therefore beyond the "norm" would be a clear indication of process abuse.

We are confident however that there is currently a huge variance in objection rates amongst suppliers and in our experience the main perpetrators of abuse in this area are Big 6 suppliers who appear to have no fear of potential governance or enforcement action.

Our company has found itself increasingly exposed having entered into new supply contracts in good faith (in terms of forward purchased energy to satisfy the forecast demand of newly acquired customers where live supply never actually commences) only to subsequently find our applications to incumbent suppliers objected to and in many cases, the objection quickly followed by notification that the customer has entered into a new contract with their existing supplier (after our contract was completed).

Question 11: Are there other issues with the objections procedure, other than the obligations of the licence condition, which stakeholders consider need to be addressed?

Selective acceptance by suppliers of Letters Of Authority (LOA's) by suppliers (mainly Big 6) as and when it suits them is a clear current issue. Such suppliers are in many cases initially happy to accept a customer LOA from a TPI to confirm information such as contract end dates and to accept termination notices but they then often then subsequently question the validity of an LOA as a reason to delay a site transfer to a new supplier resulting in an objection being raised whilst they "clarify the validity" of the LOA with their customer. Unsurprisingly, during these "clarification" discussions with their customers, in many cases new terms are offered to try to retain the customer and again in many cases, a new supply contract is then agreed leaving the new supplier's contract meaningless and practically worthless.

We have no doubt that suppliers (mainly larger suppliers) are currently using the objections process as a site retention tool and we have clear and substantial evidence of "blanket objection" activity without a permissible reason (as clearly defined in SLC 14) to "buy" time for suppliers to attempt to retain a site they have become aware is about to move to a new supplier.

We also have clear evidence of the existence of lower rates being offered by some suppliers to existing customers than those initially made available via the renewal terms letter. In simple terms, if the renewal terms offered to a customer by a supplier are not attractive to the customer and they then choose to enter into contract with a new supplier offering more attractive rates, the incumbent supplier

then often offers improved rates to that customer (often during the discussion to "verify" the LOA they have previously accepted and acted upon) in a "last ditch" attempt to retain the customer.

The customer is then placed in an invidious position of having either to reject more attractive rates from their existing supplier to comply with the contractual obligations they have already entered into with a new supplier or to break that contract by not completing the transfer and then risking termination fees often applied by the new supplier (who themselves have by then often suffered losses after having forward purchased energy to supply the forecast demand of the new customer).

We regard this particular practice and general area as one of the main challenges to our business currently and we urge Ofgem to exert far greater control on the activities of all suppliers in the area of objections.

Question 12: Do suppliers who have voluntarily sent data have views on whether the data we currently ask for on a monthly basis needs to change and why?

N/A. We do not currently send such data to Ofgem.

4. **Third party intermediaries**

Question 13: Do stakeholders agree that the introduction of a new supply licence condition focussed on sales activities is a suitable method to prevent harmful sales and marketing activities in the non-domestic sector?

We do not agree that a new supply licence condition is appropriate to "police" this key area of the non-domestic supply market. Whilst it is apparent that there are current activities in the TPI sector that are not in the best interests of either the customer specifically or the industry generally, much of this adverse activity is not within the direct control of an individual supplier and on that basis, in many it would not be possible to pass the responsibility for adverse TPI activity to just one supplier.

The phrase "TPI" covers a wide range – from large national aggregator type operations that process many thousands of new contract sales per week for many different suppliers to small "one-man band" operations (often working from home) who process a very small number of contract sales, often on behalf of just one supplier or under the "umbrella" of a larger aggregator.

Many TPI's, at the time they first have customer contact, are not at that stage acting on behalf of a specific supplier as they are assessing the needs of that particular customer and ultimately making recommendations to that customer (supplier/product) based on their specific needs/requirements. In that scenario, it is likely that a number of different suppliers/products have been discussed with the customer and if mis-selling occurs at any stage during those "exploratory" customer discussions, how can this be "assigned" to an individual supplier?

The role of aggregators in the market place is also, we believe, misunderstood and greatly underestimated. Many suppliers have formal relationships with large aggregators but not with the individual brokerage businesses that are physically completing contract sales. Many smaller TPI's are

unable to form direct relationships with suppliers (particularly larger suppliers) as their expected relatively small number of contract sales is of little interest to the supplier. Instead, they form "secondary" relationships with suppliers via aggregators (who pass on to them their formal supplier relationships by "proxy") which gives them the ability to sell supplier products that wouldn't be available to them individually (by "piggy-backing" the aggregator's own supplier arrangements).

If mis-selling occurs at the point of sale in that scenario, the supplier often has no direct relationship with the TPI making the sale and to pass responsibility to that supplier for any adverse action taken by a TPI with whom they have no formal relationship (and hence no direct control) would be inappropriate in many cases.

All of that said, we do believe that ultimately the "policing" of the TPI market should be led by suppliers but via formally accredited Codes of Practice rather than via additional licence conditions. In very simple terms, if a TPI is mis-selling, no supplier should ultimately accept contract sales from that TPI as it is likely the TPI will have breached an accredited Code of Practice.

More generally, we also believe that there non-industry agencies (eg Trading Standards) already in place to regulate non-Ofgem licensed parties operating in the utilities sector (including TPI's) and many current issues are as a result of inaction by such agencies and/or a lack of suitable resource. TPI's operate in many sectors other than utilities (eg – finance, telecoms etc) and it is the responsibility of those appointed agencies to monitor, investigate and where necessary take enforcement action against all TPI's where miss-selling is suspected (in all sectors not just utilities).

<u>TPI full call recording</u>

Per section 4.7 (c) of the document , whilst we understand fully the sentiment behind Ofgem's proposal that <u>all</u> telephone conversations between a TPI and a customer be recorded and retained, we feel that such an obligation on both suppliers and TPI's to ensure this takes place is completely and entirely unworkable.

Currently our company requires TPI's with whom we have a formal relationship to record and to provide to us the actual verbal contract (which is based in all cases on an approved "script" which complies with fully with SLC 7A). We then retain such recordings for at least the length of the relevant supply contracts.

We accept Ofgem's point that many mis-selling allegations relate to discussions between the customer and TPI before the contract is finalised but having spoken at length to TPI's with whom we maintain a long standing relationship, they confirm that often "pre-contract" discussions with an individual customer could run into several telephone calls over many months. Indeed some larger TPI's engage in many thousands of customer calls each week and even if they invested sufficiently in the technology required to accommodate the storage of such a huge volume of calls, in the event of a mis-selling complaint, the end supplier could potentially have to "trawl" through a huge number of calls in investigating any such allegations (needle in a haystack?).

Provided an approved sales script is followed fully and without omission or deviation, all key terms of a utilities supply contract should be included without exception in the final call recording. Our scripts require a TPI to clearly request confirmation from every customer that they fully understand and accept the terms detailed and the customer at that stage has the ability to raise any concerns or objections to those terms. We see no reason why a customer, having confirmed their agreement to clearly laid out contractual terms, would need subsequently to refer to any pre-contractual discussions with a TPI as a basis for making a mis-selling allegation.

Question 14: Do stakeholders agree that this licence condition is necessary if Ofgem decides not to proceed with its Standards of Conduct proposals?

No.

Question 15: Do stakeholders consider the introduction of an accreditation scheme for TPI Codes of Practice will reduce harmful TPI activities across the whole market?

Our company was one of the first suppliers to create and issue a TPI Code of Practice (COP) to its network of TPI's and to make compliance with it a binding part of our relationship with every TPI that we have dealings with. We strongly believe that all suppliers should follow our lead in this regard in all aspects (including formal TPI acceptance and full compliance). We also strongly believe that Ofgem should not only accredit individual COP's but that they should make available an "industry standard" COP that all suppliers should accept and adhere to.

We do not consider under any circumstances that any private "trade association" or similar body (whose actions would undoubtedly be driven mainly by self interest) should be involved in the creation of COP's or in enforcement of them. This issue is of such importance in terms of greater regulation of the TPI market that only Ofgem (in conjunction with its licensed suppliers) should have direct input into the key area of compliance with industry standard (or at least Ofgem accredited) Codes of Practice.

Question 16: What do stakeholders consider to be key criteria for an accreditation scheme for TPI Codes of Practice?

Per Question 15 above, we believe that an industry standard COP with mandatory use by all suppliers is the way forward here. If however Ofgem ultimately decides to accredit individual supplier COP's as an alternative to our preferred way forward, we believe that clearly agreed key components should have to be included in individual supplier COP's to gain formal Ofgem accreditation. We believe that our own COP (which we have made available to Ofgem) contains all the required key criteria.

It should then be mandatory for all suppliers to formally issue an accredited COP to all TPI's with whom it has a direct relationship (and also that aggregators working on the suppliers behalf issues an accredited COP to all brokers they deal with who do not have a direct supplier relationship). All recipients of an accredited COP (aggregators, direct and indirect TPI's) should then be required to formally accept an accredited COP in writing and to commit to full compliance.

Any subsequent TPI activity that breaches an accredited COP should be "punishable" by direct action by the affected supplier either by a formal warning system (to include such remedies as staff retraining, removal of "rogue agents" or in extreme or regular breaches by a termination of a formal relationship with that TPI.

Question 17: Do stakeholders believe it is necessary for TPI's to disclose their actual fee, or would making clear the fact that the customer is paying a fee for their services be sufficient?

We do not believe that TPI's should need to disclose their actual fee to their client as we feel it is not easy for them to do so at the point of sale or on completion of the supply contract completed. Many initially agreed commissions or fees between the supplier and the TPI are subject to a number of future events (including whether the supply actually commences – see objections in Section 4 – and that the advised consumption level of a particular site at the outset is subsequently achieved). Also, many suppliers make payments on a fee scale linked to the number of contracts sold on their behalf by an individual TPI and the actual amount for an individual sale isn't always finalised until future sales volumes are known.

We believe that the customer simply needs to be made aware that the TPI will be receiving a payment from the chosen supplier and that the fee will not be passed onto the customer (unless it is passed on of course) but is instead incorporated within the contractual terms (rate etc) offered.

5. Standards of conduct

Question 18: Do you consider the revised SOC's will help to achieve our objectives?

We believe that the "lack of trust" between customer and supplier referred to in the document (section 5.1) emanates mainly from the ever increasing retail cost of gas and electricity (which is, in turn, driven by ever increasing wholesale and other industry costs). This "lack of trust" appears to be with the supply industry generally rather than with individual suppliers and the banking sector has, we believe, also experienced similar general sector customer mistrust.

We also accept however that poor levels of customer service available from suppliers generally (particularly difficulty in actually being able to speak to a supplier representative about a specific concern) impact on the public perception of the supply industry. In our opinion however, the level of service provided by a supplier is directly related to the size of the supplier and in simple terms, the biggest issues in this area rest with the "Big 6" suppliers.

We receive regular positive feedback from many of our customers that they prefer to remain with us (or another smaller supplier) even if our rates don't match those available from a larger supplier because of the ease in communicating with us. We accept however that it is generally much easier for a small company with only a few thousand customers to offer a higher level of customer service than for a company with several million customers to do so.

As a company, we have no issue whatsoever with the proposed new SOC's as we firmly believe we are currently fully compliant with them.

Question 19: Do you agree that SOC's should be in a licence condition and enforceable?

We do not believe the SOC's should be in a licence condition for two main reasons. Firstly, the wording is very "general" rather than specific and any breach of the SOC's (and therefore potentially of a licence condition) would in many cases be very subjective. For example, how could it be easily proved that a licensee had not carried out its actions "in a fair, honest, transparent, appropriate and professional manner"?

Secondly, we believe that many of the current industry failings in the area of customer service fall squarely at the feet of the "Big 6" suppliers". We equally believe that the service offered by our company and other small suppliers is of a much greater standard. On that basis, it would seem more appropriate for Ofgem to address individual supplier failings in these areas rather than to adopt the "broad brush" approach of additional licence conditions which would impact on all suppliers.

Question 20: Do you agree the revised SOC's should apply to all interactions between suppliers and consumers?

Yes.

Question 21: Do you have information regarding potential costs this may impose on suppliers?

No.

Question 22: Do you think these proposals should apply to the whole non-domestic market, or only a sub-set of it, eg small businesses?

We see no reason why the proposals should not apply to both the non-domestic and domestic markets in their entirety.

Question 23: Given your answers to the questions above, do we still need the licence changes proposed elsewhere in this document?

We do not consider that any changes to existing licence conditions are needed in relation to either the proposed new SOC's, SLC 14 (re objections) or to greater control of the TPI market. The only licence changes we feel are appropriate relate to the broadening of SLC 7A to bring a greater number of business consumers into the category of micro-business.

For and on behalf of Business Energy Solutions Ltd/BES Commercial Electricity Ltd