

Louise van Rensburg
Retail Markets
Ofgem
9 Millbank
London
SW1P 3GE

BY E-MAIL

**COMMERCIALY
CONFIDENTIAL**

21st February 2012

Dear Louise

The Retail Market Review: Non-domestic Proposals

I am writing on behalf of Contract Natural Gas Limited (CNG), who is retaining me to deal with this matter. Thank you for enabling us to make this response at this time. The response includes confidential information and we would ask that this is not placed on public record.

CNG is an independent gas-only supplier to the industrial and commercial market. The vast majority of our customer base is small and medium sized enterprises. Like other independent suppliers, we did not start with a significant incumbent customer base have built the business on high quality service and competitive pricing.

General Comment – A Lack of Differentiation

We do not doubt the evidence that is presented by others of poor service and aggressive pricing. However, we are concerned that all suppliers appear to be tarred with the same reputation and that there is little effort made to illustrate that there is a spectrum of performance or that a proportion of customers are satisfied with their supplier.

The proposals paper hints that there are differences in performance, for example in the section on objections, but on the whole reinforces any prejudice that customers may have that all suppliers consistently perform poorly. This works against the efforts of suppliers who are trying to provide better service, is damaging to competition and may in part explain why such a large proportion of the SME sector is still supplied by the Big 6, when there are many other suppliers to choose from.

We would therefore suggest that, regardless of whether some or all of the proposals package is implemented, Ofgem should be seeking, in line with its principal objective to promote effective competition, to illustrate, on a regular and persistent basis, whether there are differences in performance and service between suppliers. We acknowledge that this will mean that there will need to be greater monitoring, such as the objections information proposed in the document, but believe that this exposure will help to improve customers understanding of the options open to them and to add

performance quality to the parameters that customers and intermediaries can consider when choosing a supplier.

We now turn to the specific proposals.

Protections for smaller businesses

The majority of CNG's customers fall into the micro-business category and we took the decision at the implementation of SLC7A that we would employ the same practices for all of our customers. We therefore have no objection to extending the scope of the condition.

However, we are very concerned at the proposal mooted to remove entirely the ability to roll-over contracts. We believe that this will make a significant proportion of customers worse off. We have reviewed our records for 2011 to look at the behaviour of customers whose contracts reached the end of their contract period:

- 38% of customers accepted the offer presented to them;
- 14% of customers declined the offer made; and
- 48% of customers did not provide explicit instructions and the contract was rolled over for a further 12 months.

We have also reviewed what happened to those customers who left us during the year after having been on an 'out of contract' rate. On average, these customers were billed against the out of contract rate for 111 days. 50% of sites were billed at this rate for more than 91 days and 25% for more than 173 days.

We would suggest from this that if contract rollovers were to be prohibited, many more customers would end up spending extended periods on out of contract rates, incurring greater costs than necessary. This may also encourage customers who had chosen to engage with the market to stay with the incumbent supplier, who can offer to reduce the out of contract rate in return for the customer signing a new contract (which could be for more than 12 months) – an offer that no other supplier can match. For these reasons we would suggest that the current package of arrangements strikes the right balance and should be retained.

Objections

We agree with the conclusion that there is no need to make changes to standard licence condition 14 governing objections to supply transfers and welcome the illustrations of good practice in the open letter. We would also confirm from our experience that 'win-back' activities and practices surrounding the management of changes of tenancy can frustrate the change of supplier process. We support Ofgem investigating these issues further.

We note that there will be further consultation on the format of the data you will require under the Third Package and note the potential publication of any data gathered. While we acknowledge that the incentives are usually on the incumbent supplier to object, objections, particularly those related to contract terminations, may be as much a function of poor processes at the acquiring supplier or the customer's intermediary as of the incumbent supplier's.

If there is to be any data publication we would suggest that, in the first instance, any such publication is anonymised. In this way the range of performance can be

observed and suppliers given an opportunity to improve, while those who are better performers may choose to publicise their better performance voluntarily.

Third Party Intermediaries

A major issue in seeking any mode of regulation for third party intermediaries (TPIs) is the variety of approaches adopted by TPIs. We support efforts to require TPIs to declare whether they represent a subset of suppliers or investigate the whole market and consider that seeking powers to enforce the Business Protection from Misleading Marketing Regulations is the preferable solution. This allows Ofgem to intervene with TPIs directly, rather than having to employ a surrogate route via a supplier.

Rather than a specific marketing condition, we favour the application of Standards of Conduct, albeit noting our alternative approach to their implementation that we set out below.

Standards of Conduct

As a supplier that has endeavoured to meet or exceed the requirements of the existing standards, we are disappointed that the overall perception is that a tightening of regulation is necessary for all suppliers.

The customers that we supply are already in the 'active' part of the market, as their actions show that they, or their intermediaries, have been willing to switch suppliers. In effect, for all the customers we gain we are automatically on notice that these customers could leave us if our performance is unsatisfactory. This provides a major incentive to provide high quality service and is competition at work.

If the Standards of Conduct are to be included formally in the licence conditions, we would suggest that provisions are included which would enable Ofgem to switch the Standards on as required for individual suppliers. In this way, the Standards would remain an integral part of the regulatory system and most suppliers would self-regulate their activities. However, if a supplier's performance was not good enough, then among the sanctions that Ofgem could apply would be switching on the condition and the greater level of intrusion that is likely to result. A further option with this approach is that the Standards could be formally applied to specific activities that are the subject of poor performance, rather than to the company's activities as a whole, so improving the proportionality of any outcome.

A second concern about the standards arises from the fact that they are high-level principles. As such they are more open to interpretation and increase the potential for a supplier to be unwittingly in breach, particularly as 'Representative' is being defined to include third party intermediaries with whom there may be little contact.

We would therefore comment that before agreeing to the formal inclusion of the Standards in the licence conditions, we would need to see the guidance that accompanies the Standards.

We would be happy to discuss these matters further with you.

Yours sincerely

Arthur Probert

c.c. Jacqui Hall, Managing Director, Contract Natural Gas Limited