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Louise van Rensburg

17/02/2012

Dear Louise,

Ref: The Retail Market Review: Non-domestic Proposals

Corona Energy (CE) welcomes the opportunity to comment on Ofgem's proposals, developed from its work on the Retail Market Review of the Non-domestic sector. As an independent supplier of gas to the Non Domestic market, including the largest supplier to the Public Sector in the UK, changes the market rules have a significant impact on both our business and our service to our customers.

CE would like to thank Ofgem for the open and active engagement it has had during the development of these proposals with all key stakeholders and the effort to which it has gone to ensure all views are considered.

Background

In February 2008 Ofgem launched the Energy Supply Probe which investigated the markets in electricity and gas supply for domestic households and small businesses. It published its initial findings in October 2008 where it recognised deficiencies in competition in the domestic markets and the electricity markets. The I&C gas market was noted for both the liquidity of the wholesale market and the strong competition in the supply market.

Ofgem noted that it felt some improvements could be made to ensure that all business customers, both large and small, could easily participate in the competitive market. These included ensuring that the use of rollover clauses in contracts with the combination of the objections regime did not unfairly restrict competition.

CE supported the introduction of Standard Licence Condition 7A which obliged all suppliers to follow the industry best practice of informing customers prior to a contract renewal, ensuring that they had the opportunity to switch suppliers, renegotiate or remain under the existing contract for another year.

While this Licence Condition only mandated that suppliers do this for micro-business customers, CE supported the option for the supplier to treat all small business customers as micro-business customers and therefore operate under this best practice.

Ofgem also commented that it believed that Third Party Intermediaries such as agents and brokers required some form of regulation. CE supported a dialogue over this issue and remains of the view

an active, trusted TPI market is key for the development of further levels of competition in both the domestic and I&C markets.

Ofgem RMR Proposals

CE broadly welcomes the intent and nature of the proposals put forward by Ofgem in the Retail Market Review: Non-domestic proposals document. Excluding the Standards of Conduct proposals, we believe all of the proposals are broadly implementable and will deliver benefits to the consumer.

The key to ensuring that these proposals provide real benefit is to ensure that the cost and nature of the implementation does not negate the potential benefits. CE is happy to work with Ofgem to develop the detail of these proposals to ensure that the means of implementation and any process improvements are effective and efficient.

Current Levels of Regulatory Burden

In any regulated industry it is clearly important to ensure that there exists a balance between the standardisation necessary to allow the market to operate effectively and the freedom for suppliers and service providers to compete and innovate. CE is concerned that the balance in the energy industry is changing to enforce greater and greater levels of standardisation. If this continues CE believes this will result in the destruction of effective competition.

CE recognises the need for Ofgem to respond to concerns raised and acknowledged by the large vertically integrated domestic utilities. It notes that last year Ofgem undertook 14 separate enforcement actions and levied significant fines for market abuse in the domestic markets. It also notes the work Ofgem has done to implement minimum standards of conduct in these markets to ensure that the dominant market players are unable to abuse their positions without further enforcement action.

There is clearly a huge difference between the customers of a small supplier that are highly active and engaged in the competitive market and are often advised by a broker or agent and those of a large incumbent monopolistic or oligopolistic supplier.

CE welcomes the effective regulation of large monopolies and oligopolies by Ofgem but notes it would appear unlikely that enforcement action will stimulate greater levels of competition in the domestic markets. Rather, where Ofgem applies regulation uniformly across all suppliers, large and small, competition can be deteriorated. Not only is the marginal costs of compliance usually higher for smaller suppliers than for larger suppliers but the impact of the distraction is also often greater.

It is therefore important that Ofgem recognise and understand the consequences of proposals and work to reduce the impact of these proposals on small suppliers and new entrants to counterbalance the impacts on competition.

Where possible smaller suppliers and new entrants should be exempt from new regulation or have a reduced exposure. The form of *Proportionate Regulation* could vary from proposal to proposal but CE would be happy to discuss with Ofgem how this could be achieved while maintaining customer benefit from the RMR proposals.

Our specific responses to your questions are set out in the attached appendix. If you have any questions regarding this response please contact Richard Street on 07920 803271.

Yours Sincerely

Richard Street

Regulation Affairs Manager

Appendix 1 – Ofgem Questions

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

Ofgem should urgently review the regulatory burden placed on small suppliers and shippers in the gas market for both the domestic and non-domestic sectors. Where possible this burden should be reduced to promote competition to ensure all regulation is proportion to the size and nature of the organisation and the relative exposure of different sized suppliers to the competitive market.

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

The current Website is difficult to navigate for both suppliers and consumers.

From the home page it should be possible for consumers to easily get a list of suppliers active in their market with links to the supplier's website and published contractual terms. This list could roll each time it is clicked to ensure all suppliers appear at the top of the list the same number of times.

The website could also fulfil a useful role in providing simple, easy to understand guides about the mechanics of the energy supply industries (gas and electricity). These could be in simple to read guides or via video clips.

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?

Like many suppliers, CE chooses to operate all of its SME business under SLC 7A and is therefore not opposed to the principle of widening of the scope.

CE believes that there are three main kinds of consumers active in the gas markets:

1. Domestic & Micro-business that contract direct with the Big 6 via a tariff
2. Micro-business and Small Business that contract via an energy broker
3. Large business that use a broker, agent or dedicated buyer

CE has recognised the importance of supporting the ability of consumers in the first group to engage with the competitive markets and therefore supported the introduction of the SLC7A for microbusinesses. CE has never believed that consumers in the second two groups need the protection of a licence condition as they have representation of a knowledgeable, engaged TPI who will usually re-quote every year irrespective of supplier performance.

As CE gains virtually all its new business via TPI's it is concerned that the extension of any licence obligation should be carefully considered and done in such a way that limits the regulatory burden placed on small suppliers active in the truly competitive market. It should also allow customers in that market to retain the flexibility to negotiate energy terms that reflect their needs and wishes and should not constrain the type and nature of the contracts they can sign.

The definition referred to in Ofgem's document of a Small Business Customer is, as drafted, impracticable. Most suppliers do not currently record information for each customer relating to the turnover and staff numbers. Not only would recording and tracking this information be unnecessarily costly, it would raise privacy concerns with many customers (private businesses do not have to reveal this information). Our preference would be for a distinction based on existing industry data only (e.g. energy consumption or meter type) and not on which relates also to turnover or staff numbers.

There may be drawbacks to extending the SLC7A measures, where customers with high energy usage (such as bakers, glass blowers, foundries, etc.) are captured by the definitions. Companies may wish to contract for more sophisticated products (e.g. demand side reduction) with different pricing methods (e.g. indexed prices) and by doing so they are exhibiting a conscious decision to engage with the market and hence are not behaving with a domestic mind-set. An approach that arbitrarily allocates consumers into a particular classification could therefore result in a decreased range of choice for consumers and it should be noted that this may frustrate other efforts and government policies that want suppliers to develop new technologies and opportunities for customer engagement.

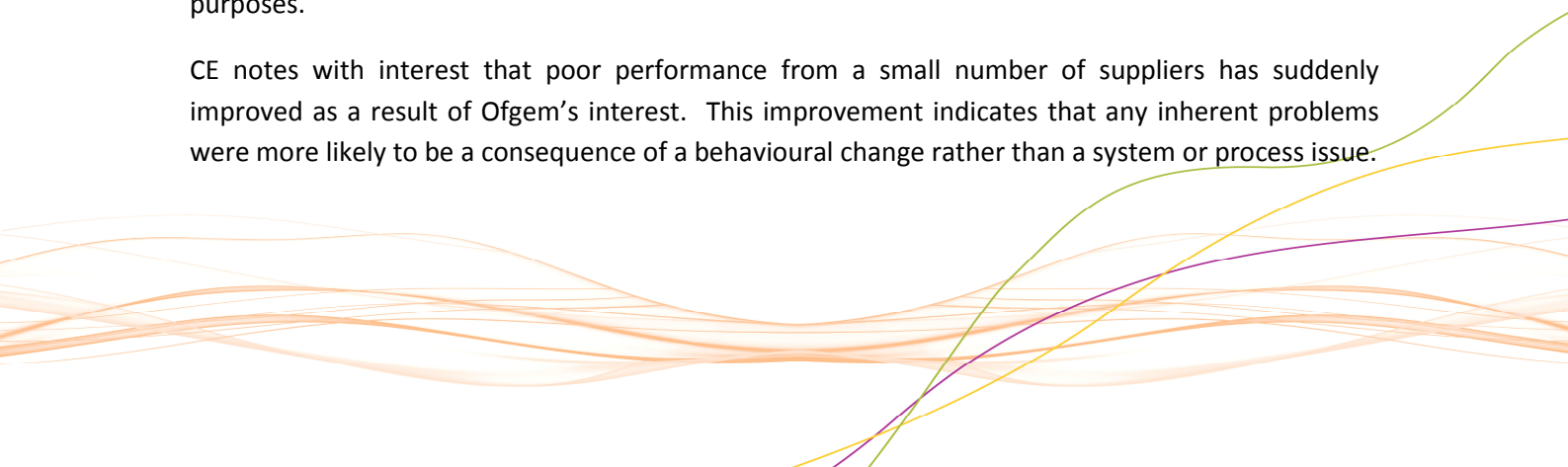
Question 7: Are there other clauses that stakeholders believe we should be reviewing, in light of our expanded definition proposal?

None currently.

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

CE supports Ofgem's stance of closely monitoring the use and abuse of the objections process as it notes that a small number of suppliers appear to have been using this process in a way that it was not intended. Indeed one supplier has publically admitted to using these processes to 'win back' customers despite public letters from Ofgem advising the process could not be used for marketing purposes.

CE notes with interest that poor performance from a small number of suppliers has suddenly improved as a result of Ofgem's interest. This improvement indicates that any inherent problems were more likely to be a consequence of a behavioural change rather than a system or process issue.



It is important for Suppliers to be able to object in certain circumstances as this ensures suppliers avoid having to price transfer risk to fixed term contracts. It also avoids the need for suppliers and customers to revert to the courts to uphold legal contracts.

CE would hope that any enforcement action taken as a result of their monitoring will reflect the damage and loss caused through a parties systematic abuse of this process, both to the competitive market and to competitors businesses.

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. We believe the existing SLC14 and Ofgem's powers to investigate should be adequate.

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

Yes. This should be quarterly or six monthly and should exclude suppliers with very low numbers of customers which could create statistical anomalies. The data should be created by xoserve and suppliers should have the opportunity to note intra-group objections and objections done in co-operation with the confirming shipper.

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?

None currently.

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?

We believe this data should be initially created centrally by xoserve and checked by the supplier. This would ensure consistency across all suppliers.

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?

CE does not support the introduction of a new supply licence condition focussed on sales activities and does not believe this is a suitable method to prevent harmful sales and marketing activities in the non-domestic sector.

CE believes that a trusted, active TPI market is vital to the growth of smaller independent suppliers and the retention of competition in the energy markets. It is therefore concerning when TPIs are found to have behaved in a poor manner and we support the efforts of both TPIs and Ofgem to move towards better governance in this area.

CE therefore supports Ofgem's 'Option 4' proposal to enforce the use of a TPI Code of Practice via the supply licence. CE notes that this model has been used in other areas (such as the MAMCoP) to great success and avoids the unnecessary problems and burdens that the other options would create.

CE shares other suppliers concerns that the introduction of a new supply licence condition focussed on sales and marketing activities would result in a huge regulatory burden that small suppliers could not realistically bear. CE is aware of over 400 TPIs currently active in the market and currently provides quotes to a large proportion of these. It would appear impractical for every supplier to audit every TPI, even on an annual basis and smaller suppliers would therefore be unable to support the majority of this market.

Unlike the other options, which would restrict competition for both TPIs and suppliers, option 4 would enhance competition, bringing confidence to consumers and suppliers. CE believes that Ofgem was correct to consider this option and this option should be progressed.

CE notes that Ofgem has used the option 4 model with success several times previously (Energy Ombudsman, MAMCoP etc.) ensuring that self-regulation has been maintained yet enforcing best practice across the industry.

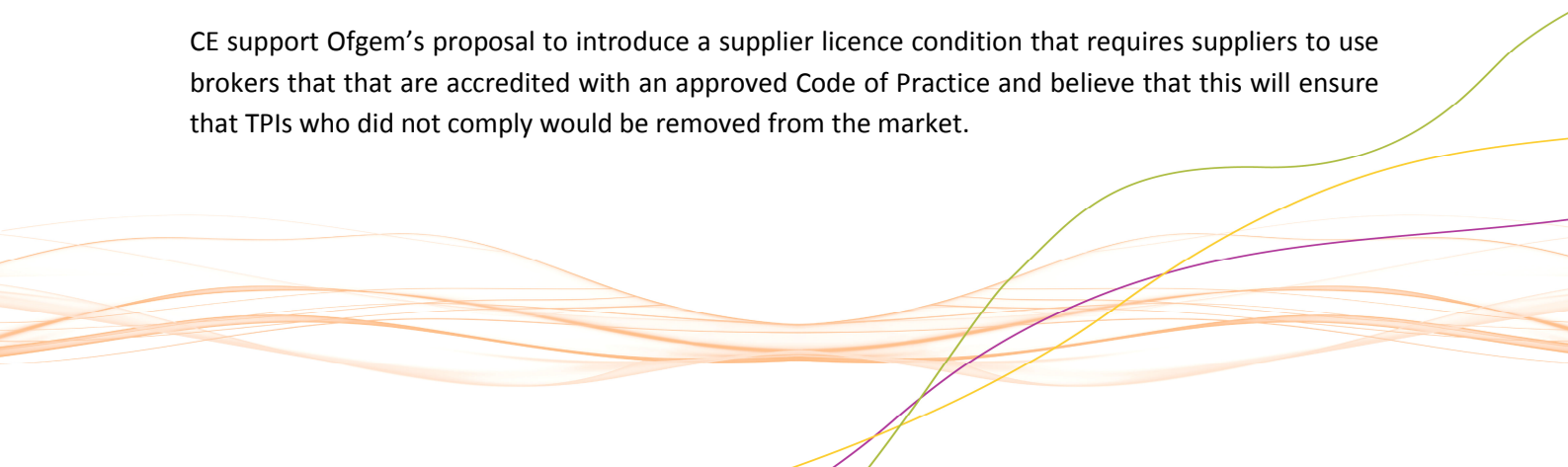
Question 14: Do stakeholders agree that this licence condition is necessary if Ofgem decides not to proceed with its Standards of Conduct proposals?

No. See above.

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?

Yes we agree that such a scheme would have benefits. We note that the TPI market has taken active steps towards self-regulation via the UIA and believe that the TPIs themselves should be capable of building, running and enforcing a suitable Code of Practice.

CE support Ofgem's proposal to introduce a supplier licence condition that requires suppliers to use brokers that are accredited with an approved Code of Practice and believe that this will ensure that TPIs who did not comply would be removed from the market.



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

We would suggest dialogue is undertaken with the market in light of recent voluntary codes of practice being developed between TPIs, customers, Ofgem and suppliers.

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

According to research by the UIA many customers currently believe that they receive a 'free' service and feel misled when they discover that their price includes TPI fees. Either option would resolve this issue.

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

CE believes that these proposals would add a significant regulatory burden to small suppliers and would provide no benefit to consumers.

Ofgem appears to have applied a logic that what has been effective in the domestic market should be effective in the I&C market. This logic is flawed as it ignores the lack of effective competition in the domestic market and the highly competitive nature of the I&C market.

Unlike the Domestic market, which is dominated by an oligopoly of 6 large suppliers (who control in excess of 99% of the market), the I&C market is far more competitive with suppliers offering a wide range of products. Customers in this market are able to engage directly with suppliers or utilise TPI's to assist with finding the right product for that customer's needs.

Suppliers in the I&C market are subject to competitive pressure to deliver a balance of products, service and price. This is evident in the extremely low margins generally found in this market, in contrast to the margins found in the domestic market and those allowed by Ofgem to be levied by the Gas Transporters.

Size of the burden of SOC's

The largest cost of the introduction of SOC's is for small suppliers that do not run generic systems and processes (like the Big 6) to prove compliance if challenged. It would be expected that these costs could be several million pounds per supplier initially and would significantly increase the operating costs of their businesses on an on-going basis.

For example, like most small suppliers in the market, CE do not currently record all customer telephone interaction. In order to prove compliance small suppliers would be forced to introduce highly expensive telephone recording equipment, all contracts would need to be changed to reflect this recording, training would need to be given to all staff on its use, changes would also need to be

made to all staff contracts to address privacy concerns and there would be ongoing costs and processes needed to maintain the equipment.

As many customer service and sales staff speak to customers via their mobile phones (as they work from home or travel frequently), these interactions would also need to be recorded.

Similar costs would be experienced as suppliers would have to ensure compliance via written and face to face communication.

CE believes this burden could be expected to result in a number small suppliers exiting the market.

Is this measure needed?

CE understands the temptation for Ofgem to intervene into the market when accusations are made of poor levels of customer service being received by customers. Failure of Ofgem to intervene is sometimes portrayed as a failure of the regulator to care about the customer experience.

This fallacy ignores the customer ability to choose another supplier who will offer the requisite level of service.

It should be noted that consumers will sometimes choose a supplier that they know will offer a poor level of service, purely because they are the cheapest. This conscious choice often does not stop them from complaining about the level of service. If the level of service is so low that it fails to meet a customers' reasonable expectations then it is likely that this will lead to a material breach of the contract and enable the termination of the contract and/or customer compensation.

Proportionate Regulation

Were Ofgem to take forward any of the SOC proposals CE would expect Ofgem to carefully consider the appropriateness of the measures on suppliers of different sizes and the application of these measures on them.

CE believes that where possible Ofgem should recognise and understand the consequences of proposals on suppliers of various sizes and work to reduce the impact of these proposals on small suppliers and new entrants to counterbalance the impacts on competition.

Where possible smaller suppliers and new entrants should be exempt from new regulation or have a reduced exposure. This could be done through differing levels of proof of compliance and/or enforcement actions on different sized or structured businesses.

Further, it would be advisable that Ofgem reconsider the appropriateness of these measures applying to small suppliers in the domestic market. It is highly possible that the application of these proposals in the domestic market may be acting as a barrier to entry for new suppliers and therefore be counterproductive.

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

No. This would undermine the competitive market and reduce competition.

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

No

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

These costs would be significant and we believe would result in a number of suppliers exiting the market.

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 do not support the introduction into the Licence into any part of the I&C sector.

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

Where possible increased regulatory risk and costs via licence changes should be avoided.

