
Consultation on The Retail Market Review: Non-domestic proposals by Ofgem
Submission by International Power Plc

(I) About International Power Plc

International Power Plc (IPR) welcomes the opportunity to contribute to Ofgem's Retail Market Review – Non-domestic proposals.

International Power plc is a leading independent power generation company with active interests in closely linked businesses such as LNG terminals and water desalination. Following the combination with GDF SUEZ Energy Europe and International, International Power plc has strong positions in all of its major regional markets (Latin America, North America, the Middle East, Turkey and Africa, UK-Europe, Asia and Australia). In total, it has 66 GW gross capacity in operation and committed projects for a further 22 GW gross new capacity.

In the UK-Europe region, International Power plc has 13.2 GW capacity in operation and a further 1.3 GW under construction. This includes over 7.3 GW of plant in the UK market made up of a mixed portfolio of conventional plant – coal, gas, CHP, a small diesel plant, and the UK's foremost pumped-storage facility. Several of these assets are owned and operated in partnership with Mitsui & Co. Ltd. IPR's assets represent just under 9% of the UK's installed capacity, making IPR the country's largest independent power producer.

The company also has a significant gas and electricity supply business in the UK. GDF SUEZ Energy UK is firmly established as a specialist energy supplier to industry and commerce across the UK and has been operating in this market since 1999. We offer an innovative range of energy supply products to meet the requirements of all types of business, from small industrial and commercial companies, to energy-intensive industrial plants. We are constantly developing new products and adapting our services to meet the needs of business customers.

(II) Summary key points

General Comments

- **IPR are concerned that increased regulatory intervention in the non-domestic market segment may have a detrimental effect on competition in this sector. Traditionally the non-domestic sector has exhibited a more diverse range of suppliers, and this has produced innovation in product development and a broader range of options for customers.**
- **There is a danger that over regulation in the business sector may prove to be a deterrent to market participation for new and existing participants. Some of the policies proposed in Ofgem's Review are domestic style obligations which are largely inappropriate for his market and are disproportionately onerous for companies other than the large domestic suppliers. Before proceeding with more domestic style regulation we urge Ofgem to more fully consider the risks associated with the competitive outlook for the sector that may arise as a result.**

Extending SLC7A

- IPR are not in principle opposed to additional protection measures for small business, particularly in relation to automatic contract rollovers, but we remain unconvinced that the criteria suggested to identify small businesses are appropriate. Any threshold must be easy for suppliers to identify and must be limited to existing industry data otherwise the system will be confusing and complex to administer.

Objections

- Publication of objections rates by supplier would be an important move forward at this stage, however the existing licence conditions remain appropriate and we can see no reason to change these immediately.

Third Party Intermediaries (TPIs)

- IPR would support progress towards an Ofgem accredited code of conduct for TPIs coupled with an obligation on suppliers to only deal with those companies who are accredited. In our view any attempt to legislate TPIs via the supplier licence is misplaced and would be counterproductive.

Standards of Conduct

- Suppliers to the larger business market should be allowed to develop their own standards of conduct which are appropriate to their sector. For micro-businesses only it may be appropriate to apply the set standards of conduct as proposed by Ofgem.

(III) Answers to Consultation Questions**CHAPTER: One - General*****Question 1: Are there other key issues that we should be looking into in the non-domestic sector?***

1. None identified at present.

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

2. Publication of Supplier objection rates would be helpful.

CHAPTER: Two – SLC 7A***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?***

3. IPR are not, in principle, opposed to additional protection measures for small business but we remain unconvinced that the criteria suggested to identify small businesses are appropriate. Any threshold must be easy for suppliers to identify and limited to existing industry data otherwise the system will be confusing and complex to administer.
4. The current definition of micro-business customers is difficult for suppliers to capture in that there are three potential criteria by which consumers could be classified. Under Ofgem's proposals this complex method of categorisation will be retained when determining the thresholds for Small Business Customers (SBCs). Other than consumption, suppliers would not ordinarily record information relating to the other Micro-Business Customer (MBC) criteria of turnover and staff numbers were it not for the current licence requirement. 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.
5. Additionally some consumers within the proposed criteria may be advised by TPIs and hence are acting in an informed manner with regard to their energy contracts. It does not seem appropriate to offer domestic style protections to business customers who are either advised or informed by energy professionals.
6. There may be drawbacks to extending the SLC7A measures, where customers are wrongly classified by the definitions. Companies may wish to contract for more sophisticated products with bespoke 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. Ofgem's approach to arbitrarily allocate sets of consumers into a particular classification may result in a decreased range of choice for consumers who have been deemed to be Small Business. The choice of products and services available to them in the market may be constrained to a narrow range of uniform products whereas more sophisticated products may be more suitable for their requirements.

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

7. Adding an additional classification of SBC further adds to the administrative burden for suppliers. It is no clear from Ofgem's consultation whether or not it is intended for SBCs to be included under the energy ombudsman umbrella and as such whether signposting on supplier bills will be required.
8. There will be an additional cost burden on suppliers resulting from the requirement to capture non-routine information on customer turnover and employees from either the customer directly or company reports. Supplier systems will need to be adapted in order to record an additional category of customer (SBC) in addition to the existing micro-business customer definition.
9. In addition to supplier costs there may be additional costs and constraints relating to the energy ombudsman service. This service is already resource constrained handling the traffic from the current scope of customers. There may be delays to resolving queries or other unintended consequences for existing domestic and micro-business customers as a result of the ombudsman being further constrained.

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

10. Whilst it is probable that Ofgem’s estimate of customers who may fulfil the criteria on an energy consumption/meter type basis will be reliable, as this is industry standard data, the very fact that Ofgem’s own numbers are based on an imprecise estimate only serves to highlight the difficulty that suppliers face when attempting to categorise consumers using the additional criteria such as turnover and number of customers.

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

11. IPR recognise the need to ensure that rolling contract terms are clear such that customer switching is not hindered and customers are not unwittingly trapped into contracts. To this end there may be merit in extending the notice and termination procedures in SLC7A more widely. This would enable the customer to have sufficient time to be able to engage in the market properly, and to consider competitive offers from market participants other than the incumbent supplier. The wider application of SLC7A notice and termination procedures should also enable the incoming supplier ample time to complete the industry registration processes and hence help to prevent transfer objections.

12. It is important to recognise the link between rolling contracts and the level of transfer objections which are related to termination procedures. For example; Ofgem’s figure 3.1 concludes that most (81%) of objections are related to termination procedures, and within that; more than half are classified as “still in contract” and a further 15% of termination requests are classified as being “too early”. It is not obvious why any supplier would not accept a termination request at any point within the contract subject to the contract end date being honoured.

13. We do not support any move to restrict customer choice in the market and hence we do not support removing rollover contracts completely. Evergreen, or rolling contracts, when properly managed by the supplier (e.g. by giving the customer proper notice) are a popular product for those customers who value stability with regard to their energy purchasing requirements.

14. Additionally, it may be detrimental to some customers to ban rollover contracts completely, for example, a consumer who is inactive at contract end may be subject to out of contract rates being applied by the existing supplier.

15. Our view is that Ofgem’s current position, of restricting rollers to twelve month duration, is sufficient.

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

None identified.

CHAPTER: Three - Objections

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

16. We welcome Ofgem's recent move to monitor closely the behaviour of suppliers in relation to their objections behaviour and we note with interest Ofgem's findings that poor performance from a small number of suppliers has improved as a result of their interest in this matter. This sudden improvement indicates to us that any inherent problems were more likely to be a consequence of a behavioural approach rather than a systemised issue, which would no doubt have taken longer to resolve.

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?

17. Our view is that the current licence condition SLC 14 and Ofgem's existing investigation powers are adequate to resolve any issue.

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

18. Yes, we are supportive of this data being published on a regular basis, and we believe that additional supplier licence conditions are unnecessary in the first instance subject to there being regular reporting in place.

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?

19. None at present.

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?

20. GDF SUEZ Energy UK has voluntarily submitted regular data to Ofgem with regards to our objection rates and reasons. We consider that monthly reporting is the correct frequency and are supportive of the publication of each suppliers objection rates to bring about improved transparency on the issue.

CHAPTER: Four - TPIs

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?

21. We agree with Ofgem that Third Party Intermediaries (TPIs) have a major presence and play an important role in the energy market and we support a move towards better governance in this area. However, it is entirely inappropriate for Ofgem to attempt to legislate TPIs via the supplier, simply because Ofgem itself does not have traction directly with TPIs at this stage.
22. IPR consider that option 4, as highlighted by Ofgem in table 4.1 is the best outcome for the regulation of TPIs and we would urge Ofgem to re-consider before rejecting this option. IPR would not object to a “Supplier light” obligation which required the company to only deal with TPIs who are subscribe to a code of practice that Ofgem have accredited. We would support an expanded role for Ofgem in respect of the oversight of TPIs which would extend to Ofgem applying codes of conduct and accreditation scheme.
23. Any move to make suppliers directly responsible for the actions of TPIs is both misplaced and would be counterproductive to making real progress in this area. It is important to understand that energy brokers in the business segment are acting on behalf of, and are contracted to, the customer directly. Therefore any obligation directly on the supplier would be ineffective. The contractual terms of the broker service to the customer, including the level of disclosure on the applicable fees is entirely a matter between the two parties and not the supplier.
24. Additionally, a direct obligation on the supplier in the first instance would be ineffective act as a disincentive to the development of a code of practice for TPIs as once a supplier obligation is in place this reduces the momentum to a develop a proper solution.

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

25. IPR are not convinced that the two are necessarily interchangeable. It is entirely possible to have a separate code of conduct for TPIs concurrent to an appropriate obligation on suppliers to publish their own standards of conduct. We discuss this further in our answer to Q18, section 5 below.

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?

26. IPR are in favour of progressing with a framework code of practice for TPIs. However we consider the content of the code of conduct to be a matter for Ofgem, customers and the TPIs themselves to develop.

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

27. It is not appropriate for suppliers to comment. The accreditation of TPIs is a matter for Ofgem, customers and the TPIs to consider jointly.

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?

28. We do not regard price disclosure to be a relevant question for suppliers. Any contract between the customer and broker for services should be clearly defined and is a matter for these two parties to consider.

CHAPTER: Five – Standards of Conduct

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

29. We regard a homogenous approach to standards of service to be inappropriate. Whilst we are supportive of Ofgem's intent to improve the standards of some suppliers we are not convinced that enforcing a prescribed set of conditions is helpful as this may stifle innovation and may inhibit customers from being able to differentiate between suppliers. A "one size fits all" approach to all business customers would, in our view, stifle competition.

30. Our preference is to enhance the prominence of supplier standards of conduct by requiring suppliers to publish and adhere to their own standards of conduct which are accessible to their customers on their website. It is important for suppliers to be allowed the ability to reflect what they regard as the key values relevant to their particular market segment in their standards of conduct and it is likely that most suppliers will have researched these with the market. For larger companies many of these standards are closely linked to corporate values and ethics statements.

31. Ofgem must recognise that there is a greater diversity in the non-domestic sector including a variety of Industrial, commercial, public and private sector activities - customer requirements here are more complex than the domestic sector. To illustrate this point, Ofgem's standard (ii) states that suppliers must ensure information to customers *'is communicated in plain and intelligible language'*. For more sophisticated products in the I&C sector the contracts are complex and require a degree of understanding of the energy market. Many standard industry terms (including those defined by Ofgem) are referenced in the terms. Whilst such contracts are entirely appropriate for the customers they serve and the understanding that particular business customer may have, they may not pass the *'plain and intelligible'* test. It is common in the larger business sector for terms and conditions to be bespoke and subject to negotiation and in many cases contract amendments are adopted as a result of a request from the customers own legal department. It would be inappropriate to hold the supplier liable to a 'domestic style' standard in such cases.

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

32. Our view of the most effective solution is as follows:

- a) Introduce a uniform SoCs (similar to those drafted) as a minimum standard for micro-business only.
- b) Introduce a requirement for suppliers to the remaining segments of the business market to publish and adhere to their own standards of service.

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

33. Suppliers should be allowed to develop their own standards of conduct in a competitive market without the need for regulatory intervention.

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

34. No information available at this stage.

Question 22: Do you think these proposals should apply to the whole non-domestic market, or only a subset of it, e.g. small businesses?

35. Mandating a set of homogeneous standards of service would be largely ineffective for large sectors of the non-domestic market for the reasons we have set out in response to Q18. It may be appropriate to mandate these for the Micro-business sector, in line with the recently established back-billing CoP but it would be more effective to oblige suppliers to the larger business segment to develop and publish their own bespoke standards.

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

36. Our preferred approach to the proposals is set out below:

- a) SLC7A extension

Additional classifications as drafted will be costly and complex for suppliers to administer and may be detrimental to consumers if their choice is restricted as a result. The focus should not be specifically on the size of the customer but to ensure 'rolling' contract terms are clear, so customer-switching is unhindered and customers are not unwittingly 'trapped' into contracts.

b) Objections

We favour the publication of objection rates in the first instance, additional licence obligations are not appropriate at this stage.

c) TPIs

An Ofgem accredited Code of Practice coupled with an obligation on suppliers to only contract with accredited parties is appropriate.

d) Standards of Conduct

The application of standard terms may be appropriate for the micro-business sector only, for larger business suppliers should develop their own standards of service.

For further information please contact:

Phil Broom
Policy and Regulation Advisor
International Power Plc
Senator House
85 Queen Victoria Street
London, EC4V 4DP
Telephone: 0113 306 2104 or 0207 320 8728
Email address: phil.broom@iprplc-gdfsuez-ukeu.com

Or

Dr Chris Anastasi
Head Government Affairs, Policy and Regulation
International Power Plc
Senator House
85 Victoria Street
London EC4V 4DP
Telephone: 0207 320 8995
Email address: chris.anastasi@iprplc-gdfsuez-ukeu.com