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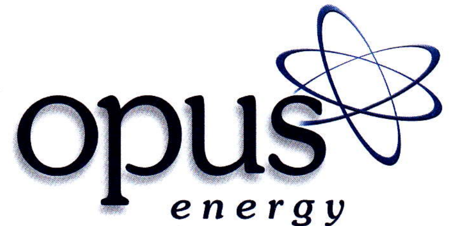

14 February 2012

Dear Louise

Re: Retail Market Review – Non Domestic Proposals Consultation of 23 Nov 2011

Opus Energy is an independent supplier of electricity and gas to the UK business sector supplying over 130,000 sites in both the SME and Corporate sectors. Please find below our response to the above consultation.

Summary

We agree with the proposed extension of SLC 7A to small businesses. We strongly disagree with the suggestion that the debate on rollover contracts should be reopened, particularly so soon after it was last consulted upon.

We feel strongly that a ban on rollover contracts would:

- Damage competition
- Increase customer's prices
- Increase customer dissatisfaction

We agree with Ofgem's aim to provide guidelines for suppliers on correspondence related to objections, but we disagree with some of the conclusions that are leapt to in connection with objections or that these misinterpretations should be reinforced through the publication of league tables.

We agree with Ofgem's desire to regulate better TPI behaviour but believe this is more effectively achieved through direct enforcement powers on TPIs rather than through the proposed supplier licence condition.

In relation to the supplier licence, we outline an alternative approach, which we consider is more likely to be effective in protecting consumers from mis-selling activity.

Detailed Responses

CHAPTER: Two – Extension of SLC 7A to small 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?
Question 4: Do stakeholders foresee significant costs or complications if we were to introduce our proposals? If so, please provide details and cost estimates.
Question 5: Do stakeholders agree with our estimates on the number of extra businesses covered by our proposed definition?

We agree with the principle of extending the scope of SLC7A to cover all small business customers. It is nearly impossible for us to distinguish which of our SMEs are microbusiness or not microbusiness consumers, so we already treat all small businesses as microbusiness. Hence there are no cost implications for Opus Energy in relation to this proposed change.

However, the wording of the proposed definition needs amending to clarify that it only applies to _Single Sites_ otherwise ambiguity and confusion is likely to arise. Any drafting must be clear that it does not include P3/P4/<293,000kwh sites that are premises supplied under a multi-site contract (ie to the sites of a customer who is not a small business).

CHAPTER: Two – Review of Rollover Provisions

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

No. The licence conditions relating to automatic rollover were extensively debated and change implemented by suppliers less than 2 years ago. At this time, the principal problems surrounding the rollover process were established (customers failing to receive written notice, impossibly small windows in which to act, inappropriate rollover terms of more than 12 months) and measures were put in place to address these failings.

It was considered, at that time, that the damage caused by banning rollovers would outweigh any advantages to be gained from this action; and that introducing measures to specifically address abuses was the best way forward. Nothing has changed since this was determined - in fact there has barely been time to allow the new measures to take effect.

As a reminder, the damage that banning rollovers would cause are:

(i) A significant reduction in the independent sector's ability to survive and continue to provide business customers with a competitive alternative to the Big 6; and
(ii) An increase in cost which would lead to higher prices for business customers & increased customer dissatisfaction

The UK gas and electricity commodity markets are extremely volatile. This is not a market such as the telecoms sector. The underlying commodity prices of energy change rapidly and, more importantly exhibit severe seasonal fluctuations. Suppliers must find a way to offer their customers a stable and reliable pricing structure, to protect them from the market's volatility.

Independent suppliers do this by agreeing and entering into fixed term contracts (with rollover provisions) with their customers. We will find it very difficult to support the variable contract that Ofgem is suggesting customers must roll onto at the end of a fixed term contract. We also think customers ending their contracts in winter will be unpleasantly surprised to find themselves suddenly exposed to a volatile winter price. We believe that to ban rollovers would be bad for independent suppliers and bad for small business customers.

On the other hand, the UK's vertically integrated suppliers (such as the Big 6) already support large domestic customer bases where variable tariffs are prevalent. They are set up to hedge this type of portfolio and would be unaffected by a ban on rollovers.

Banning rollover contract structures will lead to significant damage to independent suppliers and reduce competition to the Big 6.

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Opus Energy and Opus Gas are the trading names of Opus Energy Limited (Registered No: 4382246), Opus Energy (Corporate) Limited (Registered No: 05199937) and Opus Gas Supply Limited (Registered No: 06874709), Registered in England & Wales with Registered Offices at Lambourne House, 311-321 Banbury Road, Oxford, OX2 7JH

Significant Reduction in Competition

A portfolio of fixed term contracts allows an independent supplier to:

- effectively hedge its exposure to wholesale price risk,
- raise working capital and finance for growth, and
- grow in a steady and stable fashion.

In the non-domestic market, where rollover contracts are a feature, 29% (gas) & 6% (electricity) of the market is supplied by independent suppliers. In the domestic sector, where 28 tariff contracts dominate, ***this figure is less than 0.5% in both gas and electricity markets.***

Increased Costs to Customers

If rollover provisions were banned, all customers at the end of their fixed term contract would be forced onto floating out-of-contract deemed tariffs. These have always been higher than fixed term contract rates because the supplier is unable to purchase a forward agreement for a fixed term but must buy the energy on a short-term basis in a volatile prompt wholesale market.

Increased Customer Dissatisfaction

Our experience is that customers both understand and, for the vast majority, are happy with the rollover process. Over 60% of our customers automatically renew at the end of their contracts and of those, 91% choose to remain with Opus at next renewal. Of those who choose not to be automatically renewed, but who call to renegotiate their contract, 60% choose to rollover at the next renewal and 88% choose to stay. Many customers are actively engaged in renegotiating their contract every year, and many chose to renegotiate every few years. All customers have the option of not being rolled over.

If customers, as a whole, were unhappy or felt 'caught' by the rollover process, we would expect (i) rolled customers being unhappy and less likely to stay at next renewal and (ii) customers who renegotiate not choosing to roll in future. Our experience and evidence, gained over 10 years of operating with rollover contracts, demonstrates the opposite.

Forcing customers onto a floating out-of-contract rate at their end of their fixed term contract is likely to anger many customers and lead to confusion and disputes. Floating day 28 day contracts are available in the market for customers that choose to switch to them. Forcing customers who have been happy buying under fixed term product schemes for many years seems a recipe for disaster. All this will do is cause damage to the customers who have been actively engaged and transfer value to those that are not.

The domestic sector (in which 28 day tariff contracts are the norm) is not a market place filled with content consumers. Following the introduction of the new measures, the only winners from the proposal to ban rollovers will be those customers who fail to act in the 30 day window after a written notice has been sent to them reminding them to act (ie now the "very disengaged") and the TPIs who will earn switching commissions.

The losers will be all other customers since:

- they would be automatically deposited onto higher out-of-contract rates that include the additional costs related to hedging an uncertain floating portfolio of customers, and
- they would find the competitive alternatives available to them reduces (as the independent supply sector shrinks to match that of the domestic sector).

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All this is likely to lead to an enormous number of disputes between suppliers and customers, most of who have no knowledge of these plans and who were previously perfectly happy; this will ultimately bring further damage to the reputation of the energy sector.

CHAPTER: Three - Objections

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

We agree and support Ofgem's aim to encourage suppliers to provide customers with detailed information when objecting. We welcome the guidelines that Ofgem has published, which provide a clear guide to the information that Ofgem would like to see on customer correspondence relating to objections.

We do not agree with some of the assumptions (relating to objections) that have been made in the consultation document.

(i) It is not true that all suppliers should be expected to have a similar rate of objections per customer transfers. Suppliers which have a larger proportion of fixed term contracts than average within their portfolio (which includes many independent suppliers) are likely to have a higher rate of objections per customer transfer.

(ii) It is not true that a high number of objections occurring in the market place is necessarily evidence of poor supplier performance. It could as easily be (and we believe is) driven by sharp sales practices by TPIs. The practice of falsely claiming a change of tenancy in order to fraudulently attempt to break a fixed term supply agreements is common.

Making such assumptions is damaging for the reputation of the sector and does nothing to get to the root cause of any problems that truly exist surrounding the objections process.

We hope that Ofgem's proposed extension of power over TPIs will allow it to address the true cause of problems within the objections process.

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 agree. The regulations are clearly defined in the MRA and licence and generally the objection process is used in the manner it was intended – ie to prevent erroneous transfers.

Question 10: Do stakeholders believe that we should publish our data relating to supplier objections on a regular basis?
No, because it is not true that all suppliers should have similar rates of objection (see Q8 above), so any such publication would be without purpose and misleading.

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?
Yes. Around 30% of the requests to transfer supplier following a change of tenancy turn out, on investigation, to be falsely made.

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?
No.

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CHAPTER: Four
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?
Question 14: Do stakeholders agree that this licence condition is necessary if Ofgem decides not to proceed with its Standards of Conduct proposals?
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?
Question 16: What do stakeholders consider to be key criteria for an accreditation scheme for TPI Codes of Practice?

We consider that attempting to reach through the supplier to regulate TPI behaviour is an ineffective way of improving the standard of conduct of TPIs in this sector. The marketing clause, as drafted in the consultation document, is not a suitable method to prevent harm.

In the non-domestic sector, TPIs very often promote products from a number of different suppliers. There is a clear distinction between (i) when a TPI is carrying out prospective client-gathering activity and (ii) when the TPI is acting on behalf of a specific supplier to contract the customer.

The proposed drafting of the marketing clause makes the supplier responsible for both of those activities. This is not appropriate. It is also not practical since the supplier cannot monitor the first part (ie when the TPI is carrying out prospective client-gathering activity) since the call recordings will contain competitor information. We propose, instead the solution below.

Proposed Solution

1) It should be a licence condition that:
- suppliers may only allow TPIs to act as their representative (ie market products on their behalf for which a fee might become due) if the TPI is signed up to an Ofgem approved COP; and
- suppliers must ensure any TPI acting on its behalf to contract with a small business consumer creates a call recording of the contract including a confirmation of principal terms and that this call recording is available to the supplier for monitoring and compliance checks.

2) It should be a condition of the TPI COP that:
- TPIs must carry out full call recording of all contacts with small business consumers and that this call recording must be available to the authority/COP authority for monitoring and compliance checks

Together, these requirements should be sufficient to:
1. encourage all TPIs to be (and maintain adequate standards to remain) signatories to an Ofgem approved COP;
2. ensure suppliers maintain quality standards during the contracting process; and
3. ensure TPIs maintain high standards of quality during their marketing activities.

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?
We think that the proposal to ensure all TPIs make customers aware of commissions is unworkable and unfair.

Internal Sales v TPIs - If there were no similar requirement to make the customer aware that there has been an internal sales cost associated with the sale, this proposal would be disproportionately disadvantageous to smaller suppliers. Typically smaller suppliers rely to a greater extent on TPIs to acquire new customers than do the Big 6.

CHAPTER: Five – Standards of Conduct

Question 18: Do you feel the revised SOCs will help to achieve our objectives?
Question 19: Do you agree that the SOCs should be in a licence condition and enforceable?
Question 20: Do you agree the revised SOCs should apply to all interactions between suppliers and consumers?
Question 21: Do you have information regarding potential costs this may impose on suppliers?
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?
Question 22: Given your answers to the questions above, do we still need the licence changes proposed elsewhere in this document?

We do not agree that the revised SOCs should be a licence condition. As drafted, they are highly open & discretionary; they are open-ended and they lack specificity. They do not provide a clear guideline as to what we should ensure we do and will be difficult to ensure compliance against.

It is difficult for the supplier to set up processes and practices under this uncertainty and this increases cost.

We consider Option 2 to be more appropriate.

If you have any questions on any of the views above, please do not hesitate to contact me.

Yours sincerely,

Louise Boland
Director

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