

10 April 2012

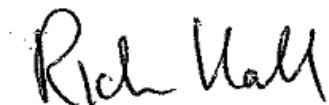
Jemma Baker  
Economist  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Dear Jemma,

**Response to consultation on the Undue Discrimination Prohibition standard licence condition**

Thank you for providing an opportunity to respond to this consultation. We provide responses to the questions posed below.

Yours sincerely,



Richard Hall  
Head of Energy Regulation

*1) We welcome views from stakeholders on our 'minded to' proposals and any other considerations in this consultation*

Before the introduction of the undue discrimination licence condition (SLC25A) in 2009 we were concerned about a number of price differentials which could not be objectively justified by the cost to serve (including in area and out of area price differentials). We continue to believe that non cost related pricing, in some cases, is not in the interests of all energy consumers. We consider that the separate payment method licence condition (SLC27) seems to have provided concrete benefits to vulnerable consumers.

However, the most important question for SLC25A is whether the undue discrimination licence condition has provided cost reflective prices that benefit consumers in the round – is society as a whole better off? Although in-area/out-of-area price differentials may have reduced this does not mean that total costs to consumers have reduced.

Unfortunately the empirical evidence suggests that they have not. Your rolling analysis of supplier profit margins suggests that the profitability on the typical dual fuel standard tariff has escalated considerably since SLC25A was introduced, from approximately £0 in September 2009 to £75 today. This suggests that price pressure on standard tariffs – which the majority of consumers remain on – is reducing, not improving. SLC25A allows for time limited deals to win market share – in effect they are excluded from the requirement to be cost-reflective - and we have seen an explosion of activity in those areas<sup>1</sup>. This is resulting in wide differentials between standard variable credit tariffs and online direct debit 'deals'. It is hard to avoid the conclusion that suppliers are using standard credit customers as a 'war chest' to pay for the deals of the highly engaged.

It would be useful if you could provide a more detailed analysis of why you think retaining the undue discrimination licence condition will help consumers. It seems to be taken on faith that it will; we are not so sure.

*2) We welcome comments from stakeholders on whether it would be appropriate to review the 50,000 customer threshold as part of a separate process, in the event that we decided to reinsert SLC25A for a further period of time.*

The consultation document suggests that 'smaller suppliers are unlikely to be capable of infringing the requirements of SLC 25A in practice'. The reasons why you hold this view are not stated, but we are interpreting that this is because the smallest suppliers may have insufficient 'sticky' customers to allow them to cross-subsidise predatory, or otherwise unfair, pricing tactics.

We agree that it does not seem particularly credible that the small players would be able to undercut large suppliers on headline price. This does not preclude the possibility of small

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<sup>1</sup> See page 15 and Annex 2 <http://www.consumerfocus.org.uk/files/2009/06/Consumer-Focus-response-to-Ofgem-Retail-Market-Review-February-resubmitted-version.pdf>

players engaging in sharp practices however – for example, we have been alarmed<sup>2</sup> at the excessive standing charges and exit penalties levied by some players. It is not clear to us that SLC25A would stop such abuses in any event however – because they may exist on time limited deals that are explicitly allowed by the licence condition.

- 3) *We welcome comments from stakeholders on whether there are alternative suggestions or views on the Undue Discrimination Prohibition Standard Licence Condition (“SLC 25A”)*

Please see our answer to question 1, above.

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<sup>2</sup> For further details on our tariff concerns, see <http://www.consumerfocus.org.uk/files/2011/10/Letter-to-Ofgem-on-energy-tariffs-November-2011.pdf>