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## **Retail Market Review: Non-domestic Proposals**

Dear Louise,

### **Introduction**

SmartestEnergy welcomes the opportunity to respond to Retail Market Review: Non-domestic Proposals.

As you know SmartestEnergy is a non-domestic supplier in the electricity market currently operating in the half hourly market only. Our target market is the corporate group sector and not SME.

### **Summary of view on the “remedies”**

*Expansion of SLC 7A* – Ofgem appear to want to extend the definition without losing anything previously covered. The resultant definition is very complex and yet does not exclude the possibility of capturing half hourly measured sites. We estimate that around 5% of our customers (none of whom are on roll-over contracts) in the Half Hourly market have a turnover of less than 10m Euros and less than 50 employees. (This is not easy information to capture.) It would be much simpler just to make the definition cover all NHH and exclude HH. This would be easy for suppliers to accommodate because they use separate systems for each. Another alternative to the complex definition would be to state that SLC7A applies only where there are roll-over or other such terms in the contract.

*Objections* -- After Ofgem announced in March 2011 their intention to look more closely into this area, they issued a formal Information Request to a number of suppliers, taking into account their levels of objections and whether there had been complaints about them. SmartestEnergy was not one of these companies. It is very rare for SmartestEnergy to object to a transfer. The level of objections we experience is no where near as high as those reported by Ofgem. We estimate that less than 10%

of sites we attempt to register are objected to. It is clear to us that objections are a problem in the SME end of the market and as such the monitoring and enforcement should be more targeted. Increased blanket monitoring is not necessary. Further information requests should be targeted at those companies reporting (or being reported with) high levels of objections. In other words, it is now the time to drill down into the reasons for objections on a company by company basis and then determine whether these are reasonable.

*TPIs* – Any arrangements which Ofgem introduce should make a clear distinction between sales agents (who act on behalf of suppliers) and brokers (who act on behalf of customers.) SmartestEnergy only uses brokers and we feel that it is inappropriate to regulate them through the supplier licence because they are independent of suppliers and should remain so. We support the proposed arrangements if they apply to sales agents only. We agree with the need for transparency on commissions and would happily accept a licence condition which places an obligation on suppliers to disclose the broker's fee on the contract which the customer signs. Ofgem seem to be saying that where relationships exist (or are deemed to exist) regulation can be effected through the supplier and where it does not exist there could be an accreditation scheme for Codes of Practice. However, the accreditation scheme could cover both situations.

*SOCs* -- We have no issues with the SOC's per se and do not believe that compliance with them would be onerous (unless there is an excessive burden of proof on suppliers). However, we are of the view that this is not the sort of thing that needs to be in a licence. We are a successful new entrant precisely because we offer good customer service. If other aspects of the market are improved (to facilitate switching, for example) SOC's would be unnecessary.

### **General views on the approach**

We are very concerned by the heavy-handed and untargeted nature of these proposals. It also appears to us that failings by the Big 6 suppliers are being addressed by implementing changes which affect all suppliers and, disproportionately, smaller players. Also, it is generally accepted that the non-domestic market works much better than the domestic, but by splitting up the remedies, what appears to have happened is that there is equal focus on domestic and non-domestic. There is also no distinction made between SME and corporate or between HH and NHH. This is wholly inappropriate because the issues which Ofgem are trying to address are clearly in the SME market and not in the HH market.

That aside, we are happy with the consultation process itself, and the consultation document and questions address all the issues in a clear way.

## Ofgem's specific questions

For your convenience we answer Ofgem's specific questions below in the order in which they are presented in the consultation document.

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

No. It is appropriate not to extend Ofgem's domestic tariff proposals into the non-domestic sector.

Ofgem said in March that they would seek explanations, examine the reasons, and consider if existing licences has been breached or if new licence conditions would be needed. We believe Ofgem should be focusing on examining whether existing license conditions have been breached before considering new licence conditions. This should be done through targeted information requests, drilling down to specific examples.

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

If Ofgem go ahead with the introduction of an accreditation scheme for TPI Codes of Practice we would suggest that a list of TPI codes which meet Ofgem's requirements should be posted on the website.

**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?

The definition is very complex and yet does not exclude the possibility of capturing half hourly measured sites. We estimate that 5% of our customers (none of whom are on roll-over contracts) in the Half Hourly market have a turnover of less than 10m Euros and less than 50 employees. (This is not easy information to capture) It would be much simpler just to make the definition cover all NHH and exclude HH. Another alternative to the complex definition would be to state that SLC7A applies only where there are roll-over or other such terms in the contract.

The document states "We received a number of responses to our March consultation from both large customers and suppliers to large customers who did not want the shape of their contracts restrained in any way. We have taken these comments on board and, at this stage, agree that it would not be appropriate to apply the specific contract terms within SLC 7A to the whole

market. Nonetheless, the evidence supports a widening of our protections to include small businesses.”

However, as far as we as a supplier are concerned, it does affect the whole market because we will have to either introduce procedures to establish whether our customers meet the complex definition of a small business or decide to treat all customers as if they were small businesses, which may be restrictive.

Ofgem need to ensure that the proposals are flexible enough to meet considerations which are acknowledged in the Consultation document: “We engaged PA Consulting to review our options for expanding our protections. They reviewed the evidence, definitions used in other countries, and definitions used within the GB energy market. In summary, they noted that there is a balance between offering protection and impeding innovation. There is a risk that offering such protection to the engaged sector of the market could impede contract offerings and the ability to deliver bespoke arrangements. For example, some customers may wish to negotiate how and when they would give their notice to terminate their contract.”

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

This not so much an issue of direct cost, but more of business disruption in order to comply. We would have to review all of our processes and documentation when in reality our customers are happy with the information we provide. Genuine customer service cannot be imposed. We as a small supplier differentiate ourselves by providing good customer service.

The document states: “This [extension of SLC7A] was a proposal in our RMR responses and should benefit both customers and suppliers, who are likely to have systems in place already to recognise such thresholds.” SmartestEnergy does not have systems in place to do this and we do not operate in the segment of the market which is the real focus of these changes, and yet we will be seriously affected.

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

We have no view on how many additional sites will be included with the new definition market-wide. We are of the view, however, that the new definition will include quite a large number of Half Hourly customers, which seems inappropriate to us.

The counter to the argument that a definition based around the amount of electricity taken rather than on the proposed number of employees and

turnover seems to be that “smaller business customers may not always be fully aware of their annual energy use.” But we are talking about how the supplier views the customer not how the customer views themselves; the obligation is on the supplier and ease of how the customer is identified for the supplier must be the over-riding factor.

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

We do not believe that roll-over contracts are in the best interests of customers. The issue is not so much termination procedures but the reasonableness of contract terms which have very narrow notice windows, coupled with poor communication of relevant dates. It seems odd to us for Ofgem to propose an extension of SLC 7A and then review automatic rollovers, because changes to the rules over automatic rollovers may make the extension of SLC7A unnecessary.

A review of termination procedures and automatic roll-overs needs to be done in conjunction with a review of deemed rates. Some suppliers argue that rolling over is cheaper than going onto deemed rates. This may be true but deemed rates should also be investigated.

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

No comment.

**Question 8:** Do stakeholders agree with the conclusions we have drawn [on blocking]?

The document says: “Most suppliers object to around a quarter, or less, of attempted transfers. However there are a few suppliers that object to most of their customers attempted transfers (more than 50%). ”

The level of blocking we see is somewhere in the region of 5 to 10%. And over half of these are resolved. This indicates to us that blocking is a much more serious issue in the lower (SME) end of the market than the market we operate in.

We are very concerned at the industry average level of blocking and believe action should be taken. Ofgem clearly do not need further evidence of which companies have dubious objection practices and should request further information from those companies and, if appropriate, enforce the licence conditions. We see no justification for making reporting of objections statistics mandatory as this will just increase the costs for us as a supplier and hence our customers.

The document states: "As a result, we are actively considering a range of enforcement and regulatory action. We set out in our Enforcement Guidelines our criteria for considering whether or not to open an investigation. These include: if there are sufficient grounds to suspect that there has been a breach; how serious the breach is, including if any steps have been taken to resolve the situation; the effect, including any deterrent effect, of an investigation; and the resources that will be required to investigate the matter. "

It is clear to us that neither the outcome of this consultation nor additional reporting information will have any additional bearing on Ofgem's consideration of enforcement. It is also clear to us that this is a problem in the low end of the market (and Ofgem know who the offenders are) and as such the monitoring and enforcement should be more targeted. Increased blanket monitoring is not necessary.

**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?

As previously stated the real issue is around the windows within which notice to transfer has to be given.

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

We do not see what purpose this would serve. Customers would not be able to act on the information.

**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?

Please see answer to Q9

**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 have not been sending data voluntarily because we believe it is unduly onerous to extract from our systems and we are not a supplier who has a disproportionate number of objections to our name. The remedy is not being appropriately targeted. We estimate that the IT changes involved could amount to a five figure sum.



**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?

No. Any arrangements which Ofgem introduce should make a clear distinction between sales agents (who act on behalf of suppliers) and brokers (who act on behalf of customers.) SmartestEnergy only uses brokers and we feel that it is inappropriate to regulate them through a supplier licence condition because they are independent of suppliers and should remain so. We support the proposed arrangements if they apply to sales agents only because they are working on behalf of specific suppliers.

We agree with the need for transparency and would happily accept a licence condition which places an obligation on suppliers to disclose the broker's fee on the contract which the customer signs.

The logic that a new supply licence condition is necessary is flawed; Ofgem seem to be saying that where relationships exist (or are deemed to exist) regulation can be effected through the supplier and where it does not exist there could be an accreditation scheme for Codes of Practice. However, the accreditation scheme could cover both situations.

Ofgem have already asked BIS to consider conferring on them powers to enforce the BPMRs, alongside OFT and Trading Standards Services. This is something that we support and, if approved, would make regulation of any "relationship" between suppliers and TPIs unnecessary.

We accept that there has not been much additional take-up of TPIs seeking guidance from the OFT when developing their own CoPs and to promote these to encourage industry best practice. However, the idea of an accreditation scheme will boost this and it is unnecessary to introduce further burdens on suppliers at this stage.

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

We do not believe that the licence condition as proposed or the SOC's are necessary. As previously stated, we would happily accept a licence condition which places an obligation on us to disclose the broker's fee on the contract which the customer signs. In terms of SOC's our view is that we are a successful new entrant precisely because we offer good customer service. If other aspects of the market are improved (to facilitate switching, for example) SOC's would be unnecessary.

**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, this is the best approach. It will not take long for public awareness of the scheme to mean that TPIs who are not prepared to sign up to the principles will no longer attract much business, much in the same way that most holidays sold are now covered by ABTA.

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

- Transparency of terms and charges
- Random and independent review of phone calls
- Clear suspension rules. Rapid retraction of quality mark.
- It is also important to highlight the distinction between sales agents and brokers.

**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 level of the fee should be made known by the TPI and we would be happy to be obliged to disclose this in the contract which the customer signs.

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

No

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

As previously stated we have no issues with the SOC's per se and do not believe that compliance with them would be onerous (unless there is an excessive burden of proof on suppliers; we are slightly concerned by the sinister implications of the following sentence in the document: "We would monitor suppliers' adherence to the SOC's"). We just don't think this is the sort of thing that needs to be in a licence. We are a successful new entrant precisely because we offer good customer service.

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

Please see answer to Q19



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

We believe we comply with all of the SOC's mentioned and thus do not think there would be any additional costs associated, unless Ofgem are suggesting some kind of reporting which we would find burdensome. The solution, we believe, should be that Ofgem investigate where they receive customer complaints but do not ask for regular reporting from all parties.

**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 believe there are any reasons to differentiate between sectors of the market in this matter. However, we do not believe SOC's are necessary.

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

No. The only licence changes we think that are necessary are: a) for suppliers to include the TPI's commission on the contract which the customer signs and b) extend SLC7A to all NHH or to those on terms which Ofgem are wishing to target OR revise rules around rollovers.

Should you wish to discuss any aspect of this matter, please do not hesitate to contact me.

Yours sincerely,

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