Louise van Rensburg
Retail Markets
Ofgem
9 Millbank
London
SW1P 3GE

Dear Louise,

Please find enclosed with this letter our response in relation to the Retail Market Review Updated Proposals for Business issued by Ofgem on 26th October 2012. While this document does not need to be treated as confidential we would appreciate notification if any of the content is going to be published.

Firstly may we take this opportunity to confirm our support for Ofgem in bringing the Retail Market Review: Updated Proposals for Business further forward towards implementation.

It is our belief that the non-domestic energy market is not currently functioning in a way that engenders trust from customers, nor encourages transparency from participants in the market.

The non-domestic energy market must quickly and effectively move to the most simple and transparent method of operation in order to build trust and provide a market that we can all be proud to be associated with. It is with this in mind that we welcome the balanced view that Ofgem has taken in its proposals and are minded that this approach is a very positive one for the industry and most importantly its customers.

We do however have concerns, we continue to be concerned about a market where a customer would not have confidence in the knowledge that whenever and with whomever they enter contract discussions they will be treated fairly and that they will have full recourse to recompense where standards fall below acceptable levels

We caution that these proposals should not be seen as “protection”, rather they should be viewed, considered and implemented as the minimum standard of communication that a business, of any size, should expect when engaging in the energy market

Additionally we have concerns over the proposed timescales, we do not believe they bring the much-needed change to the market quickly enough.

Overall we believe Ofgem’s proposals are a welcome move but need to go further, quicker.

In light of this our key recommendations are as follows:

- All proposals to be fully effective from ‘Day One’
- Extension of SLC7A to all non-domestic customers,
- Total ban on rollover contracts,

- Supplier market based pricing for 'out of contract' customers,
- Total freedom of movement for 'out of contract' customers
- Contract End Dates on all supplier correspondence
- Termination Dates and obligations on all supplier correspondence
- Interim letter detailing contract & termination dates if supplier unable to hit day one
- Proscribed format, content, position & prominence of Contract & Termination dates
- Full customer termination rights up to the final day of their existing contract
- Extension of the registration and objection windows
- Automatic removal of an objection where the supplier fails to meet its obligations
- Clear steps to quantification, remedy and censure of objection malpractice
- Alignment of the Industry codes to enable consistency of objection application
- Mandated content, format and timescales of a supplier objection notification
- Mandated supplier provision of objection data
- Publishing of objection statistics
- Mandating of evidence in objection dispute (including full supplier call recordings)
- Supply Licence Condition to underpin objection communication and fair practice
- Expansion of TPI Code to cover all parties selling to non-domestic energy customers
- Build on the pre-existing foundations of the E.On TPI Code
- Prevent existing 'Codes' from operating in the market
- Universally enforced SOC with objective, quantitative measurement of performance
- SOC to have specific provision for action against win-backs
- SOC sanctions directly related to the potential harm to the market
- SOC covering all customer interaction and all non-domestic customers
- Quantifiable KPIs to underpin the success criteria of the proposals
- Survey of each TPI, supplier or other participant to underpin the working group
- Annual market review of clear metrics against which success can be measured.

If you wish further clarification around any of the information that has been provided in this response and supporting documentation please do contact us and we will support all we can.

Thank you once again for the opportunity to respond to this consultation document and we look forward to seeing the implementation of what we hope will be a positive and market defining set of proposals.

Yours sincerely,

James Constant

Managing Director
uSwitch for Business Limited

Executive Summary

Acknowledgment

We would like to thank Ofgem for the opportunity to provide consultative feedback regarding the Retail Market Review: Updated Proposals for Business

Our Approach

Our approach is one of dialogue and understanding but also of frank and constructive comment.

Our specific approach to the Retail Market Review: Updated Proposals for Business has been an over-arching call for simplicity and transparency. Both of these elements we see as essential to delivering the competitive market that non-domestic customers deserve.

Simplicity – it is essential to ensure that the principle of any change is one of making things as simple as possible for the customer, supplier, TPI and regulator alike. There is already too much unnecessary, though well intended, bureaucracy that gets in the way of improving the experience of non-domestic customers. This review should be a catalyst for less not more complexity.

Transparency – the ultimate goal of this review must be improved transparency and increased non-domestic customer participation. Vested interests, however ingrained, should not get in the way of genuine market improvement.

We also see each proposal as being intrinsically linked and therefore view that for the benefit of the market it is in the context of the 'whole' that each proposal needs to be considered.

Overview

OUR PROPOSALS

In addition to the 'Updated Proposals' provided by Ofgem, our key proposals are:

- All proposals to be fully effective from 'Day One'
- Extension of SLC7A to all non-domestic customers,
- Total ban on rollover contracts,
- Supplier market based pricing for 'out of contract' customers,
- Total freedom of movement for 'out of contract' customers
- Contract End Dates on all supplier correspondence
- Termination Dates and obligations on all supplier correspondence
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- Build on the pre-existing foundations of the E.On TPI Code
- Prevent existing 'Codes' from operating in the market
- Universally enforced SOC with objective, quantitative measurement of performance
- SOC to have specific provision for action against win-backs
- SOC sanctions directly related to the potential harm to the market
- SOC covering all customer interaction and all non-domestic customers
- Quantifiable KPIs to underpin the success criteria of the proposals
- Survey of each TPI, supplier or other participant to underpin the working group
- Annual market review of clear metrics against which success can be measured.

We believe these represent true change in the operation on the market and are an evolution of Ofgem's proposals, rather than a critique.

ACTION

We welcome Ofgem's increased vigour in proposing what appear real, fundamental changes to the non-domestic market for the consumer.

However we do not believe that Ofgem go far enough, quickly enough.

Whilst it is understandable that Ofgem's retail focus has until recently been on the domestic consumer, it is long overdue for the interests of the non-domestic consumer to be in focus. It is essential that this remains the key objective of any intervention in the market by the regulator. Therefore we are pleased to see Ofgem recognising the principle that time and cost saving is critical to SMEs.

ENGAGEMENT

We remain unconvinced as to the level of true engagement in the energy market of businesses in comparison to households.

Despite Ofgem's claim to the contrary, in our experience being on a fixed term contract is no more likely to prompt active choices at contract end than any other sort of contract. The fundamental issue is the opaqueness of contract terms and contract end dates and not the construct of the contract itself.

We recognise too that there are indeed more suppliers in the non-domestic market and a greater presence of TPIs but there is also a far more heterogeneous profile of customers and behaviours in the market that necessitate and provide the opportunity for greater involvement.

It is equally true that unlike in the domestic market, suppliers do not offer market wide deals and do not necessarily court the mass market. Therefore the reality for SME businesses is there are nearer to 16 available suppliers rather than the quoted 32.

In light of this perception of added activity, Ofgem stress customers' awareness of alternatives and their ability to assess options as being better than for domestic consumers. However our quarterly barometer results show 46% of business consumers have not switched in the last 12 months and 43% have no intention of switching in next 12 months.

Furthermore, 43% of businesses believe there is no competition in the market, that all suppliers the same and that there is no point in switching. This is disengagement in action.

This figure increases to 48% when considering micro business alone.

Worryingly this is a situation that is worsening across all sectors of business with an 18% rise in disengagement over the past quarter.

This does not chime with Ofgem's confidence in a working market.

It is clear then that congratulations are not yet due, however admirable the stated intentions are.

What we can agree on however is that for larger businesses there is more engagement in the market with 73% of businesses professing to shop around for the best deal whether doing this themselves or via a TPI.

However we believe that there are a number of reasons for this apparent confidence.

Firstly Larger businesses have historically been better served by both suppliers and TPIs in both quality and quantity, this is good news, but we believe it is a fundamental problem that the market does not extend this support to all businesses, regardless of size.

Secondly, large business are not wont to look ignorant in the face of their competitors and customers and so will always wish to at least be seen as in control, regardless of the reality of the situation.

Thirdly, many large business "employ someone to look after energy" and therefore believe that they "must be OK", the truth however is often that this distance from reality masks the actual exposure the businesses face.

Though all is not well in the larger business market the concern increases considerably as we move down the scale of business size.

Indeed market engagement plummets to 43% for micro business and given the disproportionate numbers of such businesses in this category, over 80% of the market, this surely provides the true reflection of the actual state of the market.

Whilst Ofgem's proposed moves are broadly welcomed the critical measure of success now comes in the reality of the implementation and the timescales within which these will be effected. The cost of failure is too great for UK business.

PROPOSALS

Ofgem's admission that they have looked to strike a balance between helping businesses effectively manage their energy costs while ensuring their market interventions "do not impose unnecessary costs or deter suppliers from competing in this market" is to be welcomed.

However we strongly feel that the balance should be actively weighted in favour of the consumer. With the needs of the business consumer being the central consideration and allowing a market to develop from a newly engaged customer base.

Overall we are very happy to see that the points we put forward in our February 2012 submission have been heeded, and though not all our proposals have been adopted, and not all go far enough, quickly enough, the

principles of our recommendations are being carried through by Ofgem.

However, taking each proposal in turn we still maintain caution around some of Ofgem's approaches. This is mostly because they do not go far enough in creating a single market with uniform, minimum standards applied to all participants and businesses of any size.

SLC7A Extension

We remain opposed to this artificial demarcation of businesses.

We see this as unnecessary and unhelpful not least in the measurement used but also in the questionable belief that only certain segments of a market need a minimum standard of quality communication and transparency.

We continue to believe that these 'protections', we would call them 'supplier obligations' should be applicable to all businesses.

In lieu of this however it is to be welcomed that Ofgem have seen to at least extend these 'rights' to over 90% of the market and though, this still falls short of where we believe it should be, we recognize Ofgem's desire to benefit a wider audience.

Contract End Dates on Invoices

We have long campaigned for this as a key plank in our demand for simplicity and transparency in the business energy market and have therefore been delighted to see other TPIs and some suppliers supporting our initiative in the previous responses.

We therefore very much welcome Ofgem's adoption of this principle, however we must not lose sight of the context within which this demand was raised.

Supplier communication of both contract end dates and contract obligations are poor in comparison to other industries, and action in this area is long overdue.

Our call for contract end dates to be printed on all non-domestic invoices was not the 'perfect' solution; rather it was the bare minimum vehicle for communication that should be expected.

The 'bar' was set this low due to the lack of proactive communication of such information from suppliers.

Therefore whilst Ofgem's move is to be welcomed it should not be seen as the end of the story.

Given this is the lowest bar for supplier engagement it is of concern that this is only applicable to small business, that there is no mandated format, content, positioning or prominence and that the timescales for delivering are in the future.

We have very strong concerns that without the addition of the above stipulations suppliers will hide this information in the 'small print' and business consumers will be no better off whilst suppliers will have 'technically' abided by Ofgem's rules.

Indeed given only 2 of 32 suppliers have proactively considered the printing of contract end dates on non-domestic invoices and only 50% support Ofgem's limited moves in this area.

This raises real cause for concern that this initiative will be followed to the letter of the law and not the spirit.

This opportunity must not be allowed to fall away in implementation to the detriment of the customer.

SOCs

It is to be welcomed that the time and cashflow impact of poor supplier billing practices is being recognized by Ofgem as a major issue facing UK business. The cost to small and large businesses alike of this issue cannot be underestimated.

However we believe that SOCs should be applicable to all businesses, that they should be auditable and quantifiable with clear KPIs and carry sanctions directly related to the potential harm caused by the failure to meet the SOC.

We also believe that there should be specific action in the SOC on supplier 'win-back' practices and that the enforcement of sanctions is clear in this area.

Furthermore we believe that in time the SOC should be extended to cover all interactions and not just its current narrowed focus.

We recognize that Ofgem's consultation has resulted in the conclusion that "In general, large businesses said they did not consider they needed further protection…. but some pointed to areas that could be improved – such as billing accuracy and high out-of-contract rates".

Given that large businesses are experiencing the same issues of rollover contracts and billing as SME customers but are deemed to not need the same level of minimum standards to enable them to navigate the pitfalls of the market does not make sense to us.

We simply do not agree that a two-tier set of standards for supplier behaviour is an acceptable way forward for the market.

The comment from Ofgem that "We encourage suppliers to consider where improvements could be made and to consider developing customer charters and other ways of allowing large business customers to hold them to account" must surely point to the fundamentals of the issues facing SME customers being shared by larger business.

Rollover

We note with interest that as part of the SOC that Ofgem intend to "properly assess the costs and benefits to small business customers of the practice of auto rollovers".

In particular that they will "look at whether or not it is in small business customers interests to allow this practice" once their proposals on the definition of small businesses have been agreed.

We strongly welcome Ofgem's commitment to review the practice of auto rollovers however express regret that this practice is not already under scrutiny and indeed outlawed.

It reinforces our concern over the artificial demarcation of businesses under SLC7A and that it is this definition that is delaying action in this critical area. Priorities appear to be wrong here.

We recognise that Ofgem have a real commitment to focus on this issue however we strongly feel that action is required with more urgency than is currently being seen.

We have no doubt that Ofgem recognise the harm that rollover contracts bring to the non-domestic consumer and appreciate the desire they are showing to remedy these issues however that desire and intent needs to be turned into action much sooner than is currently the case.

We continue to believe that energy suppliers should not be allowed to roll-over ANY customer for ANY period of time.

Where that customer remains 'out of contract' they should be placed on a short-term 28-day market priced contract with full freedom of movement.

Thereby delivering protection to the supplier from wholesale market risk and the customer from unfair, premium contracting practices.

Code of Conduct

We very much welcome Ofgem's recognition that a single code of conduct is required for the market.

Multiple codes are unworkable, unenforceable and unwelcome and need no further debate here.

We also welcome Ofgem moving to take a lead role in this process however we must caution on three critical points.

Firstly, any code must apply to all non-domestic energy sales channels, whether they be TPI, supplier or any other medium of customer engagement.

Secondly, Ofgem must build on the pre-existing code developed by E.On in conjunction with a number of TPIs including ourselves, it would cause unnecessary delay to allow the work put in to go to waste, indeed Eon are actively pursuing engagement from all parties, TPIs and suppliers alike and are in a willing position to cede control of the code to an independent authority – Ofgem fits this bill perfectly.

Thirdly, Ofgem must take action to remove pre-existing, self interested code operators from the market, we have become increasingly concerned by the behaviour of some operators purporting to be a force for good for the non domestic consumer when in fact they operate to the benefit of their members against the suppliers themselves. This behaviour is as unacceptable as it is unwelcome.

Wider TPI review

We very much welcome Ofgem's commitment to use "certain parts of the Business Protections from Misleading Marketing Regulations to censure those participants guilty of exploiting customers". Indeed this is again something that we have campaigned and lobbied for over recent years.

However Ofgem's additional commitment to "launch a wider review to deliver a regulatory framework for third party intermediaries (including those that operate in the domestic market) that is fit for purpose in light of market developments and that supports consumer engagement and protection" is cautiously welcomed.

It is not clear of the concerns and intentions that prompt this need however we appreciate what is now a more

balanced view being taken by Ofgem in their perception of TPI activities in the market and we welcome their commitment to "communicate with stakeholders on other developments" as a result of this review.

We also appreciate the recognition of a major concern of any move would be the "impact of regulation on the cost of the operations of a TPI and as such the risk this may place on continued participation in the market of organizations who play a vital role in helping businesses navigate the market" and "Ensuring that businesses pay no more for their energy than they need to, and don't spend unnecessary time managing their energy accounts, is a key factor in our economy's competitiveness and its ability to grow and create employment".

This balanced view is to be welcomed.

Working Group

We also welcome the move to create a 'industry working group' to "discuss the options for a single code of conduct for third party intermediaries".

However we maintain that any code of conduct must be applicable to all internal and external sales channels and not solely focused on TPIs.

It would not be appropriate to allow a two-tier standard of engagement a customer can expect by failing to doing this.

Furthermore whilst seeing a working group as a positive move for engagement we must caution that the resource availability within the average TPI to focus on such involvement is significantly less than the resources available to supply businesses and consumer groups.

As such we would recommend a more inclusive, less obstructive method of collating opinion such as independent surveys of each interested TPI and supplier to establish a common ground and not deliver a bias towards larger TPIs or suppliers.

Objection Practices

The final recommendation concerning objection transfer practices is the most disappointing of all of Ofgem's considerations.

It simply does not do enough, quickly enough to address the incentive for supplier manipulation of the objection process.

Whilst Ofgem's recognition of the impact of this issue on all businesses is to be credited, we cannot avoid the fact that this issue has a long history with questionable supplier behaviours dating back to 2007.

We remain hopeful that Ofgem now has the confidence to investigate, judge and pass censure on the guilty parties.

Self-governance, or reliance on suppliers improving their act will not remedy this most obstructive of issues to a genuinely competitive energy market.

We note Ofgem's reference to improvements "in line with best practice suggestions that we set out in our November 2011 consultation"

Best practice suggestions need to be mandated obligations if this anti-competitive behaviour, seemingly facilitated by the existing market rules is to be remedied once and for all.

IMPLEMENTATION TIMESCALES

Whilst we broadly agree with all of Ofgem's proposals we cannot agree with the implementation timescales.

We recognize the need for Ofgem to manage implementation against their obligations and protocols as a regulator however we are concerned that the timescales envisaged are excessively long and will prompt further delay and failure to remedy current unfair practices.

We believe that all proposals should be effective from Day One and that Day One should be expedited with the utmost haste.

About

uSwitch for Business Limited are a wholly owned subsidiary of Forward Internet Group Limited. Forward Internet Group owns a series of consumer and business brands.

uSwitch for Business Limited operates two brands, uSwitch for Business and Business Juice.

In addition uSwitch for Business Limited owns and operates the Energyforecaster website, http://www.businessjuice.co.uk/energy-forecaster, a forum for debate and information regarding the UK energy market and designed to help UK business navigate the future energy challenge.

The brands sit within this portfolio focussing on the business energy market and serving all-comers from the smallest micro business to the larger I&C customers. With a full panel of suppliers and a wide customer base uSwitch for Business is uniquely positioned for market commentary given the background of its leaders in new entrant suppliers ranging from Enron Direct to Gazprom Energy, deep experience in the domestic price comparison space and significant exposure to the insurance and communications industries. Our supply side insight greatly aids a balanced view of the market and promotes a pragmatic and constructive approach to tackling problems within the industry.

CHAPTER: One

Question 1: Do you agree with the envisaged implementation timetable set out in this chapter? If not, what factors do we need to take into account in setting this timetable?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- All proposals to be fully effective from 'Day One'
- Annual market review of clear metrics against which success can be measured.

KEY STATEMENTS RELEVANT TO THIS ANSWER

- We recognise the binding obligations on Ofgem
- We are concerned at unnecessary delay
- We believe all proposals should be fully effective from Day One
- We recognise Ofgem's approach of continual monitoring
- We believe a formal review of measures should be made on an annual basis

We recognise the need for Ofgem to manage this implementation against their obligations and protocols as a regulator, however we are concerned that the timescales envisaged are excessively long and will prompt unnecessary delay in providing remedy.

We note that Ofgem aim for their "proposals to protect small businesses to come into legal effect in the supply licence from summer 2013, subject to responses to this document and the outcome of an envisaged statutory consultation in spring 2013".

We would request understanding of the potential for delay to the intended Summer 2013 date by both responses and statutory consultation period.

Addressing each proposal in turn we have considered the implementation timescales and have found real cause for concern.

Firstly, Standards of conduct, to be implemented from Day One.

We refer to the following wording in Ofgem's proposal "what is reasonable for a supplier to have accomplished in transforming its processes and systems to meet the fairness principle will change over time. We will take this into account in dealing with any licence breach allegations".

This suggests that what will be implemented from Day One is actually a framework rather than mandated behavioural change, this is of concern. It is unclear therefore when the SOC will be fully enforceable.

Secondly, SLC7A, to be implemented from Day One + 4 Months.

This is a worrying delay to an essential conduit for customer engagement in the market.

It is of surprise that the system changes and preparatory work required to facilitate this would be expected to take in excess of 12 months.

This must be a mandated provision from Day one with suppliers placed on a course to fulfil this obligation immediately.

Given there is an expectation that this approach will be met with challenge we would expect Ofgem to insist that by Day One every supplier should be mandated to have written to each of their customers providing full clarity over contract end dates and termination obligations in lieu of contract end date bill printing.

Thirdly, expanding the requirements of SLC7A to small businesses. Ofgem similarly propose this is to take effect for new contracts on Day 1 + 4 months. We can see no logical reason for this. This must surely be applicable from Day one.

Fourthly, rollover.

We maintain that rollover rights for suppliers should be abolished and that all businesses should be afforded the same protection and that this should be implemented from Day One.

We do however recognize that Ofgem's approach is an acceptable compromise in the spirit of minimizing the continued exposure of customers to automated rollover.

Therefore we support Ofgem's statement that: "For contracts entered into before Day 1, we propose that the requirements of SLC 7A will come into effect 130 days before the first rollover of an existing contract. This is to allow for the required notices to be sent before rollover".

Fifthly, Ofgem's proposal for "amendments to the termination rule, that require suppliers to accept termination notices at any time up to the last day of notice". This is to come into effect on Day One + 4 months for new contracts and from the date the first rollover takes effect for existing contracts.

This timescale is justified by Ofgem because its intention is "to take account of any potential costing implications for contracts this rule may impact on".

This appears to unnecessarily keep alive a major obstacle to a competitive market.

Suppliers, if operating in a truly competitive market, should be well versed in prediction models of customer behaviour be that demand side or contractual side.

As such suppliers should have no need for additional time to implement open termination windows. It would be of concern if this was interpreted as suggesting that the cost implication to suppliers are held as greater import to the cost consideration for the customer exercising their rights to choose contracts in a competitive market.

This cannot be an acceptable consequence in a market pushing for more engagement. This must be implemented from Day One.

In summary, we would expect ALL recommendations proposed by Ofgem to be binding from Day One and failure to fulfil those obligations would be in full breach of the supply licence and/or industry code from Day One.

Ofgem's proposal that "Following introduction, we will monitor the impact our changes have made and whether small businesses feel they are finding it easier to effectively manage their energy costs. If our reforms come into effect in the summer next year, and assuming there is no clear reason to delay, we will review this sector of the market in full no later than 2017" is of concern.

Whilst we recognize that Ofgem will continue to adopt a policy of continual evaluation and modification we do not believe it is acceptable to allow a 5-year gap between the original responses to the RMR and a review of the proposals implemented.

Ofgem's goodwill in this area could be misplaced. The untold damage that continued poor contracting behaviour could have on UK business over that time is such that a review should be a) held far earlier, we would suggest 2014 b) regularly held, we would suggest annually and c) have clear metrics and deliverables against which success can be measured.

CHAPTER: Two

Question 2: Do you have any comments on our success criteria and the outcomes we expect to see?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Quantifiable KPIs to underpin the success criteria of the proposals
- Annual market review of clear metrics against which success can be measured.

KEY STATEMENTS RELEVANT TO THIS ANSWER

- Engagement is key to a better market
- A lack of mandated, quantitative standards risks ineffectiveness
- All existing success criteria would be vastly improved by quantification
- We fully support Ofgem's move to use certain parts of the Business Protections from Misleading Marketing Regulations against rogue TPIs
- We believe the actions of rogue TPIs will be made more difficult by improved supplier communication around CoTs

We firstly have a number of clarifications to make on Ofgem's commentary surrounding their proposals.

We read with interest Ofgem's comment of the existence of 32 suppliers operating in the non-domestic market in comparison to 13 in the domestic market. Suppliers in the non-domestic market are often, beyond the big six, niche operators providing solutions for specific segments of the market only. We therefore believe the true nature of supplier options in the SME market is nearer to 16 than the quoted 32.

From Ofgem's own figures the Big 6 energy suppliers supply 70% of the NDM gas market, 92% of the NHH electricity market and 78% of the HH electricity market, and although there is more competition in the much smaller DM gas market with only 22% with the big 6.

It is clear then that the big 6 energy supplier retain a strangle hold on the business energy market in excess of what would be seen as acceptable levels of 6 of 16 let alone 6 of 32.

With regards Ofgem's comment on seasonality in switching rates around March and September, this is indeed the case for larger business due to the traditional energy purchasing 'rounds' in April and October however is a less clear trend for the SME market whose contracts are much more evenly spread over the year.

In addition Ofgem suggest that 22% of businesses are switchers compared to 14% in the domestic market and that this is therefore a positive sign of competition.

We have an alternative view, to us this means that 78% of businesses are not switching.

Ofgem go on to suggest that this low rate of switching might be masked by long term

contracts preventing annual contract selection, from our surveys of the market only 8% of those not switching annually are not doing so due to being locked into long term contract.

We believe that the remainder is not switching due to market disengagement.

Ofgem recognise this in their statistic that 31% of small and micro businesses have never considered switching. This is critical. Our own quarterly energy market barometer surveys shows even larger levels of disengagement with 43% of micro businesses having no intention of switching due to a perceived lack of competition, indeed this level of disengagement has increased 18% over the last quarter according to our survey.

Ofgem claim, "most business consumers of all sizes are reasonably satisfied with their energy suppliers". We too have found that the majority of customers state a satisfaction level of fair or above however this headline masks a significant minority of businesses who are dissatisfied.

32% find their energy contracts so confusing that the "don't know where to start" when it comes to engaging with the market. This has actually worsened by 25% over the 6 months to October 2012.

Furthermore 52% of businesses do not have confidence in their knowledge of their termination obligations and 35% do not have confidence that they know their contract end date.

This would strongly suggest therefore that engagement is the key to a better relationship.

It is greatly welcomed that Ofgem recognise that "qualitative research has indicated that for individual businesses, problems with an energy contract can be material: whether it's the extended time they have had to take to resolve problems, or the negative impact on cash-flow or overheads of the business – particularly an issue in a tight economic environment"

This is an issue we have long campaigned to gain recognition of and must be the cornerstone for any action by Ofgem to improve the market.

It is therefore difficult to reconcile Ofgem's own quantitative findings and the evidence we have to support these, with the proposed success criteria.

We recognise that Ofgem believe that these success criteria have significant potential for action and that their hope that their apparent ambiguity enables this potential to be realized. However we feel that without there being mandated, quantitative standards, well meaning ambiguity may become worryingly ineffective.

Ofgem state:

- We hope to see a trend over time of fewer contacts involving unclear contract terms, contract termination and switching problems

- We also expect to see fewer objections to supply transfer, as a percentage of total attempted transfers

- We expect over time to see a lower percentage of dissatisfied consumers and less issues relating to poor information

- We would expect a reduction in back billing complaints as more consumers receive accurate billing and consumption information from their smart and advanced meters

- We also expect that other complaints related to billing – including clarity – should reduce if binding Standards of Conduct are in place, as suppliers seek to understand and deliver what their customers want

All of these would be vastly improved by quantification.

In our opinion the setting of KPIs against which Suppliers could be measured and where applicable censured in line with their supply licence obligations and the relevant industry code should be the minimum expectation for any 'measure of success'.

In considering the action of rogue TPIs in the market Ofgem say:

- We would specifically like to see TPIs who undertake fraudulent or misleading activities being held to account; with a consequential reduction in these activities in complaints information and a rise in consumer trust in using TPIs

We fully agree that these rogue TPIs exist in the market and indeed we have long campaigned for TPIs, the employing suppliers and the regulator to take united action against them.

We believe, however, that it would be very much more difficult for rogue TPIs to hoodwink business customers if those customers were fully armed with their options, contractual terms and pricing offers at the point of renewal.

Change of Tenancy customers are an easy hunting ground for rogue TPIs who are taking advantage of the opacity of their contract terms and the inadequacies of supplier communication to sign businesses of all sizes into unfair contract terms, on premium rates.

Therefore improving supplier communications and customer understanding in the event of a CoT as well as making it easier for customers to provide relevant information will go a long way to closing this trap.

This can only come from the suppliers themselves and therefore changes to the behaviour of and sanctions against transgressing suppliers should remain the core focus of Ofgem in the market.

CHAPTER: Three

Question 3: Do stakeholders agree with our proposal for a revised definition for the expansion of SLC 7A?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Extension of SLC7A to all non-domestic customers

KEY STATEMENTS RELEVANT TO THIS ANSWER

- Simplicity and transparency is key to improving the market
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market

In keeping with our approach of simplicity and transparency, whilst we agree that widening the definition will potentially remove some of the clear anomalies, we believe that any artificial categorisation of a customer as micro-business, small business or any other definition is a bad thing.

We recommend the removal of this artificial demarcation for the following reasons:

- It is a root cause of customer and supplier confusion
- Suppliers' ability to comply is compromised by this confusion
- Proving eligibility is of considerable challenge
- Few businesses will be aware of their turnover as measured in Euro
- Businesses cannot 'prove' the number of employees
- Business cannot confidently state their annual energy consumption

However there is a more fundamental issue that we have with the concept, content and intent of SLC7A and that is we do not believe that it is acceptable to have a two-tier supply market.

The argument in favour of this appears to rest upon the description of 'minimum standards' as "protection".

We fundamentally disagree that this should be viewed as "protection", this is plainly and simply the minimum standard of communication that a business, of any size, should expect when engaging in the energy market.

It should be left to the customers themselves to choose to ignore the communications if they so wish.

In our previous response we reviewed the common arguments being put forward for why a universal minimum standard was not necessary. Our view has not changed.

Whilst we have sympathy with large I&C customers not necessarily needing or wanting plain English detail of their contractual situation, it needs to be seen in the context of 'minimum

standards' and not "protection".

Any customer, SME or I&C, can choose to ignore the communications and protections provided under SLC7A, and can choose to tailor their specific energy contracting process to suit their particular commercial, strategic or financial needs.

Conversely, if they choose to add bells and whistles to the core provision then that should be their right. This should not however be a reason not to employ minimum standards of communication across the market.

CHAPTER: Three

Question 4: Do stakeholders foresee any significant costs or difficulties to our revised definition?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Extension of SLC7A to all non-domestic customers,

KEY STATEMENTS RELEVANT TO THIS ANSWER

- Simplicity and transparency is key to improving the market
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market
- SLC7A in current form causes unnecessary cost and time burden on all parties

We advocate the extension of SLC7A to all non-domestic customers.

Whilst we recognize that Ofgem have attempted to widen its reach to overcome the obvious anomalies caused by the initial definition we continue to see this as at best a distraction from real change and at worst a costly exercise that will actually lead to less engagement in the market due to customer confusion.

It remains, in our opinion, wrong that only a segment of businesses are provided with a minimum standard of information, contract end dates on invoices, and protection from the worst excesses of default rollover contracts.

Ultimately costs will follow wherever there is a burden of proof on one or more parties. This is exactly the situation that SLC7A brings.

There is little doubt that the implementation of this definition has already, and will continue to create an unnecessary cost and time burden on all parties involved.

Though well meaning this demarcation is an entirely unnecessary and artificial construct that does not address the fundamental problems of the market.

In addition quite opposed to the intended good it is a cause of customer confusion and whilst Suppliers' failure to comply frustrates it is unsurprising given that:

- It is a root cause of customer and supplier confusion
- Suppliers' ability to comply is compromised by this confusion
- Proving eligibility is of considerable challenge
- Few businesses will be aware of their turnover as measured in Euro
- Businesses cannot 'prove' the number of employees
- Business cannot confidently state their annual energy consumption

These are just the headline challenges posed by the definition and its criteria.

Cost will land on both sides in proving and disproving eligibility as well as through the need for suppliers to segment practices.

On any objective measure these costs must exceed those associated with a universal application of this standard.

By extending SLC7A to cover all businesses the costs of measurement, development and maintenance to supplier systems are removed.

This, together with the added benefit of no artificial, unquantifiable, unenforceable definition, no two-tier market, no requirement for suppliers to segment their offerings is reason alone to ensure a change in approach and apply SLC7A to all businesses.

CHAPTER: Three

Question 5: Do stakeholders agree with our proposal to mandate contract end dates on bills for consumers covered by SLC 7A? Are there significant cost implications?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- All proposals to be fully effective from 'Day One'
- Extension of SLC7A to all non-domestic customers,
- Total ban on rollover contracts,
- Supplier market based pricing for 'out of contract' customers,
- Total freedom of movement for 'out of contract' customers
- Contract End Dates on all supplier correspondence
- Termination Dates and obligations on all supplier correspondence
- Interim letter detailing contract & termination dates if supplier unable to hit day one
- Proscribed format, content, position & prominence of Contract & Termination dates
- Full customer termination rights up to the final day of their existing contract

KEY STATEMENTS RELEVANT TO THIS ANSWER

- Simplicity and transparency is key to improving the market
- Invoices are just the start
- Provision of clear, prominent contract dates is the essential conduit to engagement
- All businesses would benefit, non co-terminus end dates are a major issue
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market
- Past failure cannot be an excuse for future under-servicing of the customer.

We welcome Ofgem's move to mandate contract end dates on bills in light of our campaign for simplicity and transparency, however there are a number of things that we see are critical here to ensure this is not a missed opportunity:

1. Contract end dates on invoices was the focus of our campaign because it was the lowest hurdle for supplier sentiment to get over, in itself it is not enough, all customer correspondence should detail this information

2. It must be applicable to all business customers and not just those under SLC7A, non co-terminus contract end dates are a major issue for large businesses and it would therefore be wrong not to extend this measure to all parties in order to enable much needed transparency in this area.

3. To make this truly effective the contract end date must be in a proscribed format, content, position and prominence uniform to all suppliers and not hidden away in the small print

4. Suppliers' implementation of this should be immediate, with a maximum deadline of Day One of these proposals coming into legal effect

5. Where a supplier claims incapability to organise 'legacy systems' or any other reason for failure to meet these timescales and therefore argues insufficient time and resource to remedy we call for Ofgem to implement a clear alternative in lieu of contract end dates printed on invoices by Day One and that is a letter to each of the affected customers from the impacted suppliers to the criteria set out in 3)

6. We note with concern the lack of engagement from suppliers with only 6% actively considering contract end dates on invoices as a policy worth investing in for their customers and only 50% agreeing with Ofgem's move to mandate this activity. This does not sit comfortably with a background of co-operation and commitment.

With regards cost implication we remain in no doubt that this will be a central argument by suppliers for why this minimum information provision is unworkable and unfair.

We would simply ask the regulator and suppliers to take an objective look at what is a reasonable expectation for customers in terms of communicating critical contract data.

It is abundantly clear that any cost is borne out of the failure of suppliers to build these minimum standards into their original systems and failing to invest in positive customer relations.

Past failure cannot be an excuse for future under-servicing of the customer.

It should not be forgotten that the provision of clear, prominent contract end dates on invoices is the essential conduit to clarity over contractual timings which will allow the customer to make a timely and informed choice in contract selection.

CHAPTER: Three

Question 6: Do stakeholders agree the last termination date should be included alongside the end date on bills? Are there any significant cost implications?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- All proposals to be fully effective from 'Day One'
- Extension of SLC7A to all non-domestic customers,
- Total ban on rollover contracts,
- Supplier market based pricing for 'out of contract' customers,
- Total freedom of movement for 'out of contract' customers
- Contract End Dates on all supplier correspondence
- Termination Dates and obligations on all supplier correspondence
- Interim letter detailing contract & termination dates if supplier unable to hit day one
- Proscribed format, content, position & prominence of Contract & Termination dates
- Full customer termination rights up to the final day of their existing contract

KEY STATEMENTS RELEVANT TO THIS ANSWER

- By allowing full customer termination rights up to the final day of their existing contract this proposal would be rendered unnecessary
- Simplicity and transparency is key to improving the market
- Invoices are just the start
- All businesses would benefit, multiple termination dates by premise are common
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market
- Enabling the customer to engage in the market at a point convenient to them

We welcome this move however our call for full customer termination rights up to the final day of their existing contract would render it unnecessary.

Recognising however that Ofgem are not currently proposing this and instead are suggesting customer termination rights up the final day of their notice period we would recommend that the following be considered:

1. Contract end dates on invoices was the focus of our campaign because it was the lowest hurdle for supplier sentiment to get over, in itself it is not enough, extending this to termination dates is welcomed but applying it to all customer correspondence should become the minimum standard

2. It must be applicable to all business customers and not just those under SLC7A, non co-terminus contract end dates are a major issue for large businesses and it would be wrong not to extend this measure to all parties particularly given the potential for varying termination dates and contract end dates for the same premise

3. To make this truly effective the termination date must be in a proscribed format, content, position and prominence uniform to all suppliers and not hidden away in the small print

4. Suppliers' implementation of this should be immediate, with a maximum deadline of Day One of these proposals coming into legal effect

5. Where a supplier claims incapability to organize 'legacy systems' or any other reason for failure to meet these timescales and therefore argues insufficient time and resource to remedy we call for Ofgem to implement a clear alternative in lieu of termination dates printed on invoices by Day One and that is a letter to each of the affected customers from the impacted suppliers to the criteria set out in 3)

7. We note with concern the lack of engagement from suppliers with only 6% actively considering contract end dates on invoices as a policy worth investing in for their customers and only 50% agreeing with Ofgem's move to mandate this activity. Given this, we suspect the move for inclusion of termination dates on invoices will further entrench suppliers' attitudes against this proposal.

Whether it is the last day of their current contract or two years before their contract end the customer should be able to terminate and contract for a contiguous period safe in the knowledge that their only obstacle is their appetite for the price and contract on offer.

Ofgem's ultimate goal has to be enabling the customer to engage in the market at a point that is convenient to them in this way. We therefore believe that this solution should dovetail with our other proposals detailed above.

CHAPTER: Three

Question 7: Do stakeholders agree with our proposal to require suppliers to allow small business customers to give notice to terminate their contract (as from the end of the fixed term period) from the beginning of their contract? What are the implications of this proposal, including cost implications?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- All proposals to be fully effective from 'Day One'
- Extension of SLC7A to all non-domestic customers,
- Total ban on rollover contracts,
- Supplier market based pricing for 'out of contract' customers,
- Total freedom of movement for 'out of contract' customers
- Contract End Dates on all supplier correspondence
- Termination Dates and obligations on all supplier correspondence
- Interim letter detailing contract & termination dates if supplier unable to hit day one
- Proscribed format, content, position & prominence of Contract & Termination dates
- Full customer termination rights up to the final day of their existing contract

KEY STATEMENTS RELEVANT TO THIS ANSWER

- We agree 'Not before dates' should be banned
- Only 1 in 16 suppliers allows termination at any point
- 50% of the big 6 employ a not before / not after window
- Contract end dates on invoices is the bare minimum
- All non-domestic customers should benefit from this
- A customer should have full termination rights to their contract end
- Supplier 'risk' is overblown
- Suppliers can protect themselves by levying market rates to uncontracted customers
- Uncontracted Customers can protect themselves with total freedom of movement
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market

We fully share Ofgem's concern regarding multiple termination windows.

Customers must not, and never should have been, subject to a 'not before' date for termination.

From our own analysis only one of 16 suppliers surveyed permitted termination of their contract any point up until the final day.

Furthermore 50% of the big 6 energy suppliers operate a not before / not after window for termination.

We recognise that the difficulties and opaqueness of this are being addressed by Ofgem in pursuing contract end dates and termination dates on invoices however we believe that this

is the bare minimum and the following amendments should be made.

We believe that a customer should be able to terminate at any point up to the end of their existing contract.

This therefore means freedom throughout the contract term for the customer to actively engage in the market

We believe that this represents a positive step forward for businesses and our industry.

Suppliers will argue that the final day of the contract is too late to provide security in forward purchasing for a future contract period. We believe that this is nonsense.

We recognise that it is challenging for outside observers to accurately dispute this claim therefore we call for the supplier to be allowed to charge market reflective rates to an uncontracted customer and the customer to be allowed full freedom of movement during that 'uncontracted' period.

We believe this will result in a smoother functioning, fairer market typified by higher customer engagement and the recognition, based on regular and consistent supplier communication of the cost of failure to actively engage.

It has to be better to expose a small minority of customers to short term market pricing than to expose a huge swathe of the market to locked-in, long term, premium rates bearing no relation to prevailing market prices, as is currently the case.

Nobody loses out in this scenario, the suppliers 'protect' themselves from market risk, the customers 'educate' themselves through supplier communication, and the 'uncontracted' customer is only exposed to short-term uncertainty with the ability to lock in a better deal at any point.

CHAPTER: Three

Question 8: Do stakeholders consider that it would be to the benefit of customers to allow suppliers to terminate small business contracts, signed under the terms of SLC7A, in specific circumstances where a customer's energy usage significantly increased?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- All proposals to be fully effective from 'Day One',
- Extension of SLC7A to all non-domestic customers,
- Supplier market based pricing for 'out of contract' customers,
- Total freedom of movement for 'out of contract' customers

KEY STATEMENTS RELEVANT TO THIS ANSWER

- Extension of SLC7A to all non-domestic customers would remove this issue
- Material changes in the cost to supply can affect suppliers
- This will be driven by capacity and metering not consumption
- Supplier driven change should signal total freedom of movement for the customer
- The supplier should be free to offer new terms with no obligation to honour existing terms

If our proposal to extend SLC7A to cover all businesses was implemented this issue would be immediately negated.

We recognize however that Ofgem propose to retain and extend SLC7A only partially and therefore this issue may well occur.

However we still see this particular issue as a relatively uncommon occurrence and as such would be minded to reassure Ofgem not to overtly change or hold back on their desire for change because of such "what if?" scenarios.

That said we do recognize this as an issue and we do recognize that whatever solution is brought there is a risk of gaming by supplier and customer alike.

We do not believe this can be avoided without unnecessary market complication out of proportion to the number of examples of this issue.

From a supplier's perspective we believe there comes a point where the material cost of supplying a customer changes.

This could be through consumption levels however the construct of energy contracts already caters for this exposure to a more than acceptable level.

It is therefore then only likely that this eventuality would be played out by a need to overcome either physical capacity constraints or change metering system.

In both of these circumstances the industry, if not the supplier would most likely prompt this themselves.

At this point, we would expect the supplier to necessarily contact the customer with the proposed changes and offer them new contract terms, the customer themselves should have total freedom of movement to re-contract with their existing supplier or a new party from the start date of the new arrangement which will be ordained by the supplier.

We do not believe there is a necessity for any further complication beyond these simple measures.

CHAPTER: Three

Question 9: Do stakeholders have views on the proposed amendments to SLC 7A set out in Appendix 4?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- All proposals to be fully effective from 'Day One',
- Extension of SLC7A to all non-domestic customers,
- Total ban on rollover contracts,
- Supplier market based pricing for 'out of contract' customers,
- Total freedom of movement for 'out of contract' customers,
- Contract End Dates on all supplier correspondence,
- Termination Dates and obligations on all supplier correspondence,
- Interim letter detailing contract & termination dates if supplier unable to hit day one,
- Proscribed format, content, position & prominence of Contract & Termination dates,
- Full customer termination rights up to the final day of their existing contract,

KEY STATEMENTS RELEVANT TO THIS ANSWER

- 'Prominence' is too subjective, proscription is the right way to go
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market
- It is the combination of proposals that will bring real change, not just one element

Whilst widening the definition has potentially removed some of the clear anomalies caused by the micro-business definition, we believe that any artificial categorisation of a customer as micro-business, small business or any other definition is a bad thing.

We advocate the removal of this artificial demarcation for the following reasons:

- It is a root cause of customer and supplier confusion
- Suppliers' ability to comply is compromised by this confusion
- Proving eligibility is of considerable challenge
- Few businesses will be aware of their turnover as measured in Euro
- Businesses cannot 'prove' the number of employees
- Business cannot confidently state their annual energy consumption

With regard the proposed wording for Information on Bills, we welcome the use of the word 'prominence' but believe this is too subjective and does not go far enough to stipulate a uniformity of approach that is essential to avoid customer confusion.

We therefore propose that the contract end date and termination date must be in a proscribed format, content, position and prominence uniform to all suppliers and not hidden away in the small print.

In consideration of the treatment of termination criteria we advocate a move to allow customers to terminate their contract, of whatever definition, up to and including the final day of that contract.

We believe that is a combination of the proposals detailed above that will allow a truly competitive, engaged market to rise.

CHAPTER: Four

Question 10: Do stakeholders agree that industry processes could be improved to alleviate current issues with the objections process?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- All proposals to be fully effective from 'Day One'
- Extension of SLC7A to all non-domestic customers,
- Total ban on rollover contracts,
- Supplier market based pricing for 'out of contract' customers,
- Total freedom of movement for 'out of contract' customers
- Contract End Dates on all supplier correspondence
- Termination Dates and obligations on all supplier correspondence
- Interim letter detailing contract & termination dates if supplier unable to hit day one
- Proscribed format, content, position & prominence of Contract & Termination dates
- Full customer termination rights up to the final day of their existing contract
- Extension of the registration and objection windows
- Automatic removal of an objection where the supplier fails to meet its obligations
- Clear steps to quantification, remedy and censure of objection malpractice
- Alignment of the Industry codes to enable consistency of objection application
- Mandated content, format and timescales of a supplier objection notification
- Mandated supplier provision of objection data
- Publishing of objection statistics
- Mandating of evidence in objection dispute (including full supplier call recordings)
- Supply Licence Condition to underpin objection communication and fair practice
- Expansion of TPI Code to cover all parties selling to non-domestic energy customers
- Build on the pre-existing foundations of the E.On TPI Code
- Universally enforced SOC with objective, quantitative measurement of performance
- SOC to have specific provision for action against win-backs
- SOC sanctions directly related to the potential harm to the market
- SOC covering all customer interaction and all non-domestic customers

KEY STATEMENTS RELEVANT TO THIS ANSWER

- The current market structure creates this problem
- This problem is a long running one, notoriously difficult to police
- Ofgem's moves are welcomed
- Three areas of concern: Information provision, market structure & censure
- Multiple invalid objections suggest information provision is not working
- The mandating of timescales and content of communication is required
- Removal of objection where supplier fails to meet its obligations
- We support a total overhaul of the objection rules under the MRA
- In lieu of this the registration and objection windows should be increased
- Ofgem must enforce clear penalties where malpractice is discovered
- The burden of proof should be on the objecting supplier
- We welcome the information provision from the Dist Co's and Xoserve
- We are concerned at Ofgem's move to end supplier objection data reporting

- Publishing supplier objection statistics in a league table will aid customer choice
- The prevalence of 'win-backs' is a major concern for all players
- The TPI code of conduct and SOCs should be extended to cover all channels
- Action must be taken via the Code and SOC to stop this anti-competitive activity

We note with interest section 4.4. of Ofgem's Updated Proposals regarding the ongoing investigation into the behaviour of a major supplier around objection practices.

This move by Ofgem is to be welcomed following a similar investigation in 2007.

It is to be hoped that in future actions go beyond investigation and commentary and can deliver appropriate censure if a party is found guilty of abusing industry objection processes.

It is our belief that this is only this level of recourse that will change behaviour.

We believe Ofgem and other parties such has Gemserv are exposed in this area in light of the market structure which provides the outgoing supplier with the final say on the smooth running of a transfer.

It therefore becomes incumbent on Ofgem to ensure that any malpractice is appropriately acted upon. This has proved difficult historically and therefore Ofgem's moves to improve this situation are welcome.

Our concerns over the current treatment by suppliers of the objections process focuses on three areas:

- Information provision
- The negative incentive the current structure creates
- The burden of proof and strength of censure

Firstly information provision, we remain concerned about the quality, consistency and timeliness of information provision from suppliers around objections.

For this reason we believe that Ofgem must mandate the timescales within which proscribed information must be provided to the affected customer. Where a supplier fails to meet these obligation the objection should be automatically removed.

Secondly, the negative incentive the current structure creates.

We note with interest that Ofgem are "concerned about any misuse of the change of supplier process. Governance of this process, though, largely rests with the relevant industry codes" and that they "encourage the industry to solve these issues without the need for specific regulatory intervention; such as making modifications to industry codes"

We would support any move by Ofgem to push the industry through a fundamental overhaul of the current MRA rules that effectively place the power of final arbiter of a transfer in the hands of the outgoing supplier.

Finally, the burden of proof and strength of censure.

Ofgem propose to "monitor whether changes to industry process are made and if they do enough to improve consumer experience with the objections process."

In lieu of these findings we believe that both the registration and objection windows should be increased in length to allow a customer to establish at an earlier point and in a viable timeline to overcome the objection raised and to ensure that a far larger proportion of objections are resolved at the first attempt.

Ofgem commit to "consider if changes to licences will be necessary, in the light of this monitoring", this is to be welcomed. However Ofgem need to have the confidence to challenge this behaviour in a robust fashion where abuse comes to light.

We believe that Ofgem, together with the custodians of the industry codes must enforce clear penalties with the burden of proof heavily weighted on the outgoing supplier to prove that their actions were in keeping with the letter and spirit of the rules.

We welcome Ofgem's move to collect data from Xoserve and the distribution companies to establish objection levels from independent parties but are concerned at the consideration to end the current voluntary monthly reporting requirements on these sources. We believe that not only should this continue but also it should be mandated on suppliers to provide this information.

We also call for Ofgem to publish a 'league table' of objection statistics so customers can make an informed choice about their true freedom of movement at contract end given the varying propensity for suppliers to prevent legitimate transfers.

The concerns raised by Ofgem in 4.21 regarding multiple invalid objections would appear to further emphasise that the adherence of suppliers to the requirement to inform customers in writing of the occurrence of and reasons for objection are not working.

Finally, we believe that urgent action must be taken to prevent the prevalence of win-backs in the market.

This fundamental flaw in the market structure should either be removed or the behaviours exploiting it should be legislated against.

The lack of cooperation with the 2007 open letter demonstrates the need for direct, enforcing action to be taken.

The number of win-backs in the market and the varying propensity by supplier is such that it is the major issue with regards failed sale activity.

To this end we believe that it is essential to extend the terms of the TPI Code of Conduct to cover all sales channels, whether supplier, TPI or another and for the SOC to make specific provision for action against this anti-competitive activity.

CHAPTER: Four

Question 11: Do stakeholders agree that we do not need to make further changes to the licence conditions at this stage?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Extension of the registration and objection windows
- Automatic removal of an objection where the supplier fails to meet its obligations
- Clear steps to quantification, remedy and censure of objection malpractice
- Alignment of the Industry codes to enable consistency of objection application
- Mandated content, format and timescales of a supplier objection notification
- Mandated supplier provision of objection data
- Publishing of objection statistics
- Mandating of evidence in objection dispute (including full supplier call recordings)
- Supply Licence Condition to underpin objection communication and fair practice
- Expansion of TPI Code to cover all parties selling to non-domestic energy customers
- Build on the pre-existing foundations of the E.On TPI Code
- Universally enforced SOC with objective, quantitative measurement of performance
- SOC to have specific provision for action against win-backs
- SOC sanctions directly related to the potential harm to the market
- SOC covering all customer interaction and all non-domestic customers

KEY STATEMENTS RELEVANT TO THIS ANSWER

- The time has come for concrete action in the supply licence
- The industry needs to be seen to be taking a stand against malpractice
- The 2007 open letter has failed to make changes
- The industry codes need to be aligned to enable Ofgem to take action
- The penalty for malpractice should be clear

We believe that in the context of section 4.4, the investigation into the behaviour of a major supplier and the legacy of these issues dating back to 2007 means that the time for changes to licence conditions is upon us.

It is difficult to perceive a more direct experience of the market not working that this. Customers experience objection malpractice first hand, as does the applying supplier.

The consequences for future engagement in the market are clear.

Given the apparent lack of cooperation with the 2007 open letter it is now time for the industry to be seen to take a stand against objection malpractice.

The supply licence should detail the recourse available against suppliers to censure these behaviours with specific regard to:

- Communication
- Unjustified objection

- Win-back activity

In order to address this we recommend that the supply licence obligates suppliers to:

- Perform the following functions in good faith,
- Aligns the Industry codes to enable consistency of application and
- Provides clear auditable steps to quantification, remedy and appropriate censure.

CHAPTER: Four

Question 12: Do stakeholders agree that we should collect and potentially publish information from industry sources rather than from suppliers?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Mandated supplier provision of objection data
- Publishing of objection statistics

KEY STATEMENTS RELEVANT TO THIS ANSWER

- The lack of effective response to the 2007 open letter has changed the landscape
- Objection statistics should be published from independent sources
- Suppliers should be mandated to provide objection statistics
- A league table would help customers navigate the market and suppliers improve
- Allow customers to vote with their feet against transgressing suppliers

In contrast to our previous response, and in the context of section 4.4, and the ongoing investigation into a major supplier's behaviour regarding their objection practices, we now believe that the time has come for publication of objection data from independent sources.

We therefore welcome Ofgem's move to collect data from Xoserve and the distribution companies to establish objection levels from independent parties.

However we are concerned at the consideration to end the current voluntary monthly reporting requirements on supplier. We believe that not only should this continue but also it should be mandated on suppliers to provide this information.

We also call for Ofgem to publish objection statistics so customers can make an informed choice about their true freedom of movement at contract end given the varying propensity for suppliers to prevent legitimate transfers.

The development of a 'league table' of objection practitioners would enable the non-domestic customer to get a real picture of the consequence of contracting with each party at the point at which they are making their decision.

Providing the customer with the ability to vote with their feet will prove a critical move in overcoming the less positive contractual practices performed by some suppliers.

CHAPTER: Five

Question 13: Do you agree with our proposed approach to tackle issues in the non-domestic market? If not, which alternative proposals do you prefer?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Extension of SLC7A to all non-domestic customers,
- Universally enforced SOC with objective, quantitative measurement of performance
- SOC to have specific provision for action against win-backs
- SOC sanctions directly related to the potential harm to the market
- SOC covering all customer interaction and all non-domestic customers
- Quantifiable KPIs to underpin the success criteria of the proposals

KEY STATEMENTS RELEVANT TO THIS ANSWER

- The intentions of the SOC are honourable
- The conviction with which it is being applied is sub-optimal
- SOC needs rigorous auditing and quantifiable KPIs
- Option 4 does not cover the whole market so we do not support
- Option 6 is our favoured option, whole market, all interactions
- Simplicity and transparency is absolutely key here
- Provide clarity. Provide understanding. Promote engagement.

We believe that the spirit and intent of the SOC is honourable however we have concerns as to its effective application given the difficulty for even a well meaning business to enshrine a notion of 'fairness' in their dealings.

If a SOC is to have any effect it needs to consist of rigorously audited and quantifiable targets.

Given the proposed SOC fails to deliver on this it is unlikely that despite the best intentions of Ofgem that the SOC will succeed.

We will comment on each of the options raised by Ofgem in turn:

Option One: We agree that this is too limited a scope given its focus being constrained to billing. We continue to believe that the real issue is market engagement and clarity and that should therefore constitute the basis of any SOC.

Where we do not agree with Ofgem is in the notion that being prescriptive is impractical per se. In our opinion being prescriptive on the right subjects to the appropriate degree is essential in order to ensure compliance and relevant action. It is this auditable, quantitative measurement that is missing from the SOC and which risks its failure.

Option Two: We agree that this is too narrow and believe it poses too great an opportunity

for obfuscation

Option Three: We agree that though the breadth is improved it still falls short of covering all issues of concern.

Option Four: we recognise that this is Ofgem's preferred option and understand and appreciate the context in which they have reached that decision.

However in line with our belief that SLC7A should be extended to all business we do not see that a Standard of Conduct limited to only a section of the market and therefore the implied development of a two-tier level of service is an acceptable outcome.

Whilst we support the intent of the content of the SOC in option four it's market coverage is sub-optimal and as such we do not support its implementation in this form.

Option Five: we appreciate the extension of the SOC to all customer interactions and have considerable sympathy with this move, however it again is limited to the current artificial demarcation under SLC7A and as such is not a market wide solution.

Option Six: This combines the benefits of Option five with our call for the abandonment of the artificial demarcation placed on the market under SLC7A. As a result this is our preferred option.

We note Ofgem's concern regarding the heterogeneous nature of the business market and specifically the finding that "one small business wanted more detail on their bills, while another wanted less", this is an interesting point, however it is easily solvable given this is two sides of the same coin.

Customers don't want more they don't want less they want clarity.

Clarity drives understanding.

The reactions provide a dichotomy of response simply because the clarity does not exist.

Provide clarity. Provide understanding. Promote engagement.

Promoting choice and value.

CHAPTER: Five

Question 14: Does the proposed approach to enforcement mitigate stakeholders concerns about the regulatory uncertainty and risk?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Universally enforced SOC with objective, quantitative measurement of performance
- SOC to have specific provision for action against win-backs
- SOC sanctions directly related to the potential harm to the market
- SOC covering all customer interaction and all non-domestic customers
- Quantifiable KPIs to underpin the success criteria of the proposals

KEY STATEMENTS RELEVANT TO THIS ANSWER

- A bespoke approach to enforcement is a recipe for ineffectiveness
- 'Fairness' is an indefinable concept and therefore is a weakness
- The subjectivity of view could benefit larger suppliers with large resource to remedy
- The SOC should be quantifiable and enforceable in both letter and spirit
- KPIs and sanctions against failing to reach KPIs should be published
- Sanctions should take into account the potential harm of an action
- Without this we fear the SOC will be a lost opportunity for market improvement

Without prejudice to the pre-existing arrangements in the domestic market an objective view would suggest that a "bespoke approach to enforcement" could result in patchy, inconsistent and potentially overly subjective decisions being reached.

This concern is most acute when considering the enshrinement of the concept of 'fairness' within an assessment of the "seriousness of the breach".

In addition the potential to take into account "suppliers actions and considerations… including at senior level" and the focus on new and existing "policies and processes" though understandable has the potential to 'advantage' the larger suppliers.

The larger suppliers, who by virtue of any misinterpretation of the letter or spirit of the SOC will have a commensurably larger impact on the market and who possess larger management structures and significantly higher resource and budget availability could presumably avoid enforcement through (deliverable) promises of future change.

In direct contrast smaller, lower resourced suppliers, having a far reduced impact on the overall market could be censured to a far greater impact under this subjective approach due to an inability to create a 'project team' to overcome an anomalous process.

Our view is very much that the SOC should be quantifiable and enforceable in both letter and spirit.

To this end we believe that it is inappropriate to take a subjective view of misdemeanours and instead to develop a series of KPIs and sanctions in the event of a failure to comply with

or meet those KPIs.

These sanctions should be directly related to the potential harm brought by the specific activity of the subject supplier to the market as a whole.

In our opinion, intentional actions taken to distort the market by a large supplier carries a far greater consequence than an oversight committed by a small supplier.

None of this should reduce the import of tackling these issues but it is our belief that this must be done objectively, against quantifiable KPIs and with clear consequences for failure to adhere to the SOC

We fear without this the SOC will be a lost opportunity for genuine market improvement.

CHAPTER: Five

Question 15: Do you agree the proposed binding Standards should cover small businesses only?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- All proposals to be fully effective from 'Day One'
- Extension of SLC7A to all non-domestic customers,
- Total ban on rollover contracts,
- Supplier market based pricing for 'out of contract' customers,
- Total freedom of movement for 'out of contract' customers
- Contract End Dates on all supplier correspondence
- Termination Dates and obligations on all supplier correspondence
- Interim letter detailing contract & termination dates if supplier unable to hit day one
- Proscribed format, content, position & prominence of Contract & Termination dates
- Full customer termination rights up to the final day of their existing contract
- Extension of the registration and objection windows
- Automatic removal of an objection where the supplier fails to meet its obligations
- Clear steps to quantification, remedy and censure of objection malpractice
- Alignment of the Industry codes to enable consistency of objection application
- Mandated content, format and timescales of a supplier objection notification
- Mandated supplier provision of objection data
- Publishing of objection statistics
- Mandating of evidence in objection dispute (including full supplier call recordings)
- Supply Licence Condition to underpin objection communication and fair practice
- Expansion of TPI Code to cover all parties selling to non-domestic energy customers
- Universally enforced SOC with objective, quantitative measurement of performance
- SOC to have specific provision for action against win-backs
- SOC sanctions directly related to the potential harm to the market
- SOC covering all customer interaction and all non-domestic customers
- Quantifiable KPIs to underpin the success criteria of the proposals

KEY STATEMENTS RELEVANT TO THIS ANSWER

- We do not agree that the binding Standards should only cover small business
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market
- It is the combination of proposals that will bring real change, not just one element

This is the crux of our argument. A customer, of any size, should be able to expect a minimum standard of service from their supplier.

We therefore do not agree that the binding Standards should only cover small business

We believe that SLC7A should be extended to cover all businesses and that should be seen not as "protection" but as the 'minimum' standards all businesses can expect from their

supplier.

If a larger or indeed any size of business desires to place additional criteria around their energy tendering process, contractual requirements or service levels this should be left to them to devise however this should not prevent a universal minimum standard to be applied to all businesses.

We believe this move together with the proposals laid out above will lead to material improvement in the running of the market, bring significance improvement to the experience of the business consumer and will enable a truly competitive market to blossom.

CHAPTER: Five

Question 16: Do you agree with the assessment that the scope of the binding requirements should focus on the relevant activities of billing, contracting, and transferring customers (and matters covered by related existing licence conditions)?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Extension of SLC7A to all non-domestic customers,
- Universally enforced SOC with objective, quantitative measurement of performance
- SOC covering all customer interaction and all non-domestic customers

KEY STATEMENTS RELEVANT TO THIS ANSWER

- We do not agree that the binding Standards should only cover small business
- We do not agree but do understand the reasons for limiting the scope of focus
- We however expect this to be a first step to the scope extending to all interactions
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market
- It is the combination of proposals that will bring real change, not just one element

We recognize the reasons for the extent of the SOC to be limited to billing, contracting and customer transfer however our preference is to have the SOC covering all interactions between suppliers and consumers regardless of business size.

However we believe that in order to make the step change required within the market to the benefit of the business consumer it is essential that all supplier actions be measured against a minimum standard.

We do however accept that the most logical first step is to cover those issues which relate to existing licence conditions namely

- Billing,
- Contracting and
- Customer transfer

However it is essential that this is extended to cover all businesses and therefore to extend SLC7A to cover the whole market, and it is essential that the SOC should be quantifiable and enforceable in both letter and spirit.

To this end we believe that it is inappropriate to take a subjective view of misdemeanours and instead to develop a series of KPIs and sanctions in the event of a failure to comply with or meet those KPIs. These sanctions should be directly related to the potential harm brought by the specific activity of the subject supplier to the market as a whole.

It must be further underlined that we see the SOC covering these limited areas as a first step

and as such expect over the longer term for Ofgem to extend the SOC to cover all supplier interactions with business customers.

CHAPTER: Five

Question 17: Do you have any information about potential costs and benefits of the roll out of the Standards of Conduct?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Extension of SLC7A to all non-domestic customers
- Universally enforced SOC with objective, quantitative measurement of performance
- SOC sanctions directly related to the potential harm to the market
- SOC covering all customer interaction and all non-domestic customers

KEY STATEMENTS RELEVANT TO THIS ANSWER

- Cost is inevitable
- The benefit is key
- Significant savings however are available through extending SLC7A to all

Any change will result in a cost consideration somewhere. That is unavoidable. However the criticality of measuring cost comes against the benefit of taking action. The positive benefit that:

- A universally enforceable SOC with objective, quantitative measurement of performance
- Covering all supplier interactions

We believe this will have a material impact on improving the working of the market and will positively encourage market participation to the benefit of all parties.

It is in this context that potential costs should be viewed.

Indeed by following our recommendation and removing the artificial demarcation created by SLC7A in its current and proposed form a significant cost will be removed from the industry enabling this spend to be focused more effectively elsewhere in the drive to make genuine, deliverable and positive changes to the market for business customers.

CHAPTER: Five

Question 18: Do stakeholders have views on the proposed New Standard Condition 7B set out in Appendix 4?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Universally enforced SOC with objective, quantitative measurement of performance
- SOC to have specific provision for action against win-backs
- SOC sanctions directly related to the potential harm to the market
- SOC covering all customer interaction and all non-domestic customers

KEY STATEMENTS RELEVANT TO THIS ANSWER

- We support the wording, intent and expectations of behavior
- We fear that this is undermined by both coverage and enforceability
- The SOC must be extended to all non-domestic customers to bring true benefit
- The SOC should be quantifiable and enforceable in both letter and spirit.
- The potential for harm should be a key underpin to any sanction

We see the SOC as set out in Appendix 4 as a positive move for the industry. But we do have a significant concern.

It is not the wording or intent that is of concern, indeed the expectations of supplier behaviour is clearly spelt out.

Instead the issue is one of coverage and enforceability.

It is essential that the SOC is extended to cover all businesses and therefore we push for SLC7A to be extended to cover the whole business market.

It is equally essential that the SOC should be quantifiable and enforceable in both letter and spirit.

To this end we believe that it is inappropriate to take a subjective view of misdemeanours and instead to develop a series of KPIs and sanctions in the event of a failure to comply with or meet those KPIs. These sanctions should be directly related to the potential harm brought by the specific activity of the subject supplier to the market as a whole.

Intentional actions taken to distort the market by a large supplier clearly carries a far greater consequence than an oversight committed by a small supplier. None of this should reduce the import of tackling these issues but it is our belief that this must be done objectively, against quantifiable KPIs and with clear consequences for failure to adhere to the SOC

We fear without this the SOC will be a lost opportunity for genuine market improvement.

CHAPTER: Six

Question 19: Do stakeholders agree with the proposal for Ofgem to develop options for a single Code of Practice (the Code) for non-domestic TPIs?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Expansion of TPI Code to cover all parties selling to non-domestic energy customers
- Build on the pre-existing foundations of the E.On TPI Code
- Prevent existing 'Codes' from operating in the market

KEY STATEMENTS RELEVANT TO THIS ANSWER

- We fully support Ofgem in this
- Codes operating in the market to date have not been fit for purpose
- We believe the existing foundations of the E.On code should be built upon
- We apply the principles of this code to all businesses and all suppliers
- This should be extended to cover all non-domestic sales interactions by all parties
- It would be of great concern if customers were faced with a two-tier standard
- We believe pre-existing, partial codes should be removed from the market
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market

We wholeheartedly support this decision by Ofgem.

It is to be commended that we are now in a position to implement a single code, to the benefit of the market and not to the benefit of individual vested interests.

It is in this context that we are also proud to be founder members of the Eon sponsored code of conduct.

We have to this point refrained from joining 'codes' operating within the TPI market, as we did not view them as fit for purpose, working for the benefit of the customer, nor as taking objective and professional stances on key issues.

This has changed with the heralding of the E.On prompted code, we have been involved in the drafts of this code from the early stages and are pleased to report the commitment and desire of the parties involved to make this work and to encourage the remaining suppliers and TPIs to sign up.

Despite the code emanating from E.On we apply its principles in dealing with all suppliers and all businesses, whether micro, small, large or I&C. We provide a minimum standard that any customer can expect regardless of size, supplier or intent. Given we do this we see no reason whatever why this code cannot and should not be extended to cover all non-domestic sales interactions by all parties, TPIs and Suppliers alike.

Whilst we recognise the potential of issues in Ofgem taking over a supplier created code we

feel a pragmatic approach is needed and that building on an existing foundation is preferable to embarking on a completely fresh construct.

Given the supplier themselves are actively looking to pass the management of the code onto an independent body, it is to state the obvious that the candidature for this should be limited to one, Ofgem.

We also recommend that Ofgem move to remove from the market the pre-existing, subjective, and questionably managed codes. Continued operation of codes that appear to be fueled solely by the desire to 'score points' against other industry participants be they suppliers or TPIs is both unconstructive and unseemly.

Furthermore it is absolutely essential that Ofgem expand the current narrow focus of the Code from covering non-domestic TPIs to cover all sales channels interacting with non-domestic energy customers.

Whether these are directly employed departments with the supplier, brokers, agents representing single suppliers, price comparison sites, indirectly employed business providing sales and acquisition services to suppliers, they should all be equally covered by the Code.

It would be of great concern if a two-tier set of standards between TPIs and suppliers were allowed to develop. Business customers should be confident in the knowledge that whenever and with whomever they enter contract discussions they will be treated fairly and will have full recourse to recompense where standards fall below acceptable levels.

CHAPTER: Six

Question 20: Do stakeholders consider the Code should apply to all non-domestic TPIs (including those serving small business and large businesses)?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Expansion of TPI Code to cover all parties selling to non-domestic energy customers
- Extension of SLC7A to all non-domestic customers,

KEY STATEMENTS RELEVANT TO THIS ANSWER

- This should be extended to cover all non-domestic sales interactions by all parties
- It would be of great concern if customers were faced with a two-tier standard
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market

We believe that the code should apply to all dealings with all non-domestic customers.

For the avoidance of doubt this means that the Code should apply to Suppliers and TPIs alike, and indeed any third party operating in the market on behalf of suppliers and/or customers and should apply to all non-domestic customers.

And this should be echoed by the removal of the artificial demarcation of businesses under SLC7A.

All business, of whatever size, should be able to engage in the market, with the knowledge that whenever and with whomever they enter contract discussions they will be treated fairly and will have full recourse to recompense where standards fall below acceptable levels.

CHAPTER: Six

Question 21: What do stakeholders consider should be the status of the Code, the framework in which it should sit, and who should be responsible for monitoring and enforcing the Code?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Expansion of TPI Code to cover all parties selling to non-domestic energy customers
- Build on the pre-existing foundations of the E.On TPI Code
- Prevent existing 'Codes' from operating in the market

KEY STATEMENTS RELEVANT TO THIS ANSWER

- We fully support using Business Protections from Misleading Marketing Regulations
- We are agnostic to supply licence changes
- This should be extended to cover all non-domestic sales interactions by all parties
- The focus should be ensuring customers aren't faced with a two-tier standard
- It isn't "protection", it is the minimum standard of communication that a business, of any size, should expect when engaging in the energy market

We fully support Ofgem's move in "continuing to seek the powers to use certain parts of the Business Protections from Misleading Marketing Regulations to allow us take action directly against TPIs for mis-selling to business consumers".

Indeed this must form a core plank of Ofgem's power in monitoring and enforcing the code but it must also be extended to all sales interactions and not just limited to TPIs.

We are somewhat agnostic as to the inserting of a specific marketing licence condition on suppliers.

We see this as a by-product of an enforceable, fit for purpose code requiring all signatories to meet minimum standards of behaviour and preventing access to the market to those that fall below these standards.

Furthermore it is absolutely essential that Ofgem expand the current narrow focus of the Code from covering non-domestic TPIs to cover all sales channels interacting with non-domestic energy customers.

Whether these are directly employed departments with the supplier, brokers, agents representing single suppliers, price comparison sites, indirectly employed business providing sales and acquisition services to suppliers, they should all be equally covered by the Code.

It would be of great concern if a two-tier set of standards between TPIs and suppliers were allowed to develop. Business customers should be confident in the knowledge that whenever and with whomever they enter contract discussions they will be treated fairly and will have full recourse to recompense where standards fall below acceptable levels.

We also recommend that Ofgem move to remove from the market the pre-existing,

subjective, and questionably managed codes. Continued operation of codes that appear to be fueled solely by the desire to 'score points' against other industry participants be they suppliers or TPIs is both unconstructive and unseemly. We strongly suspect that the continued existence of these sparsely supported Codes will interfere with genuine progress in market improvement.

CHAPTER: Six

Question 22: Would you like to register your interest in attending the TPI working group?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Survey of each TPI, supplier or other participant to underpin the working group
- Universally enforced SOC with objective, quantitative measurement of performance
- Extension of SLC7A to all non-domestic customers
- Expansion of TPI Code to cover all parties selling to non-domestic energy customers

KEY STATEMENTS RELEVANT TO THIS ANSWER

- We are keen to be involved
- All parties need to be involved, suppliers and TPIs alike
- We are concerned that moving directly to a working group will lose contributions
- Smaller TPIs are likely to be 'drowned' out by larger TPIs and Suppliers
- We propose a survey of all parties in advance of the working group
- The working group can then be optimised to focus on the core issues raised
- The Energysure code provides a strong example of supplier collaboration
- The obstacles to co-operation in a single set of principles can be overcome

uSwitch for Business Limited would like to register their interest in being involved in the TPI working group, however we feel it necessary to caution that we have concerns over whether a working group is the most appropriate way of getting a balanced view from a fragmented and heterogeneous market.

We maintain that any code of conduct must be applicable to all internal and external sales channels and not solely focused on TPIs and therefore would expect the constituency of this working group to be extremely wide. For the avoidance of doubt we believe the working group needs to include both TPIs and Suppliers.

Whilst "getting suppliers on board" is a concern for some we believe that there are genuinely positive signs of improved supplier engagement with one another.

The Energysure code in the domestic market is a strong example of where all suppliers have come together to reach an agreement over a common way of operating. This demonstrates that having suppliers operating to the same set of principles is not impossible. Replicating this approach in the non-domestic market should therefore not be seen as facing obstacles too big to overcome.

Whilst we see a working group as a positive move for engagement we must caution that the resource availability within the average TPI to focus on such involvement is significantly less than the resources available to supply businesses and consumer groups.

As such we would recommend an initial more inclusive, less obstructive method of collating

opinion such as independent surveys of each interested TPI, supplier of other market participant to establish a common ground and not deliver a bias towards larger TPIs or suppliers whose presence and voice would be heard the most.

From this basis a representative working group could be then established, taking on board a far wider range of views and effectively formulating future plans.

CHAPTER: Six

Question 23: What issues should Ofgem consider in the wider review of the TPI market? What are the benefits and downsides to looking across both the domestic and non-domestic market?

KEY PROPOSALS RELEVANT TO THIS ANSWER

- Expansion of TPI Code to cover all parties selling to non-domestic energy customers
- Build on the pre-existing foundations of the E.On TPI Code
- Prevent existing 'Codes' from operating in the market
- Survey of each TPI, supplier or other participant to underpin the working group

KEY STATEMENTS RELEVANT TO THIS ANSWER

- We welcome reviews with a clear intent and focus
- It is unclear what is the object of the "wider TPI review"
- We welcome Ofgem's considerate and balanced view of TPI needs
- Collective purchasing, as a subject of review, should be industry wide
- We expect that the RMR has covered all 'live' issues and that a further review is unnecessary
- We believe that the RMR has directly covered all issues bar Rollover
- We do not believe that non-domestic reviews should be also focus on domestic
- We believe the non-domestic market has benefitted from focus and clarity
- This has resulted in much improved set of proposals from Ofgem

Ofgem's additional commitment to "launch a wider review to deliver a regulatory framework for third party intermediaries (including those that operate in the domestic market) that is fit for purpose in light of market developments and that supports consumer engagement and protection" is cautiously welcomed.

It is not clear what the concerns and intentions are that prompt this need.

However we appreciate what is now a more balanced view being taken by Ofgem in their perception of TPI activities in the market and we welcome their commitment to "communicate with stakeholders on other developments" as a result of this review.

We also appreciate the recognition of a major concern of any move would be the "impact of regulation on the cost of the operations of a TPI and as such the risk this may place on continued participation in the market of organizations who play a vital role in helping businesses navigate the market" and "Ensuring that businesses pay no more for their energy than they need to, and don't spend unnecessary time managing their energy accounts, is a key factor in our economy's competitiveness and its ability to grow and create employment"

This balanced view is to be welcomed.

With regards a further review, 6.10 refers to collective purchasing schemes being a justification for a separate TPI review.

It is difficult to comment on the intent of such a review without some greater insight into the reasons for embarking on this process. However if collective purchase schemes or some other market development warranted a review then whilst we would understand the move, we would expect any review of this sort to be market wide and not TPI specific.

In addition we believe that the work currently being undertaken by Ofgem through the Retail Market Review and these updated proposals provide an opportunity for real change in the market. To this end we would hope that this current process has covered all active and relevant issues facing the market. We believe that with the exception of the aforementioned Ofgem commitment to review Rollover activity, this has been the case.

With regards the move to review both the non-domestic and domestic market together we would sound a note of caution.

It is clear that until the February 2012 responses to the Retail Market Review were received there was a lack of general understanding as to the roles of players and the true workings, structure and challenges of the non-domestic market.

The responses received to the retail market review and more specifically the non-domestic elements have aided this understanding and enabled the participants to better understand the market and look beyond the dominant domestic sector.

The result has been a much-improved set of proposals from Ofgem, despite the need for them to be improved further.

We therefore believe it would be a mistake and a retrograde step to confuse the two markets, domestic and non-domestic, in the future.

It is our view that if there is insufficient insight missing in the non-domestic market to justify its own review then we would respectfully suggest that a further review, at this time, was surplus to requirements.