

Retail Market Review Team
Retail Markets
Ofgem
9 Millbank
London
SW1P 3GE

Ecotricity Group Limited
Unicorn House
Russell Street
Stroud
Gloucestershire
GL5 3AX

20th December 2012
Ecotricity Reference No.: 376
emma.cook@ecotricity.co.uk

Summary

Ecotricity support any initiative that will make the energy market more transparent and accessible to consumers, including businesses. We agree with some of Ofgem's proposals, particularly those on regulating brokers; however, we are concerned about how some of the other proposals such as the Standards of Conduct will be enforced in practice and the potential regulatory risk that they pose.

Timetable

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?*

We would like to see third party intermediaries (TPIs) regulated at the nearest possible opportunity. Unscrupulous conduct by such brokers causes huge problems for suppliers and consumers alike.

In terms of regulation affecting suppliers directly, we do not object to the proposed timeline for implementation: Standards of Conduct being incorporated into the licence conditions immediately after the 56 day mandatory notice period and other requirements coming in 4 months later. Ofgem must, however, bear in mind all other changes suppliers are being required to make and ensure that the implementation dates are sufficiently well spaced to make compliance to all the deadlines a realistic possibility for suppliers.

Market Overview

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

We support Ofgem's criteria for success. A reduction in unclear contract terms, contract terminations, switching problems and spurious objections, would improve the non-domestic market.

Protections for small businesses

We have combined our responses to questions 3 and 4.

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

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

Ecotricity appreciates the rationale for expanding the number of business customers that are protected by SLC 7A from "micro-businesses", those with a consumption of up to 55,000, to "small businesses" with a consumption of up to 100,000 kWh; but we have some concerns about this in practice.

We are particularly concerned about potential future changes in policy and how this new definition would be relevant. If protections for smaller businesses were significantly increased beyond the current level would those protections apply to all "small businesses" or just "micro-businesses"?

Ecotricity are relatively unique in respect of our business offering: we offer all businesses the option of a rolling variable tariff and the vast majority of our business customers take up this option. Of those that choose a fixed tariff, only one customer comes under the definition of a "micro-business customer" and just a handful are likely to come under the new definition of a "small business". Most of the other provisions of SLC 7A relate to protections for customers on fixed term contracts. It is not clear what the practical effect of these changes will be in relation to our rolling contract customers.

For those few customers that are on fixed term contracts, we are very concerned about the effect of expanding the group of customers affected by SLC 7A.3: the prohibition on contract clauses that allow suppliers to terminate a contract where a supplier no longer satisfies the definition of a business protected by SLC7A. The inability to terminate fixed term contracts when there is a significant change in consumption poses a high hedging risk to us and could therefore be costly.

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?*

It is not clear whether and how the requirement to place an end date on bills would apply to customers on rolling contracts. We would be opposed to any requirements to clutter our bills with information that is not relevant to the individual customer. In a telephone enquiry made in relation to Ofgem's information request on the cost of the RMR implementation we were told that it is not Ofgem's intention to require regulations aimed specifically at fixed contracts to apply to rolling contracts. We would like this to be clear in the Licence Conditions.

With regard to those few customers on fixed tariffs that would be covered by SLC 7A, our initial estimations show that this would not be a high cost for us to implement.

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

Ecotricity does not automatically roll fixed term contract customers over when they come to the end of their contract term. Instead these customers go onto a variable rolling tariff. Therefore, our customers do not have a last termination date and this would not be relevant to us. Again, we have been verbally informed by Ofgem that we are unlikely to be required to follow this requirement, but there must be clarity in the Licence Conditions. It would not make sense for us to add irrelevant information to our bill simply because we are caught by regulation that was not designed with our particular business model in mind.

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?*

As noted above, we do not automatically roll our business customers over onto new contracts and therefore our customers do not need to inform us of a wish not to be rolled over; they have the right to switch at the end of their term as a default. As a matter of principle we would support this applying across the industry; customers should be allowed to switch away when their contract term ends and should be able to inform the supplier of this at the beginning of the contract.

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?*

Yes we do. When we offer fixed term contracts, we purchase the amount of power that we estimate the customer will use for the period of the contract in advance. This estimation is based on the customer's historic consumption. This is necessary, in order to enable us to offer a fixed price to the customer without putting ourselves at risk. If the customer's consumption is significantly higher we will need to purchase additional power to supply it. This power will typically be more expensive and if we are unable to adjust the price we

charge the customer we could face significant losses. This problem is particularly relevant to independent suppliers that would face additional risks in terms of trading collateral.

In addition, there should be provisions to allow suppliers to increase the standing charge of a small business customer on a fixed term contract if that customer's consumption reduces significantly. We might, for example, have offered a very cheap standing charge that does not cover all the fixed costs of supply on the understanding that this would be covered through the unit rate on the customer's typical consumption. If this consumption reduces significantly then we would be unable to cover our costs.

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

There should be clarification over how provisions apply to customers on rolling contracts. For the avoidance of doubt, in the section titled "Information Required on Bills" the following two points of clarifications should be inserted:

"The requirement to place contract end dates on bills under SLC 7A 10(a), does not apply in relation to rolling contracts;" and

"The requirement to place the last termination date on bills under SLC 7A 10(b), does not apply to either rolling contracts or fixed contracts that do not require advance notice of termination at the end of the contract term."

Objections

We have combined our responses to Questions 10 and 11.

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

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

Ecotricity see no problem with the industry processes and regulations regarding objections to customer transfers. The majority of problems in the switching process and misuse of the objections procedure are caused by parties failing to comply with the existing rules; not by a need for new ones. It may, however, be useful for Ofgem to set out clear guidance on compliance with the existing rules, to ensure that all suppliers are fully aware of their own and their competitors' obligations.

We support the introduction of Change of Tenancy (COT) flags to ensure that the losing supplier does not unknowingly object to a new occupier switching supplier because of a debt on the old occupier's account.

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

We have no principle objection to this proposal but we have concerns about how it would work in practice. We are not confident in the robustness of central organisations such as ECOES and Xoserve in relation to their data. We note that their records are often incomplete and many have the incorrect meter serial numbers, MPANs or MPRNs. If these organisations were to be involved in reporting objection levels, there would need to be a substantial increase in the quality of their data checking and scrutiny to ensure that they follow best practice.

We are also concerned about how figures would be presented and the potential for this to unfairly represent independent suppliers. A small number of valid objections from us might appear high as a percentage of our total customer base. In particular, a valid objection to a single customer with several hundred meters would substantially increase the number of objections registered by an independent supplier and result in a distorted view of its practices. Therefore, it is important to consider how such misleading information could be avoided when implementing any reporting requirement.

Standards of Conduct

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?*

We do not object to the principal of the Standards of Conduct (SOC). We already treat all our customers with honesty, transparency and fairness, and the information that we provide is accurate and given in intelligible language. We are however concerned with how compliance with this would be enforced and with the lack of clarity over when a supplier would be found in breach of the SOC.

We also object to the proposal that suppliers inform all customers of how they plan to adhere to the SOC every year. Such repeat mail outs will only create irritation among customers. With business customers there is a high chance that not all mail outs will reach the appropriate person and therefore anything considered "non-essential", which this statement would probably be, is likely to be ignored. It would be more appropriate to limit the requirement to inform customers of SOC's when they switch to us and display the commitment on our website.

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

No it does not. We are concerned that the SOC as currently defined are not sufficiently clear. The vagueness of the drafting means that it will be difficult for suppliers to be certain whether or not they are compliant. A "principled approach" based on what a "reasonable person" would consider to be honest and fair leaves too much to interpretation and increases regulatory uncertainty and risk.

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

In principle we see no reason why all businesses should not be treated fairly and honestly in all dealings with their energy suppliers; the size of the customer should not be considered an excuse for dishonest and unfair treatment. On the question of enforcement and the need to show evidence of compliance - a more limited approach that focuses only on small businesses would be more appropriate.

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)?*

Yes, we do. Billing, contracting and transferring customers are the major points of customer interaction with suppliers and it therefore makes sense to limit the application of this requirement to those areas.

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

As currently drafted, the proposed Standards of Conduct and the way they would be enforced are not sufficiently clear to enable us to give any estimate of cost impact. This lack of clarity does in itself pose a risk to us and will make certainty of our compliance difficult.

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

The drafting of the Customer Objective is not sufficiently clear to enable it to be easily complied with. It requires the licensee to carry out actions in "a fair, honest, transparent, appropriate and professional manner."

As noted in response to Questions 13 and 14 we have serious concerns about this lack of clarity. The licence does not give any definitions of these qualities beyond stating that behaviour would not be considered "fair" if it caused detriment to the customer and advantage to the supplier.

Clause 7B.5 on compliance with the Standards of Conduct states that suppliers must "take all reasonable steps to achieve the Standards of Conduct and ensure that they are interpreted and applied in a manner consistent with the Customer Objective." Again, such drafting is vague and leaves a lot open to interpretation. Greater certainty about what would and what would not be considered compliant is needed.

Third Party Intermediaries

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?*

Yes, we would be strongly in favour of such a code. Third Party Intermediaries (TPIs) perform an important role in the market, increase the level of switching and have the potential to increase engagement. However, they are responsible for a large amount of mistrust in the industry and the more unscrupulous among them cause costly problems for consumers and suppliers alike.

Ecotricity has had a significant amount of trouble in our dealings with TPIs including: TPIs sending false customers with invented names to sign up; TPIs misrepresenting our prices to customers and TPIs calling our customers, falsely claiming to be our representatives and persuading these customers to switch away from us.

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

Yes, the code should be comprehensive and it must cover all TPIs.

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?*

The Code should be binding on all TPIs through a licence structure similar to supply licence conditions. Minor breaches should result in fines whilst major and consistent breaches should result in the TPI being stripped of its licence to operate.

Ofgem should be responsible for monitoring and enforcing the code. It is the best equipped body to do this and the alternatives of self regulation or holding suppliers vicariously responsible for broker actions are insufficient. Self regulation is unlikely to be robust and effective, as TPIs have an incentive to only do the bare minimum. It is clear that holding suppliers vicariously responsible for the actions of TPIs has not been effective to date. The only penalty is potential loss of business from a particular supplier and the requirement on suppliers to police the activities of brokers is in direct conflict with business requirements to establish good relationships with such TPIs. The only effective solution that will restore industry confidence in TPIs is direct regulation.

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

Yes we would to attend such a working group. Steve Ridsdale, our Head of Business Sales would be our representative on the group. Please add steve.ridsdale@ecotricity.co.uk to the mailing list for this group.

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?*

Ofgem must consider the following issues when reviewing the wider TPI market: how upfront are TPI agents about their commission and who they are paid by? Are they honest about who they are and whom they represent? What evidence do they give for recommending that a customer switch to a particular supplier? Do they inform suppliers that consumers have signed up to switch, when these consumers never actually agreed to this? Do they invent customers at addresses, whose occupiers have not been contacted? What should be the penalty for such outright fraud? At what point should their licence be removed? When would criminal sanctions be necessary?

It is essential that both the domestic and non-domestic markets are regulated. Households are even more vulnerable to unscrupulous behaviour from TPIs and we see no reason why they should not also be protected.

Conclusion

In conclusion we support proposals to increase the integrity of the non-domestic market by regulating Third Party Intermediaries and clamping down on spurious objections to customer transfer blocking.

We have some concerns about proposals to expand the definition of SLC 7A, particularly the prohibition on allowing suppliers to terminate or change a fixed term contract when the business increases its consumption by a significant level. We are also concerned about the enforcement of the SOC. We see a danger that these well intentioned Standards, which on the surface of it no one could reasonably object to, may result in a regulatory nightmare in which suppliers can never be sure of their compliance.

We welcome any further contact in response to this letter. Please contact Emma Cook on 01453 769301 or emma.cook@ecotricity.co.uk.

Yours sincerely,



Emma Cook
Head of Regulation, Compliance & Projects