



Making a positive difference
for energy consumers

To: Non-domestic suppliers, non-domestic consumers, consumer organisations and representatives, academics and other interested parties.

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13 June 2013

Dear Colleagues

Automatic rollovers in the non-domestic market – call for evidence

This letter is a call to suppliers, consumers, consumer organisations and other interested parties to provide evidence for our review of automatic rollovers in the non-domestic market. On 22 March 2013, we published our final non-domestic proposals as part of the Retail Market Review (RMR).¹ In this, we said we would review the current licence condition² that gives suppliers the ability to automatically extend (rollover) micro business contracts for a maximum of 12 months. Responses should be emailed to nondomestic.rollovers@ofgem.gov.uk by 11 July 2013.

Background

Many non-domestic contracts contain a clause whereby the supplier can automatically extend the customer's fixed term contract for a further fixed period, which may include higher rates and new terms. A customer can only prevent this from happening if they contact the supplier to stop the rollover. They would then be able to negotiate a new contract with that supplier, or they could change supplier when the contract expires. However, if they do not contact the supplier before the end of their notice period,³ they cannot switch suppliers until the end of the new fixed term⁴ and would have to pay the rollover rates during this time.

In April 2009, as part of the Energy Supply Probe⁵ we proposed to remove suppliers' ability to automatically rollover fixed term contracts. This would mean that once a fixed term period ended, customers would be free to agree another contract, or move to a new supplier.

Significant concerns were raised about this proposal, such as the potential impacts on the dynamics of competition and the overall impact on prices. In light of this, we published a

¹ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=458&refer=Markets/RetMkts/rmr>

² SLC 7A.13. Standard licence conditions can be found on the Electronic Public Register. <http://www.ofgem.gov.uk/Licensing/Work/Pages/licence-conditions-consolidated.aspx>

³ SLC 7A.11 states "The notice period for termination of a Micro Business Consumer contract must be no longer than 90 days."

⁴ Customers may be able to exit a contract early if they pay a termination fee. This would be defined in their terms and conditions.

⁵ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=97&refer=Markets/RetMkts/ensupro>

letter in June 2009⁶ that amended the proposal. We proposed to restrict the conditions⁷ under which suppliers could automatically rollover contracts for micro business consumers and limit the duration of these contracts to a maximum of 12 months. There was more support for this alternative proposal, although some consumer groups and Third Party Intermediaries (TPIs) still expressed a preference for an outright ban. In January 2010 this proposal was implemented by the new licence condition, Standard Licence Condition (SLC) 7A.

As part of the RMR proposals we are proposing to strengthen protections for non-domestic consumers by:

- Introducing new rules to help smaller businesses avoid being caught out when their fixed term contract come to an end. Suppliers will have to show clearly on every bill, the date the contract ends and the deadline for giving notice to change supplier.
- Introducing enforceable Standards of Conduct to provide greater assurance to smaller businesses when they are given contractual information, wish to change supplier, are on a deemed contract, or receive a bill.
- Increasing the energy usage threshold part of the micro business definition to more accurately capture the smaller businesses that need to be protected.
- Increasing our monitoring of customer transfers and continuing to take enforcement action where necessary.
- Taking further steps to gain powers under the Business Protection from Misleading Marketing Regulations 2008 (BPMRs). We have also taken the lead in developing a single Code of Practice for non-domestic TPIs.

In responses to our RMR⁸ consultations some consumer groups and TPI representations maintained the view that automatic rollovers should be banned. Amendments to restrict the duration of rollovers have been tabled during the passage of the current Energy Bill.⁹ Another consumer group is supportive of a system whereby businesses would be allowed to opt-in to a rollover where prices were no higher than their current contract. We have also received specific complaints from consumers about their contract rolling over onto much higher prices.

However, as set out in the responses to the RMR consultations, many suppliers remain strongly opposed to a ban on rollovers for a number of reasons:

- Many customers will be placed on deemed or out of contract rates if they do not agree a new contract with their existing or new supplier. These can be significantly more expensive than contracted rates.
- Disengaged consumers are the most at risk of going onto these more expensive out of contract rates for longer periods.
- A less stable customer base for suppliers will lead to an increase in hedging¹⁰ costs, and price rises across all their customers.
- Banning automatic rollovers would be a significant market intervention.

In our March 2013 RMR consultation we said that we were starting a review into the ability of suppliers to rollover micro business contracts for 12 months, using the revised micro business definition.

⁶ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=99&refer=Markets/RetMkts/ensupro>

⁷ Under SLC 7A, suppliers must provide the express terms and conditions and renewal terms to a micro business consumers when they enter or extend any contract. At least 60 days before the end of the contract, the supplier must also send details of its new fixed term offer and what will happen if the consumer does not contact them to accept the new offer, negotiate a new deal or tell them they want to switch. More details can be found on our factsheet: <http://www.ofgem.gov.uk/Media/FactSheets/Documents1/energycontractsforbusinesscustomersfs.pdf>

⁸ <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Pages/rmr.aspx>

⁹ <http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0135/amend/energyaddednames.pdf>

¹⁰ Transactions that fix the future price of a good or service, and thereby remove exposure to the daily (or spot) price of a good or service. This enables those purchasing a good or service to reduce the risk of short term price movements.

Call for evidence

There are a number of areas where we are seeking evidence as part of this review that could help us decide whether, and if so how, to alter the current rules for automatic rollovers.

The specific questions we would like to address as part of this call for evidence are:

1. Are the current rules for automatic rollovers effective at protecting micro business consumers?
2. Are micro business consumers sufficiently aware of automatic rollovers, and the consequences of opting out (i.e. moving onto out of contract or deemed rates)?
3. Are there any specific barriers that prevent micro businesses from engaging with their supplier when their contract is due for renewal?
4. Do stakeholders have any evidence of punitive rollover and/or out of contract/deemed rates?
5. A number of responses to the RMR consultations suggest we explore banning automatic rollovers. Are there any other risks or unintended consequences of banning automatic rollovers not highlighted above?

We also welcome any additional views and evidence relating to automatic rollovers not covered by the questions above.

Following closure of the consultation period associated with this call for evidence, we intend to use our formal information gathering powers to gain further detailed information from non-domestic suppliers. This is expected to include a request for information on (at least) average rates for new contracts, rollover contracts, deemed contracts and out of contract charges, and the relevant customer numbers that usually fall within each of those categories. Suppliers will receive this request in due course, but are welcome to provide any additional information as part of this call for evidence.

After considering responses to this call for evidence and information request we expect to consult on our preferred option before the end of this year and reach a conclusion by the end of winter 2013/2014.

Next steps

Responses to this call for evidence should be received by **11 July 2013**. Please send your response (preferably in electronic form) to:

nondomestic.rollovers@ofgem.gov.uk

Or alternatively to:

Jonathon Lines
Retail Market Functioning
Ofgem
9 Millbank
London
SW1P 3GE

Unless marked confidential, all responses will be published on our website at www.ofgem.gov.uk. You may request for your response to be kept confidential. Ofgem shall endeavour to respect this request in so far as this would be compatible with Ofgem's statutory functions and any obligations to disclose information, for example, under the Freedom of Information Act 2000. Respondents who wish to have their responses remain

confidential should clearly mark their document(s) to that effect and include the reasons for confidentiality.

Yours faithfully

Maxine Frerk
Partner, Retail Markets and Research