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Dear Meghna

Retail Market Review – Proposals for non-domestic automatic rollovers and contract renewals

Please find attached our response to the above consultation.

Please note that there is a confidential annex which if for Ofgem' use only, the rest of the response is not confidential

Yours sincerely

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Business Regulation Manager

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Ofgem Consultation on the Retail Market Review – Proposals for non-domestic automatic rollovers and contract renewals

Response by E.ON

Executive summary

We support many of the proposals in the consultation as in our view they will improve customers' perception of the industry and trust in suppliers.

We are disappointed that Ofgem have decided not to ban auto rollovers. It is clear from research that we have conducted that the vast majority (86%¹) of our SME customers do not favour auto rollover. This research was the driver behind our decision to stop auto rollover of new contracts with effect from 31st March 2014. In not taking the decision to ban Ofgem are potentially creating more confusion for customers as in the future some suppliers will offer auto rollover contracts and some won't. There is a real danger that customers fail to make true "like for like" comparisons as happens at the moment with "fixed" price offers, some of which have opaque third party cost increase pass-throughs. We acknowledge that the banning of auto rollover may result in a small increase in hedging costs however this would be a cost borne by all suppliers in proportion to their overall volume so will not impact upon any particular type of supplier. In addition it will not necessarily result in an increase in prices as customers who would have rolled over previously are more likely to seek alternative offers. If Ofgem is not persuaded that a ban is required we propose in our detailed response some additional requirements for principal terms where a supplier retains the ability to auto rollover.

We believe Ofgem needs to provide clarity around the licence conditions which apply where a supplier does not auto renew. Previous advice from Ofgem would mean that the standard renewal process proposed for all micro businesses would in fact not apply for most customers.

We support Ofgem's desire to show customers the impact of not contacting their supplier at the end of their fixed term period. However, we don't agree that the inclusion of current prices on renewal notices is the best way to show the impact of renewal. We feel that this will be confusing for customers particularly when a

¹ Research by E.ON conducted in April 2013 with E.ON's YourSay for Business Panel



renewal letter in the future is likely to include three sets of future prices (default tariff, out of contract rates and offer of a further fixed term product). Feedback from our customers suggests that some customers want price comparison information on their renewal letters and others refer to their previous bill to see the impact of the renewal. We believe that the way to meet both these customers' needs without confusion is to include on the renewal letter, the annual cost of their current product and a forecast of the energy cost for the other three products being offered

We are very concerned at Ofgem's proposed implementation date. This is another major change to our systems, processes and fulfilment. It will involve changing our terms and conditions and mailing all our customers. These changes cannot robustly be implemented in less than 9 months. A realistic date based upon final licence conditions being available by the end of June 2014 would be 31st March 2015, however if the final licence conditions are delayed the implementation date will need to be delayed by a similar period.

E.ON Response

Consultation Questions

CHAPTER 2: Automatic rollovers and contract renewals

Question 1: *Do you agree with our proposal to reduce the maximum termination notice period to 30 days?*

Yes, standardisation of this and the renewal timetable will reduce customer confusion of individual supplier's processes. This will contribute to greater trust, simplicity and transparency in the industry.

Question 2: *Do you agree with our proposal to include current prices and annual consumption on contract renewal letters?*

Partly. We accept and support that providing additional information concerning their current product could be beneficial to some customers.

We support the inclusion of annual consumption information as this will help customers make better comparisons between offers.

We support Ofgem desire to show customers the impact of not contacting their supplier at the end of their fixed term period. However, we don't support the inclusion of current prices on renewal notices as the best way to show the impact of renewal. We feel that this will be confusing for customers particularly when a renewal letter in the future is likely to include three sets of future prices (default tariff, out of contract rates and offer of a further fixed term product). Feedback from our customers suggests that some customer want price comparison information on their renewal letters and others refer to their previous bill to see the impact of the renewal. We believe that the way to meet both these customers' needs without confusion is to include on the renewal letters, the annual cost of their current product and a forecast of the energy cost for the other three products being offered.

Question 3: *Do you agree with our proposal to require suppliers to acknowledge termination notice received from a customer? Do suppliers already do this?*

Yes where a contract requires termination then suppliers should acknowledge receipt of the termination notice.

In our SME business we already acknowledge receipt of termination notices.

Our Corporates business do not require a customer to terminate their contract as at the

end of the fixed term the customer automatically goes onto Extended Supply rates and can leave at any time providing they don't have a debt.

Question 4: *Do you agree with our proposed implementation dates?*

No. This is another major change affecting our sales and renewal systems and fulfilment across all our non-domestic sales channels including TPIs. In addition as we operate to a single set of terms and conditions we will not only need to change our terms and conditions but also send new versions to existing customers. We have only just completed the mailing exercise to make customers aware of the changes required by RMR and our decision to stop auto rollover. This project took seven months from the time the requirements were well understood, despite the project team being in place, working on the basic RMR requirements and the changes to renewal fulfilment being moderate in nature.

A realistic timescale for these changes would be 9 months after the final licence conditions are laid, so assuming this is around the end of June, implementation by 31st March 2015.

We also believe this would add confusion to our customers who would see two updates within 12 months.

Question 5: *Do you have views on the proposed amendments to standard licence condition 7A in Appendix 2?*

Based upon advice provided by Ofgem in 2009 to E.ON (Attachment 1) the existing licence conditions 7A.8, 7A.8 (a) and 7A.8 (b) will not apply to those suppliers that do not offer auto rollover. This advice has been used not only by our Corporates business which recently re-commenced sales to micro-businesses and does not auto renew but also in designing our new SME business renewal processes following our decision to stop auto rollover. If other suppliers have received similar advice from Ofgem then Ofgem's desire to have a standard renewal timetable for all micro businesses will not be achieved through the proposed licence condition changes unless Ofgem retracts its previous guidance.

We support the standards renewals timetable proposed by Ofgem but don't believe that suppliers who don't auto renew should be obliged to provide an offer open for 30 days. At 60 days before the customer's fixed term end date the supplier should make the customer aware of the prices which will apply at the end of their fixed term if they take no action and the prices that will apply if the customer terminates (i.e. SLC 7A.8 should apply) but there should be no requirement to provide a 30 day offer (i.e. SLC 7A.10 should not apply).

Definition of Annual Consumption.

We would prefer that requirements for Micro Business Consumer Contracts were more explicit in the definition to avoid any inadvertent regulatory creep. We show how this can be achieved easily in Attachment 2.

CHAPTER 3: Deemed and out-of-contract terms

Question 6: *Do you agree that the current licence conditions provide sufficient protection to consumers on deemed contracts?*

Yes. The supplier in determining their deemed prices has to be mindful of licence conditions 7.3 and 7B. The supplier also has to meet the requirements of 7.7 in informing customers of alternative products.

Question 7: *Do you agree that more consistent use of terms across suppliers would benefit consumers?*

Yes. Difference in terms can create customer confusion. This is particularly true for products which apply where the customer has terminated their contract following a fixed term period but has not transferred to another supplier. Suppliers ensure that customers do not default to a deemed contract (under which they would lose their right to object to a transfer of a customer in debt) by creating another type of product, the name for the product varies between suppliers but is commonly referred to as "Out of Contract". However, the customer technically it is not "out of contract" because the only truly out of contract product is a deemed contract product. The need to differentiate between a true deemed customer and a customer who is transferring supplier would fall away if the supplier had a right to object to the transfer of a deemed customer with a debt.

Question 8: *Should suppliers be able to object to the transfer of a deemed consumer with outstanding debt?*

Yes. As set out above creating this right for suppliers would potentially simplify suppliers' products because the need to offer separate products for customers pre-contract and exiting a contract would fall away. More importantly though where a supplier differentiates their deemed and out of contract prices it would remove some additional credit management costs (associated with collection of debt and "writing off bad debt") from the deemed cost stack. Ultimately this could be to the benefit of deemed customers through prices lower than they would otherwise have been.

CHAPTER 4: Options we considered

Question 9: *Do you consider there are any other options we have not considered?*

Yes. We are recommending the provision of forecast annual charges on renewal letters as we have set out above.

Question 10: *Do you agree that we should not ban automatic rollover contracts?*

No. The vast majority (86%²) of our SME customers would prefer not to auto rollover. Assuming that this is a representative sample of small business customers there seems a persuasive case to ban. The consequence of not banning automatic rollovers is that customers will be faced with different offers from suppliers, some with auto rollover and some without. There is a real danger that customer will not be able to make like for like comparisons as can be the case at the moment with "fixed" price comparisons where some suppliers are passing through third party cost increases and some aren't. If this proves to be the case we will be faced with a worse situation than that which existed until just a few months ago when nearly all suppliers used automatic rollover but at least most customers were aware of this.

If Ofgem is not persuaded to ban auto rollover we believe that additional consumer protections are required to mitigate customer detriment and support Treating Our Customers Fairly (Standards of Conduct) this can easily be achieved by additional principal terms for micro business customers, namely;

1. clear statement if a supplier terms include auto rollover,
2. where they do include auto rollover
 - i. a statement that the customer can prevent auto rollover by terminating their contract at any time including during the sale call/visit
 - ii. a statement informing the customer of their renewal pricing policy.

The purpose of this latter point is so to make obvious to a customer where a supplier is offering a low initial price on the assumption they can increase profitability at renewal.

Question 11: *Can you estimate the potential costs and benefits (in £) of our preferred options? Please consider the initial implementation and ongoing costs where possible.*

For cost information see the Confidential Annex.

It is difficult to quantify the benefits from these proposals. There will be a standard renewal process and maximum termination period which customers will become familiar

² Research by E.ON conducted in April 2013 with E.ON's YourSay for Business Panel

with over time but it is difficult to assess whether this will have a tangible benefit over and above the clear renewal communications customer now receive from E.ON. Customers will have more information at renewal which could prompt them to take action but if they don't as most customers will no longer auto rollover the receipt of the first bill after the end of their fixed term this will in all likelihood drive action. As we already acknowledge termination notices and are not aware of what other suppliers do it is difficult to gauge if this will have any real impact. In our view the benefits of these proposals (modified as we have outlined) is that they improve customer's perception of the industry and their trust in suppliers. On that basis alone they are worth pursuing.

Question 12: *Are there any other impacts we have not identified?*

Yes. Our concerns regarding not banning auto rollover outlined in our response to Qu.10

Attachment 1

Individual Guidance on applicable regulations where a contract does include a suppliers right to auto rollover

From: Gosia Rees [Gosia.Rees@ofgem.gov.uk]
Sent: 21 December 2009 09:41
To: Russell, Steve
Cc: Emma Kelso; Paul Huffer; Anna Pechlivanidou
Subject: RE: Question on fixed term contracts

Hello Steve,

Following our telephone conversation last week afternoon, I wanted to put down in writing our thoughts related to your question below.

Please be aware that we are happy to provide general advice on the interpretation of the SLC7A, but for any more specific or more detailed queries with regards to compliance to these conditions you should to seek independent legal advice.

Question: do SLCs 7A.8 and 7A.10 apply to fixed term contracts which do not contain roll-over provisions?

Ofgem's view is that SLCs 7A.8 and 7A.10 will not apply to contracts which do not contain roll-over provisions.

This is based on an assumption that:

- (a) at the end of the fixed-term period the supplier has no ability to extend the duration of the existing contract for a further fixed term period; and
- (b) once the fixed term period comes to an end the customer would:
 - (i) still be subject to the original contract (but not a further fixed term period); or
 - (ii) would be subject to a deemed contract.

We find it important to highlight that:

- should the original contract continue to apply (i.e. (b)(i)), we would view this as a contract extension at the end of the original fixed term period. Thereby suppliers still have to comply with 7A.7a to ensure that the customer is provided with all the express T&Cs (including the new rates and the arrangements for terminating the contract).
- Should the customer be subject to a Deemed contract (i.e. (b) (ii)) at the end



of the fixed term contract, the supplier must comply with SLC 7.7, thereby providing the Principal T&Cs that apply.

Finally, we wish to mention that if the contract terms in question were ever amended to provide for roll-over for fixed term periods, it would be necessary for any roll-over to comply with SLC 7A.13 (and therefore the requirements that relate to SLC 7A.7 and 7A.8).

I hope this is helpful.

Kind regards,

Gosia

Gosia Rees

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Attachment 2

Modification to the proposed definition of Annual Consumption Details

Annual Consumption Details means:

(a) where the Domestic Customer has held their Domestic Supply Contract ~~or Non-Domestic Supply Contract (as applicable)~~ Micro Business Consumer Contract for at least 12 months and the licensee has obtained actual meter readings (including meter readings provided by the relevant Customer and accepted by the licensee in accordance with standard condition 21B) which can reasonably be considered to cover the whole of that 12 month period, the quantity of Electricity/gas which was treated as consumed at the Domestic Customer's Domestic Premises ~~or Non-Domestic Premises (as applicable)~~ Micro Business Consumer's Premises during the previous 12 months on the basis of those meter readings; or

(b) where the relevant Customer has held their Domestic Supply Contract ~~or Non-Domestic Supply Contract (as applicable)~~ Micro Business Consumer Contract for:

(i) less than 12 months; or

(ii) at least 12 months and the licensee has not obtained actual meter readings (including meter readings provided by the Customer and accepted by the licensee in accordance with standard condition 21B) which can reasonably be considered to cover the whole of that 12 month period,

the licensee's best estimate of the quantity of Electricity/Gas that the Domestic Customer or Micro Business Consumer may be expected to consume during a 12 month period having regard to any relevant information that is available to the licensee or which the licensee could otherwise have reasonably ascertained (including any actual meter readings that have been obtained and which cover part of the previous 12 months);