

Notice of reasons pursuant to sections 38A(1)(f) and 38A (2) of the Gas Act 1986 and sections 49A(1)(f) and 49A (2) of the Electricity Act 1989 in respect of the decision of the Authority to make a provisional order under Section 28(2) of the Gas Act and Section 25(2) of the Electricity Act

1. This notice sets out the reasons why, on 16 January 2019, the Gas and Electricity Markets Authority ('the Authority') made a provisional order in respect of apparent contraventions and / or apparent likely contraventions by **E (Gas and Electricity) Limited** (Company number 08520118) of T3 Trinity Park, Bickenhill Lane, Birmingham, England, B37 7ES ('**EGEL**') of its obligations under the Gas Act 1986 ('Gas Act') and the Electricity Act 1989 ('Electricity Act').
2. This is a notice pursuant to sections 38A (1)(f) and 38A (2) of the Gas Act and sections 49A (1)(f) and 49A (2) of the Electricity Act which provide that the Authority shall publish a notice stating the reasons for its decision to make a provisional order.
3. EGEL holds a licence granted under section 6(1)(d) of the Electricity Act and a licence granted under section 7A(1) of the Gas Act.

A. Background

4. On 10 January 2019 the Authority gave notice to Economy Energy Trading Limited (Company number 07513319) of 10th Floor Friars House, Manor House Drive, Coventry, England, CV1 2TE ('**Economy**') to revoke its licences to supply electricity and gas. On 12 January 2019 Economy's licences to supply gas and electricity were revoked by the Authority.
5. Simultaneous to revoking Economy's licences to supply electricity and gas, the Authority directed OVO Energy Limited (Company number 06890795) of 1 Rivergate, Temple Quay, Bristol, BS1 6ED ('**OVO**') to take on the supply of electricity and gas to Economy's customers. This direction was made public by the Authority on 11 January 2019.
6. The Authority was made aware on Tuesday 15 January 2019, but was not aware at the time it revoked Economy's licences and directed OVO to supply gas and electricity to Economy's customers, that Economy and EGEL had entered into contractual arrangements (on or around 21 December 2018) to transfer around 30,000 of Economy's customers (the 'Affected Customers') to EGEL. At the time of making the provisional order, the Authority understood that the process of transferring the Affected Customers' gas accounts would complete on or around 21 January 2019, that the transfer of the Affected Customers' electricity accounts would complete shortly thereafter and that the transfer of the Affected Customers' gas and electricity accounts to EGEL had not yet been completed. It appeared to the Authority that the contract between Economy and EGEL arranging the transfer of the Affected Customers to EGEL may no longer be effective as a result of Economy Energy ceasing

to trade, its licences having been revoked and OVO having been directed to take over supply to Economy's customers and that accordingly the contract had been frustrated by operation of law.

7. On the basis of the information available to the Authority, it appeared to the Authority that EGEL, in the act of taking steps to complete the transfer of the Affected Customers to it, was contravening and / or was likely to contravene standard licence condition 14A ('SLC 14A') and standard licence condition 0.3 a) ('SLC 0.3 a)') of its licences to supply electricity and gas, both such standard licence conditions being relevant conditions for the purposes of section 25 of the Electricity Act and section 28 of the Gas Act.
8. Having had regard to the matters set out in section 25 of the Electricity Act and section 28 of the Gas Act, the Authority considered it requisite to make a provisional order in exercise of its powers in section 25(2) of the Electricity Act and section 28(2) of the Gas Act.

B. Apparent contravention or apparent likely contravention

9. On the basis of the information available to the Authority at the time it made the provisional order, it appeared to the Authority that EGEL was contravening and / or was likely to contravene SLC 14A and SLC 0.3 a).
10. SLC 0.3 a) requires a licensee to 'behave and carry out any actions in a Fair¹, honest, transparent, appropriate and professional manner'. On the information available to the Authority at the time it made the provisional order, it appeared to the Authority that EGEL was already taking or was likely to take steps to conclude the transfer of the Affected Customers to it. While the Authority had had some limited contact with EGEL prior to the point in time at which it made the provisional order, in the timescales available, the Authority could not be sufficiently confident that EGEL would take all steps necessary to stop the transfer of the Affected Customers from being concluded. The Authority considered that if EGEL continued to take steps to conclude the transfer of the Affected Customers to it, or did not reverse steps already taken to conclude such transfer quickly enough, it would not be acting Fairly to those customers, who would have a reasonable expectation of an orderly transfer to OVO, due to either receipt of related correspondence from OVO or awareness of the Authority's announcement on 11 January, of OVO's appointment to take on supply to all of Economy's former customers from 12 January 2019.
11. The Authority also considered that, as it appeared that EGEL was taking steps to conclude the transfer of the Affected Customers to it and was likely to continue to take steps to conclude the transfer, EGEL was not acting or would not be acting in an appropriate and professional manner in respect of the Affected Customers, given that

¹ 'Fair and other cognate expressions' is defined in the standard licence conditions of the gas and electricity licences as 'The Licensee or any Representative would not be regarded as treating a Domestic Customer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer, unless the detriment would be reasonable in all the circumstances'.

EGEL would or should have been aware, from at least 11 January 2019, that OVO had been appointed by the Authority to take over the electricity and gas supply from Economy in respect of those customers.

12. The Authority also considered that, as it appeared that EGEL was in the process of taking steps to conclude the transfer of the Affected Customers to it and would likely continue to take steps to conclude the transfer unless told not to, it had failed to consider whether OVO's appointment by the Authority to take on all of Economy's former customers was a circumstance outside of its control which would prevent it from completing the transfer of the Affected Customers to it under SLC 14A.1 and 14A.3.

C. Reasons for provisional order

13. Section 25(2) of the Electricity Act and section 28(2) of the Gas Act provides that where it appears to the Authority that:

- a. a licence holder is contravening or is likely to contravene, any relevant condition or requirement; and
- b. that it is requisite that a provisional order be made,

the Authority shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to it requisite for the purpose of securing compliance with that condition or requirement.

14. The Authority considers that it was requisite to make a provisional order requiring EGEL to cease taking steps to conclude the transfer of the Affected Customers to it and to take steps to reverse that transfer due to the urgent need to address any uncertainty, potential confusion and distress experienced by the Affected Customers caused by EGEL's actions in apparently concluding and likely continuing to conclude the transfer, given the likely expectation of the Affected Customers of an orderly transfer of their gas and electricity supplies to OVO.
15. The Authority considered it was important to address any potential confusion and uncertainty caused by EGEL's actions in apparently attempting to conclude the transfer of the Affected Customers to it, given that the Affected Customers had already recently experienced a degree of uncertainty and potential distress caused by their incumbent supplier (Economy) ceasing to trade. The Authority considered that swift action was necessary to ensure that the Affected Customers had a clearly communicated route to the continued supply of gas and / or electricity to their homes via OVO and to ensure, as far as possible, that the Affected Customers' confidence in the processes of transferring their supply to OVO was not eroded.
16. In making the provisional order, the Authority also considered that it was important to take prompt action in this case to ensure that market participants continue to have confidence in the supplier of last resort process. Behaviour which interferes with this process could undermine the willingness of market participants to respond to the

Authority's requests for information in future supplier of last resort events (i.e. the process by which the Authority identifies and directs a supplier to take over the accounts of suppliers who have ceased to trade) by eroding the confidence of market participants in the information given to them by the Authority and on which they base their assumptions in responding to these processes. The Authority believes there is a tangible risk that any such erosion of confidence could impact the quantity and or/quality of responses by market participants in future supplier of last resort cases, which in turn could threaten the integrity of the supplier of last resort process and reduce its effectiveness in ensuring advantageous arrangements regarding the continuity of supply of electricity and gas for consumers affected by failed supplier events.

17. The Authority has had regard to the fact that the effect of the provisions of sections 28 and 30 of the Gas Act and sections 25 and 27 of the Electricity Act is to exclude the availability of any remedy (apart from under those provisions of those Acts or for negligence) in respect of any contravention of a relevant condition.
18. The Authority has considered that the duties imposed on it by sections 4AA, 4AB or 4A of the Gas Act and sections 3A to 3C of the Electricity Act do not preclude the making of the provisional order.
19. Pursuant to section 28(4A) and section 25(4A) of the Electricity Act the Authority has considered that it would not be more appropriate to proceed under the Competition Act 1998.
20. The Authority has considered all of the circumstances and is of the view that it was requisite to make a provisional order under sections 28(2) of the Gas Act and 25(2) of the Electricity Act for the foregoing reasons. Accordingly it has made the provisional order.
21. The provisional order will cease to have effect on 15 April 2019 unless confirmed by the Authority on or before that date.

D. Content of the order

22. The provisional order is available on the Ofgem website at:
<https://www.ofgem.gov.uk/publications-and-updates/e-gas-and-electricity-ltd-provisional-order>

Charles Hargreaves
Deputy Director
Dated 21 January 2019