

Andrew Wright
Managing Director – Markets
Ofgem
9 Millbank
London
SW1P 3GE

29 June 2009

Dear Mr Wright,

Amendment to proposals outlined the *Energy Supply Probe* – proposed retail market remedies relating to automatic contract rollovers for micro business consumers

Consumer Focus welcomes the opportunity to respond to the proposals in this letter. This response is non-confidential and we are happy for it to be published on the Ofgem website.

In our response to the Energy Supply Probe – proposed retail remedies consultation in May 2009¹, Consumer Focus raised concerns about the state of the small business energy market and the many problems experienced by SME's, and in particular micro businesses. Therefore Consumer Focus welcomed Ofgem's acknowledgement that many non-domestic consumers are currently suffering significant detriment and broadly support the proposals to make it easier for small businesses to engage effectively in the market.

While Consumer Focus supported Ofgem's proposed ban on automatic contract rollovers, we raised concerns about a number of potential unintended consequences that we felt had not been fully considered or addressed.

As many micro businesses already suffer from a lack of engagement with their energy suppliers we are concerned that a ban on contract rollovers could result in businesses being put on to out of contract terms or deemed rates. This could result in a situation where consumers are paying significantly higher rates, and perhaps not becoming aware of this for a period of time. To address this situation we encouraged Ofgem to consider the introduction of safeguards, particularly around deemed out of contract rates.

We also however recognised the potential impact on competition and cash flow for small suppliers and are keen to avoid further damage to the already fragile competition in the non-domestic sector.

¹ http://consumerfocus.org.uk/en/content/cms/Consultation_Respons/Consultation_Respons.aspx

While Consumer Focus accepts that Ofgem has sought to find a reasonable alternative to the ban on rollover there of course remains the concern that consumers will still be exposed to the potential of being put on to punitive deemed rates, which the new proposals have not sought to address. Indeed it appears that the new proposals are aimed at addressing issues raised by industry, and not consumers. It is therefore essential that Ofgem closely monitors the impact of the licence changes on consumers, not merely looking at unfavourable lock-ins but the level of deemed rates and the number of consumers affected by them.

If Ofgem is to proceed with the alternative proposals and effectively allow contract rollover, albeit in a more limited set of circumstances, greater protections must be built in, therefore we would suggest the following is essential and should be enshrined within the licence:

- Clear information about the terms and conditions of the contract, including the information that the consumer has the ability to inform the supplier of the intention to terminate the contract at anytime during the contract period.
- An appropriate time frame to consider new contract offers or to inform suppliers of the intention to switch (we agree with Ofgem that the minimum of 30 days is desirable).

In addition, and to provide the appropriate protection to consumers, Ofgem should look to introduce:

- A test on supplier contracts against the unfair commercial practices and unfair Contract Terms legislation, while we accept that this technically does not cover business to business contracts, Ofgem has acknowledged that the behaviour of micro enterprise businesses is similar to that of domestic consumers.
- In particular Ofgem must review the termination rates imposed on rollover contracts to ensure there is a balance of obligation and risk between the supplier and the consumer. Termination rates should not be punitive and supplier methodology on termination rates must be subject to scrutiny.
- The introduction of a mandatory 14 day cooling off period in line with domestic contracts.

Finally we would like to emphasise that we consider that information and engagement with non-domestic consumers on this subject is essential to ensure that the proposals deliver real protection, therefore we ask Ofgem to commit to reviewing the impact of the new arrangements within the first year of implementation.

Yours sincerely,

Audrey Gallacher
Head of Company Performance and Consumer Experience

Artillery House
11-19 Artillery Row
London SW1P 1RT

t 020 7799 7900
f 020 7799 7901
e contact@consumerfocus.org.uk
www.consumerfocus.org.uk