

Energy Policy Issues: The Ofgem Retail Market Review

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The purpose of this paper is to enable the Board to consider and endorse our approach to the Ofgem Retail Market Review.

1 Background

In November 2010 Ofgem announced a review of the retail energy market. This was in response to the margin on a standard dual fuel tariff rising 38% from £65 to £90 since the last quarterly analysis of retail prices.

The review also intended to examine the effectiveness of the retail market to see if any further action was needed to protect consumers, this would build on protections that came out of Ofgem's 2008 Energy Market Probe (the Probe).

There was no formal call for evidence but Consumer Focus submitted an open letter¹ to Ofgem in December 2010 requesting an investigation into the structure and marketing of tariffs.

2 The Retail Market Review – proposals

On 21 March 2011 Ofgem published their Retail Market Review - findings and initial proposals report (RMR). The overriding message was that competition is being stifled by a combination of tariff complexity, poor supplier behaviour and lack of transparency and that radical change is needed.

The report consisted of five key proposals:

Proposal 1 – Tariff complexity and proliferation

The proposal aimed to address tariff complexity and help consumers compare prices more easily. The key proposal was that energy suppliers should offer one “evergreen” tariff per payment method in a standardised format to allow consumers to compare prices per unit.

Suppliers could still offer more “complex and innovative” tariffs on a fixed term basis. However these fixed term deals would have to be easily comparable with the standard products. Automatic contract rollovers would be banned, so at the end of the fixed term customers would default back to the supplier’s standard evergreen tariff.

Proposal 2 – Liquidity

This proposal aimed to increase liquidity in the wholesale market in order to encourage new participants to enter the retail market and improve competition.

Ofgem aimed to achieve this by:

- Requiring the Big Six to make 10% - 20% of their generation available to the market through a regular Mandatory Auction (MA)

¹ A copy of the letter is available at <http://www.consumerfocus.org.uk/news/request-for-investigation-into-energy-tariffs>

- The establishment of Mandatory Market Making (MMM) arrangements to allow market participants to trade continuously

Proposal 3 – Protections for domestic consumers

Following disappointment at how suppliers had complied with various consumer protections introduced following the 2008 Probe, this proposal aimed to strengthen:

- Information given to customers – the ‘information remedies’ required from the Probe included an Annual Statement with the information consumer need to engage in the market including the tariff name and consumption level. Analysis by Consumer Focus and Ofgem found these to be inconsistent and did not meet the policy intent which was to prompt consumers to switch. Ofgem proposed to standardise bills and Annual Statements along with improvements to the language suppliers use on customer communications.
- The standards of conduct for suppliers – the Probe introduced obligations on suppliers to ensure they do not sell a customer a product or service that they do not fully understand or that is inappropriate for their needs and circumstances; not change anything about a customer’s product or service without clearly explaining why; not prevent a customer from switching product or supplier without good reason; not offer products that are unnecessarily complex or confusing; and make it easy for customers to contact their supplier and act promptly and courteously to put things right when the supplier makes a mistake. It is proposed to embed these in licence conditions as the existing Code of Conduct is not working.
- Monitoring and enforcement – Ofgem committed to beefing up its monitoring enforcement activity.
- Switching processes and access to tariff information – enhanced obligations on suppliers when dealing with switching sites and on their own marketing activities. Exploring ways to improve consumer confidence in price comparison and switching sites (one proposal was for Ofgem to create its own price comparison tool)

Proposal 4 – Protections for small businesses

This proposal aimed to look at suppliers’ failure to comply with existing protections for micro businesses and also address the following areas:

- The objections process, which allows the losing supplier to object to a customer transfer. There are suspected abuses of this which is preventing many small businesses from switching
- The role of brokers/third party intermediaries
- Possible extension of protections on contract duration beyond micro-enterprises to cover all small businesses

Proposal 5 – Improving transparency

This proposal aimed to improve transparency on the relationship between wholesale and retail prices. Ofgem proposed to appoint a firm of accountants to review the transfer price and hedging account practices of the vertically integrated companies.

Competition Commission referral

Ofgem made it clear in the RMR that they regarded the adoption of above proposals as an essential step to improve the market for consumers, and doing so would negate the need for a Competition Commission referral. However, it suggested that if suppliers refuse to cooperate with these reforms, Ofgem was prepared to refer the market to the Competition Commission for investigation.

3 Energy and Climate Change (ECC) Select Committee hearing

The RMR was subject to an ECC Select Committee inquiry held over three evidence sessions in May and June 2011. Called in front of the Committee were Energy Minister, Charles Hendry; Alistair Buchanan of Ofgem; and the Big 6. Consumer Focus submitted written evidence to the Committee (see Annex A) - main points were:

- Consumer Focus was in broad agreement with the findings of Ofgem's RMR and supported the majority of its recommendations.
- We felt in some areas the RMR could go further to protect consumers. In particular, we consider that it could do more to protect micro-businesses by preventing suppliers from back-billing further than one year, and requiring them to consider repayment plans rather than demanding instant payment in such cases.
- The most problematic areas of the RMR proposals were those seeking to tackle tariff complexity. We have argued strongly for action in this area and while Ofgem's ideas in this area had real merits, we were concerned that there could also be significant unintended consequences. We also felt it did not bring forward proposals to adequately tackle tariff complexity and proliferation.

The EEC Select Committee published its findings on 19 July 2011. Its key conclusions were:

- The dominance of the Big Six is a consequence of problems with the structure of the market. Solving issues such as liquidity and price transparency require urgent intervention from both Ofgem and the Government.
- Tariff complexity and mis selling remain a huge problem for consumers. The industry needs to act immediately to solve these issues and not wait for Ofgem to take action.
- Ofgem needs to take tighter control of issues that adversely affect consumers and prevent them switching.
- In recognition of the huge importance of these issues in delivering a market that works for consumers, the EEC select commit outlined its intent to keep a close watch on Ofgem and DECC's performance in these areas.

It is of particular note that the Select Committee picked up on our considerable concerns over backbilling and the problems it causes for micro businesses. This has led to pressure on suppliers from Ofgem to produce a voluntary code of practice around backbilling, similar to the one that already exists in the domestic sector. The Energy Retail Association (ERA) and ICOSS (Industrial and Commercial Shippers and Suppliers) presented a draft code to Ofgem in October 2011, with the aim of their members adopting it by January 2012.

4 Consumer Focus' response to the RMR

Consumer Focus' June 2011 response to the RMR findings was positive and broadly supportive of the recommendations.² However we asked for an impact assessment on the proposals, particularly for the tariff proposals, where we continue to have serious concerns that they could result in significant unintended consequences. While we are fully supportive of tariff simplification, we have reservations about the distributional impact of a single evergreen tariff. We also feel that the proposals fall short of addressing tariff proliferation as there will be no limit on the number of fixed term products. We also stressed the need for Ofgem to clarify what success would look like in order for there to be a proper assessment of the impact of these proposals in the future.

5 Developing the RMR proposals

We have continued to work proactively with Ofgem and suppliers to help develop and shape the RMR proposals. Key areas of work have been:

- Working with Ofgem to help frame their consumer research on tariff simplification and comparability
- Meeting with suppliers to explore measures to improve tariffs
- Working with the ERA to develop common definitions of tariff features, and key facts to aid comparability and consumer understanding
- Working with Ofgem and suppliers to develop a backbilling code of practice for non domestic customers
- We wrote to Ofgem to request a review of non domestic suppliers debt and disconnection practices

In July 2011 Ofgem confirmed that in light of responses to the consultation it would proceed with the development of the RMR proposals. Ofgem had previously stated that if, following consultation, it considered that the proposed reforms did not have a realistic chance of addressing the concerns identified, or if there was industry opposition, it would consider a referral to the Competition Commission. The July letter confirmed this position and that there would be ongoing monitoring.

Suppliers have also developed proposals in response to concerns raised in the RMR:

- In October SSE announced moves towards improving liquidity by offering some short term energy contracts to the open market – Consumer Focus sees this as an important first step but the market needs long and medium term contracts to be made more open, not just day ahead contracts.
- SSE also announced they would cease to offer online discount tariffs in an effort to simplify the tariffs they offer.
- Over the summer, five of the Big Six (British Gas, EDFE, SSE, ScottishPower, npower) announced they would voluntarily cease doorstep cold calling.

² <http://www.consumerfocus.org.uk/publications-reports/consultation-responses>

We are keen that the RMR proposals are progressed as they have the potential to considerably improve the market for consumers. Against the current background of low consumer confidence and poor industry reputational ratings there has never been a better time, or a greater need, to push through reforms. The key will be whether Ofgem's implementation and ongoing monitoring will deliver where the Probe remedies failed. We have committed to working with Ofgem to help achieve this.

6 Next steps

Ofgem

Ofgem announced in October that that is planned to progress its preferred model for the reform of the retail energy market. This is despite the considerable reservations by consumer groups and industry on the proposed tariff reforms. Detailed proposals on this and the small business sector reforms will be released at the end of November. Implementation is expected in late 2012, following further consultation.

We expect the decision on wholesale liquidity in December and the findings of the independent report into making energy company accounts more transparent are due in the New Year.

Next steps - wider work

We are anxious to see the Impact Assessment around tariff reforms to determine what further action is required. It is possible that one or more suppliers will reject the decision which could ultimately lead to the Competition Commission. As well as responding to the Ofgem consultation we are continuing with our programme of work around the RMR. This includes:

- Along with other consumer groups we gave evidence at a private session of the ECC select committee where we stressed the need for ongoing scrutiny of the RMR proposals and implementation.
- We have reviewed our December 2010 letter on tariff complexity to assess what changes have occurred around sales and tariffs in the last 10 months. We will soon publish another open letter outlining the lack of voluntary progress by suppliers. We will circulate that letter to the Board before we submit.
- Five of the Big 6 have ended unsolicited doorstep selling. We are now working with industry and Ofgem to extend marketing protections to telesales and internet sales.
- We have an ongoing campaign to close the protection gap for micro-enterprises.

The Energy and Climate Change Select Committee Inquiry: Result of Ofgem's Retail Market Review

4 May 2011

Introduction

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do. We have specific responsibilities for the energy and postal sectors.³

We are yet to respond formally to Ofgem's consultation on its proposals and are still considering their possible impacts. In areas this submission represents policy in development rather than finalised views. We are happy to copy our formal response to Ofgem to the Committee when it is ready.

Following the executive summary, we provide high level feedback on each of the five key proposals contained in its 21 March 2011 'The retail market review – findings and initial proposals'.

Executive summary

We are in broad agreement with the findings of Ofgem's Retail Market Review ('RMR') and support the majority of its recommendations.

We consider that Ofgem could do more to protect micro-businesses by preventing suppliers from back-billing further than one year and requiring them to consider repayment plans rather than demanding instant payment.

The most problematic areas of its proposals are those seeking to tackle tariff complexity. The regulator's ideas have real merits but we are concerned that there could also be significant unintended consequences.

Proposal 1 – tariff complexity and proliferation

1. The proposal to simplify standard variable tariffs such that each supplier may only offer one per payment method and in a prescribed format of a defined standing charge and a single unit rate is genuinely radical. It has significant potential advantages and disadvantages that will need to be bottomed-out as Ofgem further develops its proposals.
2. Simplified standard variable tariffs have the potential for significant unintended consequences. Ofgem is trying to tackle three distinct problems – tariff complexity, proliferation and low consumer engagement in the market.
3. The proposals could make standard variable tariffs far easier to understand for customers who remain on them. Price comparison should be much easier and confidence improved that they understand their product.
3. It may also better align consumers' and suppliers' interests as complex tariffs could only be offered to those consciously willing to take them on (ie by switching to a fixed price/term product). Consumers would otherwise be on a simple tariff by default.
4. We suspect that this approach may mitigate, though not eliminate, some of the problems of dubious discounts⁴ that many customers cannot qualify for. Such

³ For further information on our role and duties, see <http://consumerfocus.org.uk/g/4p4>

discounts would appear to be incompatible with the product structure that Ofgem envisages.

5. We particularly welcome the proposal to prevent suppliers from automatically rolling over consumers at the end of fixed term deals. These deals can be attractive, but the choice should always be for the consumer to opt-in. Automatic rollover locks in those consumers most naturally inclined to switch supplier or tariff. It therefore frustrates the development of a competitive marketplace and has a dilatory effect on the extent to which consumers can punish or reward supplier performance.
6. There is considerable evidence that consumers are reluctant to read extensive contracts (for any product). We therefore think that Ofgem should require the suppliers to produce short 'key facts' documents (similar to those for financial services products). These should set out the principal terms and conditions of their non-standard products so consumers can more readily understand and compare tariffs without needing to wade through the small print.
7. We are worried by the suggestion that the standing charges may include environmental levies. Applying these on a per household basis rather than per unit would be a significant backward step on both social and environmental grounds. It would be inconsistent with polluter pays principles, because all households would pay the same towards decarbonisation regardless of their carbon footprint. It would also disproportionately load the cost burden on to the poorest in society, because (in broad terms) there is a correlation between income and energy usage.
8. The difficulties of migrating the majority of energy consumers on to new tariffs when several of the major suppliers are moving their billing systems to new platforms should not be underestimated.
9. Furthermore, migrating consumers from a wide range of existing tariffs on to a much narrower range with different characteristics is likely to create distributional impacts, with some better and some worse off than they were before. The scope of these distributional impacts is not clear at this stage. There may also be significant costs in applying and explaining the change to consumers.
10. There is a substantial risk that there will be limited pressure on suppliers to offer competitive pricing for their new 'standard' tariff. The majority of consumers could be worse off if they are migrated, particularly if low engagement levels continue. There will be substantial costs associated with any migration and the bulk of consumers could find themselves cross-subsidising the (already empowered) group of consumers who are most likely to take advantage of fixed term tariffs. The distributional impacts will need to be very carefully explored in the Impact Assessment.
11. The proposals are not clear on how time of use tariffs – whether existing simple ones (like Economy 7) or more complex ones facilitated by smart metering – would be configured (or indeed, whether they would be allowed). It is also unclear what will happen to consumers on preserved (pre-competition) tariffs.
12. The key question is whether consumers will engage with the market and switch even if tariffs are considerably simplified. Ofgem's and our research suggests that only a minority of consumers are actively engaged in the market and that informational remedies have only limited effect.
13. Consumers' primary engagement with tariffs is via their energy bills. Research shows that many consumers' overall understanding of their energy bills is quite poor. There is a wide range of evidence (see Consumer Focus 2010⁵; Which? 2009⁶; Uswitch 2009⁷

⁴ For further details on the nature of such discounts, please see our open letter to Ofgem of 2 December 2010, <http://tinyurl.com/5rc2svy>

⁵ Online survey conducted by ICM on behalf of Consumer Focus on smart meters and energy billing. 2,048 consumers aged over 18 years took part in March 2010

and Ofgem Consumer First Panel 2009⁶) to suggest that energy consumers find bills confusing.

14. It is unclear whether the root of the problem is complex tariffs, a combination of complex tariffs and complicated energy bills or just widespread disengagement. If it is the former then Ofgem's proposed remedies are likely to have a much greater impact.
15. Suppliers have been successful in communicating some key messages to consumers via 'nudges' on energy bills. For example, the proportion of consumers paying their bills by Direct Debit has increased from 36% (electricity) and 42% (gas) in 2002 to 51% (electricity) and nearly 54% (gas).⁹ The success of other more complex messages still remains to be proven, including information about annual consumption.
16. In May 2011 we will publish the results of a series of research studies on how consumers are reacting to these existing nudges and whether messages were successful at reaching all groups of consumers.
17. We are happy to make this research available to the Committee when published. Our headline findings show:
 - Widespread consumer disengagement with energy bills continues
 - Distrust of energy suppliers colours consumers' views of information provided on energy bills
 - Consumers from low income groups tend to be less engaged with their energy bills
 - Information on energy bills does not act as a prompt for behaviour change for the majority of consumers

Proposal 2 – liquidity

18. We welcome the intention to intervene in the wholesale electricity market. Such actions are fundamental to ensuring the success of the Government's Electricity Market Reform proposals. Liquid markets are needed to provide a credible reference price for use in the Government's favoured Contracts for Difference Feed-in Tariff model and create an attractive investment environment for new generation. There has been a lack of wholesale power market liquidity for many years, particularly in the forward market (the market for contracts of longer maturity).
19. The main industry solution to combat low levels of liquidity has stagnated. Traded volumes on the N2EX exchange are low. A large amount of traded volumes are executed initially on the OTC market and then given to the exchange for clearing ('OTC give up'). Virtually no small and/or independent market participants have signed up to the new exchange citing excessive credit requirements as a barrier to participation. The slow progress of the N2EX to attract significant traded volumes and a significant variety of market participants proves the need for regulatory intervention (the N2EX took over five years to be established).
20. The development of liquid traded wholesale markets is fundamental to ensuring that consumers receive a fair, efficiently determined market price. This risk premia can be observed on wholesale electricity markets by comparing forward contract prices with outturn spot prices for delivery on the same day, as well as wide bid-offer spreads. Any risk premia will be ultimately paid for by consumers.

⁶ www.which.co.uk/documents/pdf/bamboozling-bills-203858.pdf

⁷ <http://www.uswitch.com/gas-electricity/confusing-energy-bills/>

⁸ <http://www.ofgem.gov.uk/sustainability/cp/cf/Pages/CF.aspx>

⁹ <http://tinyurl.com/42uh6pm> and <http://tinyurl.com/66ourxd>

21. Liquid wholesale markets also promote efficient competition in electricity generation and supply which will tend to foster efficiently determined market prices. Potentially most importantly in the case of the GB electricity market, liquid wholesale markets (particularly forward markets) provide efficient price signals for future investment in generation assets. This is particularly important in the case of the GB market with major investment expected to be made in the next decade and beyond. It is clear that the Big Six do not have the balance sheets required to make these investments on their own. These balance sheets are also highly leveraged. As such liquid wholesale energy markets are crucial to encourage new equity investment. Without investment the cost to current consumers is likely to be prohibitive in terms of ensuring affordable energy suppliers.
22. The two proposals suggested by Ofgem, a mandatory auction (MA) and mandatory market maker (MMM) are not sufficiently developed at present to give a definitive verdict on their suitability for improving wholesale market liquidity. However, we provide some initial thoughts on both measures below:

Mandatory Auctions

23. It is important that products that are made available meet the needs of independent market participants. It is essential that the auction provides a sufficient volume of forward contracts. It must not be allowed to develop in to a purely day ahead auction. Liquidity is thinnest in the forward market; solutions should be developed to solve this problem. However, there might also be a need for more bespoke product offering.
24. The main area of weakness in this proposal is the lack of detail on credit arrangements. While both intermediated OTC markets and exchanges can provide adequate price transparency, the collateral requirements for smaller market participants on exchanges can be prohibitive to trading. As such a solution that provides 'fair' collateral requirements still needs to be proposed. There might be some scope to introduce centralised credit arrangements but careful thought needs to be given to any unintended consequences. There is a trade off between encouraging competition and inadvertently facilitating inefficient entry. However, such concerns should not represent a barrier to the development of proposals to foster greater wholesale market liquidity.
25. We are also unsure why the option of a self supply restriction has been ruled out by Ofgem. Such measures have worked in other electricity markets (in the US for example). Greater discussion would be welcome.

Mandatory Market Maker

26. There is even less clarity on how this proposal will work compared to the MA. It could provide smaller market participants with the electricity products they need. However, if the MMM is focused on providing products to manage electricity imbalance, there is some doubt as to how much this will help smaller market players. In addition, the issue of credit requirements is not adequately tackled.
27. The use of the regulated market making entity might also have unintended consequences in terms of creating market inefficiencies and discouraging 'actual market makers' (like large financial institutions). However, a lot of detail still needs to be finalised before being able to give a definitive judgement on these proposals.

Proposal area 3 – fairness

28. We broadly support Ofgem's proposals, although they could go further.
29. We agree that there is a need for further standardisation of the format of information on bills and annual statements to ensure they provide consumers with clear, useful information. We reviewed suppliers' annual statements in July 2010 and the overall results were poor. Many of the new statements suffered from poor design and confusingly worded information.
30. Our research in February 2011 showed that only 46% of consumers remembered receiving an annual statement. Of those who remembered receiving the statement, 79% found it easy or fairly easy to understand, but only 25% of these consumers took any further action such as comparing prices, switching supplier, etc.
31. The standards of supplier conduct introduced following the 2008/09 Energy Supply Probe have not led to meaningful improvements for consumers. Since the Probe's conclusion, Ofgem has opened a series of investigations into supplier practices. These range from compliance with the complaint handling standard to the sales and marketing licence condition and the cost reflexivity of certain suppliers' offerings. Consumer Focus's December 2010 open letter to Ofgem on tariff confusion, was prompted in part, by the explosion in new and increasingly complex tariffs that followed the Probe's conclusion. The absence of licence backing weakens the prospect that the suppliers will embed these standards in their ways of working because they are not enforceable. Ofgem should introduce the standards of conduct into licence conditions. This could include a new duty on suppliers preventing them from offering unnecessarily complex, confusing or inappropriate products to consumers.¹⁰
32. We welcome the intention to make increased use of reputational regulation – 'naming and shaming' and 'naming and faming' – to try and improve supplier standards. It is important that such tools are seen as supplements to, and not alternatives for, the application of traditional regulatory tools, such as sector specific and general consumer law. The RMR highlights that about two-thirds of energy consumers are disengaged from the market and that consumer trust in energy companies is very low. This combination of high reluctance to switch and a common perception that energy firms are 'all as bad as each other' mean it is unlikely that reputational regulation will be effective in improving consumer outcomes in isolation – because consumers may only punish or reward suppliers (by switching or staying) to a limited degree in response to these signals.
33. We welcome the proposal to boost monitoring of supplier compliance with regulations and to increase the speed with which enforcement investigations are carried out. We have been concerned that the resourcing and priority given to enforcement activity has been insufficient to deliver a credible compliance regime; we are still awaiting the outcome of several investigations commenced more than a year ago. We would like to see a clearer articulation of how Ofgem will deliver a more timely and muscular enforcement regime; for example, will it be increasing its headcount in this area and/or modifying its approach to investigations?

¹⁰ This could include making the requirements in SLC 23 (Notification of Domestic Supply Contract terms), SLC 25 (Marketing electricity/gas to domestic customers) or SLC 31 (General information for Domestic Customers) more explicit.

34. We have long called for Ofgem to use a wider range of indicators to monitor the competitiveness of the energy retail markets and we welcome confirmation that it will do so. We particularly welcome its increased use of direct consumer feedback, for example through its Consumer First programme and far more frequent polling of consumer experience, to inform and develop policy and hope that this continues.
35. We recognise that the proposals to directly provide consumers with information and advice regarding the switching process and how they can use available information to assess their options is intended to help them consider switching. However, we consider that the evidence from existing schemes is relatively limited on how many consumers actually change their behaviour. It is also unclear whether a sector regulator is best placed to provide such information as it does not deal directly with individual consumers.
36. The remedies are largely silent on specific problems facing customers with prepayment or dynamically teleswitched ('DTS') meters. Competition and choice has been particularly limited here and this will need to be tackled through the RMR and the smart meter programme.¹¹
37. We would also like to see Ofgem publish its long awaited guidance on the application of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR) in order that its interpretation and use can be understood.

Proposal area 4 – small businesses

38. We support Ofgem's proposals but would like it to go further in a number of areas. In particular we would like to see:
 - protections on back billing for micro-businesses that are comparable to those granted to domestic customers
 - better consumer protections around debt and disconnection
39. We agree with Ofgem that it is appropriate to conduct a review of supplier compliance with gas and electricity supply Standard Licence Condition 7A, 'Supply to micro business consumers'. We would like to see more detailed monitoring and reporting on the state of competition in the non-domestic market.
40. We recently conducted research¹² into the activities of Third Party Intermediaries ('TPIs') which suggested a range of problems in that sector, most notably that:
 - Micro-business consumers are being committed to contracts that are not best-suited to their needs
 - The disclosure of commission to consumers, who ultimately bear this cost in the prices they pay, can be poor and this impedes consumer understanding of the value and appropriateness of TPI services.
41. The evidence suggests that it may be appropriate to grant Ofgem additional powers to tackle problems in the TPI sector.
42. Back billing remains a major source of detriment for micro-businesses. Last year, Consumer Direct's helpline received 1,848 complaints from micro-businesses who received unexpected bills after their energy charges were initially underestimated. 40% of all the complaints it received from small businesses about energy bills related to back-billing issues. The problem is compounded as energy suppliers can back-bill

¹¹ See Annex 4 in our *Cutting Back, Cutting Down, Cutting Off* report <http://consumerfocus.org.uk/g/4lx>

¹² *Watching the middlemen – brokerage services for micro business energy consumers*, 18 March 2011. <http://tinyurl.com/3nh3mkz>

businesses for up to six years of usage, compared to just one year for domestic consumers, and can demand instant repayment.

43. Ofgem should extend the domestic back-billing protections to the micro-business sector. Ofgem should consider the introduction of protections that require suppliers to take into account the businesses' ability to pay the debt in setting a realistic timescale for repayment, rather than demanding full payment immediately.
44. There is little evidence to suggest that micro-businesses are better equipped to deal with the complexity of tariffs than domestic consumers are. We think that Ofgem should ensure that both types of consumers are provided with the same kinds of 'key facts' information summarising the main points of their contract.
45. There are a number of areas where non-domestic consumers receive fewer protections than domestic consumers, summarised in the table below

	Domestic	Non-domestic
Contracts	Evergreen or fixed - and RMR should improve things	Rollovers at punitive rates, expensive deemed rates otherwise
Back-billing	Back-billing code = 1 year	Up to 5/6 years
Debt and disconnection	ERA vulnerable Safety Net, negotiation and ability to pay LC	Disconnection in a matter of weeks even when debt due to back-billing
Marketing	SLC25, self-regulation, consumer protections	Unregulated brokers exploit businesses' lack of knowledge
Information	SLC31 & 31A - Annual Statements	Lack of visibility of contract terms, minimal info on price in public domain
Switching	Debt Assignment Protocol, Confidence Code	Churn at half domestic rate, levels of objections

Proposal area 5 – improving transparency

46. We broadly welcome Ofgem's proposal to appoint independent accountants to review the transfer pricing and hedge accounting practices of the Big 6; report on the likely impact of these practices on reported profits and transparency; and make

recommendations on how the usefulness of the reporting could be enhanced in future years.

47. To be successful, the reporting will need to focus on three key principles: comparability; integrity and timeliness.

Comparability

48. The guidelines should be developed to ensure consistency in whether items are reported as direct or indirect costs to ensure that the regulatory accounts are mutually consistent and comparable.

Integrity

49. The reporting needs to be cost reflective; suppliers should be obligated to report figures based on actual operating behaviour.
50. The apportionment of costs, revenues and profits to different parts of the business should be adequately explained.
51. The reporting also needs to unwind any international distortions. Ofgem's analysis of the Big 6 companies' 2009 results suggests that that RWE and Eon effectively expatriate fuel costs and profits from their UK generation activities into their overseas trading arms through their tolling agreements. This is likely to distort the regulatory accounts, artificially reducing the scale of revenues and profits attributed to these firms and impeding meaningful comparison between the Big 6.

Timeliness

52. The older data gets, the less informative it is – because it becomes less indicative of current performance and drivers.
53. The Big 6 companies prepare and report their statutory or group financial accounts within three months of the end of the financial year, but are given six months to prepare their regulatory accounts. The lag between the final regulatory report for 2009 (by SSE) and the publication of Ofgem's analysis has been a further six months.
54. We recognise that the complexity of the reports significantly constrains how quick the publication timescales can be. But we do think the timeline could be significantly tightened. We would like to see the deadline to prepare accounts shortened to three months from the end of the financial year. Ofgem should commit to turning round its own analysis within a similar timescale of receiving the last annual submission.