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RE: Review of the Regulation of the Non-Domestic Energy Retail Market Call for Input 4 December 2023

Power 2 Business are Energy Procurement Consultants who act on behalf of our commercial clients in Northern Ireland by group tendering on their behalf for their electricity and gas supplies and reviewing suppliers offers. For further information on Power 2 Business please visit our website at www.p2bgroup.com

We welcome the opportunity to respond to Unireg's Information Paper and Call for Input December 2023

Q1. Do you agree with the four areas of focus identified in this paper? Please provide any additional information to support your view, including any additional areas that you consider should be of focus.

Response

Yes we agree with the four areas of focus but would like to see an additional area included being the use of the market message system by suppliers stopping sites moving. Some suppliers in our view abuse the market message system and see it as a first course of action preventing a site moving to the new supplier. We have countless examples where suppliers incorrectly reject transfers based on contract default or debt and upon raising queries on our client's behalf the supplier allows the site to leave after investigation. The delay in moving between suppliers generally means the customer is prevented to moving to a lower rate sooner, thereby losing financially with the old supplier gaining financially.

Q2. Do certain groups of customers require specific additional levels of protection (e.g. small and medium sized businesses) beyond what is currently provided? Please provide your rationale.

Response

In our experience covering both the NI and ROI market there is a lighter touch regulatory approach in ROI in comparison to NI. I have found business users in ROI to be more attuned to the contract negotiation process with suppliers at all levels and for this reason careful consideration needs to be given to any introduction of new levels of protection to not send the wrong signal to customers who may perceive that the regulator has all in hand and not engage with suppliers for seeking better contracts thereby missing an opportunity for further education and financial gain through better contracts.

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Q3. Is the current level of competition in gas and electricity retail markets sufficient to produce positive outcomes for non-domestic consumers? i.e. around matters such variety of contract offers, tender responses, supplier service, etc. Please provide any additional information to support your view.

Response

Currently there is a satisfactory level of competition within the business electricity market. The most recent P2B Group tender yielded a variety of 8 different contract offers from various suppliers. However, this wasn't the case for much of the time in 2022/23 with suppliers virtually withdrawing from engagement with new business, and particularly the hospitality sector. The level of competition within the commercial gas market though in our view is poor, and particularly with some larger suppliers still focusing on niche markets rather than a full NI market approach covering all networks equally.

Q4. Do non-domestic consumers require regulatory protection when engaging with TPIs in the energy market in Northern Ireland? Please provide any information to support your answer.

Response

In our view taking an umbrella approach on TPI's makes it harder to answer this question.

Having a clear distinction between a TPI whom is deemed as a seller for a supplier and a TPI whom is deemed to be working on behalf of a client should be used here.

For TPI's whom are sales companies selling on behalf of a particular electricity supplier if the existing codes of practice for the supplier they are acting for cannot be applied to the TPI then yes regulatory protection could be enhanced.

Where a TPI is working on behalf of a client with suppliers, formulating any new regulatory protections that reach further than the Department for the Economy and Trading standards in our view is unnecessary. Power 2 Business Ltd are in our 13th year of business and not a single complaint has been raised to either ourselves or any other body with regards to the service we provide. Power 2 Business Ltd whilst can be categorised as a TPI are energy procurement consultants acting on our client's behalf by way of tender negotiation, contract placement and account management and in effect are an extension of their clients by becoming a full outsource of their energy procurement function.

With the above said though we will make recommendations in question 5.

Q5. If you answered yes to Q4, what additional protections do you feel would benefit non-domestic consumers in Northern Ireland? Please provide examples to support your answer where necessary.

Response

Whilst not answering yes to question 4, from a position of being a TPI whom acts on our clients behalf, if it provides customers more confidence when engaging a consultant by having greater protection then we would be happy to work with the regulator to explore how this can be implemented.

Whilst the findings from the regulators interviews in May 2023 provide mainly positive views of

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the role of TPI's in our view two things could be done to enhance this further and help to remove some of the concerns of some interviewees. Firstly where a TPI is being paid a commission by the supplier the letter of authority for the TPI to act on behalf of the client should detail their commission so that it is then agreed at the outset by the client. An extension to this is the electricity supply contract entered into should detail the level of commission being paid to the TPI. This recommendation would be seen as a low cost and easy introduction to remove one of the concerns of the May 2023 interviews. A further extension of this could be to list the commission then separately on the suppliers electricity invoice but so as to not provide an unfair spotlight on one element of a clients bill, a full breakdown would need to be provided as to the makeup of a bill including pass through charges, wholesale purchase costs, supplier margins, electricity taxes and so on.

Secondly a code of conduct could be developed with existing reputable TPI's and the regulator but this needs to be customer needs led along with organisations representing customers and not supplier led. Careful consideration needs given to supplier input as energy procurement consultants such as ourselves act on client's behalf and not suppliers so there is a contradiction to having suppliers being involved in the code of practice formulation as its basis is for the protection of customers and not suppliers . Any introduction of additional customer regulation that covers this outsourced function needs to ensure that the consultant has the freedom to continue to perform their role on the client's behalf and give absolutely no reason for an energy supplier to have some form of leverage or control over consultant as this should only lie with the client. Some suppliers refuse to work with energy procurement consultants for their own strategic reasons and as such suppliers should not be the lead driver but must be customer needs driven.

Any new code of conduct and its implementation needs to be easy to manage, non cumbersome, not prohibitive to small operations whom operate on small margins. Ultimately the cost would be borne by the consumer and if its costly this is the very basis of what will drive higher prices and could ultimately drive some out of the market, inhibit creation of new consultants or worse be a cause for commissions being high to cover costs.

TPI's whom have agreed any new code of conduct should be published on the regulator's website in the same way suppliers contact details are provided and suppliers only able to deal with TPI's whom are listed.

Q6. What are your views / experiences of the treatment of non-domestic consumers in debt by suppliers in the retail energy market in Northern Ireland? Please provide examples where possible.

Response

Power 2 Business clients would have very limited instances of debt to be able to form a far-reaching view. However from our limited knowledge some suppliers I see treat customer fairly positive in terms of dealing with their debt and would continue to offer contract terms. But others whilst managing the debt with their customers consequently do not offer renewal terms without the payment of a large deposit which only compounds the problem for the customer. The

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implications are customers to be paying anywhere between 10-45% more (based on today's figures) with certain suppliers than if having a contract in place with the same supplier.

Q7. Are there specific supplier behaviours and / or debt collection processes that require enhanced regulation to better protect non-domestic consumers? If so, please specify, with examples.

Response

For customers whom are not choosing a fixed energy rate contract where no hedging is required by the supplier, they should be able to accept a contract rate on a variable / market tracker product without the a need for a large deposit to avail of a lower prices. We have multiple instances where customers have missed single payments in a 12 month window and have no debt on the account but requested deposits. We have lots of examples of customers, particularly in the hospitality sector, that have missed no payments but still requested deposits from their current supplier whom take a different risk view of the industry the customer operates in at renewal time.

Q8. Should certain non-domestic consumers (such as small and microbusinesses) be provided a similar level of protection as domestic consumers regarding treatment of debt? (e.g. as is provided in CoP on the Payment of Bills).

Response

Please see response to question 7 for recommendations.

Q9. To what extent do you believe the communications from suppliers to nondomestic consumers are clear and transparent (e.g. billing, renewal agreements, etc)? Please provide examples where possible.

Response

On the whole yes we see the information provided by suppliers tends to be clear and transparent however we see evidence of some suppliers being selective in the information they provide to new customers particularly around "wholesale pass through products" with supplier margins as they tend to be selective in always showing the lowest of a "daily", "weekly", "monthly", "futures", or "energy only". This lack of consistency can make it less straightforward for customers when negotiating directly with suppliers to be able compare with a supplier whom has offered an all-inclusive rate or based their figures on the most recent monthly average.

Billing, particularly in the multirate tariff where the regulated pass through costs are separately listed, can be complicated for customers to understand however upon explanation and education customers then find this to be very informative as the percentage of their bill taken up by these charges. Hopefully the high energy rates of the last few years will be an outlier but prior to this, and back again now, the cost of total pass through charges exceeds 50% in most cases of the bottom line of a customer total annual bill.

Q10. Do you believe that there is sufficient market information available for non-domestic consumers to make informed choices around their energy needs? Please provide details and

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your reasons

Response

As electricity procurement consultants it's our role to perform this task for our clients but for customers whom attempt to engage directly with suppliers themselves it is easier than ever as customers have multiple supplier choices in the marketplace and they can seek them out with the use of the internet. A simple search pulls up the details of the leading suppliers.

Any literature provided by the regulator to aid customers to make informed choices about electricity contracts should be welcome.

Q11. Are you aware of any onerous or unfair contract terms which impact a non-domestic consumers ability to engage with the retail energy market in Northern Ireland fairly, or are there any contract terms and conditions that you have concerns about? Please provide evidence for your views and details of any specific examples.

Response

Our main concern is the length of notice periods exercised by some suppliers. We have a clear example of a supplier using their long notice period as a negotiation tool where a customer had signed a contract with a new supplier to be told by the existing supplier they had to serve a 3 month working days notice period before being allowed to leave and during this time they would be charged out of contract deemed rates but if a new contract was signed this could be avoided. This was a clear use of the long notice period as leverage to retain the customer. The legality of a supplier attempting retention after knowing that a new contract is signed with another supplier is questionable as it could be deemed as tortious interference.

Excessive notice periods, and the use of the notice periods at all by some suppliers if a customer is on standard variable rate, in our opinion should be removed. Customers can be paying very high percentages above contract rates on standard variable rate contracts and a supplier citing a reason of "hedging" requirements for the notice period is simply not feasible. When a fixed term contract ends the customer should be free to leave without a notice period.

It is important to note that not all suppliers require a notice period to be served if a customer fixed term has ended, or at least do not exercise it.

Q12. In terms of protecting the short-term and long-term interests of nondomestic consumers, is there anything else not covered by questions 1-11 that UR should consider?

Response

Suggestions have been made outside of the questions asked, in particular around market messages in response to question 1, deposit request in response to question 7 and notice periods in response to question 11.



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Thank you again for the opportunity to respond to Unireg's Information Paper and Call for Input December 2023 and we look forward to further work in the future on this matter.

Kindest Regards,

Gareth Strain

Managing Director

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