CHAPTER: One

Question 1: Are there other key issues that we should be looking into in the non-domestic sector?

No. We believe that Ofgem are right to focus both on ensuring that there is an appropriate level of protection for non-domestic customers and reforming of the third party intermediary market (TPI). We welcome the Retail Market Review (RMR) as an opportunity to deliver improvements in these two key areas.

We are supportive of customers' rights to change supplier but as previously indicated, we believe that some industry parties may be misusing processes during acquisition to erroneously gain customer accounts. We believe there is scope for the industry to reach a solution on these issues without Ofgem involvement, however if this is unsuccessful we may seek to raise the matter with you formally. This issue is explored more in our answer to question 11.

Question 2: What would stakeholders like to see on our website to help business customers and support a competitive supply market?

Whilst we believe that generally Ofgem have a limited role to play as an information source for businesses, we welcome Ofgem's proposal to accredit TPI Codes of Practice and recommend that, given the fragmented nature of protection in this area, Ofgem should seek to publish details of accredited Codes on their website, along with a list of the intermediaries accredited under them. This will enable customers to easily find a suitable intermediary who can help them, thus facilitating the competitive supply market.

We recognise there may be practical difficulties in making sure any such list is maintained, but believe this could be overcome by making it a condition of accreditation for the Code Administrator to notify Ofgem of changes to the list of third party intermediaries covered by the Code within a reasonable time.

CHAPTER: Two

Question 3: Do stakeholders agree with our proposals to extend the scope of SLC 7A to include a wider small business definition, and do you agree with our proposed definition?

We believe that, in the context of a business to business relationship, regulation should be kept to an absolute minimum. If however Ofgem decide that further regulation of the market is required, we are committed to working with them in order to ensure the resulting controls are workable, proportionate and deliver genuine customer benefit.

We have concerns however that, in their current format, Ofgem's proposals provide protection for small, medium and large businesses and will actually mean that 99% of all British Gas non-domestic customers will be covered. This includes a number of FTSE 100 organisations we currently supply; all of whom are sophisticated purchasers of energy with strong buying power. Whilst we welcome protection for genuine small businesses, we cannot support the proposals if they inappropriately cover large organisations.

The root cause of the problem is the inclusion of a full time employee (FTE), revenue "or" consumption and meter type test. The proposal is for FTE and revenue measures to apply at the aggregate customer level whereas the consumption and meter type measures to apply at both a supply point and fuel level. This leads to some unintended consequences and as referenced above, captures inappropriately large organisations within its scope. Many large organisations split their operation across a number of different sites, with a number of the sites within their portfolio falling within the proposed definition by virtue of their level of consumption or the type of meter they have installed.

For example, large organisations will typically have a mixture of large and small sites. Energy needs for all sites within the portfolio may be purchased centrally, but if there is at least one site in the portfolio with either a Profile Class 3 or 4 meter, or uses less than 293MWh of gas per annum, they would be erroneously classified as a small business under these proposals.

Regulatory protection of this type constitutes an unnecessary expense for suppliers and customers alike. Suppliers will need to put in place processes which ensure compliance with rules on providing specific documentation at set times and apply restrictions which limit the type of offers which can be made to these customers on renewal. This would restrict competition in the market by limiting the types of deal available.

For example, we would not be able to offer such organisations deals which involve lower prices in return for increased supplier certainty and longer extensions to customer fixed term deals. Whilst we agree that such deals may not be appropriate for genuine small businesses, larger organisations are better placed to understand the risks and opportunities these types of deals present and actively use them as a way of managing their exposure to energy costs. In their current format, the proposals are disproportionate in their effect on suppliers as they fail to properly ensure the costs associated with compliance are properly targeted at just those customers that need protection.

The definition used should explicitly assess the customer by looking at an aggregated view of the size of the business across all its various sites, and not on a per site or per fuel basis. Whilst suppliers can easily obtain information about the aggregate number of FTE an organisation has, or its aggregate annual revenue for

all sites, it is not able to see the aggregate consumption or meter type information for all sites in the customer's portfolio unless it is the registered supplier to them. This also demonstrates that businesses of this size are sufficiently sophisticated to source the best deal for them by co-ordinating across a number of suppliers.

We therefore propose that Ofgem should adopt the EU definition of a small business as having less than 50 FTE and a revenue smaller than €10m. Our modelling shows that this definition would capture approximately 75% of our customer base and, importantly, would avoid the anomalous consequences and logistical difficulties detailed above. Furthermore we also propose that the definition explicitly excludes public sector organisations who's energy is purchased centrally. It would be inappropriate, unnecessary and will increase cost for both suppliers and Government to include such customers, without necessarily adding benefit.

Question 4: Do stakeholders foresee significant costs or complications if we were to introduce our proposals? If so, please provide details and cost estimates.

Regulatory intervention in a market introduces costs for those operating within the market, and it should therefore only occur when the benefit from such intervention outweighs that cost. The proposals will obligate suppliers to introduce procedures to assess whether a business meets the definition, meet particular information requirements on renewal and limit the offers made at the end of a fixed term contract. All of these will increase the cost to serve for those organisations impacted.

As drafted, the proposals will also introduce a three-tier approach to regulation in the non-domestic market which will further increase costs to serve. Suppliers will be obligated to provide protection to micro-businesses based on SLC7A as well as the separate complaints and backbilling regulations. Small businesses would then require separate identification to enable just SLC7A protection, with larger customers remaining largely unregulated. This introduces process complexity for suppliers, as well as necessitating systems changes to identify which customers are micro, small or larger to ensure the appropriate level of protection is afforded. Such an outcome would mean that some small business customers will be unable to access the redress arrangements, being protected by parts of SLC 7A but not escalate a complaint to the Energy Ombudsman service.

We estimate that, in their current format, the proposals will increase our costs by approximately £16m over the next three years through a combination of systems changes, added process complexity and increased operational costs associated with achieving compliance. It is therefore important that Ofgem take steps to ensure that the proposals target the right customers and do not extend to organisations that do not need protection.

Question 5: Do stakeholders agree with our estimates on the number of extra businesses covered by our proposed definition?

No. As we set out above, the scope of the proposals is far greater than Ofgem have envisaged and capture some inappropriately large customers. Our modelling estimates that in their current forum at the will cover 99% of our customer base, including classifying a number of FTSE 100 companies as small businesses. We also believe that even the "Big Six" energy suppliers would also fall under the definition of a "small business" by virtue of the fact that they have sites which are likely to meet the consumption test proposed.

We support the need for appropriate regulatory protection for genuine small businesses. It is therefore important that Ofgem take the opportunity to change the proposed definition so that only customers with less than 50 FTE and revenue of below €10m are captured, in line with the accepted EU definition. Furthermore we believe it is necessary apply the test at an aggregate customer level, and not on a per site or per fuel basis.

Question 6: Do stakeholders agree that we should review termination procedures and our current position that allows automatic rollovers?

No. We believe that regulatory protection over termination procedures and automatic rollover need to be proportionate to the customer which the measures target. The focus on both limiting the length of automatic rollovers for small businesses and ensuring that customers are aware of both the termination procedures and the costs and benefits associated with them is the right approach. The renewals process works successfully for most customers and Ofgem's current rules, defined in SLC7A, encourage the necessary clarity and transparency across the industry.

A blanket ban on auto-rollovers will lead to more businesses being placed on "out of contract" rates which are typically more expensive. The effect would be to increase the burden energy prices have on businesses at a time when they need most support. Ofgem should instead allow the information based remedies within the RMR to bed in and take effect before commencing on further reform.

A ban on auto rollovers would also tend to lead towards a position where contract lengths offered would be longer, as suppliers seek to mitigate the extra costs arising from an inability to automatically roll customers over. This may reduce the range of products available in the market, something we consider would not be in the customer's interests.

Instead the focus of the RMR proposals should be on ensuring that the information provided to customers at acquisition and ahead of renewal, particularly those genuine micro or small businesses, is clear, transparent and timely. This will ensure that customers have the information available to make an educated decision about

what is best for their business. Only if these remedies fail do we believe that Ofgem should consider more restrictive regulation of termination and auto rollover procedures.

Question 7: Are there other clauses that stakeholders believe we should be reviewing, in light of our expanded definition proposal?

No.

CHAPTER: Three

Question 8: Do stakeholders agree with the conclusions we have drawn?

No. We do not accept that Ofgem's findings are evidence that the objections process is being misused and in particular disagree that a high percentage of objections resulting from the termination process necessarily means that competition is being restricted. On the contrary, it is evidence that a number of TPIs and suppliers do not complete sufficient validation during the acquisitions process, and often try to acquire a customer midway through a contract.

We recognise many customers experience repeat objections. Our experience is that this is caused by suppliers' systems automatically reapplying for a site regardless of the objection reason, or without first discussing with the customer the reason for the objection, or seeking consent for a reapplication. We know of one supplier whose policy is to automatically reapply for a site nine times if an objection is received. This has the effect of significantly inflating the overall number of objections made by other suppliers. As there is currently no proper regulation of the registration process for a site, the abuse of this process distorts the picture around objections generally.

Neither does the evidence Ofgem have presented on the rate of objection withdrawals highlight that there is an issue in the market. Following an objection the withdrawing supplier will enter in to a dialogue with the customer to explain the reasons for the objection and afford them a chance to correct the issue. If the customer is able to resolve the reason behind the objection, for example by repaying a debt, then the supplier is obligated to remove the objection.

It is not necessarily accurate to conclude that the variance in objection withdrawal rates is therefore evidence of poor practice in the first place, and could simply be a product of different qualities of dialogue with the customer following an objection.

It is also noteworthy that suppliers are likely to have different processes and policies for validation of the accuracy of information provided in a transfer application. It stands to reason that the more rigorous the validation process the more likely a supplier is to identify inappropriate transfer requests. Objections raised as a consequence do not indicate anything untoward being done by the objecting supplier.

Question 9: Do stakeholders agree that we do not need to make changes to SLC 14 governing objections to supply transfer for non-domestic suppliers?

Yes. We believe that the rules within SLC14 are clear and robust enough to ensure customers are protected in the objections process. We do however welcome the fact that Ofgem have published guidance on the best practice that suppliers should consider when drafting objection letters.

Question 10: Do stakeholders believe that we should publish our data relating to supplier objections on a regular basis?

We are not opposed to transparency in principle but believe that differences in the way in which suppliers manage the acquisitions processes may lead to difficulties in interpreting the data. For example, suppliers each have different policies relating to the number of automatic reapplications they will make when they receive an objection to an acquisition attempt. We are aware of some suppliers in the market who will reapply for a site following an objection up to nine times, whilst others will either not reapply, or do so sparingly. The effect of this difference in approach would be to inflate the objection figures of those who automatically reapply less when compared to the rest of the market.

If more data is published therefore, Ofgem should take steps to ensure that it is not misinterpreted, for example by including only the first objection for a particular site in any one reporting period.

Question 11: Are there other issues with the objections procedure, other than the obligations of the licence condition, which stakeholders consider need to be addressed?

We are concerned about the way in which some suppliers may be misusing industry processes such as the Change of Tenancy (COT) Flag. This flag is used by an acquiring supplier that the contracting customer is not the customer that the incumbent supplier has on record, following a COT, and that any objection reason the incumbent may have is invalid. The presence of a COT Flag will therefore allow any site to withdraw, even during the middle of a fixed term deal or when there is a debt on the account.

Whilst we accept a small margin of error may be expected in a process such as this, our analysis shows that approximately 66% of all COT Flags we receive are false. We believe there is evidence to suggest that suppliers and brokers may be misusing the process to reduce leakage in their acquisition process.

The effect, over time, of this practice is to reduce the benefit for suppliers and customers of fixed term deals. If a contract can be broken at any time using industry processes, with little opportunity for the matter to be identified and prevented, then the hedging risk a supplier faces and the price the customer receives will tend

towards that seen in the out of contract market. This is in neither the customer or supplier interest.

It also has necessitated us putting in place a process to monitor the accuracy of COT Flags once they are received. This involves a dedicated team of employees telephoning each customer to establish whether a COT has taken place. In addition to the expense this entails, it can be difficult to contact customers in the short space of time the objection window allows. This means that some sites will erroneously withdraw leaving us exposed to increased credit risk associated with any debt they may have had..

We are at this time pursuing bi-lateral solutions with the parties we consider to be the worst offenders. If this is unsuccessful however, we will seek to refer the matter to Ofgem.

Question 12: Do suppliers who have voluntarily sent data have views on whether the data we currently ask for on a monthly basis needs to change and why?

Ofgem may wish to consider seeking information from suppliers about the rate with which they use the COT Flag on acquisition. This data is recorded on industry data flows and therefore can easily be reported on by suppliers.

CHAPTER: Four

Question 13: Do stakeholders agree that the introduction of a new supply licence condition focussed on sales activities is a suitable method to prevent harmful sales and marketing activities in the non-domestic sector?

British Gas has been at the forefront of calling for reform of the Third Party Intermediary (TPI) market for some time. Whilst the majority of TPIs provide a valuable and professional service for businesses, we share Ofgem's concern that a small section of that market operates in a way that negatively impacts customers and damages the trust in the energy market. We therefore welcome Ofgem's focus in this area.

In particular, we strongly support Ofgem's request for more powers in this regard and believe that this will rightly enable Ofgem take direct control of the TPI market in the same way they do for other participants. This would be in line with Ofgem's Primary Duty, and could be achieved through a reinforcement of the proposed Code of Practice accreditation scheme.

If the aims of reform are to be achieved however, it is important that the obligations placed on suppliers can be practically applied and do not allow either suppliers or TPIs to circumvent it. On both counts however, we have concerns that the proposals may lead to unintended consequences which risk the overall delivery.

Importantly, the proposed reform still allows suppliers to make a conscious decision to use TPIs who refuse to sign up to an Ofgem accredited code of practice, in effect trading increased regulatory risk for the commercial advantage which would arise from using TPIs with a lower cost base. We are therefore concerned that the proposals may not address the root cause of the problem and that a small number of TPIs will continue to be able to operate in a way which negatively impacts customers.

This could be avoided were all suppliers to be obligated, as a condition of licence, to only contract with TPIs who were signatories of an Ofgem accredited Code of Practice. This would also have the additional benefit of creating a level playing field for suppliers and customers alike. This would also significantly reduce the possibility for "rogue" TPIs to operate in the market. We therefore ask Ofgem to reconsider their decision not make use of accredited brokers a licence condition for suppliers.

Conversely, we also have concerns that the proposed licence obligation on suppliers to police the TPI market themselves is potentially unworkable.

There are large numbers of TPIs in the market, with British Gas dealing with over 200 themselves. Whilst some control frameworks already exist between supplier and TPI, a strict interpretation of the proposed rules suggests that suppliers would need to go much further, perhaps even completing regular audits of broker processes. This would be impractical, necessitating a large increase in resource dedicated to quality checking the sales presented by brokers to suppliers, thus increasing our cost to serve.

In addition, it is unclear for example how suppliers could police TPI activity when it is in an "umbrella" TPI and sub-TPI relationship. There are approximately 60 "umbrella" TPIs active in the market today, each of whom acts as an aggregator for approximately 30 smaller sub-TPIs. A supplier will only contract with the "umbrella" TPI and as such has no practical way of policing the interaction between the customer and the sub-TPI. This can only be effectively done if Ofgem regulate the market directly.

Aside from practical issues associated with policing so many different organisations, it is important to note that the way TPIs operate also varies significantly depending on the type of customer they are working with, and thus the challenges suppliers face will also vary depending on the customer base they have. Small businesses tend to seek simple fixed price products over the telephone from TPIs in return for relatively basic fee structures. Larger organisations however tend to negotiate more complex, bespoke, products face to face, and in receive more complex commission structures.

This complexity reflects the fact that such deals are often based on the provision of advice rather than simply an energy sourcing product. When you also consider that suppliers generally have no visibility of how these deals are conducted, it is not clear

to us how a supplier may physically police TPI behaviour in either market, but especially for larger customers.

We also note that in the larger end of the non-domestic market where TPIs are significantly larger and more powerful, suppliers' ability to dictate the terms of business are significantly weaker. There is genuine concern over whether, even if it could practically be done, a supplier could dictate the level of control Ofgem propose.

We call on Ofgem to rethink the proposed new licence condition, and to consider ways in which it can take a more active role in protecting consumers from those TPIs who act unscrupulously.

Question 14: Do stakeholders agree that this licence condition is necessary if Ofgem decides not to proceed with its Standards of Conduct proposals?

As above, our primary concern with the proposed licence condition is that it implies suppliers need assume the role of regulator in respect of the TPIs but without having any meaningful powers to perform this role. This is unworkable and is therefore unlikely to deliver the change that is required.

We recognise that in processing sales directly however, a supplier has complete control over their actions, and that the proposed licence condition is more appropriate in this context.

We spend a significant amount of time and resource on meeting the current guidelines, and would therefore have no objection to them being placed in licence if they applied to supplier actions only.

Question 15: Do stakeholders consider the introduction of an accreditation scheme for TPI Codes of Practice will reduce harmful TPI activities across the whole market?

There are currently a wide range of different Codes of Practice, with the quality between these documents varying significantly. This is confusing for customers and, where the Code of Practice is inadequate, offers customers a misleading sense of protection. We therefore welcome the proposal in introduce an accreditation scheme for TPI Codes of Practice and see this as an important step forward in delivering customer protection.

We believe there is scope for Ofgem to go further with their proposals however, and ensure that all suppliers have a licence obligation to only use brokers who have signed up to an Ofgem accredited Code of Practice. This would mitigate the risk that some TPIs would choose to operate outside of an accredited Code of Practice, and therefore that unaccredited Codes of Practice would continue to exist. This would improve transparency and confidence in the regulatory framework for customers, better enabling them to find a TPI without fear that they will be misled.

It would also prevent suppliers from choosing to accept greater regulatory risk in return for the competitive advantage from using TPIs who do not incur the cost of signing up to, and complying with, an accredited Code of Practice. This could easily be made workable if Codes of Practice administrators shared and up to date list of accredited brokers with the industry, perhaps through Ofgem. This would enable suppliers and customers to see which TPIs they could safely work with.

It would also resolve the potential problem associated when an "umbrella" TPI is a signatory to an Ofgem accredited Code of Practice, but some of their contracted sub-TPIs are not. These "umbrella" TPIs currently act as aggregators, providing a route to market for smaller operators, but it is not clear how consumer protection would work effectively in this context if TPIs continue to be allowed to operate outside of an Ofgem accredited Code of Practice.

Finally, we believe that in order to deliver genuine reform, TPI Codes of Practice need to make adequate commitments to customer protection and then deliver on them. It is therefore important that, in establishing an accreditation scheme for Code of Practice Administrators, Ofgem also consider how they will ensure that accreditation is removed from any Code of Practice which fails to live up to the commitments they make. Without this, it is entirely plausible to expect that some Codes of Practice may seek the benefits of accreditation without the costs of customer protection.

Question 16: What do stakeholders consider to be key criteria for an accreditation scheme for TPI Codes of Practice?

We agree with the proposal to ensure that accredited Codes of Practice have both complaints and compensation procedures, but we consider there is scope for more to be required.

If, for example, suppliers are obligated to follow the Standards of Conduct in sales activities, it is logical for the same requirements to be made of TPIs through the Codes of Practice. This would ensure that customer treatment is consistent throughout. Ofgem should also consider obligating Code of Practice Administrators to provide relevant data on complaints received and upheld to enable them to see whether the commitments made by the Administrator are being adhered to.

Question 17: Do stakeholders believe it is necessary for TPIs to disclose their actual fee, or would making clear the fact that the customer is paying a fee for their services be sufficient?

We fully agree that transparency is in the customer's interests and believe that the proposal to obligate disclosure of both the fee and who the TPI is representing, will benefit customers. Importantly, we note that negotiating an energy contract is only one aspect of the service TPIs often provide for customers and that this level of transparency should therefore apply to the commission charged for all services a TPI

may offer. This will prevent any unscrupulous TPI from moving their charges to services where transparency rules do not apply.

Given that TPI commission structures vary significantly, it is important that Ofgem also consider ways of how customers may adequately compare one TPI's commission rates with another. This will ensure that transparency delivers genuine benefit for customers.

CHAPTER: Five
Question 18: Do you feel the revised SOCs will help to achieve our objectives?

We fully support the principles contained within the proposed Standards of Conduct and already spend a significant amount of time and effort in to ensuring we embody them right across our business, not just in our sales process where they currently apply. In making these directly enforceable licence conditions however, without the inclusion of objective tests against which supplier performance can be measured, we believe there is significant risk that the intent behind the proposals will not be achieved.

In particular, we believe that the inclusion of subjective tests in licence will not make it clear what change suppliers need to deliver in order to achieve compliance. For example, a "fit for purpose customer service" may mean one thing to one supplier, something else to a different supplier and an entirely different thing to Ofgem. If Ofgem want to make sure these proposals deliver real change for customers, they need to provide clear and specific guidance on the interpretation for the new rules

Question 19: Do you agree that the SOCs should be in a licence condition and enforceable?

As above, it is unnecessary to put subjective rules such as these in to the licence. Suppliers should be able to enter and then operate in the market knowing precisely how to achieve compliance.

We fully support the intent behind this proposal and will continue to invest in processes and procedures which embody the ideals Ofgem have set out. If Ofgem believe there is currently a difference between what we and other suppliers do and the ideals expressed in the proposal however, it is important that difference is set out in clear and objective guidance. Without this, the risk of operating in the market will be increased, and there will be potential for suppliers to deliver no customer benefit.

We also believe that the effect of placing the Standards of Conduct in to licence may limit the scope for competition in the non-domestic market. For example, and

perhaps distinctly from the domestic market, we believe there is legitimate space in for a supplier who is willing to offer a low cost, reduced service, product. This would appear to be prohibited by the proposed rules.

In particular, the proposal to obligate suppliers to have a fit for purpose customer service will tend towards homogenisation of service in a market where customers' needs will vary more significantly than in the domestic market. It is not clear that this is necessarily in the customer's interest.

Importantly, we believe that there are issues within the market which means a move to principles based regulation will not work as Ofgem intent. For example, the current approach to enforcement action is incompatible with principles based regulation, where dialogue on how rules should be interpreted is required as part of the process.

Question 20: Do you agree the revised SOCs should apply to all interactions between suppliers and consumers?

Yes. We believe that customers want, and need, to see the principles within the Standards of Conduct displayed in all their interactions with suppliers, not just during the sales process. This includes when they query a bill, discuss a debt or consider renewing their contract. We believe that we already embody the Standards of Conduct in all our customer interactions at the moment, and will continue to identify ways to do more.

Question 21: Do you have information regarding potential costs this may impose on suppliers?

As above, it is not clear to us from the proposals what changes Ofgem expect suppliers to make as a result of placing these obligations in licence. We already seek to embody the Standards of Conduct in all our customer interactions, and whilst work to achieve this is a constant process, without clear guidance on how to interpret the proposed rules we are not able to assess the likely cost the proposals represent.

It is conceivable that other suppliers, whose model is based on a low cost and reduced service model may experience significant financial impacts in order to comply with these proposals however.

Question 22: Do you think these proposals should apply to the whole non-domestic market, or only a sub-set of it, eg small businesses?

We recognise that the majority of the principles within the Standards of Conduct will be of value to all customers, regardless of size. Whilst we also consider that the proposal for a "fit for purpose customer service" may prevent low cost products coming to market, we believe that this would negatively impact businesses in all

parts of the market. We therefore conclude that the issues above apply equally to all customer types and sections of the market.

Question 23: Given your answers to the questions above, do we still need the licence changes proposed elsewhere in this document?

As above, we recognise the need for an appropriate level of protection for genuine small businesses and agree that Licence changes in this specific area are required. We maintain that the proposed definitions are too wide in their application however and believe they need amending. More detail on this point is provided in answer to question 3.