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9<sup>th</sup> July 2021

FAO Jonathan Blagrove,

**Gazprom Energy Response to the Statutory Consultation for the Strategic Review of the Microbusiness Retail Market**

Thank you for providing the opportunity to respond to the statutory consultation on the strategic review into the Microbusiness Retail Market. We will explore the questions raised in the consultation in more detail in Appendix 1 following this letter. In responding to the consultation, we would first like to provide some general comments and observations.

**Aligning the delivery date for the proposals**

We believe that the proposals that are ultimately taken forward would be best implemented as a package rather than a piecemeal approach. In doing so we would ensure that they are implemented with the maximum efficiency and the minimum disruption to the market. In considering the current industry change horizon we believe that 1<sup>st</sup> January 2023 strikes the best balance between the ongoing implementation of major change programs and the need to ensure any new arrangements are successfully delivered.

**Implementation of the Proposals – Cooling-off Period**

As detailed in our response to the Policy Consultation issued in July 2020 and the Request for Information (RFI) issued in February 2021, we have concerns with the proposal to implement a Cooling-off Period into the Microbusiness market whilst the Faster Switching Programme is being completed. Whilst we acknowledge the revised Cooling-off proposal, first outlined in the RFI, de-risks the direct impact on the Faster Switching Programme there remain significant consequential impacts on other parties including, but not limited to, system changes that would be required to be delivered before the Faster Switching Programme goes live.

Our key resources, whose knowledge and capabilities would be required to implement the relevant changes to our systems to facilitate a Cooling-off Period, are currently focused on the material changes that have to be made as part of the Faster Switching Programme. Indeed, Ofgem themselves acknowledge that no industry change should be made from February 2021 until after the Programme has been successfully delivered.



For this reason, we believe no material consequential changes should be implemented before the Faster Switching Programme goes live, and that enough time is then given post-implementation to ensure the changes are successfully implemented. Due to the size of the program, we would reasonably expect that this would require at **least 6 months** of live operation before considering making material changes. This would infer that the Cooling-off Period should not be implemented before **1<sup>st</sup> January 2023**.

We believe that the principle of a hard cut-off of D-28 for the applicability of a Cooling-off Period should be applied when considering the latest date for a Cooling-off Period to apply. In doing so and adopting a hard cut-off of D-42 for the application of a Cooling Off Period, we will avoid the confusion that will arise from requiring parties to operate a “variable” Cooling-off Period between D-42 and D-28. We believe that a variable Cooling-off Period will be complex to implement and confusing for customers.

### **Implementation of the Proposals – Alternative Dispute Resolution (ADR) scheme**

We support the proposal to implement an ADR scheme for the Broker market, but we believe appropriate time is required to implement and deliver this successfully. The Broker market considerably outnumbers the Supplier market, with hundreds of Brokers offering different services and with differing operational set-ups. Successfully onboarding all the relevant Brokers before the implementation date is key to unlocking the benefits of introducing an ADR scheme into this market.

It will also be important to ensure there is suitable guidance provided to support this new service. This will be of great benefit to Brokers, Suppliers and indeed consumers and we would argue that this should be created and implemented well ahead of the implementation date.

For these reasons we believe that an implementation date of **1<sup>st</sup> January 2023** would provide suitable time to address these points and concerns before the scheme is initiated.

### **Additional Points**

We raise additional points of clarity around the proposals and the accompanying draft Licence Conditions in Appendix 1 of this letter.

We appreciate the opportunity to respond and input into this Statutory Consultation and we explore the above in more detail in Appendix 1 following this letter. Should you have any questions relating to the information provided in our response, please do not hesitate to contact Steve Mulinganie, our Regulation Manager, [steve.mulinganie@gazprom-energy.com](mailto:steve.mulinganie@gazprom-energy.com) in the first instance.

Kind regards,

Steve Mulinganie  
Regulatory Manager  
Gazprom Energy

## Appendix 1 – Detailed Response to Questions

### Question 1

Do you agree that 1 January 2022 represents an achievable start date for implementing a 14-day cooling-off period for microbusiness consumers?

As we expressed in our accompanying letter to the Request for Information issued in February 2021, and above, we continue to have serious concerns for any consequential material changes that may impact our internal systems before, and immediately after, the Faster Switching Programme is delivered.

A significant proportion of our, and the industries', IT resources will be focused on ensuring the business is ready to support the successful implementation of the Faster Switching Programme. The impact of implementing the Cooling-off Period during the Code Freeze and prior to the Faster Switching Programme Go-Live, as is proposed in the Statutory Consultation, would require the business to put in place additional Full Time Employees (FTEs) resource to undertake the analysis of the changes and ensure processes and systems are compliant with the new requirements.

This would create material challenges in terms of accessing these resources at this challenging time so late in the program and as we continue to manage effects of the pandemic. We believe this will lead to additional material cost, increase the risk of further delay and ultimately be to the detriment of the consumer by delaying the benefits of faster switching further.

For this reason, we believe no change should be implemented before the Faster Switching Programme goes live, and that enough time is given to ensure the Faster Switching changes are successfully implemented as we enter into the winter period. Ensuring the integrity of the Faster Switching Programme is crucial, as recognised by the Ofgem Code Freeze from 28<sup>th</sup> February 2021. This recognises that any material changes arising after the Code Freeze materially impact on parties' ability to achieve the current Go-Live Date. As the program has already suffered delays, costing tens of millions of pounds, it is imperative that it is delivered on time as any further slippage will cause parties to incur significant extra costs.

We would also like to highlight the inability to identify and track Microbusiness consumers in central systems. The lack of a central record of Microbusiness Customers will create confusion should these changes be introduced without the requirement and ability for parties to identify Microbusiness customers in central systems. As a result, we have raised an Industry Modification in the Gas Market to address this. However, sufficient time is required for the Gas Modification to be debated and developed at the relevant industry forums.

Due to the scale of the Faster Switching program, we would reasonably expect that this would require at **least 6 months** of live operation before considering making material changes to market operation. Given the Faster Switching Programme is scheduled for delivery between June and August 2022, this would infer that the Cooling-off Period should not be implemented before **1<sup>st</sup> January 2023 at the earliest**. This would give Suppliers suitable time to implement the necessary system changes and ensure the integrity of the Faster Switching programme is not compromised.

## Question 2

Do you agree that 1 January 2022 represents an achievable start date for fully implementing both the proposed supply licence obligation and the associated scheme needed to introduce independent dispute resolution for microbusinesses in dispute with a broker?

Whilst we support the principle of requiring Third-Party Intermediaries (Brokers) to be party to an Alternative Dispute Resolution (ADR) scheme, we believe due consideration must be made when implementing this proposal.

The Broker market is significantly vaster than the non-domestic supplier market, with hundreds (if not thousands) of Brokers with different structures and services. We believe successfully onboarding all the relevant Brokers before the implementation date is key to unlocking the benefits of introducing an ADR in the Broker Market.

There are also Brokers that receive payment directly from the customer and it is our understanding that under this scenario the Broker would not be a Broker under the definition of these proposals. Therefore, our understanding is the Broker would not require qualification under the ADR scheme under this scenario.

Furthermore, as this is a new requirement, we believe suitable guidance will need to be issued in advance of the ADR Go-Live date, to ensure Suppliers, Brokers and customers understand these new requirements.

At the meeting held between EUK, ICoSS, the Ombudsman and Ofgem on the 30<sup>th</sup> June 2021 a number of issues were raised over the introduction and administration of the scheme and the relatively short implementation window:

If the ADR arrangements covered both Aggregators and Brokers, then this further extended the number of impacted parties.

As the Broker ADR scheme will not be backed by a Statutory Instrument, the Terms and Conditions that apply to Brokers will need to be transparent, so all parties understand how parties are expected to act.

The costs of annual Subscriptions and the setting Case Fee's would need to be determined and communicated.

Ahead of Go-Live a Roadmap, Design Document, Training Guides and Engagement Plan would need to be made available and this should include Supplier impacts.

The approach to remedies needs to be clear and a polluter-pays approach should be applied.

Confirmation that the Ombudsman ADR scheme is the only qualifying scheme in place, and any proposals for additional qualifying ADR schemes will have to be assessed by Ofgem.

The arrangements for Entry and Exit will need to be clearly set out so parties understand what is expected of them and the options open to them if they wish to appeal any decisions.

## Question 2

Do you agree that 1 January 2022 represents an achievable start date for fully implementing both the proposed supply licence obligation and the associated scheme needed to introduce independent dispute resolution for microbusinesses in dispute with a broker?

Based on all the above points, we believe that an implementation date of **1<sup>st</sup> January 2023** would provide suitable time to address these points and considerations before the scheme is initiated. If the scheme is implemented prematurely, it would not function as designed and ultimately be to the detriment of the market and consumers. This would be made worse if these problems arose at the same time as we were rolling out the benefits of more Faster and Reliable Switching.

## Question 3

Do you have any other comments on our proposals?

In addition to the above we also have a number of queries that we believe are not clearly addressed in the Final Proposals presented in the Statutory Consultation. It would be beneficial to Suppliers and Customers if the following could be addressed in more detail.

For clarity we have addressed these in a series of points below:

Does the Cooling-off Period commence on the later of either the day the contract is struck or when the Customer receives the Principle Terms?

A Broker who is party to an ADR scheme will not be required to meet the agreed SLA's under the Complaint Handling Regulations. Therefore, will there be a disconnect between the obligations for Suppliers under their ADR scheme and Brokers under theirs. If not, how will the alignment of arrangements be enforced on Brokers?

The proposal regarding market information states that Ofgem will be using the services of the Citizens Advice Bureau (CSB). Is this provision limited to the CSB or will other providers also be approached, such as the Federation of Small Business?

How will Suppliers be notified if a Broker is no longer qualified under the approved ADR scheme? It is important that this information be timely and easily accessible to ensure Suppliers do not work with unregistered Brokers, as this would potentially put them in breach of their licence conditions.

If a Broker is party to a qualifying ADR scheme, we would assume that as a Supplier we can rely on that scheme to be fit for purpose, i.e. we cannot dictate which qualifying ADR scheme(s) the Broker is party to, only that they must be party to a qualifying scheme(s).

If we are subsequently asked for Brokerage Costs are these the costs quoted, were relevant, on the Principle Terms or do they need to be recalculated to reflect the "current" value?

#### Question 4

Do you have any comments on the draft supply licence conditions at Appendix 1 in this [Statutory Consultation] document?

The definition of “Brokerage Costs” is stated as any fees, commission or other consideration including a benefit of any kind. This definition is very broad and could include a number of de minimis values. We believe a materiality test to remove de minimis values would best serve the intent of this proposal.

The definition of “Broker” is quite broad and as currently drafted may inadvertently include Sales Agents who act, in that capacity, exclusively for a particular Supplier and in doing so are only offering that Supplier’s products when acting in that capacity for that Supplier. Can we ensure the drafting does not inadvertently capture such parties because this will place suppliers with smaller operational teams at a significant commercial disadvantage to larger suppliers who operate their own internal sales teams?

Draft **SLC 7A.10.C1** (Provision of Brokerage Costs on request). Can we confirm that the intent is that this applies to all scenarios that arise on contracts struck once arrangements come into effect, i.e. it does not introduce retrospection?

With regards to the proposed **Licence Condition 7A.13.E** concerning the implementation of a two-tier Cooling-off Period, does the proposal in effect create a three-tier Cooling-off Period where customers who contract between D-42 and D-28 (where D is the Go-live date of the contract) have a variable Cooling-off Period?

For example:

- Customers who agree a contract on D-50 are entitled to a 14-day Cooling-off Period
- Customers who agree a contract on <D-28 are not entitled to a Cooling-off Period
- Customers who agree a contract on D-30 are entitled to a 2-day Cooling-off Period

If this is correct, we believe that the principle of a hard cut off of D-28 for the applicability of a Cooling-off Period should be applied when considering the latest date for a Cooling-off Period to apply. In doing so and adopting a hard cut off of D-42 for the application of a Cooling-off Period, we will avoid the confusion that will arise from requiring parties to operate a “variable” Cooling-off Period between D-42 and D-28. We believe that a variable Cooling-off Period will be complex to implement and confusing for customers.

With regards to the draft **Licence Condition 20.5B**, Suppliers are obligated to provide “any information” to the ADR. We believe that the information provided would have to be relevant and that the text should reflect this (e.g. “all *relevant* information”).