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Dear Cathryn,

We are writing to you to respond to your consultation on the proposed update to Ofgem's action plan on retail financial resilience to include measures on supplier control over material assets. This submission is non-confidential and may be published on your website.

As stated in our original response to the consultation on the action plan on financial resilience we are broadly supportive of the measures to improve supplier risk management. In that response we highlighted concerns about company structures and commercial arrangements that risked higher mutualised costs in the event of a failure, so we welcome this update¹.

Ownership of material economic and operational assets

The recent market turmoil has resulted in around 30 energy suppliers going bust since August 2021, many of whom were not financially sustainable. This has resulted in an estimated £2.6 billion in costs that will be added to consumer bills, not including the potential further cost of the special administration regime (SAR) for Bulb². We welcome Ofgem's assessment of ownership of assets and the identification of intra-company arrangements as a risk that could increase mutualised costs in future supplier failures.

It is fundamentally unfair for consumers to pay the cost if suppliers use company arrangements and other actions to limit the amount recoverable by administrators and increase the potential mutualisation cost, while investors and other creditors are protected from the cost of failure. This also drives the wrong incentives in the market, by rewarding risky practices. Therefore, we broadly support the inclusion of the 'control' outcome in the action plan to ensure that suppliers have ownership of significant control over all material economic and operational assets.

We recognise that changes to company structures may take some time for suppliers to implement and we are keen for more detail on the implementation timelines for the proposed

¹ Citizens Advice (2021) [Response to Ofgem's action plan on retail financial resilience](#)

² Citizens Advice (2021) [Market Meltdown](#)

measures, including planned future licence obligations on asset ownership. We support timely changes to the rules, with any compliance activity being proportional and targeted at firms which pose the highest risks, perhaps based on outcomes of stress testing and other data, rather than those that have orderly plans in place to achieve compliance in future.

Modification of Financial Responsibility Principle guidance

Control over material and operation assets

The Financial Responsibility Principle (FRP) requires suppliers to at all times minimise the costs that may be mutualised. As outlined by Ofgem in the consultation arrangements by suppliers where they do not have control over the material assets to cover costs of mutualisation, whilst accruing unmanageable liabilities would not be in compliance with FRP.

We welcome Ofgem introducing further guidance on FRP, in relation to ownership of material assets, but it is critical that the licence condition is effectively monitored and enforced. As highlighted in our research, previous reforms to ensure better financial management of energy suppliers - including the FRP - have not been effectively enforced.³

Credit balances

Citizens Advice has long highlighted the risk of suppliers using credit balances as working capital, and the risk of associated mutualised costs. We, therefore, welcome additional guidance on the use of credit balances to finance company operations. However, we note that such activity is already non-compliant with the overarching FRP to at all times minimise costs of mutualisation, but was not adequately enforced by Ofgem ahead of the recent retail market turmoil.

The requirement to be able to accurately calculate levels of credit balances at any point will help Ofgem in the short term to identify companies who are accruing large levels of credit balances, and intervene appropriately. Again, this needs to be properly monitored and enforced with checks at regular intervals to determine levels of credit balances.

In the medium term, Ofgem's long-planned reforms to limit how much suppliers can hold in unprotected credit balances are vital to set clear boundaries, ensure a level playing field and prevent risky behaviours in the first place. In our earlier response to the action plan we urged Ofgem to take this work forward as soon as possible, and not delay it further. We're disappointed that the update does not include a firmer timeline on Ofgem's next steps.

³ Citizens Advice (2021) [Market Meltdown](#)

Guidance on the Operational Capability Principle

We broadly support the introduction of guidance on asset control into the guidance on Operational Capability Principle. We have seen issues where suppliers have not had ownership or sufficient control over aspects of their supply business which has caused significant detriment. For example, when customer service has been outsourced overseas and has been affected by local issues without adequate contingency in place, preventing customers being able to access customer service.

Insolvency process

We welcome Ofgem commitment to assess the compatibility of the current SoLR and SAR processes with the insolvency process in the longer term. During the current market turmoil Citizens Advice has been working closely with SoLRs and administrators to ensure a smooth process for consumers. We have become aware of incidents where the goals of the SoLR and the administrator may not align, which has resulted in delays in customers receiving final bills, first bills and credit balance refunds.

We are also concerned that customers going through the SoLR process can lose the protections they have in relation to debt they owe the failed supplier. We have seen cases of consumers being unable to keep agreed repayment plans and heavy-handed debt collection practices by some administrators.

We're concerned by recent reports that administrators are challenging the ability of Ofgem to put in claims for costs under the Renewables Obligation, and for the SoLR to claim for credit balances. It is vital that these costs can continue to be recovered from failed suppliers where possible, and if there is an unfavourable outcome in any legal case this should be put on a firm legal for future failures. We also welcome the idea of making more mutualised costs the liability of the failed supplier as one that should be explored further. This would reduce incentives for risky behaviours and reduce the amount mutualised across the industry.

Ofgem should also work closely with the Insolvency Service and BEIS to take a more detailed assessment of the insolvency process in the event of an energy supplier failure and whether it is delivering good outcomes for consumers. We note that the Insolvency Service is currently consulting on the wider insolvency regime, and will respond in more detail on these matters to that consultation⁴. In the interim, Ofgem should consider what actions can be taken under the current framework to tackle problems with the administration of current supplier failures.

⁴The Insolvency Service (2021) [The future of insolvency regulation](#)

Yours sincerely

Connie Thorn,

Policy Researcher

Patron HRH The Princess Royal Chief Executive Dame Clare Moriarty

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