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Dear Louise,

**Non-domestic market review: Findings and policy consultation**

Drax Group plc (Drax) owns two retail businesses, Drax Energy Solutions (formerly trading as Haven Power) and Opus Energy, which together supply renewable electricity and gas to over 220,000 business premises. This is a joint response on behalf of Drax Energy Solutions and Opus Energy and is non-confidential.

We welcome the findings of the review and fully agree that suppliers should be held to account so that non-domestic consumers can benefit from a fair, competitive and reliable market. We also agree that, where cases of poor conduct by suppliers are observed, Ofgem should take swift and decisive action to protect consumers, and the reputation of the sector. That said, we're also comforted that the review has shown that only discrete aspects of the market require regulatory intervention and that there's little evidence of systemic issues, bar perhaps the risk that unregulated TPIs pose, which we accept is largely outside of Ofgem's control at present.

In general, we agree that Ofgem's proposals and recommendations are reasonable and proportionate. However, we have significant reservations about creating any new thresholds or classes of customer, over and above the existing microbusiness and non-microbusiness classification. Doing so would be complex and costly for suppliers to implement with little tangible (if any) benefit, particularly given any further classification would be arbitrary and would inherently continue to create edge-cases where customers fall on the wrong side of any eligibility criteria.

Instead of introducing further complexity, we favour more pragmatic and practicable solutions, specifically on plans to expand access to the redress scheme, where we'd strongly favour the Ombudsman being encouraged (or required) to make greater use of its incumbent discretion to take on disputes from non-microbusiness customers. On other proposals, we'd either be comfortable applying the existing requirements to all Non-Domestic customers or otherwise believe minor adjustments could be made to existing licence conditions, such as the Standards of Conduct, to ensure they are appropriate for all Non-Domestic customers.

Notwithstanding our broad support, the complexity of implementing the proposed changes should not be underestimated and we would urge Ofgem to reflect our recommended implementation timescales when taking the finalised proposals through to statutory consultation.

Finally, we welcome Ofgem requesting Government to consider introducing direct regulation of the TPI market. TPIs have a valuable role to play in supporting consumers, giving them impartial advice and the



wherewithal to confidently engage in the market. However, intervention is required to protect consumers from the unscrupulous behaviour of some TPIs both today and in the future. Direct regulation of TPIs would foster a more open, competitive and customer-centric non-domestic retail market, for example, by introducing a duty of care on TPIs for their customers and an obligation to treat their customers fairly. We are very happy to offer our support to Government and Ofgem to develop and introduce an appropriate regulatory framework for TPIs.

The appendix to this letter provides our responses to the consultation questions. We would welcome the opportunity to discuss our response with you further if that would be helpful.

Yours sincerely,

Matt Young  
Group Head of Regulation  
Drax Group Plc

## **Appendix - Detailed responses to consultation questions**

- 1. Do you agree with our proposal to agree voluntary improved pricing transparency and if so, please include comments on the particular areas you would like to see made more transparent.**

We already provide a clear explanation of our price components (particularly third-party charges that recover wider system costs) and the general contents of our bills on our website. We believe our customers find this useful. To support that initiative, we believe Ofgem could play a greater role in communicating and explaining the impact of policy costs and charging reform to customers, as well as how broader industry charges (such as BSUoS) are determined. This approach would leverage the standing the regulator has in being a trusted source of impartial information.

- 2. Do you agree with our proposed definition of ‘significantly exceeds’? Please provide your reasons.**

We are comfortable with the proposed definition insofar as it states that deemed rates would need to be “much higher” than an equivalent contracted rate and for that difference not to be justified before they could be considered unduly onerous (Ref. A1.28). Taking that together with the acknowledgment that the underlying costs of supply may be different, for example due to a different hedging policy (Ref. A1.30), and that deemed rates include a provision for “bad debt” (Ref. A1.40), would seem to afford suppliers sufficient means to reasonably justify any observed difference in its deemed rates.

- 3. Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.**

We do not think it unreasonable for deemed contract rates to be reviewed on a quarterly basis. Our internal policies already require us to review our deemed contract rates on a minimum of a quarterly basis which ensures we can appropriately take into account any events or material movements in costs when setting our deemed rates.

- 4. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?**

We do not supply domestic customers, so we have no direct experience as an organisation to draw upon. However, we do recognise that SLC 7.3 and 7.4 apply equally to domestic and non-domestic supply arrangements, and we understand that domestic customers who are on Deemed Contracts are currently protected by the default tariff cap. It would seem logical and reasonable to assume that the default tariff cap is set (implicitly at least) in a way that is not inconsistent with the provisions of SLC 7.3 and 7.4, and so the proposed guidance is somewhat a moot point in the case of the domestic sector at this time. In the event the default tariff cap should be removed at some time in the future, then SLC 7.3 and 7.4 along with the associated guidance, would become the constraining factor in setting Deemed rates for domestic customers, and as such, those rates would have to be justified against equivalent contracted rates if they were “much higher”. We’re unable to comment on whether or not that would be an issue, but if it were, then the guidance could be revisited at that time and amended, as appropriate, to reflect any differences between the domestic and non-domestic markets.

- 5. Do you have any further comments on our proposals for the deemed contract guidance?**

We have no further comments.

**6. Do you have any other comments on the other proposals in this Pricing and contract behaviour section?**

We have no further comments.

**7. Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?**

In the case of simple CoTs/CoOs, we do not generally request documents so as to reduce the administrative burden on customers and instead we carry out our own validation checks, such as reviewing Companies House or activity on social media accounts. Therefore, we do not think it would be appropriate to mandate suppliers to collect documents for all CoTs/CoOs, particularly where they are lower risk and requesting evidence would delay the processing of a genuine case. Nevertheless, we believe either a signed lease agreement or a public liability insurance policy would be sufficient evidence to mitigate any fraudulent activity perpetuated by customers or brokers seeking to avoid paying debt or to exit a fixed contract early. We consider it would be reasonable to expect suppliers to retain evidence of any documents for up to twelve months after the CoT/CoO has been processed. This would also align with other obligations in the relevant industry codes (such as the BSC and REC).

**8. Are Micro Business Consumers aware they can contact Citizens Advice for support? Do we need to introduce a rule requiring suppliers to signpost them more specifically?**

We believe most consumers are aware that they can contact Citizens Advice for support and therefore we do not believe that a prescriptive obligation to signpost is necessary, particularly one that is equivalent to the rules for domestic consumers. However, we are not averse to a simple and clear, principles-based requirement for suppliers to signpost Micro Businesses to appropriate providers or avenues for support (e.g. Citizens Advice for advice, Business Debtline for debt support) and using a medium of the supplier's discretion (e.g. via the bill, other periodic communications, or the supplier's website).

**9. Is an obligation requiring efficient and timely complaints handling needed? If so, what are the costs and benefits associated with introducing this?**

We have no strong view on whether this is required, but if it were to be introduced, it is imperative that Ofgem allows suppliers a reasonable amount of time to review and implement changes to their customer facing information (e.g. websites and suite of correspondence) and to make the changes needed to include all complaints in their external complaints reporting. We would require 6 months to complete that activity.

**10. Is an obligation requiring recording, handling and processing of complaints in accordance with consistent rules needed? If so, what are the costs and benefits associated with introducing this?**

See our answer to question 9.

**11. Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the *Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008* should not be expanded to apply to all non-domestic customers?**

We already record all customer complaints irrespective of size so we don't have a particular view. However, we would have significant reservations about creating any new thresholds or classes of customer, over and above the existing microbusiness and non-microbusiness classification. Doing so would be complex and costly for suppliers to implement with little tangible (if any) benefit, particularly given any further classification would be arbitrary and would inherently continue to create edge-cases where customers fall on the wrong side of any eligibility criteria. We therefore believe either the status quo should be retained or all non-domestic customers, irrespective of size or business type, should be captured.

**12. We are seeking stakeholder views on our suggested proposals to government around increasing access to the Energy Ombudsman. Should there be a threshold on who can access the Energy Ombudsman? If so, where should this be set?**

We are broadly supportive of allowing more Non-Domestic customers to access the redress scheme as there are currently edge-cases who would benefit. However, as per our answer to question 11, identifying an appropriate threshold or creating a new class of customer would be complex and costly and would continue to create edge-cases where customers fall on the wrong side of any eligibility criteria.

Additionally, requiring the Energy Ombudsman to accept complaints from a significantly larger group of customers would require it to expand its activities and enhance its capability with a consequential impact on its cost base, particularly given the typically complex nature of larger customer contracts and their service requirements, and thus the associated complaints.

We strongly believe it would be much simpler and more practicable, while still delivering support to more customers, for the Ombudsman to be encouraged (or required) to make greater use of its incumbent discretion to take on disputes from non-Micro Business customers, not least because it is best-placed to evaluate its own bandwidth and capability.

**13. We are seeking stakeholder views on the proposed changes to the rules requiring suppliers work with TPIs who are members of a redress scheme. Additionally, what are your views on the costs and benefits associated with the different proposals?**

We fully support option 2, i.e. expanding the requirement to cover all non-domestic customers and thus all TPIs. We would not expect the incremental cost to be significant given the small number of additional TPIs this proposal would bring into the scheme, but it would be beneficial for customers of TPIs whose behaviour and practices are otherwise largely unregulated. We would not support option 3 for similar reasons as given in answer to previous questions, i.e. because of the added complexity that comes from introducing a different customer category/classification.

**14. What are views from stakeholders on how long it would take to set up and register for a wider TPI ADR scheme, one that goes beyond Micro Business Consumers?**

In its *Microbusiness Strategic Review decision*, Ofgem afforded industry an eight-month period for the onboarding of applicable TPIs and for the scheme to go live. We expect at least six months would be required to implement a wider scheme, as previously unregistered TPIs captured by an expanded scope will be unfamiliar with the existing requirements and will need time to adjust their practices to sign up to a qualifying ADR scheme.

**15. What are your views on our proposal to expand SLC OA (non-domestic Standards of Conduct)? Do you have any views on which consumers they should or should not apply to? Please provide any views on costs and benefits of making this change.**

We already adopt the principle of Treating Consumers Fairly and the spirit and intent of the Standards of Conduct (SoC) across all of our non-domestic customers irrespective of size. As such, we are not opposed to this proposal in principle. However, if it is taken forward, we do not think the existing obligations to communicate ‘in plain language’ and to give prominence to specific information (SLC OA.3(b)(ii)) would be appropriate for more sophisticated consumers who are well versed in the energy market and have a comprehensive understanding of their chosen product or service.

In the event the SoC are expanded to cover all Non-Domestic customers, we believe it would be necessary to make some limited wording amendments to the existing licence text (*as suggested below*) to establish a degree of flexibility around communication to more sophisticated customers, without diluting the original intent of the condition. If Ofgem doesn’t make changes to this effect, we would require nine months to review all of our customer communications to non-Micro Businesses to guarantee they have been composed in compliance with the plain language and prominence requirements. Conversely, if our suggested changes are accommodated, then this lead time would be significantly reduced.

OA.3 The Standards of Conduct are that the licensee:...

b) provides information (whether in Writing or orally) to each ~~Micro-Business-Consumer~~ Non-Domestic Customer which:

- i. is complete, accurate and not misleading (in terms of the information provided or omitted);
- ii. is communicated (and, if provided in Writing, drafted) in ~~plain~~ suitable and intelligible language ~~with more important information being given appropriate prominence;~~
- iii. relates to products or services which are appropriate to the ~~Micro-Business-Consumer~~ Non-Domestic Customer to whom it is directed; and
- iv. in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the ~~Micro-Business-Consumer~~ Non-Domestic Customer in favour of the licensee;

**16. Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?**

We have no further comments, except regarding the proposals for improved monitoring. We fully support any initiative that reduces the number of ad-hoc RFIs as they are hugely burdensome and a significant distraction, but we also recognise the importance of Ofgem having the necessary information and insight to fulfil its statutory duties. We therefore fully appreciate the rationale for more routine reporting and associated monitoring. As Ofgem develops its intended expanded routine reporting framework, we would urge Ofgem to be targeted and pragmatic in what reporting it deems necessary, rather than requesting expansive data-sets that, while potentially interesting, do not actively serve a tangible purpose. It would be helpful if Ofgem could review the timelines for any additional reporting against an already busy calendar of reporting (from both Ofgem and other parties) to ensure it doesn’t add further pressures to busy periods. We would also urge Ofgem to appreciate the burden and cost such requests place on Suppliers and reflect that in both the breadth and depth of data requested, the frequency by which it is reported, and the lead-time for implementing any new reporting requirements.

**17. What are the views of Distribution Network Operators (DNOs), Independent Distribution Network Operators (IDNOs), Gas Distribution Networks (GDNs), and Independent Gas Transporters (IGTs) on the potential issues of targeting support to vulnerable end users supplied through non-domestic contracts?**

Not applicable.

**18. What changes to the Maximum Resale Price direction would improve its effectiveness and what are the potential downsides to any changes?**

We have no comments based upon our operational experience or issues raised by our customer-base, although we do acknowledge the potential limitations of the existing MRP regime as highlighted in Ofgem's consultation, particularly around the ease of such end consumers seeking redress. In our response to the call for evidence issued by the Department for Energy Security and Net Zero (DESNZ) that is looking into the arrangements of Domestic consumers with non-domestic energy supply contracts, we highlight that we have not seen any evidence (e.g. through investigations or enforcement action) to indicate to what extent the MRP rules are being adhered to in practise, and suggest that it may be an appropriate first step for The Department and/or Ofgem to assess the degree of compliance currently in this area to ascertain whether the MRP rules offer effective consumer protection.

**19. What are the costs and benefits associated with the proposal to expand TPI commissions disclosures to all non-domestic customers? How long would it take suppliers to implement this policy?**

We support expanding TPI commission disclosure to more Non-Domestic customers as we have received feedback from our customer-base that this transparency has been helpful and informative for Micro Businesses. We would require at least six months from publication of the decision to implement the necessary system and process changes and to reflect any expanded requirement in our relevant TPI agreements. In its *Microbusiness Strategic Review decision*, Ofgem set out that "*a period of six months provides sufficient time to implement these measures*" for Micro Businesses and we see no reason the lead time should be any shorter for expanding this to a wider cohort of consumers, particularly given that commission arrangements associated with larger non-domestic customers can be more complex than for Micro Businesses.

**20. Are there views on how commissions disclosure is best presented to be understood by consumers?**

The format for commission disclosure needs to be simple and intelligible for it to have the desired effect. We continue to believe this is best achieved by retaining the existing format (i.e. a total cost covering the duration of the contract) as Micro Business customers have found it easy to understand. We are not averse to suppliers being permitted to disclose commissions in an alternate format (e.g. a cost per unit of energy) providing any disclosure appears alongside, and not in lieu of, the primary format for ease of interpretation and comparability. If Ofgem chooses to change the primary commissions disclosure format, this would add a further three months to the initial six-month implementation time specified in our answer to question 19.

**21. Should we expand commissions disclosure to all non-domestic customers or a subset of customers, and if a sub-set do you have views on how to define this?**

We believe commission disclosure would benefit all customers and it would be easier to implement this for the entire Non-Domestic market than a more narrowly defined group. As outlined in previous



answers, we believe that creating a new subset of customers would be complex, costly and would retain the issue of edge-cases.

**22. Do you have any further comments on the proposals in this section on focussed consumer support?**

We have no further comments.