

6 September 2023

ICoSS response to Non-domestic market review - Findings and policy consultation

The Industrial and Commercial Shippers and Suppliers (ICoSS) group is the trade body representing non-domestic industrial and commercial (I&C) suppliers in the GB energy market¹.

Q1. 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 agree with Ofgem that there is little value in mandating specific bill information considering the diversity of contracts in the market. We would be supportive of Ofgem seeking to provide information centrally.

Q2. Do you agree with our proposed definition of ‘significantly exceeds’? Please provide your reasons.

We do not think the definition reflects the true cost of supplying customers on Deemed Contracts. Energy purchased for the customer on deemed contracts is likely to be at marginal rates as no provision has been made for their supply. We are also concerned that the definition does not take into account the higher cost of serving a customer on Deemed Contract; for example the customer is more likely to require a site visit or other investigation to be identified. In addition, unlike customers who a supplier seeks to contract with, the supplier has no control over the new customer entering a premises they supply. This higher risk from the potential of Deemed Customers having poor credit ratings and bad debt needs also to be considered in any price setting.

More widely we are concerned over the creation of a de-facto price cap linked to wholesale prices (or a basket of prices) for equivalent customers. Any change to the rates that suppliers should be able to charge should be fully covered in the supply licence and subject to statutory consultation.

Q3. Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.

We understand the desire to ensure that deemed contract rates are reviewed regularly but believe that suppliers are best placed to determine when to do so as prices may not move significantly between quarters or may require a short notice change.

Q4. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?

We have not commented on this question, but we believe that guidance for domestic and non-domestic customers must remain separate to reflect the different needs and features of both market sectors.

Q5. Do you have any further comments on our proposals for the deemed contract guidance?

Deemed Contract prices are a necessary feature of the gas and electricity retail markets as they provide a clear route for customers who have moved into a property (or in the rare occasions where a contract ends and makes no provision for the out-of-contract scenario). They should not be seen as a viable alternative to an agreed contract. The costs and risks for suppliers and customers are significantly higher from Deemed Contracts; all energy must be bought short-term on potential marginal rates and there is a considerable risk from bad debt. We note that many customers were protected from initial wholesale and transportation price rises in 2021/22 as they were on fixed-term contracts. Customers on Deemed Contracts were not and would not be in the future.

Any policy decisions in this area must continue to enshrine the concept that customers benefit from agreed contracts and that customers should avoid paying deemed prices as much as possible.

Q6. Do you have any other comments on the other proposals in this Pricing and contract behaviour section?

No further comments

Q7. Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?

We are sympathetic to the concerns raised regarding the lengths that a customer may have to go to demonstrate a valid change of tenancy, but we also agree with the views of stakeholders that the change of tenancy process is deliberately misused in the furtherance of financial fraud. We would note that as the exact circumstances of a valid change of tenancy may vary, the documents that be available may also vary. We believe that suppliers are best placed to determine the potential risk and should have flexibility over any verification process.

Q8. 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?

The costs in replicating the requirements of SLC31G for microbusiness is likely to be significant, requiring not only changes to websites, but also to written communications (including bills and statements of account) and customer management processes. The benefit of providing this information is unclear and we believe may be outweighed by the costs.

We note that Ofgem currently provides details of support from Citizen's Advice on its website and we believe that Ofgem is best placed to continue to publicise the existence of this additional support as it is seen to be an impartial party.

Q9. Is an obligation requiring efficient and timely complaints handling needed? If so what are the costs and benefits associated with introducing this?

As we state in our response to Q11 more fully we do not see a case for significant additional protections for larger non-domestic businesses, including placing obligations on managing complaints in an efficient and timely manner. Unlike microbusinesses larger non-domestic

businesses have buying power they utilise to ensure suppliers engage with them. We note that Ofgem has received several concerns regarding the timescales for resolution of issues. It is difficult to see if this is a systemic market-wide problem without more detailed information. The significant market disruption from COVID and the Russo-Ukrainian War has placed considerable strain on suppliers as well as their customers and we would expect this would be temporarily reflected in the turnaround for complex issues. This does not mean that permanent changes are needed to market arrangements. We do not see the case to create new obligations on suppliers regarding timescales for managing large customer complaints, which are likely to be unachievable if the issue is complex.

Q10. 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?

No. The process for managing concerns with larger customers is not analogous to that undertaken by suppliers when engaging with domestic or microbusiness customers. In many cases larger customers will have dedicated account managers who will be in continual contact with the customer. Concerns are rarely lodged as formal complaints, instead will form part of continual dialogue with the customer.

Mandating that all such concerns are lodged as complaints represents a significant administrative burden for suppliers. Each engagement with the customer where any concern is raised will have to be recorded and logged. We also believe that there potentially be significant inconsistencies on what is recorded as a complaint. We therefore do not believe that the requirement for recording complaints is expanded beyond microbusiness customers.

Q11. 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?

The intention of the complaints handling regulation was to provide individuals and the smallest businesses the power to ensure that any concerns they had regarding their energy supply were acknowledged and addressed by the supplier. Larger customers were excluded at the time as they have sufficient buying power and resources to ensure supplier consider their concerns.

We do not believe that the underlying truth of this situation has changed. Though Ofgem refers to concerns raised with them, we are not aware of any market-wide evidence of a systemic long-term issue regarding complaint management. We do not believe it is appropriate to extend specific protections to very large customers who in many cases will be larger organisations than the supplier. These customers already hold the dominant position in the supply relationship, and this will be increased if they are given more protections. Do not agree with the view stated by Ofgem in previous meetings that customers will only use this ability rarely; we anticipate that complaints will be raised by procurement managers as leverage to reduce costs, whereas the supplier will not have the same ability.

We believe that the existing market mechanisms, such as the ability to switch to another supplier in the even of poor service, will provide sufficient protection to customers now that the market is returning to normal.

Q12. 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 have a number of concerns regarding extending the scope of the Energy Ombudsman (or any other QDSS) to larger customers. We have previously expressed concerns over the ability of a QDSS to manage the more complex issues present in the microbusiness sector; we anticipate that some cases that will come to them will require significant industry knowledge and resources to understand. This will either result in high costs being incurred as the QDSS assesses complex cases, or the QDSS will make poor-quality judgements. We therefore do not agree that extending the scope of the current QDSS regime is beneficial to the market.

Q13. 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 are generally supportive of increased oversight of TPIs as poor behaviour by TPIs results in poor customer experiences. Pursuing regulation of TPIs via supplier licence conditions remains a sub-optimal approach in our view as it prevents market-wide oversight and this should be pursued as the enduring solution.

Q14. 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?

We believe that a reasonable amount of time will be required for suppliers to adjust contracts with those TPIs that are currently outside of the TPIs process. Time should also be given for TPIs to adjust their processes to take account of the new requirements.

Q15. What are your views on our proposal to expand SLC 0A (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.

Extending standards of conduct to all market sectors will represent a cost to all suppliers, even if they currently adhere to them, owing to the need to monitor and track their customer-facing activities. The costs of extending these standards must be balanced against any likely benefit.

Though Ofgem refers to concerns raised with them regarding supplier behaviour, we are not aware of any market-wide evidence being provided. We would also note that the market has had lower levels of competition than is usual owing to pressures on suppliers from extremely high wholesale prices and market disruption. We believe this unusual set of circumstances is now ending and that customers will be able to exert market pressure on their suppliers again. We do not see the value of extending the standards of conduct therefore to the most competitive part of the market as the costs of doing so outweighs the benefits.

Q16. Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?

As we have stated in some of our responses above, we do not believe it is appropriate to extend specific protections to very large customers who in many cases will be larger organisations (and possible part of multinational corporations) than the supplier. These customers already hold the dominant position in the supply relationship, and this will be increased if they are given more protections.

We also believe that undue emphasis has been placed on the unprecedented market situation caused by the COVID pandemic and the recent Russo-Ukrainian war. The issues recently experienced by some customers are, in many cases, due to the disruption of the market from these events. As the market returns to normal, we believe that the benefits of a competitive market will address the issues highlighted in this area to removing the need for substantive, and permanent, change.

Q17. 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?

We have no comments on this question.

Q18. What changes to the Maximum Resale Price direction would improve its effectiveness and what are the potential downsides to any changes?

Changes to how the Maximum Resale Price direction is enforced does not directly affect suppliers so we have not commented on this question.

Q19. 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 are supportive of the policy of publishing commissions paid to TPIs that operate in the non-domestic sector as we believe this improves understanding of customers as to the cost of the TPI and the impact it has on their energy bill. We believe that if the same obligation that currently exists for microbusiness customers is extended to all non-domestic customers, then the costs for doing so will not be excessive. In addition, we believe it would be relatively quick to do so; the most significant area of work would be amend contracts with all TPIs to allow the information to be published.

Q20. Are there views on how commissions disclosure is best presented to be understood by consumers?

There are a variety of different mechanisms for which commission is derived for non-domestic customers and these tend to be more complex in how they are calculated. We do not believe that a prescriptive mechanism for presenting this information is feasible. We believe the current requirement in the existing licence conditions regarding microbusiness customers is sufficient.

Q21. 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 that for ease of implementation all commissions should be available on request to the customer.

Q22. Do you have any further comments on the proposals in this section on focussed consumer support?

Regarding any form of cooling-off period being allowed for non-domestic contracts, we the significant drawbacks present from their implementation remains. In particular we have concerns that cooling-off period will be expensive to implement, will be subject to misuse by TPIs to undercut contracts, and leads to negative customer experiences.

Yours sincerely



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