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Office of Gas and Electricity Markets  
By email to: [NonDomesticRetailPolicy@ofgem.gov.uk](mailto:NonDomesticRetailPolicy@ofgem.gov.uk)

Date: 6<sup>th</sup> September 2023

SEFE Energy Licence number: 03904624

Dear Louise,

**Re: Non-domestic market review: Findings and Policy consultation**

Thankyou for your consultation dated 26<sup>th</sup> June 2023. We welcome the opportunity to comment on the proposals set out therein. In the UK, SEFE Group is active via its wholly owned subsidiary SEFE Marketing & Trading Limited ("SM&T"), SEFE LNG Limited and SEFE Energy Limited ("SEFE UK")

We have operated in the UK retail energy markets since 2007 and since then we have grown our retail business both in the UK and across Europe. As of today we remain one of the largest non-domestic energy suppliers in the UK. In addition we also provide shipping services to third party Suppliers supporting sustainable market innovation and diversity. We pride ourselves on our customer-focused, sustainable, risk adverse business model.

**Market Context**

Whilst we welcome proposals to further enhance consumer protection, we believe it is important to recognise that it was the heavily regulated domestic sector which suffered catastrophic failure leading to taxpayers and consumers being forced to pay £10's billions to bail out these failed business models. The regulatory environment within the domestic market encouraged a race to the bottom which led to many of the normal commercial risk management tools being sacrificed to achieve the minimum price possible. This led to a market model that was weak and unduly exposed to any extreme event.

**Lessons Learnt**

We believe it is important to acknowledge that the less micro managed, non tariff and more commercial non domestic market successfully weathered these events. Therefore we should be cautious and prudent about intervening in a competitive market that has endured particularly when considering applying approaches and principles from a market sector that has self evidently been proved to have failed.

**Data Driven**

We understand and support the desire to have relevant and timely information on hand to inform policy decisions. Therefore we accept the challenge that we cannot ask for data driven approach in the absence of providing the relevant data in the first place. We acknowledge the need to prospectively obtain proportionate and relevant market information in a consistent format from Stakeholders. However in the same way Ofgem are cautious in relation to applying regulation retrospectively we believe that the collection of historic data is also disruptive, difficult to achieve in a consistent manner and therefore challenging to interpret and draw conclusions from. We set out our concerns in more detail in the response to the specific questions in the consultation.

## **One Size does not fit all**

As previously noted we think at the high level obtaining like for like data comparable to that for Micro Business for anything larger than Small to Medium Enterprises (SME) is going to be challenging and therefore difficult to analyse and draw any meaningful conclusions from. Once we get to the size of customer who has bespoke account management (above SME) the nature of queries Vs complaints and their resolution becomes bespoke. In many cases the customers in question are far larger than the supplier with their own professional services such as legal, trading and account management. Therefore we believe the approach to getting market intelligence for this sector will need to be more bespoke.

## **Small and Medium Enterprise**

Accordingly we believe the scope of further intervention and holistic data gathering for non-domestic should be limited to the existing Micro Business sector but should also be extended to cover single site Small and Medium Enterprises (SME's) whose annual consumption, per fuel source, is less than [500,000] KWh and that a less mechanistic and more bespoke approach is used to gather market intelligence on the rest of the non domestic market.

## **Stakeholder Engagement**

It is important for Ofgem to proactively demonstrate the value of the data being collected and we believe feedback to relevant Stakeholders is key. We believe it would be helpful if we could jointly develop some Stakeholder Dashboards and KPI's associated with the information provided that would help drive proactive engagement at key times. The data collected would feed into the analysis and populate the Dashboards that would be used to identify trends. The KPI's would highlight the need for focused engagement e.g. areas may include Complaints, Debt levels, Wholesale price movement, Disconnections, Deemed Rates, Security Deposits, Access to Products, CoT's etc. This would move us to open digitalised evidence led approach

## **Digitalisation & Visualisation**

It would also be helpful if we could achieve this in a more co-ordinated and digitised way to aide ease of submission, interpretation, visualisation, and feedback e.g. common interactive data portal. This would also be more efficient by avoiding the risk of duplication of effort.

## **Recommendation**

We believe the scope of further intervention and holistic data gathering for non-domestic should continue to cover the existing Micro Business sector but should also be extended to cover single site Small and Medium Enterprises (SME's) whose annual consumption, per fuel source, is less than 500,000 kWh and that a less mechanistic and more bespoke approach is used to gather market intelligence on the rest of the non-domestic market. Any further intervention should be based on a data driven evidence-based approach which is subject to robust cost benefit analysis to ensure it delivers value for money.

Please find below our specific responses to the consultation questions. We hope you find our comments helpful and would be happy to discuss any aspect of these further. If you have any immediate questions, please could you contact Steve Mulinganie (in Cc) who is our Senior Regulatory Manager.

Your Sincerely,

**Mark Eccles**

Chief Executive Officer SEFE Energy UK

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**SEFE Energy Limited**

## Appendix 1 – SEFE Energy responses to consultation questions

### Section - Pricing and contract behaviour

**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?**

**SEFE Energy response:** We believe that there is little value in mandating specific bill information as this would not be practical given the diversity of contracts in the market.

It is difficult to provide directly comparable prices within in the non-domestic sector as unlike the domestic sector there is not the same concept of tariffs. Prices tend to be agreed on an individual basis with customers based on their own needs.

There is also a large diversity within consumption bands based on the consumers sector and metering equipment so it is difficult to compartmentalise.

There is an additional concern that publishing too much information on how prices are calculated could impact on company sensitive data and reduce competition as the non-domestic market is not tariff based.

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

**SEFE Energy response:** We are concerned that because we do not operate tariffs in the non-domestic market, the definition does not reflect the true cost of supplying customers on Deemed Contracts. There are a number of factors which cause Deemed contracts to attract higher costs to serve.

These include:

- Energy purchased for the customer on deemed contracts is likely to be at marginal rates as no provision has been made for their supply.
- The customer is more likely to require a site visit or other investigation to be identified.
- Unlike customers who a supplier seeks to contract with, the supplier has no control over the new customer entering a premises they supply.
- There is a higher risk from the potential of Deemed Customers having poor credit ratings and bad debt which contributes to a higher risk premium.

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. There will be differences in prices based on sector, region, and the nature of the metering equipment at the site.

Whilst there may be limited ability to compare contract and deemed prices for microbusiness and SME this is not the case in the I&C market as the prices are bespoke.

In reality the only direct comparison for a deemed contract would be a short duration fixed price contract reflecting the ability for the customer to transfer with only 5 days’ notice.

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.**

**SEFE Energy response:** We would note that the frequency of review would depend on the levels of market volatility and that we generally review our rates on a more regular monthly basis. We would not wish to be constrained in our ability to review either our methodology and/or rates on a more regular basis if necessitated by market volatility.

In recent times rates have been reviewed more regularly due to volatile fluctuations in wholesale costs but in a more stable market this may not be needed as often and therefore mandating a minimum period would be inefficient.

We note that a review may not result in a change to the prices.

In specifying quarterly reviews there is a concern that it may in fact have the opposite outcome of that intended, as suppliers may review costs less often than they currently do. This may need to be worded that the quarterly review is the minimum requirement but should be reviewed at the supplier's discretion based on market factors.

We also note that the process used to set prices would need to be reviewed when any of the factors that make up the costs are changed through the industry change process. E.G amendments to environmental levies or transmission/distribution costs.

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

**SEFE Energy response:** We do not supply domestic customers and any domestic customers that we inherit are advised to change to a Domestic Supplier as soon as reasonably practicable. Accordingly Any domestic customers supplied by us are non-domestic for the purposes of the Supplier Licence.

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

**SEFE Energy response:** Deemed Contract prices are necessary for 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) but they should not be seen as a viable alternative to a contract i.e. they are not another type of tariff in a tariff centric market.

Any policy decisions in this area must continue to enshrine the concept that customers should avoid paying deemed prices as much as possible by agreeing bespoke contract terms.

The costs and risks for suppliers and customers are significantly higher for Deemed Contracts (as per our response to question 2); all energy must be bought short-term on potential marginal rates and there is a considerable risk from bad debt.

Recent experience shows that many non-domestic customers were protected from price rises as they were on fixed-term contracts. Customers on Deemed Contracts were not protected from market volatility and would not be in the future therefore any policy decision that makes Deemed Contract appear attractive or non-reflective of actual market risks and costs should be avoided.

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

**SEFE Energy response:** We have noted previously that there is a fundamental difference between the failed domestic market which is price capped and tariff driven and the non-domestic market which is competitive and bespoke contract price based.

## Section - Competition in the market and customer service

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

**SEFE Energy response:** While the process may seem onerous to the customers Suppliers need sufficient evidence to avoid fraud. Unscrupulous parties may utilise a weak CoT process in order to exit contracts early and avoid debt and we expect this risk to become more prevalent as the market recovers and prices fall.

The burden of proof is on the new tenant and exiting party taken at their word in many processes. To ensure the process is robust it may be necessary to look to request proof from the exiting customer.

These are dealt with on a case-by-case basis and the evidence required may vary in different sectors so it is not as straight forward to mandate a list of accepted evidence as it would be in the domestic sector.

### **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?**

**SEFE Energy response:** If the intention would be to introduce a license condition to mirror the existing domestic market requirements, then this would introduce further costs to suppliers in order to amend bill formats and correspondence. Making the details available on websites potentially would be quicker and less costly. In many cases supplier already signpost this information in this manner.

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

**SEFE Energy response:** Ofgem have stated within round table meeting that it 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 on the scale of issues seen.

As stated in our response to the request for information drafting:

*On the basis of repeated challenges to show the value of data collected we believe Ofgem should be providing feedback to Stakeholders and for the Micro/SME sector. We believe it would be helpful if we could jointly develop some Stakeholder Dashboards and KPI's associated with the information provided that would help drive proactive engagement at key times.*

*The data collected would feed into the analysis and populate the Dashboards that would be used to identify trends.*

*The KPI's would highlight the need for focused engagement e.g. areas may include Complaints, Debt levels, Wholesale price movement, Disconnections, Deemed Rates, Security Deposits, Access to Products, CoT's etc.*

*This would move us to an open, digitalised, evidence led approach. It would also be helpful if we could achieve this in a more co-ordinated and digitised way to aid ease of submission, interpretation, visualisation, and feedback e.g. common interactive data portal.*

This information is already published for the domestic market on Ofgem's energy data portal. Existing RFIs would provide the equivalent data for microbusiness.

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 time for complex issues. This does not mean that permanent changes are needed to market arrangements now we are returning to business-as-usual market operation.

Please see our response to Question 11 for additional information on the expansion of complaints handling beyond Microbusiness customers.

There are valid concerns over complexity of the contracts in place with larger non-domestic customers and how these would be handled within the complaints processes. These contracts are usually dealt with by an account manager who will specialise in this type of contract.

Are there metrics to show there a proven need for the expansion to larger non-domestic sites?

Historically the Ombudsman services would not have the knowledge of this type of contract due to their legal based nature. In order to introduce this service the alternate disputes services would have to spend possibly significant money on training up or hiring staff to deal with these complaints. If the larger consumers would infrequently use the service is there an overall benefit?

While we feel this would be inappropriate for large customers, we can see the benefit of expanding the existing microbusiness protections to SME as per our definition in Question 11.

**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?**

**SEFE Energy response:** 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 they will form part of the continual dialogue between the Supplier's account manager and the customer.

**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?**

**SEFE Energy response:** 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 it is appropriate to extend specific protections to very large customers who in many cases will be larger organisations than the supplier.

We believe that in the short to medium term it would be more proportionate to extend some interventions e.g. extension of the Ombudsman initially to the SME sector were the Customer characteristics are similar to those of a Micro Business.

We define this as single site SME's whose annual consumption, per fuel source, is less than 500,000 kWh.

We note in previous meeting the concern that whilst smaller businesses have the legal right to enforce the terms of contracts they may not, unlike larger businesses, have the resource or capability to readily do so.

However for larger customers the extension of this proposed intervention will create an unwelcome dual route for resolution and could lead to a surge in vexatious group complaints being raised by third parties to the Ombudsman knowing that they impose an undue cost on Supplier to try to achieve a pay-out.

We believe that applying a holistic approach, other than for SME, will not work for the following reasons:

- These types of complaints will not be managed within existing CMS systems in the same way Micro & SME.
- The cost of extending the monitoring will be difficult and complex due to the very nature of the customers and the ongoing dialogue and complaints that may arise.
- Our customers include very large groups with many hundreds or thousands of sites.
- These are sophisticated customers with complex, including pseudo trading, contracts.
- Customers will have access to own specialist contract managers, lawyers, energy managers etc.
- They may cover a large number of sites across different countries and regulatory regimes.
- They will be proactively managed by account managers and not via call centres.
- Their queries, where they arise, will be complex and high value so the resolution pathway will be bespoke.
- Many outcomes may be without prejudice.
- We risk introducing a dual route for resolution instead of relying on rights of the parties to legally enforce the Terms and Conditions.
- We risk creating a complaint culture with the risk of bulk vexatious complaints being submitted via the relevant ADR scheme(s).

**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?**

**SEFE Energy response:** We have a number of concerns regarding extending the scope of the Energy Ombudsman (or any other ADR scheme) to larger customers.

We have previously expressed concerns over the ability of the Ombudsman to manage the more complex issues present beyond 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 Ombudsman assesses complex cases or will result in poor-quality judgements. We therefore do not agree that extending the scope of the current Ombudsman regime to larger customers is beneficial to the market.

Whilst we note the argument that more sophisticated customers can choose not to use the service, we believe this argument for intervention is weak and risks a introducing a dual route for resolution instead of relying on rights of the parties to legally enforce the Terms and Conditions. We also risk creating a complaint culture with the risk of bulk vexatious complaints being submitted via the relevant ADR scheme(s).

As per our response to Question 11 we do see a possible benefit of expansion to those customers whose characteristics are similar to those of a Micro Business.

We define this as single site SME's whose annual consumption, per fuel source, is less than 500,000 kWh.



**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?**

**SEFE Energy response:** We are generally supportive of increased oversight of TPIs as poor behaviour by TPIs results in poor customer experiences. We continue to believe that pursuing regulation of TPIs via supplier licence conditions remains a sub-optimal approach as it prevents market-wide oversight and this should be pursued as the enduring solution.

As per our responses to the above questions relating to extending complaints monitoring and the Ombudsman scheme, we believe that the TPI ADR schemes would come across the same issues when dealing with the complex contracts related to larger customers. As a result we do not feel it is appropriate to expand the TPI ADR scheme to these sites as described in option 2.

In relation to option 3 we believe that in the short to medium term it would be more proportionate to extend some interventions initially to the SME sector where the Customer characteristics are similar to those of a Micro Business.

We define this as single site SME's whose annual consumption, per fuel source, is less than 500,000 kWh.

**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?**

**SEFE Energy response:** 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.

The implementation period should be no less than that given to implement the TPI ADR scheme requirements for Microbusiness consumers.

**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.**

**SEFE Energy response:** 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.

As with the other proposals there is no one size fits all within the non-domestic market as the types of contracts are diverse. While there are synergies between micro business and SME sites (as per our definition covered in Q11) the terms and conditions may be significantly different to those bespoke, legally complex, contracts agreed with larger customers.

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

**SEFE Energy response:** 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 recent unprecedented market situation caused by the COVID pandemic and the Russo-Ukrainian war. The issues recently experienced by some customers are, in many cases, due to the short-term 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 invasive, substantive, and permanent, change.

Any Segmentation that is introduced through future changes to the licence conditions needs clear delineation to avoid customers bouncing between regulations.

We understand and support the desire to have viable information to hand upon which to base policy decisions for customer perceived to need additional support. We fully accept the pushback that we cannot ask for data driven policy in the absence of providing the relevant information. Therefore we acknowledge the need to prospectively obtain proportionate and relevant information from relevant Stakeholders.

As previously noted, we think at the high level obtaining like for like data comparable to that for Micro Business for anything larger than Small to Medium Enterprises (SME) is going to be challenging and therefore difficult to analyse and draw any meaningful conclusions from. Once we get to the size of customer who has bespoke account management (above SME) the nature of queries Vs complaints and their resolution becomes bespoke and in many cases the customers in question are far larger than the Supplier with their own professional services such as legal, trading and account management.

We note that trying to back fill information retrospectively will be challenging, time consuming and costly for existing industry Stakeholders, processes, and systems. We also believe that the information provided, particularly during a time of extreme volatility, may present perverse outcomes that are unique to the market circumstances and are not therefore do not form a sound basis for future market intervention.

#### **Section - Some customer groups need focused support.**

**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?**

**SEFE Energy response:** N/A

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

**SEFE Energy response:** 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?**

**SEFE Energy response:** We have no issue with disclosing commissions to a wider group.

As with previous questions we believe this should be extended to those SME customers with similar characteristics to Microbusiness sites.

The implementation period should be no less than that given to implement the disclosure of TPI commissions for Microbusiness consumers.

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

**SEFE Energy response:** 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. Therefore a prescriptive mechanism for presenting this information is unlikely to be 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 sub-set of customers, and if a sub-set do you have views on how to define this?**

**SEFE Energy response:** 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?**

**SEFE Energy response:** Regarding any form of cooling-off period being allowed for non-domestic contracts, we continue to have concerns that it will be expensive to implement, increase risk premiums significantly, cut across normal commercial practice, will be subject to misuse by TPIs to undercut contracts, and leads to negative customer experiences.