06 September 2023
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Ofgem
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Dear Louise,

Non-domestic market review: Findings and policy consultation

Thank you for the opportunity to respond to Ofgem's Non-domestic market review: Findings and policy consultation, which we have considered carefully.

We are disappointed that Ofgem issued the consultation immediately before the summer holiday period without reflecting this in the timescales available to respond, this does cause resource issues within supplier organisations, particularly where there are competing demands from other areas of Ofgem and Government.

E.ON supplies electricity and gas customers in the UK under two brands: E.ON Next (E.ON Next Energy Ltd supply licence) which provides energy solutions for domestic and microbusiness customers, and npower Business Solutions or nBS (Npower Commercial Gas Ltd supply licence) which focuses on larger industrial and commercial businesses. **This response is on behalf of E.ON Group which includes both of the aforementioned entities.**

Introduction

The last few years have seen unprecedented volatility in the energy market with factors such as the pandemic, the war in Ukraine, the exit from the energy market by just short of thirty suppliers, and the cost of living crisis in the UK which has affected both energy customers and energy suppliers (and corresponding Government financial support being rolled out at rapid pace) creating extremely challenging market conditions for customers and suppliers alike.

We are pleased that following the regulator's most extensive review of the non-domestic supply sector to date, the overall findings suggest a well-functioning and competitive non-domestic market with little evidence of ongoing systemic issues or widespread failings. Furthermore, the review indicates a return to a level of normality and market function albeit with some uncertainty ahead due to external factors outside of suppliers' control.

Executive Summary

We welcome receipt of the consultation materials, following previous engagement by Ofgem (Calls for Input, Requests for Information (RFI), open letters and industry working groups) over the last several months, all of which E.ON has participated in. We also note that an upcoming RFI will be

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issued to support the policy development activity and further engagement will be held with suppliers and stakeholder/interest groups. We support this ongoing collaborative approach to ensure a positive, proportionate outcome from this consultation.

We have previously indicated our willingness and availability to engage with and host Ofgem colleagues at our offices to further explore and discuss the operation of the non-domestic market, in particular the I&C elements, and this remains an open invitation.
We provide a full response to the twenty-two questions posed in the consultation in Annexe A, and have also set out in Annexe B and Annexe C further supplementary information to assist in Ofgem's understanding of the non-domestic market. Our response should be taken as a whole across all of the information provided within this document. However, we would like to make the following key points in summary:

1. Approach to consultation

Ofgem has set out its findings and policy proposals in this current consultation and will look to move to a statutory consultation later this year. However, for the most part, the findings set out in the consultation document do not support the case for making what would amount to radical changes and intervention in the non-domestic market. We note that there will be a detailed RFI issued on or around the day that this consultation closes, but this effectively amounts to an inversion of the usual principles and process of regulatory policy development. Such an RFI should be used to first establish whether there are issues and to quantify and contextualise those issues, and thence to move to developing solutions via regulatory policy proposals.
As it is, for most of the more impactful proposals we will move from the policy consultation phase where a clear picture of the policy detail has not been presented to suppliers and stakeholders, then to an RFI that Ofgem will use to develop its policy ideas further, and then to statutory consultation phase where the majority of the detail will be locked in and unlikely to substantively change.

2. Complexity of the non-domestic market & increased non-domestic regulation

The non-domestic sector is incredibly diverse and nuanced. The term non-domestic covers an extremely wide range of businesses and customer types with extremely varying energy needs (in many cases they have bespoke needs). In broad terms, these businesses fit into the microbusiness (MB), Small Medium Sized Enterprise (SME) and Industrial & Commercial (I&C) customer segmentations. However, even within those customer segmentations there can be further sub-segmentations where customers have differing needs and expectations. Customers in the non-domestic sector can range from a single-site local corner shop or hair salon to a multi-site, multinational and FTSE listed steel factory or energy intensive industry (EII) business.
At the upper end of the market (in what we would categorise as 'pure I&C'), customers are typically more engaged with the energy market; they may have their own in-house purchasing capabilities and they could have technical and other resources the equivalent of or greater than that of even the largest energy suppliers. These customers may also procure their energy through purchasing organisations or Third Party Intermediaries (TPIs), including via basket deals or contracts, and this method of contracting may also include the provision of energy expertise, bill validation services etc by those third parties thus helping customers secure competitive prices through bulk purchasing agreements

and to navigate the energy market. Those kinds of customers are very different from MB customers and thus do not need MB-type protections.
Similarly, there are other customers that feature in the middle of the market, and again they do not need the same kinds of protections as MBs do. It is imperative that Ofgem recognises these dimensions to the non-domestic market and should guard against over-reach and

expansion of regulations and customer protections into areas where they are not needed and might even be inappropriate or cause unintended consequences. Excessive regulatory scope creep into the non-domestic market could have an adverse impact on competition, innovation and customer choice.

We have set out our concerns in this regard in our response to the consultation questions and we have also provided additional context and key characteristics of the non-domestic market in Annexes B and C. We would urge Ofgem to consider this information carefully, in addition to the outputs from the RFIs (including those already issued and the upcoming one), and then to take a fact-based and proportionate approach here.

3. Complaint handling and increasing non-domestic customer access to Ombudsman Services

The proposals to expand complaint handling requirements and increase access to Ombudsman Services for more of the non-domestic market appear to have been formulated without robust data and evidence, as the consultation appears to rely on limited metrics and anecdotal accounts, some of which may be at the extreme edges. Our position is that such expansion is not justified or warranted and should not be pursued without the clear evidence base. In the event it is pursued, Ofgem should proceed with caution and by appropriately setting the qualifying customer thresholds.

On the latter, this should be evidence-based and take into account the various complexities in the non-domestic market (which we have set out in the body of our response to the consultation questions and also in Annexes B and C). For example, larger non-domestic customers can appoint their own preferred agents for metering services and where this occurs the ability of suppliers to resolve complaints within targeted timeframes can be limited where the resolution is dependent in part or in whole on those third parties; this should be recognised in any new rules that come into force (including in any timescales within which complaints are expected to be resolved - for example, the day+1 and 56 day key performance indicators, as used for domestic and MB complaints, would not be appropriate for larger non-domestic customers).

We would also urge Ofgem to not simply replicate and extend the existing complaint handling framework that is used for domestic and MB complaints in the non-domestic market. We believe that there are material differences in terms of defining a complaint and overall customer expectations when considered from the perspective of larger non-domestic customers (particularly with pure I&C customers) when compared to MB complaints. This should be captured, recognised, and suitably addressed in any proposals for implementation.

4. Regulation of Third Party Intermediaries (TPI)

The regulation of TPIs has long been considered within the industry, however, many proposals have either not been taken forward or have otherwise been deprioritised. What we have seen in the interim is increased requirements being placed on suppliers which have the objective of trying to regulate TPI conduct, albeit through an indirect mechanism. For example, this was evident from the Microbusiness Strategic Review (MBSR) programme of work whereby suppliers were obligated to ensure that TPIs

dealing with MBs in the energy market acceded to an Alternative Dispute Resolution (ADR) scheme and to also provide MB customers with details of their TPI commission payments. The current proposals are to enhance these two initiatives so that they cover more of the non-domestic market.

Ofgem has suggested in the consultation document that some of their proposals are being developed in recognition of the fact that formal and direct regulation of TPIs will take longer to materialise as it is dependent on government acting. Our position on this is clear: if Ofgem and/or government deems that there are issues in the TPI market that need addressing, then these need to be resolved through formal and direct regulation of TPIs (for example, with Ofgem having the role of regulator over participating TPIs). We do not feel that it is fair or proportionate to socialise the costs and administrative burden of indirectly regulating TPIs across non-domestic suppliers and their customer bases.

If you have any questions on any points in our response, or wish for any discussion on the points raised, please contact in the first instance Rob Finch (robert.finch@npower.com).

Yours sincerely

Robert Finch

Head of Regulation

For and on behalf of E.ON UK plc

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Annexe A – Response to consultation questions

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?

Any price transparency measures that are to be implemented should not require suppliers to publish any information that may be confidential or commercially sensitive; whilst it may be appropriate for suppliers to explain why energy pricing has changed owing to changes in policy costs that have been imposed, it would not be appropriate to require suppliers to provide detail on how and why commercial pricing strategies and product propositions may have changed. This could lead to a distortionary effect on competition and harm the price discovery process between competitors. Equally, any proposed price transparency measures should be confined to more generic information that helps customers understand why their prices might be changing but this should not require any further detail that may be specific to individual customers.

We support the proposition that any measures on price transparency should not be implemented through the mandating of content and/or structure of bills and invoices, as this may add unneeded complexity and stifle innovation. Therefore, options that we would support include implementing specific measures via supplier websites, access to webinars, newsletters etc or, where applicable, individual account management reviews. However, Ofgem should ensure that any proposals that are implemented as part of this consultation are proportionate and do not impact competition, innovation and overall market operation in this sector.

Any proposals on price transparency would not be appropriate for the whole of the non-domestic market and should instead, where deemed necessary and justified, be targeted, specific and limited (e.g. microbusinesses). The term non-domestic covers an incredibly wide range of businesses and customer types with very diverse energy needs. In broad terms, these businesses fit into the microbusiness (MB), Small Medium Sized Enterprise (SME) and Industrial & Commercial (I&C) customer segmentations. Customers in the non-domestic sector can range in type from a local corner shop or hair salon operating from a single site/premise to a multi-site, multinational and FTSE listed steel factory or energy intensive industry participant (EII).

At the upper end of the market (in what we would categorise as 'pure I&C'), particularly where large I&C customers are on pass-through or flexible style contracts[1], customers already have visibility and an understanding of the drivers behind market pricing movements, in many cases having very sophisticated and complex energy purchasing capabilities in-house, and as such

[1] These types of contracts allow customers to buy electricity or gas on a flexible basis, with options for customers to tailor individual elements of the cost components to suit their business needs. For example, customers can spread their purchasing decisions throughout the contract duration by fixing their energy/commodity prices at various points throughout the year or can choose how to treat non-commodity costs based on their risk appetite. This helps customers to limit the risk of market fluctuations but also benefit when prices fall.

are generally better engaged with the market. It would therefore be inappropriate, inefficient and unnecessary to aim any measures at this end of the non-domestic market. Conversely, smaller non-domestic customers tend not to have the appetite or industry knowledge to have a full view of costs (e.g. it is debatable as to whether it assists them to see the detail around BSUoS, AAHEDC etc or whether this may have the effect of confusing them further). In our experience, customers at this end of the market typically state that the industry is too complex to understand rather than it being too simple. Therefore, any pricing transparency measures that are developed need to be proportionate and customer-friendly. The solution should recognise that it may not be possible or appropriate to offer a one-size-fits-all approach, so it would be prudent to ensure that the solution offers some flexibility for suppliers to tailor the information, in form and content, to the relevant audience.

We welcome the recognition by Ofgem that it too has a role in providing better information, especially on pricing and the impact of mandated policy changes. We believe that this should be done in a way that is accessible, clear and intuitive, and Ofgem should also consider how to encourage non-domestic customers to use its website (it may be that domestic and MB customers tend to use the Ofgem website more as it has information that is specifically tailored for their needs). We also recognise the Department for Energy Security & Net Zero (DESNZ) should play a greater part in helping to publicise new policy costs or changes to existing ones, as we recently saw that policy changes that resulted in moving certain costs from commodity to fixed elements of the bill or invoice landed with non-domestic customers very bluntly and with little publicisation.

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

No, we do not agree. We believe there remains significant ambiguity, which is open to interpretation and therefore open to potential divergent and inconsistent application by market participants.

Whilst we appreciate that Ofgem has developed further the guidance since it was last issued in draft form, we believe there is further work to be done in the following areas.

'Significantly exceeds'

Paragraph A1.28 of the guidance sets out as follows:

A1.28 In the context of SLC 7.4(a), we consider that 'significantly exceeds' for the purpose of determining if deemed rates are unduly onerous, means that the deemed rate is much higher than an equivalent contracted rate ... An equivalent contract rate in this context means a contracted rate that is comparable to the deemed rate. For example, a contract rate for Small to Medium enterprises (SME)s and a deemed rate for SMEs, across a broadly equivalent time period (for example, comparing a contract rate taken out on 1 Jan 2022 for a

year with the deemed rates throughout 2022), where there may be similar energy usage/consumption for this SME on deemed and the equivalent contracted.

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The example given (as underlined) is problematic and for the following reasons may cause varying interpretations to be taken by individual suppliers.

Firstly, it is not clear what is meant by '*deemed rates throughout 2022*' – is Ofgem suggesting that the deemed rates for the entire year would be blended into an average and then compared to the equivalent contracted rate? If so, then this would not allow for shifts in volume over time (which attracts volume risk) and without knowledge of how the blended average would be assessed it is difficult to ensure that suppliers would be adhering to the obligation in a manner that is consistent across the market.

Secondly, where market conditions exist that would create material fluctuations in wholesale prices the suggested approach would not work. Taking Ofgem's example as presented illustrates the point perfectly; the contract rate(s) on offer on 01 January 2022 were relatively low as this was prior to the war in Ukraine, and this would be an entirely inappropriate comparator to use against deemed rates throughout 2022, which were significantly higher than usual for most of the year due to unprecedented market volatility.

Thirdly, using a contract rate taken out on a specified date as the comparator does not take into account the fact that the non-domestic market typically works on a bespoke pricing basis. Contract rates agreed on any given day vary, even within SME business customer cohorts, as each contract is individually priced, negotiated and agreed.

Furthermore, the term '*much higher*' is nebulous and without further definition may lead to inconsistent application by suppliers.

'Routinely over-compensating expected costs'

Further, paragraph A1.29 of the guidance sets out as follows:

A1.29 … This methodology should also include a regular review to check whether the methodology could be routinely over-compensating expected costs, resulting in higher deemed charges than are necessary.

The terms '*routinely*' and '*over-compensating*' in this part of the guidance should be defined. For example, it is not clear whether two periods of over-compensation may fall foul of this element, or whether it would need to be three or more periods before any non-compliance would be deemed to have occurred. Equally, there is an element of vagueness here as whether the periods (of over-compensation) would need to be consecutive, or whether staggered periods could be adjudged to constitute a breach.

There needs to be consideration of materiality here too. Given the uncertain nature of consumption and risk under deemed contracts, it is almost impossible to recover exactly against the '*expected costs*' of deemed contracts and consumption under those contracts and therefore introducing this requirement is erroneous in theory and in practical application for the following reasons.

Firstly, Ofgem expects suppliers to be operating in a financially sustainable way, as evidenced by their increasing focus on financing arrangements in both the domestic and non-domestic markets (including an explicit licence condition that focusses on this – Supply Licence

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Condition (SLC) 4B). We run our business with secure lines of financing and have clear, robust risk pricing methodology in how we price our products (including our non-contract rates). This involves forecasting an expected cost for all cost items, including making

provision for 'bad case' events or scenarios, and then ensuring that where we are taking on risk by fixing volatile costs for customers we are covering this volatility sufficiently through pricing.

Secondly, we operate to a Return on Risk Adjusted Capital (RoRAC) methodology. This is because we have to hold sufficient capital to sustain 'bad case' events, something we can only do through making a sufficiently risk-adjusted margin to justify that capital allocation decision. The financial strength of the business (and the need for that strength) has been clearly demonstrated though the COVID pandemic (during which we sustained significant operating losses), and through the Ukraine crisis (when we needed to stand behind very substantial mark-to-market positions on our hedge books).

In doing this we do aim to recover above expected unit costs in routine circumstances for those industry costs where we are taking on a risk. This is to allow us to operate sustainably through those events where we experience an extreme outturn.

To illustrate the point, one can look to Contracts for Difference (CfD). CfD operates to give certainty to renewable generators, unfortunately giving certainty to generators and recovering that from suppliers means that the costs to suppliers can be extremely volatile. If we simply priced to the expected level of CfD costs, we would have no coverage against bad outturns. We therefore price accordingly to ensure that we recover both the cost of the expected level of the CfD, and a return on the capital employed in taking on the risk.

Therefore, we recommend that Ofgem either completely removes the wording relating to '*routinely over-compensating expected costs*' or that it is amended to the effect of:

"*This methodology should also include a regular review to check whether the methodology is recovering expected costs and covering the cost of risk in the same way as the contracted book of the supplier, so as to avoid unnecessarily high deemed charges while maintaining the financial viability of responsible suppliers*".

If this new guidance on deemed pricing is to be meaningful and effective, Ofgem needs to address the aforementioned points in the drafting of the guidance in order for it to be interpreted and applied consistently by suppliers.

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

We agree and support that suppliers should review their deemed contract pricing on a quarterly basis. We do not believe this is overly onerous and it represents good business practice.

We welcome Ofgem's recognition that routine reviews of deemed pricing any more frequently than quarterly may be too unpredictable for consumers and adds little tangible value. It is also helpful that Ofgem has clarified that there is no expectation that deemed pricing will change

as a result of each and every pricing review, as this is very much for suppliers to decide based on market conditions and commercial considerations and, therefore, on review prices can increase, decrease or remain unchanged.

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

In line with our response to question 5 below, we strongly advocate that any guidance on the interpretation of SLC 7 (Terms of Contracts and Deemed Contracts) must be subjected to a formal consultation procedure. It is imperative that all licensed suppliers engaging in the supply of energy to domestic customers are included within the formal consultative

process. This inclusive approach would facilitate the compilation of a comprehensive response to the inquiry and would concurrently take into account the domestic price cap regulation. The domestic price cap methodology is prescriptive and transparent and, as such, those energy suppliers who adopt this methodology in their deemed pricing structure should be considered to be complying with SLC 7 (i.e. their pricing should not be considered to be unduly onerous).

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

We strongly believe that some aspects of the guidance would be better placed in the supply licence conditions (SLC) rather than via guidance. In particular, the definition or interpretation of 'significantly exceeds', the concept of 'relevant classes of customers' and mandating quarterly reviews should all be formalised in licence, especially if Ofgem is concerned by supplier performance and compliance in this area. This should be the subject of a standalone consultation, and should also include the concerns raised in our response to question 2 above as it relates to the current ambiguity in the drafting which should be adequately resolved via this established industry process.

We think the commentary Ofgem has provided in the draft guidance around requiring suppliers to price deemed products by region or location unless they can show most of their "*deemed customers are historically in the highest price … region*" goes too far in prescribing the approach, whereas this should simply be subject to a general rule of considering whether the pricing has significantly exceeded the costs (whether in absolute or average terms). Suppliers need to balance the risk-mitigation effect of more accurate charging with the risks of administrative complexity that come with setting a wider range of prices. We consider domestic/non-domestic and HH/NHH to be sufficient differentiators and do not consider anything beyond that should be prescribed or otherwise directed, as this should be a commercial matter that should be left to supplier discretion.

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

We recognise and would like to thank Ofgem for its well-researched and balanced piece of analysis in the sections on securing contracts and pricing. We welcome the conclusions that any issues in these areas were largely the result of unprecedented market volatility during winter 2021 and throughout 2022, and that as the market is settling and progressively returning to a level of normality suppliers are reflecting this in their contract offers and pricing. We will continue to adapt to changing market conditions, while serving our customers and operating as a responsible energy supply business.

The Energy Bill Relief Scheme (EBRS) was very important in supporting business customers, and it helped keep 'UK plc' afloat during unprecedented market conditions. If, however, future wholesale market conditions materially worsen during the upcoming winter, then the thresholds/support levels under Energy Bills Discount Scheme (EBDS) may need to be looked at again and we would expect Ofgem to support in lobbying government to review the position of financial support to businesses (whether general or targeted). If further support is required due to prevailing market conditions, we strongly encourage the use of the EBDS mechanism via extension rather than the introduction of any new methodology or scheme.

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

We see value in the proposals in this consultation and believe some standardisation of CoT/CoO documentation may assist both suppliers and customers in this area.
We believe that the following types of documentation would help demonstrate a CoT/CoO situation: Companies House records; business rates documents; HM Land Registry records (such as a TR1 form); property deeds; and lease documentation.
However, careful consideration should be given to not only the types of documents but the quality and veracity of documentation that would be deemed acceptable as evidence. For example, where the incoming tenant/occupier has purchased the property then HM Land Registry records may prove definitive. However, where the incoming tenant is leasing or renting the property then it may not be appropriate to accept the lease/tenancy agreement documentation in isolation (unless it was a commercial lease registered with HM Land Registry) due to the ease with which such documents can be falsified. There should arguably be a need to either have that documentation verified (e.g. through notarisation by a relevant official or certified by a solicitor) or accompanied by supporting information (e.g. business rates documents). The 'phoenix' company syndrome is an issue in the energy market and Ofgem and RECCo should be cognisant of this and therefore ensure that any proposals on the standardisation of documents is robust and credible enough to offer sufficient safeguards.
A point of distinction may also need to be drawn in terms of evidence provided demonstrating that someone has taken responsibility for premises and evidence provided demonstrating that the customer ceded responsibility for premises – the latter may in practice need to satisfy a
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higher burden or threshold, particularly where a considerable period of time has elapsed since the CoO/CoT took effect.

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?

We would be supportive of a rule requiring suppliers to provide signposting to Citizens Advice in respect of MB customers if the evidence clearly indicates that (i) these customers are not sufficiently aware of their rights or ability to refer matters relating to the performance of their energy supplier to Citizens Advice and (ii) that this signposting would drive more positive and consistent customer experiences and outcomes.

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

We do not agree that introducing a new obligation requiring efficient and timely complaints handling is needed for non-domestic customer complaints.
Ofgem has not produced nor evidenced robust data to support that such an obligation is necessary, justified and proportionate. The consultation sets out some general concerns of reports of poor customer experience and notes anecdotally that Ofgem regularly receives "*emails of complaint from non-domestic customers*" who "*detail their personal situation and how they are unable to reach a solution with their supplier*", but this is not a sound evidence base that should inform a decision of this nature (e.g. these customers could have reached the end of the process by which their issue or complaint has been considered and simply disagreed with the outcome). We look forward to engaging with Ofgem's upcoming RFIs and we hope Ofgem will focus on not only the data that is returned but will take into account any additional contextual information suppliers may provide in order to explain that data. It is crucial that Ofgem takes both a qualitative and quantitative view.

Complaints involving non-domestic customers (who are larger than MB customers) tend to be significantly more complex than complaints in the domestic or MB space. For example, larger non-domestic customers can appoint their own preferred agents for metering services (for MOP, DC and/or DA) and where this occurs it adds degrees of complexity as suppliers have to deal with third party agents to resolve any issues in situations in which suppliers do not have the requisite contractual levers to direct those third parties to assist in the resolution of the issues. Another factor is the fact that I&C complaints can often involve multi-faceted complaints that require more time to investigate (including site visits that the customer is needed to authorise) and resolve, and sometimes requires a lengthier resolution and negotiation timeframe between customer and supplier.

This means that these sorts of complaints may take longer to resolve, and it is not clear that Ofgem has acknowledged this. The 56 day/8 week complaint resolution time period is considered a key metric in the domestic and MB customer segments because it is the time after which the customer can refer their matter to the Ombudsman Service: Energy. This

should not be considered a key metric in the non-domestic sector (with the exception of MB). We hope that Ofgem will be cognisant of this and reflect this in any proposals that follow in due course.

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?

We do not consider that introducing a new obligation requiring recording, handling and processing of complaints in accordance with consistent rules is needed for non-domestic customer complaints.

As noted above in our response to question 9, Ofgem has not published robust data to demonstrate there is a material problem that requires such a policy to be implemented via enhanced supplier obligations.

At the upper end of the non-domestic market (what may be referred to as pure I&C), customers often have relationship/key account managers who work to resolve customer issues. Ofgem acknowledges this point in paragraph 3.35 of the policy consultation document and notes the positive experiences of the customer in that case. As Ofgem notes there, issues at this end of the market can be rather complex and can also be frequent. Under the status quo, relationship/key account managers have the flexibility to resolve issues and this is crucial in this segment of the market where the size and complexities of portfolios of customers means there are in some instances daily transactions which need to be actioned or dealt with. In particular, relationship/key account managers (along with operational representatives) often hold meetings with customers as part of the normal management of customer relationships, and during this there may be discussion of issues which could span many sites/meterpoints. However, this could be impacted by the introduction of new rules around recording, handling and processing of complaints, and the resulting bureaucracy would slow down the process of resolving customer issues where form may override substance. This could be highly detrimental to customers' experience.

It would be particularly problematic if any new obligation were to adopt the same definition of complaint as is used for domestic and MB customers, which is extremely wide and often catches matters which customers themselves would not consider complaints. In the non-domestic market, especially at the larger business end, we believe that customers would like

their issues resolved in a timely fashion rather than to be told a complaint has been logged/resolved and have time spent on the associated bureaucracy.

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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?

As per our responses to questions 9 and 10 above, we do not believe that complaints handling requirements should be expanded to cover businesses that are larger than MB (as per the current regulatory definitions). However, if such a proposal were to be pursued then our views on this are as follows.

On coverage of the market, we do not believe that any new requirements should cover the whole of the non-domestic market. What this may look like in practice depends on the evidence base that Ofgem uses, and we note the regulator will be collecting data ex-post of this consultation and has indicated future workshop exercises will be held to help determine where a threshold, if any, may lie.

Any new customer threshold should not cover the whole of the non-domestic market and should be based on criteria that suppliers can verify with relative ease and simplicity. We would propose that, if a threshold were to be implemented, it should be based on annual energy consumption and should not be set higher than:

• 200,000 kWh for electricity; and
• 500,000 kWh for gas.

Any customers that consume energy above those thresholds should not qualify for additional protections for the relevant fuel, and furthermore we would submit that the following customers should be excluded (irrespective of consumption) on the basis that these are the types of businesses that do not require the level of support that Ofgem believes smaller non-domestic customers require:

• Businesses listed in the FTSE 100 and FTSE 250 Indexes;
• Businesses that procure their energy through a purchasing organisation or public sector procurement organisation; and
• Businesses that have a dedicated relationship or key account manager embedded within their supplier.

In the event that Ofgem decides to introduce a customer threshold based on annual consumption of fuel, we assume this would operate in a manner that is similar to the fuel thresholds for the MB test i.e. where a customer qualifies under one fuel but not the other, then they would only qualify for protections under the fuel for which they meet the criteria. For avoidance of doubt, we would propose that these same exclusions should be used for any of the other proposals Ofgem is consulting on as part of this consultation in the event it proceeds towards implementation. We believe that for reasons of operational simplicity of suppliers and consumer engagement, the amount of customer thresholds and customer classifications should be minimised and be consistent across any obligations to which they are applied. However, it should be noted that the introduction of a new customer classification /

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threshold (alongside the existing MB flag) introduces new complexity, both from a systems and process perspective.

In terms of defining and setting a threshold, we would urge Ofgem to exercise extreme caution against setting it too high as this could be detrimental for the non-domestic market more generally. If customers who do not need extra regulatory protection are caught by a threshold or customer definition then this has the effect of adding unnecessary cost into the market, and this cost would be socialised across the customer base leaving smaller business customers disproportionately affected. As we move further along on the path to net-zero energy consumers should be reducing consumption over time, and so it would be prudent for Ofgem to exercise restraint in setting the threshold and then reviewing the effectiveness of it a few years after implementation (for example, in a way that is not dissimilar to how the MB definition has evolved over time).

In the event that Ofgem decides to not implement a customer threshold for any new complaint handling requirements (i.e. a 'whole of market' approach is taken), we believe that the following aspects of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 would need to be modified for operation in the wider non-domestic market:

• The regulation 2 definition of "consumer complaint" – should be amended for non-domestic customers to reflect differing expectations of customers in the non-domestic market (see comments on this above in our response to question 10);

• The various references to a "qualifying redress scheme" should not apply (e.g. in Regulation 2, Regulation 3, Regulation 6) (this would be subject to any decision on whether to expand the remit of the Energy Ombudsman to receive complaints from non-domestic customers larger than MB);

• The regulation 5 enhanced recording requirements for complaints that have not been resolved by the end of the working day after the day on which complaint was first received (also known in the industry as 'day+1') – this should be amended for non-domestic customers because, as set out above, non-domestic complaints are typically more complex and there is little value in placing the same amount of focus on the day+1 procedure and metrics as is the case for domestic and MB complaints;

• Regulations 8 and 9 – these are not applicable to non-domestic customer circumstances;

• Regulation 10(2) – this should be amended to reflect the above point on the day+1 procedure; and

• Regulations 10(3) and 11 – these are specific to domestic customers only.

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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 believe that Ofgem should proceed cautiously on any proposal to increase access to the Energy Ombudsman due to the impacts it will have across the non-domestic market, including potential detriment for customers. Due to this, we would support a separate, full-scale consultation accompanied by a comprehensive impact assessment.

The Energy Ombudsman currently presides over customer complaints against suppliers where the customer is either domestic or MB. Even in dealing with these complaints, we have seen (across the wider E.ON Group) cases where the Ombudsman sometimes struggles with more complex cases. The nature of the non-domestic market is significantly more complex, including in terms of the types of commercial arrangements reached and resulting supply agreements (in particular, flexible purchase contracts[2] and group supply contracts) which are often heavily negotiated. Based on our current knowledge of the working of the

Energy Ombudsman, we do not believe that they possess the requisite skills, knowledge and experience to adjudicate on disputes that may arise towards the larger and upper end of the non-domestic market (i.e pure I&C). Presumably, there would be a robust plan for provisions to be put into place to deal with these issues, but these would involve cost and resource requirements, with much of this falling onto suppliers. All of this, as previously stated, needs to be explored fully in a separate consultation exercise.

The risk here is if there is an inadequate implementation of increased access to the Ombudsman Scheme, then it could produce adverse outcomes for suppliers in the sense that non-domestic customers may choose to take a speculative opportunity on otherwise undeserving cases at the Ombudsman rather than through the litigation route due to the low bar for access. If this were to occur, suppliers and the Ombudsman would be subject to vastly increased caseloads, administration and operational costs of managing, responding to and defending cases. On the consumer side, there may be detriment through increased rate of losing cases that had little merit to begin with. [REDACTED] If the majority of suppliers operate in a similar fashion, then this would seem to suggest that on balance there is no case for extending Ombudsman access to larger non-domestic customers.

There is also the potential for suppliers, who may have ordinarily reached a mutually beneficial settlement or outcome with the customer based on commercial negotiation, to wait and see what the Ombudsman may rule (as the award could be lower than what the supplier may have

[2] These types of contracts allow customers to buy electricity or gas on a flexible basis, with options for customers to tailor individual elements of the cost components to suit their business needs. For example, customers are able to spread their purchasing decisions throughout the contract duration by fixing their energy/commodity prices at various points throughout the year or choosing how to treat non-commodity costs based on their risk appetite. This helps customers to limit the risk of market fluctuations but also benefit when prices fall.

offered) which might be to the detriment of the customer both in the speed of resolution and the outcome itself.

If the proposal to expand access to the Energy Ombudsman were taken forward, we believe that a customer threshold should apply as per the recommendation we have made in our answer to question 11 above. This is so that the scheme is limited such that it assists only those customers most in need of this type of support and it sifts out those customers who can and indeed should, use other forms of resolution (e.g. arbitration or litigation).

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 supportive of the proposal requiring suppliers to work with TPIs who are members of a redress scheme (for a greater subset of the non-domestic customer base), provided this (a) adopts the same customer threshold as set out in our answer to question 11 above and (b) this mirrors any expansion in access to the Energy Ombudsman for supplier complaints in the event that proposal is taken forward.

We believe that both the Energy Ombudsman scheme for supplier complaints and the TPI ADR scheme, in terms of customer eligibility, should remain consistent as this will assist in operational effectiveness, efficiency and simplicity (which would benefit both suppliers and customers).

As it relates to costs, both in terms of implementation and ongoing costs, we believe this will not be dissimilar to the costs incurred for the initial TPI ADR scheme that was made available to MB as part of the MBSR.
As it relates to benefits, it is hard to provide a view on this as we have received little to no feedback on the TPI ADR scheme in terms of number of cases accepted, reasons for the dispute, upheld rates etc (except for the statistics provided by Ofgem in the consultation document). There is perhaps a case for instituting a form of feedback loop between suppliers and the TPI ADR scheme so that anonymised insights are provided on these matters as this may help to drive improvements in TPI practice and behaviour (as it may assist suppliers in making decisions as to which TPIs to continue to work with and potentially ceasing to work with TPIs who have multiple complaints upheld against them).
We note that Ofgem has suggested (in paragraph 3.60 of the consultation document) that it is developing this proposal on TPI ADR in recognition of the fact that direct regulation of TPIs will take longer to materialise as it is dependent on government acting. We maintain the position that, as a principle, suppliers should not be used to indirectly regulate the market (in this case TPIs) when that regulation should be achieved via more direct routes (e.g. in this case it should be Ofgem that has remit over directly regulating TPIs). The costs and administrative burden of regulating TPIs who wish to operate within the market should fall on TPIs themselves rather than suppliers being subject to such costs and administrative burden. Direct
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Ofgem regulation also acts to instil consumer confidence and potentially dissuades TPI poor practice.

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 welcome the acknowledgment by Ofgem that a longer timeline is prudent for this licence condition change. The current ADR TPI scheme for MB customers took several months to implement, and the working assumption is that the proposed expansion of it to a non-domestic customer cohort may be slightly faster to implement from an internal systems and processes perspective if the other scheme parameters remain unchanged. However, this is subject to any contractual amendments we would have to make in our agreements with TPIs and also the number of TPIs in the market.
We note that the periods around April and October are extremely busy times within the non-domestic energy market (as these periods represent significant contract and/or renewal rounds) and would recommend these months should be avoided for any proposed implementation of new measures.

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.

In principle, we are supportive of the proposal to expand the SoC to apply to non-domestic consumers.
However, SLC 0A would need to be reworked in places to ensure that it sufficiently recognises that the SoC would operate differently for different types of customers. For example, while SLC 0A.3(b)(iii) requires suppliers, in providing information on products and services, to have due regard "*to the Micro Business Consumer to whom it is directed*", the same flexibility for tailoring for the audience is not allowed for under SLC 0A.3(b)(ii) which requires information to be communicated in plain and intelligible language. The latter seems

to be more of an objective standard rather than a subjective standard, and we note that the Ofgem guidance on what would be considered as plain and intelligible refers to the concept of the 'typical consumer':

As per the SLC 7A guidance, we would look to the interpretation the courts and the Office of Fair Trading (OFT) have taken in the context of the Unfair Terms in Consumer Contracts Regulations 1999.

For example, plain and intelligible language requires:

"…not only that the actual wording of individual clauses or conditions be comprehensible to consumers, but that the typical consumer can understand how the term affects the rights and obligations that he and the seller or supplier have under the contract…I would consider it proper when assessing whether terms are in plain intelligible language to take

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into account clear and accessible presentation with, for example, useful headings and appropriate use of bold print, which can contribute to the intelligibility to the typical consumer of the language."

(Smith J, OFT v. Abbey National [2008] EWHC 875 (Comm))[3]

Whereas the concept of the typical consumer may be more appropriate in the domestic and MB sectors, the same cannot be said of the I&C market, due to the vast complexity and differentials across customer types (i.e. as set out in other parts of this consultation response); there is no typical customer.

Applying the requirement for plain and intelligibility in a uniform and objective manner, without due consideration of the diversity in I&C customers could pose issues with, for example, flexible purchase supply agreements which may not be written in 'plain and intelligible' language when considered from an objective viewpoint. Therefore, SLC 0A would need to be amended to make it clearer that the concept of 'plain and intelligible' would vary for different non-domestic audiences and should be considered on a case-by-case basis.

Failure to clarify the policy intent above could lead to poor customer outcomes at the higher end of the market, e.g. it may necessitate rewriting our terms and conditions in an oversimplified manner that would not be appropriate for complex commercial agreements, where customers understand and desire negotiated and bespoke terms to meet their individual and complex energy needs.

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

The proposals that Ofgem has set out in this section of the consultation are extremely far-reaching and could fundamentally affect the dynamics and operation of the non-domestic market. The proposals have been formulated without reference to detailed data that specifically substantiates the problems that Ofgem is alleging exist in this part of the retail market. Instead, the data is being requested from suppliers after the close of this policy consultation.

We include in our response Annexe B and Annexe C; the former sets out some of the key characters of the non-domestic market, particularly at the upper end, and the latter features three anonymised case studies representing customers with dramatically varying energy consumption and energy requirements. We would submit that all of the proposals in this section would be inappropriate if they applied to the kinds of customers featured in these case studies (and we believe that our proposed customers thresholds and exclusions in our

response to question 11 would assist in guarding against extending protections to customers

[3] Final Guidance for the Standards of Conduct key terms, Implementation of the Retail Market Review non-domestic proposals – decision to make licence modifications, 28 June 2013 (https://www.ofgem.gov.uk/sites/default/files/docs/2013/06/implementation_of_the_retail_market_review_non-domestic_proposals_-_decision_to_make_licence_modifications_0.pdf)

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who do not need them). We would urge Ofgem to consider this information carefully, in addition to the outputs to the RFIs that will be issued shortly (ex-post), and then take a measured and fact-based view here.

On monitoring, while we appreciate the value of the regulator having better information so that it can improve its ways of working and meet its objectives, we urge caution to be exercised. In any expansion of monitoring, especially where it is not limited to MB, Ofgem must exercise discipline in limiting this to the most essential factors with due consideration given to the resource constraints of suppliers and wider demands within the sector. Requests for data that are too excessive in terms of the detail requested can result in a type of pseudo-regulation, and this should be guarded against. It would also assist if Ofgem could provide the methodology on how they intend to use or interpret any data provided by suppliers, and if suppliers could be allowed adequate space in the RFI format to provide additional narrative context on the data items (e.g. to provide commentary explaining any anomalies).

We (and, arguably, other suppliers) would find it very helpful if Ofgem were to share outcomes and insights that are concluded from RFI exercises. We find too often that following responses to calls for evidence and RFIs, there is little to no feedback from these exercises and this detracts from the value that could be had through better collaboration and the provision of feedback to suppliers (either individually or collectively). We would urge Ofgem to look at ways in which it can disseminate more of the output from RFIs to help market participants to better understand the market and where improvements can be undertaken (whilst recognising that such output would have to be anonymised and aggregated where appropriate).

We have the following observations on the draft SLC as set out in Appendix 2 of the consultation document:

• With reference to the subtitle 'Working with Third Party Intermediaries' in the proposed draft of SLC 20, the term 'Third Party Intermediaries' is in title case, which indicates that it is a defined term but it is not currently defined in the licence (or in the draft proposed licence).

• Although the proposed SLC 20 has been drafted so that it widens application to 'Non-Domestic Consumers' (and not just MB), these provisions still refer to 'Third Party'. However, the definition of the latter (as set out in SLC 1) refers to "*a third party organisation or individual that … provides information and/or advice to a Micro Business Consumer*". Therefore, the SLC 1 definition of 'Third Party' (and 'Third Party Costs') would need to be amended so that they refer to the customer types (based on the thresholds that would apply) for the measures that move forward to statutory consultation.

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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 agree with Ofgem's proposal that support for vulnerable end user/domestic consumers supplied through non-domestic contracts is best led through initiatives involving DNOs, IDNOs and IGTs, parties who are well-positioned in the central industry functions that they operate in.

We welcome Ofgem's conclusions that it would not deliver positive outcomes to place any requirements on non-domestic suppliers to offer support to vulnerable end users given the cost and complexity, and also due to suppliers not having a relationship with any consumer that sits beyond the entity they hold a supply contract with. Non-domestic suppliers do not have access to information relating to the vulnerabilities of end-users or consumers that sit behind the non-domestic contracts and it would be simply impractical to expect (i) non-domestic customers to collect this information from their end users and provide it to their suppliers and (ii) for suppliers to hold and manage that information. As a general principle, non-domestic suppliers should not be required to provide support to consumers that sit behind the energy supply agreement that has been agreed with the contracting party.

DNOs, IDNOs and IGTs already hold Priority Service Registers (PSRs) by virtue of their Distribution Licence Conditions and, therefore, have experience in accommodating the needs of vulnerable consumers in a way that non-domestic suppliers do not. For example, the network operators already manage incidents (e.g. consumers being off-supply) and can better support customer in getting back on supply.

Our only concern would be how the dataflow between supplier and the network provider would work in practice to ensure that both parties are kept up to date with any issues or compensation requests where necessary.

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

We agree with Ofgem's proposals that have the aim of ensuring resellers are acting in accordance with Maximum Resale Price (MRP) direction. We agree that consumers who are being billed by resellers should have a robust and accessible route by which to challenge the reseller in a less complicated (or costly) manner than currently exists.

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?

Following a call for evidence in August 2021 on the regulation of TPIs, in July 2023 the Department for Energy Security and Net Zero published a summary of responses. In response to question 13, which related to potential harms or risks impacting business customers

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differently depending on their size, the consensus of participants indicated that "*larger, more intensive energy users are more likely to employ energy specialists to assist in navigating more complex energy tariffs. Consequently, although their price risk is higher, they are better positioned to manage that risk than smaller businesses for whom employing specialist staff is impractical*".

We concur with this fully, as it is entirely consistent with our experience of I&C customers, particularly those in the middle to upper ranges. We welcome further impact assessments from Ofgem on whether non-MB, non-domestic customers are at risk and whether the proposed changes are necessary, justified and proportionate. We have seen no evidence that demonstrates the need for adding or extending further protections in this segment of the market.

The use (and potential misuse) of verbal contracts by TPIs was considered far more prevalent in the MB sector. Ofgem's MBSR programme of work has since put measures in place adding further protections for MB customers which we welcomed and implemented, and these measures include transparency of TPI commissions.
The payment of commission to TPIs is common practice for larger non-domestic customers. In our experience customers are aware that when they appoint a TPI that their services are being paid for. Our standard terms and conditions of supply provide that we may pass on fees payable to TPIs to customers in accordance with the amount notified to the customer by the TPI. Furthermore, our standard TPI Framework Agreements and Code of Practice provide that TPIs should disclose the payment of any commission to customers. Ofgem has not provided evidence that TPI commissions disclosure by energy suppliers is required in the non-domestic sector outside of MB customers. In our opinion TPIs are best placed to notify the customers of any fees/commission payable for the services they provide.
Whilst we would welcome any government-led proposals to implement direct regulation of the TPI sector (via Ofgem directly as the regulatory body), we firmly do not believe that Ofgem should embark on the proposed changes, which could be costly, as an interim solution in anticipation of proper, direct regulation of the TPI market.

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

On commissions disclosures, we agree with the view that it would be better to present the commissions figure as a cost per unit of energy (e.g. pence per unit uplift), instead of presenting as an annualised lump sum figure. We believe this is more meaningful for customers as it avoids the vagaries of changes in consumption (including, in larger commercial contracts, where sites/premises may be removed or added to the contract).
It has been suggested that requiring commissions to be displayed as an overall or annualised cost could be open to abuse or gaming by TPIs whereby they amend the estimated annual consumption figures in order to have presented a lower commission value. However, we have no evidence as to whether this occurs or not in practice and, if so, how often. We would

suggest that this situation should be reviewed and tackled as appropriate as part of a wider initiative by government to directly regulate TPI activity.

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?

Subject to the comments set out above in our response to question 19, we believe that if Ofgem is minded to expand TPI commissions disclosure requirements to non-domestic customers then it should be for all non-domestic customers rather than a subset of them.

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

Extending MB definition

We agree with the view reached that the MB definition does not need updating, and we support Ofgem's reasoning that underpins that view. There would be far-reaching impacts and confusion caused by this change, both in unintended knock-on impacts on other areas of regulation but also in other sectors.
We do, however, support the proposal to switch from using the Euro currency to GBP for the purposes of the current MB definition (as set out in The Gas and Electricity Regulated

Providers (Redress Scheme) Order 2008) provided that this is compatible with the terms of our withdrawal from the European Union (as the MB definition flows from the EU).

Cooling off period

We would not support any proposal to introduce a cooling-off period in the non-domestic market, whether for MB or otherwise.

As an energy supplier we operate and purchase energy commodity on a live market. Any purchases that we make in order to fulfil an energy supply contract with a customer will result in a commercial loss for us as a supplier where the customer exercises their cool-off rights and rescinds the contract. These commercial losses would then increase supplier costs and would need to be socialised in some way across the remaining customer base.

Furthermore, energy supply contracts are heavily negotiated in the non-domestic market, in some cases with extended lead times (months/years in advance) of the Supply Start Date (SSD) via a complex procurement process (particularly at the mid-to-higher end of this segment). Based on Ofgem's earlier cooling off proposal (as set out in the MBSR pogramme of work in 2021), we found that customer confusion could arise as to when the cooling off period applies where customers are enter into agreements months in advance of the SSD. Therefore, it is totally unlike the domestic market where the rationale could be made for having a cooling-off period.

We would be happy to contribute with any future discussions regarding this subject, either bilaterally or collectively with Ofgem.

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Annexe B - Complexity at the upper end of the Industrial and Commercial market

This is intended to provide some context of the customer characteristics and complexities that exist in the non-domestic/I&C market.

Metering

• Customers with a large number of meters and sites/premises some with as many as 60,000 meters, with dual or single fuel requirements, a range on all profile classes, Unmetered Supplies (UMS), AMR, SMART and TRAD metering types.

• Customers can either take our directed metering services (for MOP, DC and/or DA) or appoint their own preferred agent(s).

• Where a customer does not appoint our agents this adds significant complexity as we have to deal with third party agents to resolve any issues in situations in which we have no contractual levers to operate - this can take some of the issue resolution out of our control.

• Due to the scale of some of these customers, we have to run a rigorous process to track portfolio changes of sites moving in and out through change of tenancies/occupiers and new connections.

• Data provision has become increasingly important to our customers so where we are the appointed metering agent we will provide our customers with an online tool called Intelligent Analytics to understand their energy usage for their full portfolio of sites (this will be for a fee, unless part of a negotiated package).

Products

• Flex purchasing - meaning that customers' energy usage will be purchased post the contract being signed throughout the duration of the contract via our sales trading desk based on prevailing wholesale energy prices. These prices are then fed into our pricing team to complete the calculations of all of the other costs (such as 3rd party costs and management fee) in order to get to a billing rate. This price is what feeds into the invoice

along with their actual energy consumption to create their bill. There are a few variations to this product which include-

- the ability to buy against a nominated index;
- the ability to buy energy with a 'light' contract arrangement and if the customer decides to not enter a future dated contract this energy can be moved to an alternative supplier through a wholesale energy sleeving arrangement;
- a basket where multiple customers from different contracting entities energy usage is aggregated together to create a basket and then the purchased energy from within the basket is allocated out to the individual customers based on the pre-determined purchasing strategy; and
- screen matching – where if the customer is not happy with the whole sale energy price that the trading sales desk offers and they can see a 'better' equivalent price with another counterparty , then the energy price can be sleeved in from another party at the 'better' price.

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• Fixed and pass through - The customers have a choice of which component parts of an energy supply contract are fixed, or passed through. For example the pass through of BSUoS.

Relationships

• Due to the importance and scale of energy costs we are generally dealing with the C-suite of personnel within customer organisations (e.g. CEO, CFO, COO) at some stage during the life-cycle of the contract.

• Large organisations quite often have Energy Buyers employed to manage all of their energy needs. The engagement, knowledge and sophistication of these buyers is therefore high.

• TPIs/consultants – Energy consultants are often used at the upper end of the market and play a role for contract comparison/negotiation/procurement, energy management, bill validation services, data monitoring etc.

• Public Sector Buying Organisations are a sizeable sector that we work with managing large public sector contracts up to 60,000 meters per contract.

• Buying groups – there are a number of private sector buying groups who represent sectors such as agricultural /farming.

• There are a number of other parties at the higher end of the market which are important stakeholders for our organisation and are a source of support and advice for our larger customers such as Major Energy Users Council (MEUC)

Energy Usage

• Some customers use energy up to 1.3TWh (1,300 GWh) per annum for one fuel alone.

Contracting

• Customer structures – within customer contracts there are bespoke complexities based on the company structures that require hierarchies to be set up for contracting, billing & payments. E.g. a large chain of restaurants with many franchises.

• Bespoke terms and conditions – a significant amount of contracts at the larger end of the market are bespoke so that they meet customers' individual requirements. This process involves detailed negotiations between the legal teams within Npower Business Solutions and the customer and can take multiple months to complete.

• Volume tolerances – due to the scale of these customers, the management of the energy usage to be in line with the contractual commitments is key. As a result, we will work with

customers on how much energy they expect to consume and commercial consequences where this varies (volume tolerances). In addition to this we work with our customers when their usage changes to reforecast their future energy usage to avoid any contractual penalties. This is a complex task which requires close management between the customer and our volume forecasting experts.

• Longer duration frameworks – we have some customer contracts that are longer term. These are known as frameworks and as an example we have one particular framework agreement that is a 24 year framework with a break clause every 6 years.

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• Public Buying Organisation (PBO) Frameworks – these use a formal bidding process called 'find a tender' (previously OJEU pre-Brexit). As part of this process, contractually there is a requirement for an overarching framework. These are complex and cover a wide range of aspects from the energy products, billing and service level agreements to social value aspects such as working on projects in the community with local schools to educate around energy.

• Credit arrangements – as part of the contracting process we credit check our customers and may require some specific credit arrangements to be put in place such as specific payment terms, security deposits, parent company/cross company guarantees. We also may have a situation where the customer is such a large user that they would like to see a company guarantee the other way – from supplier to consumer.

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Annexe C – Anonymised current case studies

	Case study 1	**Case study 2**	**Case study 3**
Industry	Manufacturer of other organic basic chemicals	Multinational brewery	A large company in the transport and logistics sector
No. of meters/sites	2	25 HH & 50 NHH meters	7867 meters
Annual volume consumed	6 GWh	35 GWh	400 GWh
Contract duration	2 years	2 years	5 years
Product	Flexible purchasing – purchases based on sales trading desk	Mid-Range Flexible product / multipurchase	Flexible purchasing – purchases based on sales trading desk
Metering agent	3rd party metering agent	3rd party metering agents	3rd party metering agent
Notes	Query resolution where metering is involved is slow and complex due to the agents being a 3rd party, as we have no contractual power/levers to control the quality or speed of response.	Ongoing discussions to provide metering services. Implemented bespoke REGO offering as customers' green credentials are imperative. Procurement via TPI where TPI commission is arranged direct with the customer. Customer's aim is to meet self-imposed budget targets rather than beating the market.	Query resolution where metering is involved is slow and complex due to the agents being a 3rd party, as we have no contractual power/levers to control the quality or speed of response. Contractual arrangements – Find a tender (previously OJEU) led process, formal bidding, & bespoke.