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Dear Louise

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

On behalf of SSE Business Energy (a non-domestic gas and electricity energy Supplier), I welcome the opportunity to respond to Ofgem's Non-Domestic market review findings and policy consultation. I have set out our answers to each of the consultation questions within Annex 1 below.

We highlight a few key points from the consultation that we believe are the most significant in terms of requiring Ofgem's further consideration ahead of statutory consultation this Autumn:

Deemed Pricing Guidance

We welcome Ofgem's proposal to publish guidance, and the recognition that standard licence conditions 7.3 and 7.4 are not 'clearcut'. However, we consider that the guidance as currently drafted does not promote a clearer understanding of Ofgem's expectations, and we consider that it exceeds the licence conditions in some areas. As such we consider that it would be helpful if Ofgem set out in the guidance the steps it would expect to see a Supplier has taken to evidence their assessment of whether deemed pricing is fair. We have set out our argument in more detail in our answers to Q2 and Q3 in Annex 1 of our response below.

Domestic Customers on Non-domestic contracts

We understand the concerns raised around customers that are 'domestic' in their individual usage but supplied indirectly via a non-domestic contract. Without a direct contract with a domestic Supplier, such customers are not afforded the same benefits as a domestic customer. However, Non-domestic suppliers have legitimately supplied energy to such customers via non-domestic contracts as per long-embedded market arrangements and have done so in compliance with standard Supplier licence condition 6. We are concerned that changes to these arrangements would fundamentally change the market, with potential to

alienate these customers from non-domestic Suppliers, at a detriment to both. There can be benefits for customers supplied in this way, such as where non-domestic contracts benefit from forward purchasing of energy at lower price projections, or price advantages linked to the size/scale of a business contract. The nature of non-domestic energy contracts allows the customer to fix their energy costs in a more structured fashion compared to the domestic market, and we have received anecdotal evidence that this approach has aided various customers throughout the volatile energy market that we have experienced over the last two years. We note, though, that in this consultation Ofgem state that further work will be done with government to improve protections for this group. We request that Ofgem and government engage fully with energy Suppliers in discussions on this topic.

Loss of Microbusiness-specific protections

We have an overarching concern that the proposals for blanket expansion of SLC0A non-domestic standards of conduct, and other regulatory protections beyond MBCs to other/ all non-domestic customers erodes the protections deliberately afforded to MBCs because their challenges appear similar to domestic consumers, and therefore are the most in need of extra safeguards from their own related supply licence conditions. Ofgem must carefully consider where to 'draw the line' in terms of categorising types of non-domestic customer and the types of support they require.

We would welcome further engagement with Ofgem on these and all other points made in Annex 1 below. We look forward to working collaboratively with Ofgem on ways to improve the market and support consumers.

Yours sincerely,

Megan Coventry

Senior Regulation Analyst

Annex 1

Q1. Do you agree with our proposal to agree voluntary improved pricing transparency and if so, please include comments on the particular areas you would like to see made more transparent?

We agree that the experience of recent industry-wide changes (for example, in network pricing) has demonstrated that more could be done to help consumers to understand reasons for pricing changes. It would be beneficial for industry to work together with consumers and Ofgem on ways to improve understanding of the current complexities of the market. We suggest the development of an industry consumer guide to pricing components, that can help illustrate the complexities and fluctuations involved. This guide could be centrally managed and support commonality in descriptions, so industry can better inform and educate customers. Suppliers then only need to clarify if contracts or tariff structures differ. We also agree that Ofgem can help more by providing better information for consumers on related matters such as mandated charging elements, to benefit consumer understanding.

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

We agree with Ofgem that ‘significantly exceeds’ “means that the deemed rate is much higher than an equivalent contracted rate”. However, Ofgem has merely transposed the phrase ‘significantly exceeds’ to now become ‘much higher’, and as such the definition provides no further clarity in terms of guidance as to what constitutes a ‘much higher’ rate.

We recognise that the nature of the licence condition drafting does not lend itself to a ‘black and white’ determination of what is right and what is wrong. We do not, though, consider that Ofgem’s guidance should be prescriptive. Instead, we think it would be more helpful if Ofgem set out how it would approach a compliance / enforcement case. For example, Ofgem could set out expectations such as:

- A Supplier must maintain and be able to evidence a methodology which sets out how they have interpreted the licence condition to calculate deemed prices. This should cover:
 - the relevant classes of customer it considers are appropriate to its supply portfolio
 - how the Supplier satisfies itself that it does not significantly exceed/ charge much higher than its contracted prices

We consider this approach ensures that Suppliers can demonstrate to Ofgem why they consider their pricing is fair. We would expect, as Ofgem notes in this consultation annex A1.29 (page 86), that this methodology would consider the difference between the elements included in comparable contracted rates and deemed rates and regular review points for the methodology.

We disagree that deemed pricing would meet the definition of ‘significantly exceeds’ in annex A1.28 where “this difference between the deemed rate and the equivalent contracted rate is not otherwise justified.” SLC 7.3 / 7.4 does not require that Suppliers should be able to subjectively justify the difference – the test is an objective one of whether deemed rates significantly exceed other rates (irrespective of the reason for this). For this reason, whilst noting Ofgem’s view in A1.45 (page 88) that setting deemed contract rates higher to incentivise customers to move to contracted rates is not considered justification/ may not be compliant with SLCs 7.3 and 7.4, we do not consider that the licence condition lends itself to this subjective assessment.

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

We agree that for Suppliers to conduct quarterly reviews of deemed contract prices is appropriate, however we believe that there may be occasions where more frequent reviews are helpful (for example, during periods of high volatility in the market). Following a review, some lead time is required before any rate change is implemented. This is the time required to approve the outcomes recommended by the review, to communicate changes to customers, update system pricing, websites and collateral, etc. As such, rather than setting a prescriptive recurrence for reviews we would suggest they be set at 'no less frequently than quarterly' rather than 'must be quarterly'. Also, note that a quarterly review may not mean prices will change quarterly (i.e. in a stable price environment, it may be appropriate for prices to remain the same) as Suppliers need to be able to react to volatilities in the market to avoid an increase in non-domestic Supplier of Last Resort (SoLR) events.

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

We are a non-domestic Supplier only, and as such it may be more relevant for a Supplier with both domestic and non-domestic supplies in their portfolio to respond to this question.

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

We welcome Ofgem's proposal to create deemed contract guidance and recognise the value that it can provide. We want to work with Ofgem to put in place guidance that adds value to Suppliers and consumers, but we do not agree that what Ofgem have proposed in its current form will do that. Please see our answers to Q2 and Q3 above for our suggestions. Any guidance must be carefully considered so as not to bring unintended negative consequences or stifle innovation.

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

Ofgem notes in the consultation in 2.20 (page 26) that in response to Ofgem / government pressure more 'blend and extend' tariffs are being offered by Suppliers. Though we understand the desire to help consumers who fixed at times of high wholesale prices to reduce their energy bills, we have significant concerns that continued application of 'blend and extend' may not be in the market or consumers best interests. We allow customers to agree short term contracts as well as long term ones and that optionality is there to help them negate high market prices. Across the peak of the energy crisis we offered 6 month deals at the longest. It is our view that 'blend and extend' risks customers being led towards making the decision to extend their contract term with their current Supplier rather than engaging in the market to seek other, potentially better offers. This also sets a precedent that some Suppliers may look to utilise blend and extend contracting as if similar to rollover contracts but free from properly defined regulatory safeguards. In turn, continued use of blend and extend contracts would establish material uncertainty for Suppliers and consumers by creating an expectation that fixed term contracts can be broken in falling price environments. We consider that to extend debt repayment terms on a needs-case basis is much better for consumers and the market, supporting consumers through difficult periods and not opening the market to potential poor

practices as outlined above. We request that Ofgem set out clearly their expectations on this issue ahead of the key October contracting round.

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

We were pleased to have the opportunity to discuss our processes around requesting proof of CoT/ fraud prevention in a call with Ofgem's Paul Redmayne earlier this year (22 May 2023), at which we suggested the following documents could be required as standard for proof of CoT:

- a valid Letter of Authority (if CoT requested on behalf of outgoing/incoming customer, for example via a broker)
- Copy of a valid and signed/ stamped lease (i.e. certified by a solicitor)
- Copy of a valid and signed/ stamped Proof of Ownership document

Our CoT process also includes a request for company details for credit vetting (i.e. via Experian check) and company director information to verify that there are no links to previous tenants. It is our view that the above documents and checks together should be sufficient to evidence authenticity and be readily available (and therefore not difficult for a customer to provide) where a CoT is genuine.

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 agree that it is important for MBCs to be aware of the support available to them. We include signposting on the reverse of our MBC bills to the Citizens Advice independent support website. Should Ofgem feel it is necessary for a requirement for all Suppliers to provide this specific signposting, we would support this and encourage Ofgem to continue their work with Citizens Advice to ensure that the provided guidance is both substantive and useful to Microbusiness customers.

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

As Ofgem notes, an obligation requiring efficient and timely complaints handling for MBCs already exists within the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008.¹ It is difficult to answer on the costs and benefits of extending the obligation to encompass other non-domestic customers without further analysis of non-MBC complaints. We also believe it is important give careful consideration to the criteria used for grouping different 'types' of non-domestic customer, recognising that there will be challenges to arriving at new definitions where there are already variances in categorisation across different Suppliers. Ofgem communicates in the consultation (3.64 – 3.69, pages 56-57) that a new ongoing non-domestic RFI will be developed in the coming months to capture more information in relation to non-domestic consumers, including broader coverage of complaints. It is our view that Ofgem should share the findings from the RFI once it is established in order to illustrate to what extent customers may benefit from extending the obligations, and therefore how far to extend them and enable related costs analysis.

¹ [The Gas and Electricity \(Consumer Complaints Handling Standards\) Regulations 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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?

A new obligation for complaints recording, handling and processing should have clear justification. As per our answer to Q9 above, a clear and prescriptive set of requirements already exist under the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, and any implementation of additional obligations should not result in dual governance or an increase in ambiguity in this area. As previously noted, Ofgem should share the findings from the new non-domestic RFI once it is established to understand the number and types of complaints from which sectors of non-MBC non-domestic customers. Only then will it be possible to conduct meaningful cost/benefit analysis. It should be noted that larger non-domestic customers are generally subject to different customer journeys and interfaces with Suppliers, for example via a TPI/broker managing a portfolio of customer sites, or via (or in addition) a Supplier account manager. Therefore it may not be appropriate to handle and process complaints in the same way as Microbusiness or SME customers.

Q11. Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not be expanded to apply to all non-domestic customers?

Ofgem must keep at the forefront of any decision-making that the non-domestic market is highly diverse, which is very different to the domestic market. As such it is extremely difficult to apply domestic policy, such as the Complaints Handling Standards, to all non-domestic customers in a blanket fashion. As per our answers to Q9 and Q10 above, more data is needed on the volume and types of complaints from the wider non-domestic market before judging whether thresholds could apply for complaints handling requirements or expansion of the Consumer Complaints Handling Standards.

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?

Regarding increasing access to the Energy Ombudsman, we consider that more evidence is needed about the quantity and nature of complaints that may come from larger consumers, to understand what may be required of the Ombudsman and the impact on their service provision. It is possible that large customer complaints may be lower in number and frequency than MBC complaints, however they may also be more complex, requiring specialist knowledge unique to each complaint. It is difficult to offer a view on thresholds for access until more information is available on this. It should be noted that although the work they undertake is highly important, the Energy Ombudsman is a private company that operates to fulfil an industry requirement and that they are not a regulated party. The non-domestic Supplier community have encountered hurdles previously where the knowledge within the Energy Ombudsman relating to the complexities of the non-domestic market have led to incorrect or inaccurate outcomes for both non-domestic Suppliers and customers. Any expansion to the provision of the Energy Ombudsman's service to non-Microbusiness customers must be backed up by evidenced plans that the Energy Ombudsman is

undertaking actions to increase their knowledge of the non-domestic sector and will be able to effectively support both Suppliers and customers.

We are supportive of Ofgem's recommendation to government to consider implementing regulation of the TPI market. It remains our view that only statutory change to enable direct licensing of TPIs/ brokers, rather than indirect regulation via change to Supplier licence conditions or creation of TPI codes of conduct, will successfully resolve the issues highlighted by Ofgem and provide the best outcomes for consumers in the long term.

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 support Ofgem's proposal to expand the Supplier requirement to only work with TPIs signed up to a Qualifying Dispute Settlement Scheme (QDSS) to all non-domestic customers (Option 2), as this would provide all customers equal access to Alternative Dispute Resolution (ADR). However, as per our answer to Q12 above we believe more evidence should first be gathered by Ofgem to understand the number and types of complaints a QDSS provider such as the Ombudsman may need to facilitate. We do not believe that excluding certain customers from the expansion would be particularly fair, and introducing new defined limitations on the size of customer that a TPI works with would likely add to the complexity of administering the scheme. We work with around 10 TPIs that exclusively work with major businesses and large I&C customers, as opposed to micro businesses, and do not consider that it would be too onerous to extend our ADR scheme processes to cover these. Please note that we believe this is appropriate in relation to the TPI ADR scheme only. The nature of complaints differs greatly between Supplier and TPI. Supplier complaints can cover a range of issues, which could be simple or complex and cover topics ranging from metering and appointments, to billing, to service, whereas a TPI complaint may be related to mis-selling. As per our responses to Qs 9-12 we believe that more data from the new non-domestic RFI is needed to address whether proposals to expand Supplier complaints handling requirements to non-MBC non-domestic customers is warranted.

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?

The Energy Ombudsman would be best placed to answer this question.

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.

We disagree with the proposal to simply extend regulatory protections via expanding the Standards of Conduct to customers larger than MBCs. Due to the diverse nature of the non-domestic market and complexity of industrial and commercial customer requirements in particular, this could be highly problematic. Expanding the Standards of Conduct to cover every non-domestic consumer would mean that any interpretation Ofgem gave to this licence condition would need to ensure it worked from the smallest to the largest end of the market. For example, making it 'easy' to contact a Supplier may mean different

things for different customers and therefore a universal definition of adequate contact methods is harder to apply. Ofgem would need to consider this when assessing compliance and issuing guidance.

The nature of the current drafting of principles based SLC 0A, whilst enforceable only in relation to MBCs, allows for Suppliers to apply the principles of treating customers fairly across all their customers without a prescriptive approach being defined. And, using the ease of customer contact example as above, different processes can be applied to the different groups of non-domestic customer to allow for routes to engage with us that are most suitable for each customer's requirements. For example, our largest customers have an account manager they can contact directly due to the size of contract and/or volume of supplies, but this would not be suitable (or practical) for MBC and SME (Small and Medium Enterprise) customers who are provided with alternative support and contact options via a variety of digital and non-digital channels. Our approach has been to invest in all our support and contact options, so that customers can engage as much or as little, when and where they want as is best suited to them.

It is difficult to offer a view on costs/ benefits of such a change, and we note that the consultation does not offer reference to specific evidence to support the expansion of SLC 0A to cover more/ all non-domestic customers. Suppliers would need to consider methods for identifying any different/ new customer groupings in internal systems and processes to apply any new requirements to them, which would entail significant change and therefore likely significant costs. These costs would need to be recovered by Suppliers through customer bills. It does not appear that there are many medium or large non-domestic customers calling for changes to Supplier services to bring all in line with SLC 0A. Larger customers who want more or different service than their Supplier provides them can choose to take their business to a different Supplier. This is a key driver for healthy competition in the market.

We have a wider concern that blanket expansion of this and other regulatory protections beyond MBCs to other/ all non-domestic customers erodes the protections deliberately afforded to MBCs because they face similar challenges to domestic consumers and therefore required their own licence conditions. Ofgem must carefully consider where to 'draw the line' in terms of categorising types of non-domestic customer and the types of support they require.

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

Regards the proposal to increase monitoring activity and capturing more information through a regular 'broader' non-domestic RFI, we suggest that Ofgem carefully consider the basis for requesting the additional information and whether this justifies the impact on the market of managing increased reporting requirements. Ofgem is gathering significant amounts of data, which does itself have financial and resource implications for Suppliers in providing it. It should be noted that these costs do take away from Supplier's available resource that might otherwise be invested in innovations and creating new net zero propositions, for example. As Ofgem notes, there have not previously been (and Ofgem has not proposed) rules specific to require monitoring of contract offers or security deposits. There is no clear evidence basis for gathering this data indefinitely where these processes have been operating consistently since privatisation without proven issues.

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?

DNOs, IDNOs, GDNs and IGTs are best placed to answer this question.

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

Consumers/ representatives and resellers would be best placed to answer this question.

Q19. What are the costs and benefits associated with the proposal to expand TPI commissions disclosures to all non-domestic customers? How long would it take suppliers to implement this policy?

We support the principle of expanding TPI commission transparency changes to all customers, as this will afford all customers equal treatment in regards visibility of commission charges. As stated in our answer to Q12, it remains our view that statutory change to enable direct licensing of TPIs/ brokers would be the better way to place such obligations on TPIs directly – including the obligation to disclose their commission at point of sale.

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

Given that Suppliers have made changes within the last 12 months to implement the commission transparency changes as per the Microbusiness Strategic Review, it may be worth some analysis of the impact of these changes before suggesting further changes. As stated in our answers to Q12 and Q19, it remains our view that statutory change to enable direct licensing of TPIs/ brokers would be the better way to place such obligations on TPIs directly – including the obligation to disclose their commission at point of sale and how it should be presented.

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?

This question appears to be ostensibly the same as Q19. Please see our answer to Q19 above.

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

Cooling-off period:

We note that Ofgem have raised in this consultation (4.51, page 71) that it will consider reviewing again whether a cooling-off period should be provided to MBCs. We have previously raised concerns with Ofgem, including via our confidential responses to Ofgem's MBC Strategic Review consultation (October 2020), the RFI on implementation of a 14 day cooling-off period (March 2021) and the Microbusiness Strategic

Review Statutory Consultation (July 2021), that the introduction of a cooling-off period for MBCs is misdirected in remedying the Supplier/ customer contractual relationship where there is a lack of evidence of any harm. Instead, it was the broker / customer contractual relationship where Ofgem identified limited instances of harm, and Ofgem has already progressed work to address this through MBC Strategic Review remedies and can support further improvement through recommendation to government to implement direct regulation of the TPI market.

Our view continues to be that introducing a cooling-off period for MBCs would significantly increase administrative costs for Suppliers who will need to provide more quotes and manage the release of more contracts. This will increase Suppliers' cost-to-serve and ultimately the cost to customers. The risk of customer cancellations will impact Supplier hedging and pricing of risk into products, potentially resulting in higher prices for MBC consumers. In this regard, it is important to recognise that the energy consumption of a microbusiness consumer can significantly exceed that of a domestic consumer. A single microbusiness consumer cancellation could equate to c. 20 – 50 domestic customer cancellations in terms of energy volume lost (based on Ofgem's typical domestic consumption values). High volumes of cancellations in response to price shocks could, therefore, have a detrimental impact on Supplier finances should this result in a Supplier being over-hedged in a market where prices are falling. We also highlighted in those responses that non-domestic only Suppliers such as us would need to build cooling-off as an entirely new function, therefore they will need time to adjust systems and processes in a way that mixed portfolio Suppliers do not. Ofgem should consider carefully whether the benefits case for a non-domestic energy cooling-off period merits introduction, in particular at this point in time where the market is still recovering from significant volatility.

Domestic customers at non-domestic properties:

We are a non-domestic only Supplier, and our supply licence is restricted as such. All supplies in our portfolio are contracted as non-domestic customers as defined in the supply licence conditions. Whilst we are sympathetic to the issue of customers who are not afforded the same protections as those with domestic supply contracts due to their supply being via a non-domestic contract between the Supplier and Housing Association or landlord (for example), this is however the legitimate legal and contractual basis on which this part of the market has existed since privatisation and establishes the foundation of how we, as a non-domestic Supplier, interpret and fulfil our licence obligations. Any change to the licence conditions to separate this type of consumer out from contracting with Suppliers as non-domestic would be a fundamental change to the market, and risks alienating these customers from non-domestic Suppliers, and would have potential to detriment competition in the market and push some non-domestic only Suppliers out of the market altogether. It is important to note that there can be benefits for customers supplied in this way, such as where non-domestic contracts benefit from forward purchasing of energy at lower price projections, or price advantages linked to the size/scale of a business contract. However, we note that in this consultation Ofgem has not set out proposals to change the way such customers are contracted, but states that further work will be done with government to improve protections for this group. We request that Ofgem and government engage fully with energy Suppliers in discussions on this topic.

One suggestion we have for improving identification and management of such customers would be to develop a 'Customer Indicator' within industry systems. Currently, industry relies on the Domestic Premises Indicator (developed as part of the switching programme) to identify apparent domestic premises according to either their contract (for power) or usage (for gas). However, whilst a premises may be domestic in usage the energy may be supplied via a non-domestic contract. An additional customer Indicator could be used to mark that a domestic premises is supplied as a domestic or non-domestic customer, and potentially also allow for additional improvements such as denoting where there has been vulnerability reported.