6th September 2023

Dear Louise,

Reference: **Non-Domestic Market Review: Findings and policy consultation**

Please find below our responses to the questions raised in this consultation. For context, Bryt Energy is a non-domestic supplier only, focused on the I&C sector with a high proportion of supplied volume on Flex rather than Fixed contracts. We do not offer new contracts to Micro-Business (MB) customers, although we do have MB customers on supply, either from previously agreed contracts or when they move into premises that we supply.

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?

At Bryt, we endeavor to be as transparent as possible with customers about the energy market, and in particular to inform customers about market conditions and material changes that will impact them. This transparency is achieved through a variety of means, including website articles, social media posts, regular newsletters to all customers and more bespoke letters to individual customers about specific changes where appropriate. The TCR changes in particular were communicated and explained through all those means and on more than one occasion. For example, written explanations were provided to customers whose contract prices were impacted by the TCR changes and direct meetings were held with some customers and TPIs so that we could explain the changes in person. We are reliant on customers engaging with these communications and the Marketing team monitor engagement rates and assess the success of different approaches. By employing multiple channels and approaches we hope to achieve a higher engagement rate.

At 2.10, the Consultation document states “respondents….experienced significant price hikes….with no clear explanation as to why”. Further detail or assessment of this would be really helpful, for example could these respondents have found explanations on their supplier’s website or in other published news? If that was a possibility, but clearly not effective, then understanding the barriers for the customer would be very insightful and help us to improve our communications and engagement levels. We sought to communicate with and inform customers of the impact on wholesale prices following the invasion of Ukraine, both through updating our FAQs on the website and signposting customers to this through other communications. Any additional insight into the effectiveness of those communication channels would be very welcome.

Customers on a Flex style supply contract are frequently more informed about the energy market (either directly or through reliance on their TPI), and the nature of the contract’s pricing structure inherently provides greater transparency of the price elements than on a Fixed contract. The Flex contract and consumption bills separate out different elements of the energy price and they are shown as individual line items. For example, a customer could see separate line items for their wholesale energy rate, a shape charge, an account management fee, and a breakdown of non-commodity cost lines (DUoS, TNUoS etc) if they have selected a pass-through option for those costs.

Fixed customers receive, as the name implies, a fixed price that is frequently “all-in” and as such does not provide any further breakdown of the price elements, other than the unit rates and fixed charges.

The vast majority of our sales are achieved via TPI’s and in that scenario we often have very limited direct contact with the customer through the tendering stage, as the TPI manages that relationship. Therefore, it frequently falls to the TPI to explain price movements and variations from one contract round to the next, and to compare tender offers. In the I&C space, TPIs are generally very well informed and up-to-date with market conditions and industry changes and are well-placed to communicate this information to their customers.

In relation to the I&C market where we operate, we do not agree that the argument for increased pricing transparency has been sufficiently proven. We would absolutely support improved and effective transparency where there is a clear need and benefits case. However, we believe that further insight is needed into the role of TPIs, and the engagement levels of customers, and to probe the causes of the lack of transparency. For example, when and how do customers wish to receive certain information, so that it's most useful for them? Also, we are not clear on the type of transparency that Ofgem is looking for here. Is it in relation to market conditions and industry changes, or in relation to a breakdown of price elements on specific customers' prices? Are generic communications through various channels, like email or social media, sufficient or are customer-specific communications required? The benefits of increased transparency need to be assessed to weigh against the costs of implementation, and any changes required to bills would necessitate system changes with the costs and time that inevitably involves. Therefore, we agree with the statement at 2.24 that it would not be appropriate, or useful, to mandate specific bill information at this stage. However, we like the suggestion that bill formats could be explained on our website and will investigate how to present an explanation of our bills that will prove useful for customers.

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

We welcome further guidance on Deemed pricing, particularly around the terms "unduly onerous" and "significantly exceeds". Whilst suppliers will have their own strategies and risk profiles and appetites, the current situation is that license regulations for deemed pricing are very open to interpretation, and consequently the regulatory risks for suppliers could be perceived to be relatively high. We have a few points in relation to the proposed definition:

1. SLC7.4(a) cites a situation where revenue significantly exceeds costs of supply, or in other words the profit margin is considered excessive. However, the definition of "significantly exceeds" given at A1.28 refers to differences between prices, or effectively revenue, with no reference to margin. In addition, we believe the evaluation of a reasonable versus excessive profit margin should factor in the relative risks faced on different products, whether those risks arise from the customer, the nature of the product or due to market conditions.
2. The proposed comparison point is an equivalent contracted rate, but if deemed rates are to be set on a quarterly basis then there won't be comparable contract rates because we very rarely agree 3-month contracts. A1.28 implies that Ofgem would compare an annual contract rate priced in January 2022 to the deemed rates for the full year, but that comparison would be meaningless if there were deemed rates for each quarter over the year and each set at different times. The only viable comparison is at methodology level.
3. Any comparison to contract rates or pricing methodology should be in relation to **Fixed** contract rates, since this type of contract with a total fixed price that includes the commodity cost is closest to Deemed rates. Flex contract rates would not provide a reliable comparison, since they are broken down to a more granular level with commodity rates that can vary month on month dependent on each customer's hedging strategy, and often with pass-through non-commodity costs.
4. Any comparison of either methodology or contract rates needs to be specific to each supplier. We only supply 100% natural renewable energy and as such all of our contract prices include the cost of renewable energy certificates, including Deemed rates. Whereas for other suppliers it may not be appropriate to include the cost of those certificates within their Deemed rates.
5. We would like clearer guidance on the timing of assessments of deemed prices. At the point of setting deemed rates for a future period, suppliers are using forecast cost data and a range of estimated or forecast inputs We suggest that deemed rates should be assessed against what was known, or forecast, at the time of setting the rates, rather than with perfect hindsight looking at out-turn performance. Although we acknowledge and agree with the point at A1.29 that the methodology should be reviewed to avoid **routine** over-compensation of costs.
6. We broadly agree with the points made at A1.29 on the criteria that Ofgem may consider. Considering reasons for differences in the price elements between contracts and deemed is sensible, and also considering the supplier's methodology and process. And we agree that any methodology should be reviewed regularly to ensure it remains appropriate.
7. There is one point at A1.29 that we do not understand: "consideration given to the **relevance** of the deemed charge to the type of customer generally being exposed to it". Firstly, since deemed customers are not always known to us (new occupier at a premise who has not yet made contact with us for example) then we don't always know the type of customer incurring our deemed rates. We're not sure what Ofgem are referring to with the term "relevance". If it refers to maybe energy intensity then we do not have that insight for these customers, or possibly it refers to the customer's price sensitivity then

again we wouldn't have that information.

8. At point A1.30, there needs to be consideration of increased risks, rather than just charges. The example is given that deemed customers "may attract higher wholesale costs" whereas it's that the nature of the deemed portfolio increases uncertainty and therefore risk when setting prices and forecasting those wholesale costs.

In summary, there are elements of the proposed definition (across sections A1.28 to A1.30) that we agree with but the definition needs further work. We would expect to see references to profit margin, risk, pricing methodology comparisons (relative to Fixed) plus clarity on point of reference (timing) for assessments.

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

Given recent market volatility and general conditions, then yes we agree that quarterly reviews of deemed rates would usually be appropriate. However, we think there are occasions when market volatility is extreme (as seen over last winter) and therefore more frequent reviews could be beneficial. For example, if the risks of holding prices for a quarter are very high this will flow through into the rate-setting process, leaving customers exposed to higher prices. More frequent reviews could reduce the level of risk premium required, and ensure that any falls in the market are passed on as quickly as possible (dependent on supplier hedging strategy). Similarly, once we have experienced a prolonged period of market stability then quarterly may be unnecessary, and 6-monthly (to match the seasons) could be more appropriate. Therefore, we think there should be some leeway in the guidance to allow for changing market circumstances.

The Consultation document states at 2.63 that price reviews "should be on a quarterly basis" whereas the draft guidance suggests "at least once a quarter" at A1.41. Please clarify.

It would also be useful in this section to set out expectations in relation to customer communications. Where a quarterly review concludes that no price change is required, will suppliers be required to communicate that to customers? We believe this would be unnecessary and potentially confusing for customers, as well as add overhead costs to serving this portfolio of customers. Publishing review information (timing and outcome) on our website, along with the prevailing deemed rates, could be a useful and low-cost way of ensuring customers have comfort that deemed rates are regularly reviewed. Whenever deemed rates are changed, then we communicate specifically and directly with all impacted customers to inform them of the change, and plan to continue to do so.

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

We don't intentionally supply domestic customers and have no comment on this question directly. One area where we would appreciate clarity though is in the scenario where a domestic customer moves into a premise that we already supply (having originally contracted with a business customer). Should that deemed domestic customer be protected by domestic price cap? We were unsure whether this was the reference at point A1.36.

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

No comments to add.

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

The TCR changes were well known across the industry and signposted well in advance but we have observed on more than one occasion that both Ofgem and DESNZ (previously BEIS) appeared surprised by the level and range of the fixed charges that are now in place, and especially the very high fixed charges that some higher band customers now incur. The reasons for the changes are clearly understood and fully supported, and referenced in this Consultation, but we would have expected a more detailed knowledge and appreciation of the price impacts for customers at an earlier stage.

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

The significant level of financial exposure and fraudulent activities associated to Change of Tenancies (COT's) is notorious within the energy industry. A roust set of legally binding documents which all customers are mandated to provide to enable a cot to be actioned would be welcomed. As a minimum we would ask that our COT internal document is completed which sets out the key items which need to be provided. This would ensure that all the required information is received to enable the COT to be promptly and accurately actioned once the formal documentation referenced below is received. This internal COT form would include the following items:

1. Date of COT
2. Forwarding email address and phone number for outgoing customer
3. Forwarding postal address for outgoing customer
4. Final meter reading, if not an automatically read meter, taken on the date of the end of the occupancy
5. Name, position in the company and contact details of who is providing the COT information
6. New occupant details, if known, alternatively the landlords name, address and contact details

We would also ask for supporting information in the form of a solicitors letter to confirm the sell of the property on that date or a dual signed lease agreement.

Requesting that COT's are notified to energy suppliers in a timely manner, preferrable 1 month in advance of the COT date would also provide the industry with less financial exposure with significantly delayed COT details being received sometimes years after the old customer has left the address.

We would also welcome guidance being provided to customers and suppliers to detail when a contract novation or change of tenancy should apply. We are seeing an increasing number of requests from customers wishing to novate their existing contracts, which often requires significant administration and customer and supplier communications being issued to capture the required information and determine if this is appropriate.

Q8: Are Micro Business Consumers aware that they can contact Citizens Advice for support? Do we need to introduce a rule requiring suppliers to signpost them more specifically?

Within the Complaints section on our company website we reference that independent advice is available for Micro-Business customers and sign post them to Citizens Advice using the full suite of contact methods they provide. This includes Citizen Advice phone number and website link. This service is however typically only viewed as something which Domestic customers can access, and whilst we are unable to quantify the scale of Micro-Business customers who are unaware of this service our expectation is that this is high.

Micro-business customers tend to be less engaged with energy suppliers and so whilst introducing a rule for all suppliers to signpost more specifically would be advantageous to provide a consistent set of expectations for energy suppliers to follow the concern is that the customers would still not review, or act on the information being provided. We feel that more publications should instead be issued by Citizens Advice themselves and that this would increase awareness that this is a service which Micro-Business customers can access.

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

There are benefits with having efficient and timely complaint handling guidelines available to all Non-Domestic customers for most typical complaints. The issue we would see with mandating times to complete complaints is that due to the nature of the more complex complaint matters an average completion time is likely to be exceeded. If the average time taken to complete complaints includes the resolution time of these more complex complaints then this will then have a detrimental impact on the complaint resolution time set for other customers with more simple queries.

Whilst it would be challenging to understand and then segment the more complex complaint categories which suppliers deem likely to fall outside of average times, this could be a way of determining the categories of complaints which could have exceptions applied to the standard resolution time. However the issue with this approach would be the mandatory resolution time for those customers who are raising a complaint for a combination of complex and non-complex reasons.

Any generic obligations need to focus on confirmation of receipt of complaints, initiation of resolution actions, and keeping the customer informed, rather than prescribing fixed timescales for complete resolution. Some larger customer contracts will be negotiated with their own specific key performance metrics and service levels, including consequences, and these should also take precedence over generic industry requirements.

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 handle all of our Non-Domestic customer complaints in the same way, meaning they are all recorded, handled and processed in the same manner. The only exceptions are the deadlock process and external resolution signposting activities which are not completed for customers who are not Micro-businesses.

We would therefore have no objections to a consistent set of rules being applied for how complaints are handled, excluding the external signposting which is not available for customers who are not Micro-businesses. We would imagine that larger suppliers who have a greater volume of complaints to handle would find this concerning and there would be an associated cost increase to serve the customers in this consistent way and make any required system changes. We are not able to quantify what these costs would be.

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?

We have two concerns, one of which is outlined in our response to other questions, and relates to the extension of the Ombudsman service to a wider selection of Non-Domestic customers. There needs to be an expectation of commercial self-sufficiency at some point (i.e. customers being big enough to self-manage ant issues).

The second aspect would be section 8.2 of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 which references the handling of vulnerable customers. This clause is unlikely to relate to Non-Domestic customers as by the nature of the contracting entity being a business there are limited vulnerability aspects to consider. We would add that the only exclusion to the management of vulnerable customers we undertake is that should disconnection actions be required then the end user vulnerability would be assessed prior to any disconnection occurring.

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?

Our concern would be whether increasing the volume of customers who may access the Ombudsman could be handled effectively within the Ombudsman service itself. Signposting a greater volume of Non-Domestic customers to the Ombudsman will not only increase the volume of contacts they receive, but due to the typical extremely complex query types which larger Non-Domestic customers have there will need to be significant training and a higher level of experienced staff available to support these customers. We would need to have reassurances provided that these complex cases could be effectively managed or this could have a detrimental impact on the customers and the suppliers themselves.

The larger Non-Domestic customers also have TPI's / Brokers acting on their behalf and so clarity would need providing as to whether they are able to access the Ombudsman on their clients behalf, and what the boundaries of this contact would be to prevent contact being made to seek free advice which may otherwise have been privately paid.

There should be a disincentive for them to pursue vexatious or baseless disputes – ideally a fee to start the process, or less-favourably a fee that customers pay in certain outcomes, and not just a supplier fee for every referral. In addition, we would like clarity and confirmation that in any dispute case, non-disputed elements of any charges should be paid in full (especially given that larger customers could have very high monthly energy spend). If the scheme is widened to larger businesses, then the cashflow implications on Suppliers could become severe if full payment were withheld by customers during the Ombudsman process. We agree the points in 3.42 relating to maintaining limits on levels of restitution and continuing to refuse to deal with complex cases which could serve to create an effective natural threshold, without the need to define a limit, especially if combined with other obligations on the customer like fees in some circumstances. However,

risks and downsides remain if access is completely unlimited.

Expanding the Ombudsman service to all customers is likely to result in a strong risk of increased costs which are then effectively applied back through everyone's energy prices, and possibly for a group of business customers who are less "deserving" of that type of support, resulting in smaller businesses cross-subsidising larger businesses. Given the risks of widening access to the whole non-domestic, then maybe a stepped approach should be taken to test the outcomes and establish the best way to mitigate the risks in practice.

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?

Given that the TPI sector is not regulated and the consultation is seeking views on managing the relationship between TPIs and customers, we don't believe it is appropriate for us to determine the scope of the solution. If there are issues between those two parties, then we are unclear why license conditions should be imposed on another party, i.e. Suppliers, apparently simply because we are the only available licensed party. Noting that nonetheless in principle we are not opposed to the concept of a redress scheme for a wider segment of non-domestic customers.

However, the fact that the TPI market is unregulated means that a different solution (threshold) may be appropriate for the TPI redress scheme compared to Energy Ombudsman access covered above. We do not agree with the comment at 3.56 that different thresholds could cause confusion.

TPIs, especially those who have joined the micro-business ADR scheme, are best placed to respond to the question of costs.

This is primarily a question for customers and TPIs since it concerns their relationship. Presumably there are insights that can be gained from the implementation of the ADR scheme for micro-businesses, both in terms of TPI response and the experience of the scheme in action. How many TPIs signed up to the ADR, and how many chose instead to leave the MB sector? How are the requirements (for TPIs to be registered) being policed?

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?

TPIs that have already been through this process are best placed to comment on timescales, but there should be two basic categories of TPI: those that serve micro-business customers and need to widen their registration to cover their entire non-domestic business and secondly those TPIs that do not serve micro-businesses and would therefore be entirely new to the process.

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 agree that expanding SLC 0A to other Non-domestic customers would be a benefit both to customers themselves, but also to energy suppliers who would then have a consistent set of expectations needing to be provided to all customers. We fully comply with this condition and have also not differentiated the level of information and service which our customers, who are not Micro-businesses, receive, so they are already receiving the standards of conduct which this change is looking to outline.

The current Micro-business customer definitions are clear, and whilst it can be challenging to always identify if a premise is supplied by a Micro-business after a COT has been actioned (in this instance we would take the stance that the customer is a Micro-business until this is able to be verified) there is at least a consistent criteria to define them. The concern with expanding this out to only an additional selection of other Non-domestic customers would be how suppliers would identify the information and also where this criteria would be published for reference. If SIC codes were used for certain industry types there is a risk that not all customers would receive the benefits as SIC codes are often misrepresented by customers in Companies House, and its not always possible to match the new occupant to be able to assess the SIC code they fall under. Consumption can be used but clarity would need providing as to whether that is assessed at an individual premise level, or whether this would be for the overall customer group.

Having to then systemize the extended SLC 0A requirements to only a selection of additional customers is likely to be difficult for energy suppliers to undertake without manual intervention which would increase costs. We are unable to provide our view on the level of costs.

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

No further comments

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?

No comment

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

No comment.

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?

The main benefits of expanded TPI commission disclosure are to ensure that the TPI is acting in the customer's best interest, and is not conflicted by their own commercial arrangements with Suppliers. TPIs who are already transparent with their customers will benefit, since currently they can be perceived as being more costly to customers due to other TPI commissions being more opaque.

If the commission disclosures are to be required during the quoting and contracting process, then the implementation costs will be significantly lower than disclosures required on bills or throughout the supply contract.

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

Commission should be disclosed as it is incurred, e.g. as a unit rate (p/kWh for example) if that is the case, or as a fixed charge per day or month.

A uniform disclosure method should not be mandated across all customers, for example, an estimated contract spend figure. We do not believe a uniform approach is appropriate for the wider non-domestic segment, and it would be difficult to achieve across the wide range of contract types. For example, converting all commissions into an estimated annual spend will not allow the customer to know whether their TPI's commission is fixed or varies with volume/demand. Although, the provision of an estimated annual or contract commission cost could be useful for some customers, especially at the smaller end of the scale and if it is clearly identified as an estimate.

Disclosure of the exact and complete commission mechanism will give the most accurate picture and illustrate to the customer how the TPI is earning their fee. We support full disclosure of the commission arrangements including timing of payments to the TPI (especially in contrast to collection from the Customer over the contract) and any commission schemes that could be classed as "success fees". These disclosures would cover scenarios where a TPI is paid up front, but the customer is paying their Supplier monthly in arrears and those where a TPI receives additional payments once they have secured a minimum level of sales for a particular Supplier. Our reasons for making these recommendations is to ensure that TPIs are incentivised to make decisions in the best interests of their customers, rather than potentially prioritising their own commercial interests to the detriment of customers. We would expect these proposals to be welcomed by all reputable TPIs who are already competing on the value of their service to customers.

We believe it is important that disclosure occurs within the quoting and contracting process, to ensure that all customers are in full possession of the facts when agreeing to contracts. We would not restrict it to only those customers who requested the information, as is currently drafted in the proposed SLC amendment. We do

not support the disclosure of commission within customers' bills. Firstly, this is after the fact in terms of the customer's decision point and therefore the usefulness of the information is reduced. Secondly, the changes required to billing systems could be substantial and therefore costly, plus it could confuse bills for Fixed product customers especially.

Q21: Should we expand commissions disclosure to all non-domestic customers or a sub-set of customers, and if a sub-set do you have views on how to define this?

We strongly support the disclosure of commissions to all non-domestic customers. We are already assessing how we can voluntarily move to full disclosure of commission on all contracts on this basis – many of our contracts, especially on Flex, already disclose the commission.

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

We do not supply micro-business customers (unless gained through a change of tenancy process onto a deemed product), and therefore do not already have processes in place to meet SLC7A.10C specifically. However, as commented above, we support the expansion of commission disclosures and in response to point 4.48 we are not raising any objections on cost grounds.

We agree that the definition of a micro-business within the supply license should not be changed, but should remain aligned with the generally used definition.