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Emailed to NonDomesticRetailPolicy@ofgem.gov.uk

31st January 2024

Dear Louise,

Non-Domestic market review: Statutory consultation on licence changes

Drax Group plc (Drax) owns two retail businesses, Drax Energy Solutions (formerly trading as Haven Power) and Opus Energy, which together supply renewable electricity and gas to over 220,000 business premises. This is a joint response on behalf of Drax Energy Solutions and Opus Energy and is non-confidential.

We broadly support Ofgem's proposed licence changes to enact the findings of its Non-Domestic market review, and we support the changes identified to align the licence with the Government's intention to expand access to the Energy Ombudsman to *'Small Business Consumers'*.

We previously highlighted our concerns about creating a new category of customer, in addition to the existing Micro Business classification, as to do so could have been complex and costly to implement. For instance, it could have required us to develop an identification process, create an internal system 'flag', communicate statuses to customers, and manage the complexity of any new classification existing alongside that of Micro Businesses. However, we can support the proposed changes on the understanding that neither DESNZ nor Ofgem propose to introduce new obligations on suppliers to proactively identify, record customer status or report on Small Business Consumers.

We are also comfortable with proposals to extend existing requirements to all Non-Domestic customers providing Ofgem reflects our recommended implementation timescales in its final decision. However, we have major reservations about proposals to change the TPI service fee disclosure format from a total cost covering the duration of a contract to a cost-per-unit of energy or cost-per-day. We disagree that this would more easily allow customers to immediately understand the full cost of the service being provided by the TPI, and we would also incur significant unwarranted costs to implement the necessary system and process changes. Rather than imposing additional costs on the market (and thus its consumers), we urge Ofgem to use its existing powers to address any unscrupulous behaviour or inconsistent service fee disclosure across the market.

The appendix to this letter provides our responses to the consultation questions. We'd be happy to discuss our response with you further if that would be helpful.

Yours sincerely,

Matt Young

Group Head of Regulation, Drax Group plc

Appendix - Detailed responses to consultation questions

- 1. Alongside this consultation document we have published a draft impact assessment. Do you have any comments on the draft impact assessment published alongside this document, including the costs and benefits, competition impacts, and unintended consequences?**

We have no comments on the draft impact assessment, except one point regarding the stated benefits associated with the proposal to change the method of displaying TPI costs, which we discuss in our response to question 18.

- 2. Is there anything that has not been included in the impact assessment that you believe should be included?**

We have no comments on the draft impact assessment.

- 3. Do you agree with our proposal to expand the Standards of Conduct to all Non-Domestic Consumers? Please provide a reason for your view.**

We support the proposal to expand the Standards of Conduct (SoC). We already adopt the principle of *Treating Customers Fairly* and the spirit and intent of the SoC across all our non-domestic customers irrespective of size, and we believe all Suppliers should hold to the same standard.

- 4. Do you have any comments on our proposed draft licence text for SLC 0A?**

We maintain our previously stated position that Ofgem should make some limited but important wording amendments (*illustrated below*) to the existing licence obligations, regarding the need to communicate ‘*in plain language*’, to better reflect the need to communicate appropriately to a broader set of customers, particularly more sophisticated non-domestic customers. We acknowledge Ofgem’s clarification in the Statutory Consultation of the policy intent, however, it is the licence condition that Suppliers are obliged to comply with and consultation documents and associated ‘policy intent’ can be forgotten over time. It is critical that licence conditions reflect the policy intent to avoid confusion, not least because otherwise it creates challenges for any future market entrants.

0A.3 The Standards of Conduct are that the licensee:...

b) provides information (whether in Writing or orally) to each ~~Micro-Business-Consumer~~ Non-Domestic Customer which:

- i. is complete, accurate and not misleading (in terms of the information provided or omitted);*
- ii. is communicated (and, if provided in Writing, drafted) in ~~plain suitable~~ and intelligible language ~~with more important information being given appropriate prominence;~~*
- iii. relates to products or services which are appropriate to the ~~Micro-Business-Consumer~~ Non-Domestic Customer to whom it is directed; and*
- iv. in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the ~~Micro-Business-Consumer~~ Non-Domestic Customer in favour of the licensee;*

- 5. Do you agree with our proposal to implement the SoC as soon as the updated licence condition takes effect? Please provide a reason for your view.**

We believe a longer implementation period is needed for Suppliers to be able to thoroughly review and revise relevant communications to non-Micro Businesses and so ensure all communications are suitable and appropriate. We believe 6 months to be a more realistic and proportionate implementation timeline.

6. Do you have any views on the updated draft Standards of Conduct Guidance?

We have no comments on the updated guidance. However, we feel it necessary to raise a concern about the wording adopted in the accompanying stakeholder factsheet¹ that implies that, in Ofgem's view, treating business customers fairly confers a requirement on *"suppliers to put customers first"*. This interpretation doesn't align with the licence obligation (SLC OA.3(iv) - *"not create a material imbalance in the rights, obligations or interests of the licensee and the Micro Business Consumer in favour of the licensee"*), nor the policy intent of the SoC, nor the natural and commonly accepted meaning of *"fairness"*. We would appreciate it if Ofgem would correct the published version to avoid this being incorrectly interpreted as a commonly understood interpretation.

7. Do you agree with our proposal to align with government proposals and expand the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (CHS) to apply to Small Business Consumers? Please provide a reason for your view.

Yes. We already apply the Complaints Handling Standards to all customer complaints irrespective of size, and we believe all Suppliers should hold to the same standard.

8. Do you have any further comments on the proposed drafting of the CHS Statutory Instrument text?

We have no further comments.

9. Do you have any comments on the proposed implementation timeline of 3 months from the date of decision?

We will need to change relevant customer facing information referencing 'Micro Businesses' to 'Small Business Consumers' (e.g. on our websites and suite of customer correspondence). Three months is an acceptable implementation timeline on the proviso that the implementation date aligns with the changes that Government intend to make to the *Gas and Electricity Regulated Providers (Redress Scheme) Order 2008*. This is because the references in our communications are generally to signpost which customers can seek redress from the Ombudsman and so the associated rules need to be aligned.

10. Do you agree with our proposal to require suppliers to inform their Micro and Small Business Consumers (if this is applied) that they can access, and how to contact, Citizens Advice and Citizens Advice Scotland? Please provide a reason for your view.

While we continue to believe most consumers are already aware that they can contact Citizens Advice for support, we have no objection to this proposal on the basis that suppliers will be free to determine how best to signpost their customers to Citizens Advice's services.

¹ *Non-Domestic Market Review Statutory Consultation – 7 December 2023 – stakeholder factsheet*

11. What measures would suppliers intend to take to meet the obligation to signpost Small Business Consumers to Citizens Advice, and how would this impact costs?

We have not yet determined our approach to meeting this obligation, although, at this stage, we expect to update our website and signpost customers to the relevant information via a link on one or more of our periodic written communications. We anticipate that this will reduce the estimated implementation costs from those indicated in response to an earlier Request For Information (RFI) where we had estimated the costs based upon a prescriptive obligation to signpost customers to Citizens Advice on bills.

12. Do you have any comments on our proposed draft licence text for SLC 20.5A and 20.4A in the gas and electricity supply licences respectively? This proposed definition of Small Business Consumer includes Micro Business Consumers. However, do you think it would be preferable to explicitly set out in the licence condition that suppliers should signpost Micro Business Consumers and Small Business Consumers to Citizens Advice for the avoidance of doubt?

It is clear that the definition of Small Business Consumers includes Micro Business Consumers, so we do not think amendments are required to the proposed licence text.

13. Do you agree with our proposed implementation timeframe of 3 months from the date of our final decision?

Yes. Three months should be sufficient to make the expected changes.

14. Do you agree with our proposed change? Please provide comments to support your answer.

We support the proposals to require suppliers to only work with TPIs operating on behalf of Small Business Consumers that are registered with a TPI Alternative Dispute Resolution (ADR) Scheme.

We are, however, concerned that we currently receive limited information about the performance of the Ombudsman Services scheme. As part of any expansion, we would ask Ofgem to encourage/instruct the Ombudsman to be more open and transparent with the information and intelligence they gather to aid Suppliers' evaluation of TPIs, including information on complaint types and whether a TPI is close to or has been suspended from the ADR scheme.

We also note the recent launch of a second ADR scheme established by the Utilities Intermediaries Association (UIA). When comparing the Ombudsman and UIA schemes, we understand that the maximum compensation is less than the maximum compensation that can be awarded by the Ombudsman (£10,000). This inconsistency, and the possibility that more competing schemes could be established in the future, risks a race to the bottom where TPIs will be incentivised to register for the ADR scheme with the lowest compensatory award as well as lowest case fees, unduly favouring their own interests over their customers'.

15. Do you agree with the wording of the proposed licence condition changes outlined in Appendix 1?

We have no comments on the proposed licence drafting.

16. Do you have any comments on the suggested implementation timescale of 8 months?

We believe eight months is a reasonable implementation timescale.

17. Do you agree with our proposed expansion of Third-Party Cost transparency to all Non-Domestic customers? Please explain your answer.

We support expanding TPI commission disclosure to all Non-Domestic customers. We have received general feedback from our customer-base that the existing transparency afforded to Micro Businesses has been helpful and informative and see no reason why this wouldn't equally be the case for all Non-Domestic customers.

18. Do you agree with our proposed methodology of displaying Third Party Costs? Please explain your answer.

We do not agree with the proposed method. The format for service fee disclosure needs to be simple and intelligible for it to have the desired effect. We continue to believe this is best achieved by retaining the existing format (i.e. a 'lump sum' covering the duration of the contract) for all Non-Domestic customers, as it allows them to immediately understand the expected full cost of the service being provided by the TPI, which is the principal purpose of the disclosure requirement. Changing the disclosure format to the cost-per-unit of energy or cost-per-day would impose significant implementation costs on suppliers, and more importantly, it would require customers to calculate the total cost of a TPI's services themselves, which is contrary to the intent of making customers' lives easy.

We acknowledge Ofgem's view that the existing disclosure format can be subject to manipulation and/or can be confusing to customers, however, this is at odds with feedback from our customers which has been overwhelmingly positive. We are unconvinced how the proposed changes mitigate the risk of manipulation, and we believe that the proposed format is patently more complex and confusing for customers. Rather than imposing further implementation costs on the market (and thus its consumers), we would urge Ofgem to tighten the existing arrangements, or use existing powers, to address any unscrupulous behaviour or inconsistent disclosure across the market.

Moreover, Ofgem's Impact Assessment (IA) states in paragraph 3.4.3 that, "*The addition of a p/kWh or p/day service fee for all business customers, instead of a lump sum, may ensure that the service fee costs are not artificially deflated by using a low consumption estimate. Therefore, customers can compare all TPIs/brokers on the same basis*" [emphasis added]. We do not disagree with that logic, however, we believe the premise is incorrect. Customers do not compare between different TPIs at the point of receiving their Principal Terms from Suppliers. At that point, in almost all cases, customers are solely comparing Supplier offers sourced by a single TPI on their behalf (or as a comparison to offers sourced by the customer directly). As such, the purpose of the commission disclosure is for the customer to understand how much the TPIs service is going to cost them if they contract on those terms, rather than which TPI to use. Therefore, we believe the stated benefit in the IA is unfounded in practise.

19. Do you agree that our proposed timescale for implementation is achievable? Please explain your answer.

We will require longer than the proposed 6 months to expand commission/service fee disclosure to all Non-Domestic customers. Commission/service fee arrangements for larger businesses are generally



more complex and diverse than for Micro Businesses. We estimate we will need nine months from publication of the decision to implement the necessary changes. This will involve changes to our internal processes, multiple systems (including our outsourced Half-Hourly pricing systems) and our relevant TPI agreements.

20. Do you have any views on whether to retain the presentation of a lump sum for Micro Business Consumers and to have only a cost per unit for all Non-Domestic consumers?

Please see our answer to question 18. We firmly believe the lump sum presentation should be the only requirement prescribed in the Licence.

21. Do you have any views on the proposed wording of the supply licence conditions, in relation to this policy? Note that is SLC20.6 in the electricity supply licence and SLC20.7 in the gas supply licence.

Please see our answers to question 18 and 20 regarding which licence changes we do not believe are appropriate.

22. Do you have any other comments on our proposals not asked specifically elsewhere in this document?

We have no further comments.