



Louise van Rensburg
Office of Gas and Electricity Markets
By email to: NonDomesticRetailPolicy@ofgem.gov.uk

Date: 31st January 2024

SEFE Energy Licence number: 03904624

Dear Louise,

Re: Non-domestic market review: Statutory consultation on licence changes

Thankyou for your consultation dated 7th December 2023. We welcome the opportunity to comment on the issues set out therein. In the UK, SEFE Group is active via its wholly owned subsidiary SEFE Marketing & Trading Limited ("SM&T"), SEFE LNG Limited and SEFE Energy Limited ("SEFE UK")

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

Market Context

As previously noted whilst we welcome proposals to enhance consumer protection we believe it is important to recognise that it was the heavily regulated domestic sector which suffered catastrophic failure leading to tax payers and consumers being forced to pay £10's billions to bail out these failed business models. The regulatory environment within the domestic market encouraged a race to the bottom which led to many of the normal commercial risk management tools being sacrificed to achieve the minimum price possible. This led to a market model that was weak and unduly exposed to any extreme event. We believe it is important to acknowledge that the less regulated, non tariff and more commercial non domestic market successfully weathered these events. Therefore we should be cautious and prudent about intervening in a competitive market that has endured particularly when considering applying approaches and principles from a market that has self evidently been proved to have failed.

One Size does not fit all

In general we agree with the expansion of the Microbusiness protections to those customers that qualify for the new Small business customers. We do however believe more work is needed to look at additional processes that use the Microbusiness definition. Whether suppliers need to maintain two separate bandings for customers or replace Microbusiness with the Small Business definition will impact on the time and cost it will take to implement the changes and the complexity for customers determining which protections they qualify for.

Once we get to the size of customer who has bespoke account management (above SME) the nature of queries Vs complaints and their resolution becomes bespoke and in many cases the customers in question are far larger than the Supplier with their own professional services such as legal, trading and account management.

Trying to apply the same protections to both groups of customers may not provide the best outcome. Accordingly we believe the scope of further intervention and holistic data gathering for non-domestic should be limited to the existing Micro Business sector and the new Small Business customer group.



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Small and Medium Enterprise

We support the principle of a new definition for the Small Business customer group. There are some concerns that we have raised in our response to the consultation questions (see below) and in response to DESNZ's consultation. Our main concern is that the current wording would allow customers which would not normally be considered a Small Business to qualify. This is why we would recommend amendments to the consumption criteria.

Recommendation

We believe the scope of further intervention and holistic data gathering for non-domestic should continue to cover the existing Micro Business sector but should also be extended to cover the Small Business customer group and that a less mechanistic and more bespoke approach is used to gather market intelligence on the rest of the non-domestic market. Any further intervention should be based on a data driven evidence-based approach which is subject to robust cost benefit analysis to ensure it delivers value for money.

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

Your Sincerely,

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Appendix 1 – SEFE Energy responses to consultation questions

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Q1. 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?

SEFE response: We have no comment on the data included in the impact assessment.

Q2. Is there anything that has not been included in the impact assessment that you believe should be included?

SEFE response: It is not clear how many additional customers would be included by expanding the microbusiness protections to the Small business customers. It would aid suppliers' decision making if an estimated percentage of the market was presented.

Q3. Do you agree with our proposal to expand the Standards of Conduct to all Non-Domestic Consumers? Please provide a reason for your view.

SEFE response: We do not agree with the proposal to expand the Standards of Conduct to all Non-Domestic Consumers. Extending standards of conduct to all market sectors will represent an unjustified cost to all suppliers, even if they currently adhere to them, owing to the need to monitor and track their customer-facing activities. The costs of extending these standards must be balanced against any likely benefit.

As with the other proposals there is no one size fits all within the non-domestic market as the types of contracts are diverse.

The original intention of this licence condition was to protect Non-Domestic customers that it was felt required additional protections due to the relatively small size of their businesses. While there may be synergies between micro business and Small Business sites (based on the proposed terminology) the terms and conditions may be significantly different to those bespoke, legally complex, contracts agreed with larger Industrial and Commercial (I&C) customers.

We believe that if there is to be any expansion of this Licence condition it should only be to include those that qualify for the small business definition.

Q4. Do you have any comments on our proposed draft licence text for SLC 0A?

SEFE response: We have no additional comments on the drafting.

Q5. 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.

SEFE response: We do not agree with the proposal to implement the SoC as soon as the updated licence condition takes effect.

Whilst many suppliers already apply these principles to their customer activity some changes will still be required. We believe that suppliers will need a reasonable lead time from the decision to amend their processes and customer facing documentation E.g. websites to include the changes.

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They may also need to put in place changes to their internal monitoring to ensure compliance with the new principles.

We believe that Suppliers will realistically need 6 months to implement these changes.

Q6. Do you have any views on the updated draft Standards of Conduct Guidance?

SEFE response: We have no additional comments on the drafting.

Q7. 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.

SEFE response: We have a number of concerns regarding the impact of expanding the current eligibility threshold.

The proposed changes will increase the number of consumers that will be eligible which will require suppliers to make system changes and increase the number of complaints handlers within their teams.

The size and complexity of the contracts that the new definition will cover, including flexible and trading type arrangements, will increase significantly and will require a much higher level of expertise when assessing the most appropriate course of action.

We do not believe that the Energy Ombudsman currently has the capacity or expertise to address these complex cases. This would need to be addressed before any expansion was to go live and a suitable lead time provided. We believe there needs to be some independent oversight, industry steering committee, to ensure the Ombudsman services can meet the additional requirements and provide the service required going forward.

More generally, we have concerns over the provision of ombudsman services. It is important to note that the Energy Ombudsman is not regulated or underpinned by any formal legislation, and is a private, non-for-profit, company.

We believe any ombudsman for the market should be appointed under a competitive tender process run by Ofgem or Government.

Q8. Do you have any further comments on the proposed drafting of the CHS Statutory Instrument text?

SEFE response: There are a number of challenges associated with interpreting the existing drafting which it would be beneficial to address whilst the instrument is open for review.

The new definition for Small business continues to use the same format as the existing Microbusiness definition. Having operated under these arrangements for some time we have identified a number of challenges.

The use of balance sheet and turnover has been extremely challenging and problematic for energy Suppliers to operate to in practice as this is not information we readily have access to. These can vary on a daily basis and are very difficult to check.

In practice suppliers have operated a declaration process where customers inform the supplier if they meet the criteria. We believe it would be beneficial if the revised regulations recognised these difficulties, either creating an

“all reasonable steps” for suppliers to obtain this information or requiring the customer to provide it at point of contract.

Additionally with the new criteria there is a risk of larger sites gaining protections due to only having a single fuel. For example, a site with high electricity consumption could qualify for the protections if they have minimal or no gas consumption. Or a large Group could be eligible if they only had a small fuel use in one sector. These sites would not normally be classed as micro or Small businesses.

We therefore believe that the OR in the definition should be changed to AND to avoid these issues.

So the tests (see below) would all be AND meaning that a customer would need to meet them all to be in scope.

Please see the table below for our proposal

Current Micro Business Consumer Definition	Proposed ‘Small Business Consumer’ Definition	Suggested ‘Small business Consumer’ Definition
A Non-Domestic customer is defined as a Micro Business Consumer if they: employ fewer than 10 employees (or their full time equivalent) and has an annual turnover or balance sheet no greater than 2 million euros (this figure is intended to be converted into GBP by government); or uses no more than 100,000 kWh of electricity per year; or uses no more than 293,000 kWh of gas per year	A Non-Domestic customer is defined as a Small Business Consumer if they: employ fewer than 50 employees (or their full time equivalent) and has an annual turnover no greater than £6.5 million or balance sheet total no greater than £5.0 million; or uses no more than 500,000 kWh of electricity per year; or uses no more than 500,000 kWh of gas per year.	A Non-Domestic customer is defined as a Small Business Consumer if they: employ fewer than 50 employees (or their full time equivalent) and has an annual turnover no greater than £6.5 million or balance sheet total no greater than £5.0 million; And uses no more than 500,000 kWh of electricity per year; And uses no more than 500,000 kWh of gas per year.

We will be responding to DESNZ’s consultation of the definition.

We also note that it appears that there may be a requirement to hold both a Micro Business identifier AND a Small Business identifier as some aspects of the current arrangements are not in scope of this consultation. If so, the requirement to hold 2 identifiers will have system impacts which will need to be taken into account in terms of implementation timelines.

Further clarity will therefore be required on whether Microbusiness takes precedent over small business where consumers qualify as both.

Q9. Do you have any comments on the proposed implementation timeline of 3 months from the date of decision?

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SEFE response: As the implementation is dependent on DESNZ publishing their decision and parliamentary time to implement the change we feel that the 3 month timescale is unlikely to be met.

Suppliers will need to make system changes to incorporate these additional requirements.

If as highlighted above some of these system changes are more material, then a minimum of [6] months would be prudent.

Q10. 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.

SEFE response: We agree with this proposal.

Q11. 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?

SEFE response: We believe that as a minimum the information should be included on supplier's websites. Additional sign posting could be done via documents such as the welcome pack etc. Suppliers would need to review their customer contact points and decide the most appropriate method.

Q12. 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?

SEFE response: If the Microbusiness customer definition will continue to be used in addition to the Small Business customers then they should both be specifically mentioned, where relevant, in the text for avoidance of doubt.

Q13. Do you agree with our proposed implementation timeframe of 3 months from the date of our final decision?

SEFE response: We agree that implementation within 3 months is possible for signposting on supplier's websites. Our concern would be the readiness of the Citizen's Advice help units to undertake additional cases relating to more complex contracts. This reflects our concerns in relation to the Ombudsman. It would be helpful to understand to what extent the Ombudsman and Citizens Advice have provided evidence of their ability to be ready and fit for purpose within the 3 month timescale?

Q14. Do you agree with our proposed change? Please provide comments to support your answer.

SEFE response: We believe that rather than expanding the current arrangement, of placing oversight obligations, on suppliers a central view of TPI behaviour should be developed. We would also note that a number of TPI schemes are being set up in the market which creates the potential for confusion for customers. We continue to believe that a centralised regulatory regime with licenced TPIs is the best outcome.

Without this further legislation to introduce a regulatory regime then additional protections could be achieved by expanding the access to a redress scheme to Small Business customers. This would be in line with the principle of extending other Microbusiness protections covered in this consultation.

Q15. Do you agree with the wording of the proposed licence condition changes outlined in Appendix 1?

SEFE response: We have no additional comments on the drafting.

Q16. Do you have any comments on the suggested implementation timescale of 8 months?

SEFE response: The suggestion that an implementation for December 24 would align with the timescales for Microbusiness makes sense but it is dependent on the Small Business customer definition being implemented. The 8 month implementation timescales will depend on when this occurs.

Q17. Do you agree with our proposed expansion of Third Party Cost transparency to all Non-Domestic customers? Please explain your answer.

SEFE response: We agree with the principle detailed here that the information should be available on request to all Non-Domestic customers.

Q18. Do you agree with our proposed methodology of displaying Third Party Costs? Please explain your answer.

SEFE response: We believe that the Micro Business disclosure of a full £ and p amount of commission should also apply to the Small Business Customers, as the purpose is to show transparency and a small business may not fully understand the calculation only in a p kWh / p per-day format.

We do question however that as the goal regardless of the sector is to be transparent about their costs and estimated spend should the same format be used for all Non Domestic customers.

Within the current SLCs we have to issue Micro Business enhanced terms and clarification of terms and commissions, we do not see any value to the customer or reason that they would need to see these again within 24 hours. The cost and time implications would also be significant to Suppliers.

It also raises issues in for example with buying groups, where a customer as an end user at site is not involved with the procurement and does not specifically control the running of the energy account, could potentially receive communications showing commission for a contract at their site, without any knowledge as not the responsible party, increase therefore queries and provide them to information contractually they are not privy too.

The process suits the small business user, but not those on the I&C side of the market.

Q19. Do you agree that our proposed timescale for implementation is achievable? Please explain your answer.

SEFE response: We believe the timescales for implementation are achievable as this is in line with the implementation timescales for the microbusiness protections.

Q20. 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?

SEFE response: For the other proposals within the consultation the protections have been expanded to cover small business customers. We would like to clarify if there are any plans to also expand the requirement for the lump sum to small business in line with microbusiness or if this will only be a requirement for the existing microbusiness definition.

Q21. 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.

SEFE response: The drafting is not clear on the requirement to include the third party costs in the principal terms. The new drafting only mentions providing the information on request. For the microbusiness customers this was included within LC7 but has not been replicated here.

Q22. Do you have any other comments on our proposals not asked specifically elsewhere in this document?

SEFE response: We note in the consultation that Ofgem commits to a further review of the cooling-off concept. The previous microbusiness strategic review concluded that an introduction of a cooling off regime would be very expensive, create significant cost uncertainty (so higher risk premia in contracts), and create opportunities for aggressive selling practices.

We do not believe that anything has significantly changed in the market in the 2 years since that review to alleviate these concerns.

We believe the main issue that cooling off seeks to address in the non-domestic market is mis-selling by TPIs and that this can be addressed through effective broker regulation rather than by creating a cooling-off process. We also await further information on proposals for Domestic customers on Non domestic supply contracts.