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Dear Louise

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

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

Whilst we are supportive of the intent of Ofgem's proposed changes to modify the Supply Licence Conditions (SLCs) and the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 in order to align with DESNZ's proposed new Small Business Consumer (SBC) threshold for access to the Energy Ombudsman, we are concerned that if all are taken forward at the timescales proposed currently these proposals will require material system and process change either concurrently or in quick succession over an extremely short time period. This will put an enormous amount of pressure on operations for Suppliers and the other organisations that will be directly involved (i.e. the Energy Ombudsman, Citizens Advice and TPIs) and incur costs that are likely higher than is reflected by the broad estimates given in Ofgem's draft impact assessment which accompanies this consultation. In particular, the near immediate requirement to implement the proposed new SBC threshold and changes to Standards of Conduct (SoC) SLC following parliamentary legislation and regulatory decision making respectively, will require rapid transformations across our business. Ofgem and DESNZ should ensure that timescales for implementation of all related proposals reflect the magnitude and wide-reaching nature of these changes to ensure industry can prepare for their successful introduction in order to best protect Non-Domestic customers as intended. In our response to DESNZ's consultation on their proposed new threshold for businesses accessing the Energy Ombudsman (31 Jan 2023), we have recommended a minimum 12 month window would be required to implement, and would suggest that the timescales for implementation of Ofgem's related proposed changes also need to be extended to align with this.

We would welcome further engagement with Ofgem on this 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. 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?

Please find our comments below on aspects of Ofgem's draft impact assessment with regards their preferred options:

Signposting: All non-domestic Suppliers must signpost to Citizens Advice for all Small Business Consumers

We agree that introducing Supply Licence Conditions (SLCs) to require suppliers to signpost to Citizens Advice for all Small Business Consumers could help increase awareness of the support available from Citizens Advice and increase uptake of this amongst consumers who can benefit from it, and that the costs to expand this should not be prohibitive to Suppliers.

However, we have included signposting to Citizens Advice for our MBC customers on our website, on bills and within our Complaints Handling Statement for some time. Please note that Citizens Advice is not the only organisation we signpost and work with to support our customers - we also signpost on our website to several other independent consumer debt support organisations such as Business Debtline, Step Change, Advice Direct Scotland and Government advice pages. We find that we still receive feedback from Microbusinesses that they are not aware of what help and services are available to them from Citizens Advice, even after our long term signposting has been in place. This indicates that supplier signposting alone is not sufficient. We believe that there needs to be a requirement on either Citizens Advice, Ofgem or DESNZ to undertake a marketing campaign directly with customers to ensure that they are aware of the available aid.

Standards of Conduct (SoC): Extend from MBCs to all Non-Domestic customers

We agree that extending the SoC to all Non-Domestic customers could improve trust in the market by formally establishing the principles based requirement for Suppliers to treat all customers fairly.

However, it is not possible to presume (as is the case in the draft impact assessment) that as a result of this, consumers are both more likely to stay with their current supplier and/or more confident about switching supplier (resulting in a higher level of switching and lower prices from a more competitive environment). Similarly, it does not necessarily follow that the expansion of the SoC will reduce the number of complaints and the length of time to resolve them. This assumption appears to be based on the general notion that non-MBCs are not treated as fairly as MBCs. It remains to be seen how the SoC SLC change will influence market behaviours and we would expect Ofgem would monitor the changes from implementation and report back to industry on the outcomes in due course.

As a general point regards costs, we note elsewhere in this response and within our covering letter that we are concerned that if all DESNZ and Ofgem proposals are taken forward at the timescales proposed currently, these will require material system and process change either concurrently or in quick succession over an extremely short time period. This will put an enormous amount of pressure on operations for Suppliers and the other organisations that will be directly involved (i.e. the Energy Ombudsman, Citizens Advice and TPIs) and incur costs that are likely higher than is reflected by the broad estimates given in Ofgem's draft impact assessment.

Complaints Handling Standards (CHS): Extend from MBCs to Small Business Consumers (as per DESNZ proposed definition)

We agree that expanding the CHS to cover Small Business Consumers will help provide reassurance to more customers that consistent supplier standards should be met on any complaints journey, and that they can also access independent dispute resolution via access to the Energy Ombudsman 8 weeks from their complaint or at point of deadlock if they need it.

As a Supplier we will already be dealing with these complaints. However, we expect there will be an increase in the number of cases referred to the Energy Ombudsman and associated costs, simply because more customers will be eligible to utilise the dispute resolution service. We also anticipate an expansion of reporting requirements to include the new Small Business Consumers definition, which may increase cost to serve.

Regards costs, we note elsewhere in this response and within our covering letter that we are concerned that if all DESNZ and Ofgem proposals are taken forward at the timescales proposed currently, these will require material system and process change either concurrently or in quick succession over an extremely short time period. This will put an enormous amount of pressure on operations for Suppliers and the other organisations that will be directly involved (i.e. the Energy Ombudsman, Citizens Advice and TPIs) and incur costs that are likely higher than is reflected by the broad estimates given in Ofgem's draft impact assessment.

TPI redress scheme membership: Extend from MBCs to Small Business Consumers (as per DESNZ proposed definition)

We agree that allowing more customers to access TPI redress schemes will help to improve customer confidence in the market regards complaints management and independent resolution without the barrier of court costs that might otherwise prevent them from pursuing their complaint against a TPI.

We disagree with Ofgem's assertion in the draft impact assessment that increasing the requirement for Suppliers to only work on Small Business Consumer contracts with TPIs who are members of a Qualifying Dispute Settlement Scheme (QDSS) up to the new threshold will reduce the administrative burden on Suppliers from dealing with TPI related complaints. Evidence of a reduction in Supplier related complaints as a result of the MBC TPI ADR scheme has yet to be seen, and the success of the current MBC TPI ADR scheme based on statistics received from the Ombudsman remains unclear. There are a number of TPIs that only deal with non-MBC and larger customers, some of whom have not yet signed up to a QDSS. These organisations will likely be captured by the proposed extension to the TPI redress scheme membership requirement to the Small Business Consumer threshold. This will increase the number of TPIs registered to a QDSS and therefore increase the administrative burden on Suppliers to monitor the compliance of the TPIs we work with.

The draft impact assessment suggests that QDSS providers could share useful information with the regulator to provide early warning of possible issues. However, it is not clear what kind of information Ofgem

thinks it could make use of, where TPIs remain unregulated by Ofgem. It is concerning to us that Ofgem may seek to gather information regarding possible Supplier issues from TPI redress schemes that do not relate to complaints about Suppliers.

We continue to consider that more administrative burden on TPIs may cause them to increase the Third Party Costs that they charge consumers.

TPI service scheme transparency: Extend from MBCs to all Non-Domestic customers, and requires changes to the format of disclosure to include a cost per unit, whilst retaining the lump sum disclosure for MBCs.

It's unclear from the draft impact assessment why Ofgem are looking to change their approach regarding TPI cost transparency less than 2 years after the requirements were introduced as part of their Microbusiness Strategic Review (MBSR). As part of the MBSR consultations Suppliers provided feedback that a price per unit rate commission uplift should be included, and Ofgem rejected this in their MBSR outcomes decisions:

*'After considering stakeholder views and evidence, we are proceeding with increasing transparency around brokerage costs. This will ensure that microbusinesses are better placed to make fully informed purchasing decisions. Information on brokerage costs must be provided to microbusinesses via the Principal Terms, for all contracts, and this information must be presented as a total cost in pounds/pence covering the duration of the contract.'*¹

Ofgem have not offered further evidence of consumer detriment to explain backtracking on this approach, which will now incur further system development costs to Suppliers.

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

No.

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.

Yes, we agree with the principles based requirement to treat all Non-Domestic customers fairly. However, as per our response to Ofgem's Non-Domestic Policy Consultation (Sep 2023) it is very important that Suppliers should be able to apply the principles without a prescriptive approach being defined. Due to the diverse nature of the Non-Domestic market and complexity of industrial and commercial customer requirements in particular, Ofgem's interpretation of the licence condition should not reduce the flexibility Suppliers need to provide customers with the right level of service for their particular requirements.

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

As per our answer to Q3, it is very important that Suppliers should be able to apply the principles without a prescriptive approach being defined.

Any changes to SLC 0A must be suitable and made futureproof to ensure that we do not find ourselves in a further few years revisiting these protections as we now are, following the MBSR outcomes.

¹ Ofgem 'Decision: Microbusiness Strategic Review' (March 2022)

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.

Any changes to SoC will require at least 6 months to allow suppliers enough opportunity to reassess their processes and ensure compliance. Otherwise a period of amnesty must be agreed by Ofgem's compliance and enforcement directorates. As noted in our cover letter to this response, our response to DESNZ's consultation on their proposed new threshold for businesses accessing the Energy Ombudsman (31 Jan 2023), recommends a minimum 12 month window would be required to implement the overarching change. We therefore suggest that the timescales for implementation of Ofgem's related proposed changes also need to be extended to align with this i.e. the SoC changes not to be implemented until a minimum 6 months after the 12 month window for Suppliers to implement the new Small Business Consumer threshold.

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

The updates to the draft Standards of Conduct Guidance text seem sensible.

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.

We support the principle of expanding the coverage of Consumer Complaints Handling Standards (CHS) to Small Business Consumers in order to give increased confidence in the market to these customers and the option to contact the Energy Ombudsman if the complaint remains unresolved after 8 weeks or becomes deadlocked.

As also stated in our response to DESNZ's 'New threshold for businesses accessing the Energy Ombudsman' consultation (Jan 2024), whilst we are supportive of the change to benefit Small Business Consumers, we note that by creating the proposed new SBC threshold and expanding the coverage of CHS to align with it will impact Suppliers significantly by requiring material system and process changes to implement the proposed new threshold. There will also be other associated impacts, such as increasing the number of complaints to be handled with respect to the 8 week window to deadlock, and related resource and administrative or other costs e.g. requirements for increased letter production/ sending, the potential need to pay more charges and provide more resourcing support to Energy Ombudsman investigations for higher numbers of cases, and increased reporting requirements. Suppliers require a minimum 12 month window to make the required system and process changes to prepare for implementation. We therefore suggest that the timescales for implementation of Ofgem's related proposed changes also need to be extended to align with this i.e. the CHS changes not to be implemented until a minimum 6 months after the 12 month window for Suppliers to implement the new Small Business Consumer threshold.

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

No

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

As per our answer to Q7 above, we anticipate that significant system and process change will be required to implement the Small Business Consumer threshold across our business, in addition to the additional CHS requirements and reporting requirements. We require 12 months minimum development time to implement the DESNZ proposed SBC threshold and suggest a further 6 months minimum implementation window for the related CHS changes.

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.

Yes. The signposting will help ensure customer awareness of the availability of independent advice and support.

As noted in our response to Q1 on Ofgem's Impact Assessment, Suppliers still receive feedback from Microbusinesses that they are not aware of what help and services are available to them from Citizens Advice, even after long term signposting has been in place – showing that supplier signposting alone is not sufficient. Where suppliers are doing everything within our gift to point relevant customers in the correct direction, we believe that there needs to be a requirement on either Citizens Advice, Ofgem or DESNZ to undertake a marketing campaign directly with customers to ensure that they are aware of this available aid.

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?

We would add to the existing text that we present on the back of bills (as is currently done for MBCs). Signposting to Citizens Advice is already on our website and within our Complaints Handling Statement, so these would require minor updates to ensure coverage of SBCs. We would anticipate costs to apply these changes would be low (as long as it does not require a material increase to bill pages of printed bills).

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?

Yes, it is useful to keep the definitions separate here considering that some other licence conditions are specific to MBC not SBC.

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

Yes.

Q14. Do you agree with our proposed change (i.e. to expand TPI redress scheme membership to Small Business Consumers)? Please provide comments to support your answer.

Yes, we agree in principle with the proposal to expand TPI redress scheme membership to Small Business Consumers who have been unable to resolve their complaint directly with their TPI as this will provide a free and impartial service to these consumers where previously they may have decided not to pursue complaints via the courts due to the potential financial or administrative burden.

As stated in our Non-Domestic RFI response (Sep 2023) SSE implemented a requirement for TPIs to be registered to the TPI ADR scheme across all TPIs that submit business supply contracts for their clients. As such we estimated minimal costs to extend the scheme to all Non-Domestic consumers. However, as noted in our Non-Domestic Retail Market Review: Policy Consultation response (Sep 2023), any proposal

to introduce new defined limitations on the size of customer that a TPI works with (i.e. such as the Small Business Consumer threshold now proposed by this consultation) will add to the complexity of administering the scheme for us, compared with simply extending our TPI ADR scheme processes to cover all TPIs we work with.

Ofgem should also consider that more administrative burden on TPIs may cause them to increase the commission costs that they charge consumers.

As per our Non-Domestic Retail Market Review: Policy Consultation response (Sep 2023) we are supportive of Ofgem continuing to recommend 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.

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

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

We agree that 8 months should provide sufficient timescale to extend our TPI ADR scheme processes. However, as noted in our cover letter to this response, our response to DESNZ's consultation on their proposed new threshold for businesses accessing the Energy Ombudsman (31 Jan 2023), recommends a minimum 12 month window would be required to implement the overarching change. We therefore suggest that the timescales for implementation of Ofgem's related proposed changes also need to be extended to align with this i.e. the expansion of TPI redress scheme membership should not be required to be implemented until 8 months after the 12 month window for Suppliers to implement the new Small Business Consumer threshold.

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

As stated in our Non-Domestic RFI response (Sep 2023), we support the principle of expanding TPI service fee transparency changes to all customers, as this will afford all customers equal treatment in regards visibility of commission charges.

We already include Third Party Cost information in all SSE customer Principal terms or on request in line with the current rules for Microbusiness (MBC) and larger commercial supply contracts.

As stated in our answer to Q14, 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 service fees at point of sale.

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

Ofgem's proposal to require that Third Party Costs be displayed as a cost per unit (per unit of energy or per day/month standing charge) for all customers, rather than as lump sum monies for the length of the contract (as per the current rules for MBCs) seems sensible to help all Non-Domestic consumers better understand these costs and compare between contracts. However, the proposal to retain the requirement to present costs as a lump sum for MBCs seems superfluous.

As noted in our response to Q1 on Ofgem's Draft Impact Assessment, it is unclear from the draft impact assessment why Ofgem are looking to change their approach regarding TPI cost transparency less than 2 years after the requirements were introduced as part of their Microbusiness Strategic Review (MBSR). As part of the MBSR consultations Suppliers provided feedback that a price per unit rate commission uplift should be included, and Ofgem rejected this in their MBSR outcomes decisions:

*'After considering stakeholder views and evidence, we are proceeding with increasing transparency around brokerage costs. This will ensure that microbusinesses are better placed to make fully informed purchasing decisions. Information on brokerage costs must be provided to microbusinesses via the Principal Terms, for all contracts, and this information must be presented as a total cost in pounds/pence covering the duration of the contract.'*²

Ofgem have not offered further evidence of consumer detriment to explain backtracking on this approach, which will now incur further system development costs to Suppliers.

Q19. Do you agree that our proposed 6 month timescale for implementation is achievable? Please explain your answer.

The 6 month implementation timescale is only appropriate where minimal system and process changes are required to amend our current presentation of Third Party Costs (as, at the moment, we present Third Party Costs to all our Non-Domestic customers in the same way). It will be much more complex for us to set up separate presentation solutions for MBCs from other Non-Domestic customers (i.e. to present both cost per unit and lump sum for MBCs, but only cost per unit for all other Non-Domestic customers). More time would be required (c.8-12 months) for the more significant system and process changes needed for us to differentiate between MBCs and all other Non-Domestic customers. As per our responses to Q18 and Q20, it is our preference that the requirement for lump sum display part of the existing rules to be removed.

As noted in our cover letter to this response, our response to DESNZ's consultation on their proposed new threshold for businesses accessing the Energy Ombudsman (31 Jan 2023), recommends a minimum 12 month window would be required to implement the overarching change. We therefore suggest that the timescales for implementation of Ofgem's related proposed changes also need to be extended to align with this i.e. the changes to display of Third Party Costs should not be required to be implemented until 8-12 months after the 12 month window for Suppliers to implement the new Small Business Consumer threshold.

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?

As per our answers to Q18 and Q19 above, the proposal to retain the requirement to present costs as a lump sum for MBCs seems superfluous, and having to provide different presentation requirements between MBCs and all other Non-Domestic consumers would add to the complexity and time needed for us to amend our systems and processes. We believe the improved transparency of presenting Third Party Costs to all Non-Domestic consumers as a cost per unit will be easier to understand for all and it is fairer to apply this requirement consistently.

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.

² Ofgem 'Decision: Microbusiness Strategic Review' (March 2022)

As per our responses to Qs 18, 19 and 20, we believe that the requirement to present Third Party Costs as a cost per unit to all Non-Domestic consumers seems sensible, but an additional presentation of these costs as a lump sum to MBCs only seems superfluous. As such we would suggest the drafting referring to the lump sum requirement is removed.

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

We have noted in our response to DESNZ's consultation on their proposed new threshold for businesses accessing the Energy Ombudsman (31 Jan 2023) that both Suppliers and consumers have found issues classifying MBCs with the current MBC threshold indicators of employee numbers, annual turnover and annual consumption level. We propose that DESNZ and Ofgem take the opportunity now to reconsider the MBC classification in relation to consumption levels, and consider the potential to introduce a combined fuel threshold that could also be implemented as part of the proposed new Small Business Consumer consumption level indicator. A combined consumption level indicator for both MBC and Small Business Consumer thresholds would help to mitigate the issue of high energy consumers being captured as an MBC or Small Business Consumer where not appropriate, and align the two thresholds in the way they define consumption levels.

If the existing/proposed threshold indicators of employee numbers, annual turnover and annual consumption level remain, we suggest that DESNZ and Ofgem consider recommending the introduction of a customer industry flag for MBC and Small Business Consumers to be stored in the industry systems the Electricity Enquiry Service (EES) and Gas Enquiry Service (GES). This would help make customer MBC or Small Business Consumer status easier to determine through common use of information available to industry.