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By email only: NonDomesticRetailPolicy@ofgem.gov.uk

Dear Louise,

Non-domestic market review: Statutory consultation on licence changes

Thank you for the opportunity for E.ON UK to respond to Ofgem's 'Non-domestic market review: Statutory consultation on licence changes', which we have considered carefully before making this submission.

E.ON UK supplies electricity and gas customers in the UK under two brands: E.ON Next (E.ON Next Energy Ltd supply licence) which provides energy solutions for domestic and microbusiness customers, and npower Business Solutions or nBS (Npower Commercial Gas Ltd supply licence) which focuses on larger industrial and commercial (I&C) businesses. **This response is on behalf of E.ON UK which includes both of the aforementioned entities.**

Introduction

We are pleased that following the regulator's most extensive review of the non-domestic supply sector to date, the overall findings suggest a well-functioning and competitive non-domestic market with little evidence of ongoing systemic issues or widespread failings. Furthermore, the review indicates a return to a level of normality and market function albeit with some uncertainty ahead due to external factors outside of suppliers' control. Similarly, Ofgem's most recent request for information (issued in connection with its non-domestic market review) reflected that there were no inherently significant failings in the market.

Executive Summary

We welcome receipt of the consultation materials, following previous engagement by Ofgem (Calls for Input, Requests for Information (RFI), open letters and industry working groups) over the past year, all of which E.ON has actively participated in.

We have previously indicated our willingness and availability to engage with and host Ofgem colleagues at our offices to further explore and discuss the operation of the non-domestic market, in particular the I&C elements, and this remains an open invitation.

We provide a full response to the twenty-two questions posed in the consultation in Annexe A which follows. Also, we have included in Annexe B our response to the Government consultation on 'A new threshold for businesses accessing the Energy Ombudsman' (so that Ofgem can consider our

comments there on the new Small Business Consumer threshold), and we have also set out in Annexe C our thoughts on the Standards of Conduct guidance document. However, we would like to make the following key points in summary:

1. **Thresholds and increased intervention**

Whilst we are generally supportive of the policy intent behind the expansion of Standards of Conduct and TPI service fee transparency rules to the whole of the non-domestic market, we do have concerns around the proposed threshold criteria for the new Small Business Consumer (SBC) customer classification. We have set out our concerns on this in our response to Government's '*Consultation on the introduction of a new threshold for bringing cases to the Energy Ombudsman to include small business consumers*' (this is set out in Annexe B) and we ask that Ofgem take due account of our feedback there and factor it into its proposals that rely on that new customer classification.

Increased regulatory intervention should be balanced and proportionate. Ofgem's request for information following the earlier policy consultation does not seem to have revealed any systemic issues or underlying concerns in the non-domestic market. We note also that despite Ofgem's monitoring of the market, there has only been one publicly confirmed compliance case raised which implies that generally suppliers are behaving appropriately in serving their customers. We believe that Ofgem currently has the relevant power and tools by which to investigate suppliers and use its enforcement capability where there is evidence of non-compliance and poor practice or behaviour. This should negate the need for introducing further regulatory interventions in the non-domestic market.

2. **Proposed timescales for implementation of measures**

Across the five discrete areas for proposed regulatory intervention (i.e. Standards of Conduct, complaint handling, consumer signposting, expansion of the TPI Qualifying Dispute Settlement Scheme and TPI service fee transparency), Ofgem has proposed four different timescales for implementation and this will lead to inefficiencies and potentially incurring additional cost for suppliers. We believe that if Ofgem decides to progress with the proposals, it should attempt to minimise the impact of these changes for suppliers by aligning the implementation dates so that there are only two (or three) different implementation dates in play. With the exception of the proposal on signposting, the other proposed measures will involve significant change initiatives where synergies and economies of scale could be realised if the implementation dates can be better aligned.

This should be considered in the wider context of what is already a congested and challenging industry change landscape in 2024 with the normal scheduled change releases, significant policy interventions (such as the Energy Intensive Industry exemptions and Regulated Asset Base initiative) and significant programme milestones (for example, the Mandatory Half Hourly Settlement programme). We need to balance all of this around our ability (and that of industry) to service existing customers and managing the regular April/Oct industry contract rounds. The above does not include any supplier internally driven change (such as continuous improvement initiatives) which further compounds resource and capacity issues.

We would also ask that Ofgem reconsider the proposed timescales as they do not seem to be proportionate to what each change might actually entail. For example, Ofgem has proposed an implementation timeframe of three months from its decision date for both its signposting and complaint handling proposals and 56 days from its decision for the widening of the Standards of

Conduct to the whole of the non-domestic market. Of the three proposals, the new signposting requirements are arguably the easiest to deliver and hence why we believe three months is an appropriate timeframe within which to deliver that change. However, the complaint handling and Standards of Conduct proposals are significantly larger change pieces and would require considerably more resource and time to deliver. We have set out below our comments in respect of the timeframes needed to deliver each of the changes.

If you have any questions on any points in our response, or wish for any wider discussion on the points raised, please contact in the first instance Rob Finch (robert.finch@npower.com).

Yours sincerely

Robert Finch
Head of Regulation
For and on behalf of E.ON UK plc

Annexe A – Response to consultation questions

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?

We have no comments on the draft impact assessments other than as set out in our answer to question 2 below.

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

Ofgem appears to not have fully assessed the impact of needing to ascertain Small Business Consumer (SBC) status on a greater number of contacts. The experience of suppliers in validating microbusiness (MB) status cannot be used as a parallel or proxy, as MB status is required to be established at the point of sale when selling contracts to customers and therefore a greater number of businesses will already be known to suppliers as MBs. However, the same is not true of SBCs, and therefore suppliers will need to attempt to verify SBC status in routine contact where relevant (as well as potentially attempting to contact existing customers more widely to ensure SBC status is ascertained).

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.

In principle, we are supportive of the proposal to expand the Standards of Conduct (SoC) to apply to all non-domestic consumers.

During Ofgem's policy consultation on its Non-Domestic Market Review, we did raise some areas of concern around how the SoC would operate differently for different types of customers and specifically around the concept of the 'typical consumer' within the diverse non-domestic market. However, Ofgem has clarified its policy intent in the statutory consultation document noting that "*SoC may look different depending on the type or size of consumer*" and that the "*requirements and needs of customers can be very different*" (paragraph 2.17). Similarly, on the 'plain and intelligible language' requirements of SoC Ofgem has commented in the statutory consultation that information presented by suppliers "*may look different depending on the end consumer. Requiring plain and intelligible language should still allow for contracts to be written as needed for the largest customers, allowing more technical language to be used in large business contracts*" (paragraph 2.18). Ofgem has also added similar commentary in its updated draft of the Standards of Conduct Guidance document.

These clarifications are welcome and the expectation is that Ofgem will have proper regard to the type and size of relevant customers, the energy products being procured and the commercial and contractual arrangements the parties have entered into as part of any assessment of compliance against the SoC. This will help to ensure that the non-domestic market still has the requisite flexibility to allow competition and innovation to continue to

flourish, whilst allowing energy suppliers the agility to meet the needs of existing and prospective customers.

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

We have no substantive comments on Ofgem's proposed draft licence text for SLC 0A. The changes to the text are straightforward and reflect the policy intent.

There is, however, what we believe to be a typographical error in the draft of the electricity supply licence conditions and the definition of "Designated Activities". The draft states as follows:

> *"f. ~~any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer)~~ any matters which fall within the scope of standards conditions 14, 14A and 21B (in so far as they relate to a Non-Domestic Customer)."*

We believe that Ofgem means as follows:

> *"f. any matters which fall within the scope of standard conditions 7A, ~~14, 14A and 21B (in so far as they relate to a Micro Business Consumer)~~ and any matters which fall within the scope of standards conditions 14, 14A and 21B (in so far as they relate to a Non-Domestic Customer)."*

This correction, as shown, would better align with the policy intent and the corresponding note in Ofgem's draft of the Standards of Conduct Guidance document.

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.

No, we do not agree with the proposal to implement the SoC as soon as the updated licence condition takes effect.

Ofgem cites the implementation of the original SoC for MB customers (i.e. 56 days from the publication of its decision) as justification for the same timeframe being used to extend the change to the whole of the non-domestic market. However, in many ways, implementing SoC for customers larger than MBs (and across the whole of the non-domestic market) is a more complex and time-consuming task than it originally was for MB customers. More time would be needed for suppliers to review their systems, policies and procedures to highlight any improvements required and then to implement those improvements.

We think that an implementation timeframe of a minimum of six months from the publication of Ofgem's decision would be more appropriate.

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

In principle the guidance is fine, however, it should not be treated as a back door to further regulation being introduced (i.e. because it is deemed to be an easier and quicker route to adding new rules). If not managed correctly the SoC guidance could potentially conflict with other rules and become confusing, for both suppliers and customers (especially where the confusion causes inconsistent application by suppliers). For example, the scenarios in the guidance that relate to complaint handling are already largely covered under the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 for MB complaints currently (and these Regulations are proposed to be extended to SBCs). In these cases, whilst SoCs may be a consideration, suppliers will focus on the prescriptively defined rules first.

Some of the specific examples are very broad and open to possible misinterpretation, and we would ask that Ofgem provides clearer examples and unambiguous guidance to avoid confusion. We have set out in Annexe C below some specific feedback on the framing of the guidance.

Whilst the guidance seeks to provide examples of poor practices by suppliers, we believe that Ofgem should consider counterbalancing those with examples of good practices.

Finally, Ofgem does not curate or maintain its publicly accessible documents effectively and we believe that this needs significant improvement to ensure there is better digital curation of relevant documents. In essence, there needs to be a codified digital architecture map which reflects how all the various sources of regulation (e.g. licence conditions, guidance, best practice documents) hang together and where they can be found. This would be particularly helpful for smaller and new entrants into the market. There is also a need for such arrangements to be maintained and kept current and live.

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.

As set out in our response to Ofgem's policy consultation (September 2023) on its Non-Domestic Market Review, we do not agree that the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (CHSR) should be expanded any further than their current non-domestic remit of microbusiness consumers, mainly due to the fact that the CHSR do not adequately reflect the complexities of the non-domestic market outside of MB.

However, we concede that if Government proposals to expand Energy Ombudsman access to SBCs are implemented, then it would seem logical to amend the CHSR regime to keep in line with the aforementioned changes. Our remaining reservations relate to the customer thresholds that would be used to categorise SBC status and we would ask that Ofgem take account of our response in this regard to Government's '*Consultation on the introduction of a new threshold for bringing cases to the Energy Ombudsman to include small business consumers*', which is included in Annexe B, and also our response to Ofgem's policy consultation in September 2023.

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

We have no further comments on the proposed drafting of the CHSR Statutory Instrument text.

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

We believe that an implementation timeline of a minimum of nine months from the date of Ofgem's decision would be more prudent and appropriate.

This proposal would involve a significant change programme which would include changes to a multitude of systems, policies and processes. It would also require training and business assurance changes, and this would impact significantly on resourcing plans. We have the relevant complaint handling systems, policies and processes in place for our mid-market segment (in order to comply with MB regulatory requirements) and we can make the adjustments for SBCs within a relatively shorter implementation period. However, for the corporate and strategic segment of our non-domestic customers, this would require wholesale changes to the way in which complaints are received and handled, thus necessitating a longer implementation period.

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, we agree with Ofgem's proposal to require suppliers to inform their MBs and SBCs (if the latter proposed customer designation is implemented) that they can access, and how to contact, Citizens Advice and Citizens Advice Scotland.

We believe that this measure may assist customers who are otherwise unaware of their rights to contact Citizens Advice as a source of advice and guidance, and this has the potential to drive more positive and consistent customer experiences, outcomes and confidence in the market operation.

However, we would add that we have seen (anecdotally) that it is not always the case that customers are unaware of the services that Citizens Advice can provide, as it can often be the case that customers have attempted to contact Citizens Advice but have either been unable to establish contact (e.g. due to extended wait times when initiating contact by telephone) or have otherwise experienced difficulties in securing an appointment. In this context, increased signposting would not necessarily assist customers who are eligible for support. Therefore, it would be for Citizens Advice to ensure that they can meet both existing demand and any additional demand that may be generated as a result of these proposals should they be implemented as described.

Further, if the remit of Citizens Advice is being expanded to cover SBCs, we would need assurances that their resourcing will be appropriate and adequate both in terms of overall resource (e.g. the number of caseworkers) and in terms of the skills, knowledge, expertise and experience to deal with the more technical and complex cases that exist outside of MB customers. If this is not in place, then it could have an adverse impact on customers and the service provided by Citizens Advice.

We agree that this should be a principles-based requirement and therefore it should allow suppliers the flexibility in deciding where, when and how best to signpost Citizens Advice to their customers. Although Ofgem states that it is not proposing prescriptive requirements on how suppliers should signpost this information to customers, the express requirement to provide that information annually does introduce a degree of prescription. For example, if a supplier wished to comply with this requirement by signposting customers through their website, the requirement for an annual notification would require that supplier to do something more than just display that information on their website. We believe that suppliers should determine how best to signpost their customers to Citizens Advice, without the need for an annual requirement.

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 are still investigating how we would implement such a requirement in the event that it becomes effective in the licence conditions. This includes exploring the options of complying with this requirement via customer bills/invoices, our supplier website and other digital media channels. We would also be open to hearing views from Citizens Advice on what signposting methods they deem to be most effective for consumers.

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?

We only have one comment on the way in which the proposed licence text for SLC 20.5A (gas supply licence) and 20.4A (electricity supply licence) has been drafted currently, and it relates to the second part of the question around whether the licence condition should specify whether the requirement is applicable to both MBs and SBCs.

Whether or not the aforementioned licence conditions should explicitly specify that they apply to microbusiness customers is largely dependent on how Government defines the term Small Business Consumer in the revised The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268). Government is keen to align the SBC test to how it operates in the financial sector, and there the FCA define an SBC as one that "*is not a micro-*

enterprise". If Government adopts a similar definition (i.e. that a SBC is not a microbusiness/micro-enterprise), then for the avoidance of misinterpretation and misapplication these licence conditions would need to explicitly specify that they are applicable to both MBs and SBCs.

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

We agree with the suggested three month implementation timeframe in respect of the proposal requiring suppliers to signpost MBs (and, if relevant, SBCs) to Citizens Advice and Citizens Advice Scotland.

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

Yes, we agree with Ofgem's proposal to expand the rule requiring suppliers to ensure that any TPI they are working with must be registered with a Qualifying Dispute Settlement Scheme (QDSS) so that it now also includes SBCs (in addition to MBs).

We believe that both the Energy Ombudsman scheme for supplier complaints and the QDSS for TPI disputes, in terms of customer eligibility, should remain consistent as this will assist in operational effectiveness, efficiency and simplicity (which would benefit both suppliers and customers). Therefore, if access to the Energy Ombudsman is being widened to include SBCs we believe that the QDSS should mirror the same.

However, we would reiterate our earlier position that this proposal does not in any way reduce the need for Government and Ofgem to act to introduce direct regulation of TPIs (rather than indirect regulation through imposing additional supplier obligations), as this is the best method by which to improve TPI practices and market performance, while providing business customers with more confidence and trust in the TPIs that they work with.

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

No, we do not agree.

The term 'Third Party' is defined in supply licence condition 1 as follows:

> "*a third party organisation or individual that, either on its own or through arrangements with other organisations or individuals, provides information and/or advice to a Micro Business Consumer about the licensee's Charges and/or other terms and conditions and whose payment or other consideration for doing so is made or processed by the licensee*"

As this only refers to MBs, it would need to be amended to include reference to SBCs in order to give effect to Ofgem's stated policy intent. The term 'Third Party' is integral to the

obligations set out in electricity supply licence conditions 20.5A, 20.5B and 20.5C (and the gas equivalents) as it relates to the QDSS proposals. We have already set this out in our previous response to the policy consultation. We believe this amendment is still required having now reviewed the latest draft of the proposed licence conditions.

Also, in the draft of the electricity supply licence conditions, the reference in Condition 20.5C to "Condition 20.6" should actually be a reference to "Condition 20.5".

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

We have no specific comments, other than that we believe the suggested implementation timescale is adequate and is the minimum timeframe that should be afforded for a change of this nature.

We welcome the acknowledgment by Ofgem that a longer timeline is required for this licence condition change given the impact on supplier agreements and commercial arrangements with their TPIs.

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

Firstly, in our previous response to the policy consultation, we set out the reasons and justification of why expanding Third Party Cost transparency was not needed. Secondly, we also said that if this transparency measure is to be introduced, then it should apply to the whole of the non-domestic market.

We stand by this view for the purposes of this response and refer you to our previous submission to the policy consultation.

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

Yes, we agree with the proposed methodology of displaying Third Party Costs.

We have always believed that if Third Party Costs are required to be presented to relevant customers in the way proposed, then they should be presented as an uplift on the standing charge and/or unit rate on the energy values (as the case may be) rather than as a lump sum figure. We believe this is more meaningful for customers (particularly where consumption varies during the contract period or where customers make changes such as adding/removing sites from the contract) and it would prevent TPIs providing inaccurate or unrealistic views of consumption in order to provide a misleading view of commissions. The uplift view would allow customers to calculate the relevant commission amounts (by reference to consumption values on their bill/invoice) and where they have trouble calculating it they can contact their supplier for assistance.

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

No, we believe that an implementation period of a minimum of six months from the date of Ofgem's decision would be more realistic to allow for the necessary system and other changes, and that would also bring it in line with the implementation period for the proposed QDSS expansion.

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?

We believe that it would be prudent to remove the requirement to present the Third Party Cost (TPI commission) as a lump sum for MBs, and to have only the requirement to present the uplift against either the unit rate, standing charge or both (as the case may be).

We believe that the requirement to show both presentations to MBs may be unduly confusing for the customer, particularly where they are assessing different TPI options. A single view would be more beneficial for the customer and would avoid the problems associated with showing TPI commissions as a lump sum based on estimated or projected future energy consumption. There may also be some contracts where the TPI commission is applied as an uplift on both the standing charge and the unit rate, and in this circumstance the customer would then be seeing at least three different data points relating to their TPI commission. Making energy transparent and simple should be the guiding principle for Ofgem to follow in its final decision making.

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.

SLCs 20.6, 20.6A and 20.6B in the electricity supply licence (and the equivalent provisions for gas) rely on the SLC 1 definitions of 'Third Party' and 'Third Party Costs'. However, as noted above in our response to question 15, the term 'Third Party' is defined as applying only to "*a third party organisation or individual that, either on its own or through arrangements with other organisations or individuals, provides information and/or advice to a Micro Business Consumer*".

Similarly, the term 'Third Party Costs' is defined as applying to "*any fees, commission or other consideration including a benefit of any kind, processed by the licensee and paid or made or due to be paid or made to the Third Party in respect of a Micro Business Consumer Contract, that are passed on to the Micro Business Consumer*".

As the proposed draft of SLC 20 relies on these terms, the fact that those terms are limited to matters relating to MBs means that there is scope for ambiguity and confusion here. We believe Ofgem should ensure that the drafting is accurate and consistent with its policy intent to apply these provisions to the whole of the non-domestic market.

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

We are not supportive of any intervention by Ofgem to introduce 'cooling off periods' for non-domestic customers (whether for MBs or otherwise). We believe that non-domestic customers do not require cooling off periods due to their ability to freely negotiate prices/contracts at the point of sale and also due to the requirements upon suppliers to ensure customers are fully aware that they are entering into a legally binding contract before they agree.

Introducing cooling off periods in the non-domestic sector will add considerable commercial risk for suppliers (owing to the ways in which suppliers purchase energy and book volume in expectation of fulfilling the contracts they agree with customers), and this volatility would result in increased costs for customers. Furthermore, cooling off provisions could be open to abuse by TPIs (especially in the absence of direct regulation of TPIs) which could prove harmful to both suppliers and customers.

Annexe B – E.ON UK response to the Government consultation on 'A new threshold for businesses accessing the Energy Ombudsman'

1) Do you agree with the Government's proposal to expand the eligibility threshold in the Order to allow small businesses to seek redress through the Energy Ombudsman for complaints brought against their suppliers? Please justify your answer.

Whilst we see merit in expanding the eligibility threshold in the Order to allow Small Business Consumers (SBC) to seek redress through the Energy Ombudsman (EO) in respect of energy supplier complaints, we do have concerns with the specifics and operation of the proposed eligibility threshold criteria for SBCs. We have set out these concerns in our answers to questions 2, 3 and 4 below.

We believe that Government should tread cautiously here, to not introduce measures that are excessive and could amount to over-regulation, as this may affect the functioning of the non-domestic energy market. One of the key guiding principles of the Government's Better Regulation Framework is proportionality. Further, in the Government's current consultation it states that the proposals are aimed at rectifying the 'access to justice gap' (page 10). We believe that Government should reconsider aspects of the proposals in order to achieve a more balanced and proportionate approach by ensuring that the expanded protections cover customers who need those additional protections whilst guarding against expansion to customers who have the resources to access existing channels advice and redress through other avenues (as the latter would have the effect of socialising additional costs across the customer base). We have set out throughout our response below some suggestions on how the proposals should be amended to achieve this aim. As with other regulatory interventions, this could be kept under review periodically.

We also have some concerns that the consultation does not sufficiently consider the full impact on the EO. We note that the impact analysis has modelled the likely increase in the caseload numbers. However, there does not appear to be any recognition that the nature of the complaints involving SBCs may be more technically complex (when compared to microbusiness customers). For the following reason, we believe that the impacts and costs may have been underestimated. One of the caveats to the analysis (as set out on page 23 of the consultation) notes that "*Costs for the EO are not considered*" and the assumption is that the current case fees and supplier membership payments charged will cover the costs of the EO. However, this is problematic as customer complaints in the non-domestic sector tend to get progressively more complicated outside of the microbusiness customer segment. This is particularly relevant in the context of Government's current proposals as the intended SBC thresholds are significantly higher than the existing microbusiness level and will seek to cover all but the largest one per cent of non-domestic customers.

As we set out in our response to Ofgem's policy consultation on its Non-Domestic Market Review, whilst microbusiness consumer contracts, products and service options are relatively simple, the same is not the case of non-microbusiness customers. For example, larger non-domestic customers:

- may take flexible purchase supply agreements or group supply contracts which are considerably more complex than standard microbusiness contracts, where many of the terms are bespoke, tailored and commercially negotiated; and
- can appoint their own preferred agents for metering services (for meter operator, data collection and/or data aggregation services) and where this occurs suppliers may have to deal with third party agents to resolve any issues in situations in which suppliers do not have the requisite contractual levers to direct those third parties to assist in the resolution of the issues.

It is not clear from this consultation that the EO's ability to handle the additional complexity of the contracts and potential complaints of larger non-domestic customers has been fully considered or understood. For example, we have seen cases where the EO has not understood the requirements of the Balancing Settlement Code (BSC) for complicated metering issues. Whilst the consultation suggests the resources of the EO may increase in response to higher demand, it is silent on the issue of whether the EO possesses (or will possess) the skills, expertise and experience in its casework staff in order to adequately deal with more difficult complaint scenarios, contract interpretation and application of relevant law. Therefore, there is the potential for adverse impacts such as erroneous decisions being made or longer timeframes for decisions to be made on cases by the EO.

One potential solution that may assist here is the introduction of an additional escalation or appeal process for SBC cases. Another solution may be to consider whether an alternative provider of dispute resolution services could be appointed, one that would specialise in resolving the complaints of non-domestic customers (whilst the EO primarily focusses on domestic complaints).

2) Do you agree with the combination of employee numbers, annual turnover and annual consumption level as threshold indicators?

No, we do not agree with the combination of employee numbers, balance sheet, annual turnover and annual consumption level as relevant threshold figures for SBC status as the proposed criteria seems to be unnecessarily complex.

The non-consumption, financial information elements of the threshold can often be difficult to verify independently and are subject to change and interpretation. Therefore, it can be difficult to use these criteria in practice. We believe the threshold criteria should be based solely on the energy consumption information of a business customer as this data is more freely and routinely available in the energy industry, thus ensuring that suppliers can more consistently identify SBCs without any input from the customers themselves (which would mean that customers are more likely to be classified and treated correctly). Energy consumption data is also arguably a far more robust and consistent indication of whether a customer is a small business consumer for the purposes of energy procurement.

We also believe that, irrespective of any indicators that may be used to indicate potential SBC status, there should be a set of exclusionary criteria applied on the basis that there are types of businesses that likely do not require the level of protection that true SBCs may require. We

set out these exclusions in our response to Ofgem's policy consultation on its Non-Domestic Market Review and they are as follows:

- Businesses listed in the FTSE 100 and FTSE 250 Indexes;
- Businesses that procure their energy through a purchasing organisation or public sector procurement organisation; and
- Businesses that have a dedicated relationship or key account manager embedded within their supplier organisation.

As noted above in our comments in response to question 1, proportionality is one of the key principles of Government's Better Regulation Framework and we would ask that Government give due consideration to the merits in employing these types of exclusions to the SBC definition. This will help to guard against introducing regulation that is excessive and overly burdensome.

3) Do you agree with aligning the turnover and balance sheet elements in the proposed new threshold with that for accessing the Financial Ombudsman?

No, we do not agree with aligning the employee, turnover and balance sheet elements in the proposed new threshold with that for accessing the Financial Ombudsman Service (FOS).

In its consultation document, Government has expressed a desire to align the turnover, balance sheet and employee number eligibility criteria for access to the EO to that of the FOS. This seems to be an arbitrary aim and the benefits of reaching such an alignment are not clearly stated or understood.

Firstly, at a fundamental level the eligibility criteria between the EO and the FOS will not align completely due to the proposed energy consumption-based aspect of the SBC test being present for the EO scheme but not for the FOS scheme. This aspect highlights the fact that Ombudsman schemes in different sectors will have unique characteristics and circumstances that will be germane in considering and formulating the qualifying criteria for each individual scheme. Conceptually, it is problematic and inconsistent to aim to align the EO scheme eligibility with that of the FOS for the purposes of consistency but to also want to vary from it due to sector-specific requirements.

Secondly, and following on from the point above, there are various Ombudsman or similar ADR schemes in other sectors and they do not share common eligibility criteria for SBCs. For example, the Business Banking Resolution Service is available to business customers in respect of their business banking services, and its eligibility criteria does not align to that of the FOS. Again, this indicates that individual product/service sectors naturally require eligibility criteria that is specific and relevant to each sector. As an aside, there are other definitions of a 'small business' in other contexts, such as for the purposes of Companies House filings where the term is defined markedly differently.

Thirdly, the case for aligning the eligibility criteria to the FOS as it relates to the financial leg of the SBC test may have been better set out if detailed analysis reflected that the spending-

level of businesses (as a proportion of overall spend) at any given 'small business' designation was broadly consistent across both energy procurement sector and that of the products/services covered by the FOS. However, this analysis has not been presented as part of this consultation. For example, a business that is heavily energy-intensive but less reliant on the procurement of financial services may validly be considered an SBC for the purposes of financial services but may be considered a non-SBC for the purposes of energy procurement (due to their engagement in and experience of the market).

4) Do you agree with the expanded energy consumption levels proposed in the consultation?

No, we do not agree with the expanded energy consumption levels proposed in the consultation. In our response to Ofgem's policy consultation on its Non-Domestic Market Review last September, we suggested that it would be appropriate to set the consumption threshold for SBCs at 200,000kWh for electricity and 500,000kWh for gas. We strongly believed that this struck the right balance for consumers and that the ratio between gas and electricity consumption is reflective of both past precedents (i.e. as with the original and revised microbusiness tests) and also of how both fuels are used within the non-domestic market.

The main reason for our objection is due to the proposed parity between the suggested levels of consumption of gas and electricity. When the microbusiness threshold was first introduced through The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008, the qualifying consumption for gas was 200,000kWh and for electricity 55,000kWh. This was subsequently amended via The Gas and Electricity Regulated Providers (Redress Scheme) (Amendment) Order 2014 to 293,000kWh for gas and 100,000kWh for electricity. Therefore, the gas to electricity ratio in the microbusiness qualification criteria went from approximately 4:1 to around 3:1 between 2008 and 2014, and this was in recognition of the differences in the way in which gas and electricity is consumed.

In this consultation, the Government has proposed a parity between both fuels of 500,000kWh (i.e. a ratio of 1:1) for the new SBC definition. However, the consultation does not set out a cogent rationale for or evidence of why there should be such parity and it fails to recognise the differences in how gas and electricity are consumed on a volumetric basis (and also the price differential between them) across the cohort of customers. Therefore, in the absence of any explanatory narrative, the proposed consumption thresholds appear to be set in an arbitrary way.

It is notable that on page 22 of the consultation document, Government sets out the average energy consumption by businesses based on their employee numbers (this is shown in table 2 with data coming from the publicly available National Energy Efficiency Data). On the basis of this data, it is evident that average gas consumption is around two times higher than electricity consumption at the smaller end of business customers and rising to four times higher at larger end of business customers. This underscores the significant differential in how gas and electricity is consumed by non-domestic customers and it would appear to negate (in the

absence of any other data) the case and justification for setting parity between the fuels for the purposes of defining SBCs.

Furthermore, in the context of the various energy efficiency initiatives and overall drive to net zero, there is a need to ensure that both the current microbusiness test and proposed SBC test reflect reducing energy consumption levels. We believe that setting the electricity consumption level at 500,000kWh is excessive as it does not consider the impact of energy efficiency and net zero trends. Again, Government has a duty to guard against over-regulation and to ensure that regulatory initiatives and protections are relevant, proportionate and justified.

5) Do you agree that the introduction of the new threshold allowing small businesses to access the Energy Ombudsman should be mirrored in any changes proposed by Ofgem to the TPI Alternative Dispute Resolution scheme, expanding the Consumer Complaints Handling Standards, and requiring suppliers to signpost relevant non-domestic consumers to Citizens Advice for support?

In principle, yes we agree that the introduction of the new threshold allowing SBCs to access the EO should be mirrored in any changes proposed by Ofgem to the TPI Alternative Dispute Resolution (ADR) scheme, the expansion of the Consumer Complaints Handling Standards Regulations, and requiring suppliers to signpost relevant non-domestic consumers to Citizens Advice for support.

We believe that the eligibility for accessing TPI ADR should be aligned to the eligibility for accessing the EO in respect of supplier complaints. We do not believe that TPIs should be held to a lesser (or greater standard) than suppliers are. Aligning the eligibility across both schemes will be beneficial for customers due to simplicity and consistency of approach and it will help them to better understand their rights and future engagement in the market.

We have consistently argued that TPIs should be directly regulated (possibly by Ofgem) rather than seeking to regulate them indirectly via the imposition of further obligations onto suppliers. We are disappointed that Government has not yet acted to introduce a robust regulatory framework for TPIs. We continue to advocate for this to become a reality as soon as is reasonably practicable as this will help the non-domestic market to function better and provide greater confidence to customers.

As it relates to the issue of the threshold enabling the expansion of the Consumer Complaints Handling Standards Regulations, we think this should (for consistency) be subject to the points we have made on the SBC threshold criteria in our responses to the questions above.

With reference to the threshold criteria being mirrored in changes requiring suppliers to signpost non-domestic customers to Citizens Advice, we would urge caution in this regard. As noted above, energy contracts (and matters relating to those contracts) involving microbusiness customers tend to be more complex than domestic customers, and energy contracts involving SBCs feature even greater complexity. If the remit of Citizens Advice is being expanded to cover SBCs, we need assurances that their resourcing will be appropriate

and adequate both in terms of head count and in the skills, knowledge, expertise and experience to deal with more complex cases. If this is not in place, then it could have an adverse impact on customers. Anecdotally, we have seen that some business customers have had difficulty in either contacting Citizens Advice or in obtaining an appointment, and therefore the issue in those cases is not necessarily to do with the lack of signposting.

Annexe C – Comments on SoC Guidance

Extract from updated guidance on SoC	Comments
0A.3(a) … Customers in new premises going through lengthy change of tenancy processes were simultaneously threatened with disconnection if they did not pay off the debt from the previous tenant. These circumstances were aggravated by the change of tenancy process being protracted due to delays by the supplier and requests for documents a new tenant could not be reasonably expected to hold, while at the same time the supplier did not delay pushing ahead with threats of disconnection if outstanding debt from the previous tenant was not paid.	There needs to be a distinction between a genuine change of tenancy and a case where the change of tenancy is not genuine (e.g. where there has not been a genuine change in the underlying business that is operating from the premises). These cases can be complex and the facts of each case will determine whether the debt can be pursued. Furthermore, the issue of change of tenancy documentation is being progressed with by RECCo, which looks to standardise the types of documentation that suppliers can request.
0A.3(c) … A customer raised a complaint with their supplier, but the supplier made little or no attempt to contact the customer to discuss their case or attempt to put any issues right.	This example is vague and should clarify whether or not the subject matter of the complaint is one of the Designated Activities covered by the SoC.
0A.3(c) … A customer was advised they were only able to contact a supplier by web chat or web form, that was not saved or sent to the customer afterwards. This did not give the customer visibility of what they had raised and when, which made it more difficult for the customer to evidence the raising of a subsequent complaint.	This example is somewhat vague, and it is not completely clear what Ofgem's expectation is. Where a complaint is raised, by whatever method of contact, it should be recorded in CRM systems. However, this example in the guidance is seemingly prescribing that a copy of the contents of webchats/webforms should be provided to the customer – if Ofgem wants that level of prescription, then it should be set out in licence conditions or secondary legislation (i.e. the CHSR) rather than in a guidance document.