

27 November 2024

Dear Jemma

Innovation in the retail market

Thank you for the opportunity to respond to this important consultation. As an industry leader in innovation, we have a number of key reflections to share with Ofgem as it looks to increase innovation in the retail market. In particular, we would like to highlight:

- **New innovative services and products for consumers are very positive and we really support these, but Ofgem should not lose sight of the importance of innovations in core services.** We have re-thought core supplier functions, including customer service, communications and billing arrangements which drive better customer outcomes and improve trust in the market, both of which are essential for the energy transition. This also demonstrates the potential within the current licence framework.
- **Two of the main barriers to innovation by suppliers right now are Ofgem's financial resilience requirements and the lack of market access for demand flexibility.** In light of Clean Power 2030, we urge Ofgem to take a stronger leadership role in widening market access for demand-side response. We encourage Ofgem to address these areas and our response details actions to achieve this.
- **Trust in the energy market is a pre-requisite** for consumers adopting any new innovative products and services. With this in mind, Ofgem must ensure that there is a consistent regulatory framework for all firms interacting with customers, including third-party intermediaries and load controllers. This is also important to ensure a level playing field across market actors, fostering more competition and innovation.
- **Ofgem should be cautious about reforming routes to the supply market and eroding universal service obligations.** These could lead to unintended consequences, such as the market prioritising serving "higher-value" customers.

Octopus Energy is an industry leader in innovation. We have brought a variety of innovative products to market over recent years and we have also innovated in core supplier functions, including customer service, communications and payment and billing arrangements.

Ofgem's approach to innovation should prioritize delivering great customer outcomes, not just new products and services. Innovation in core services—such as billing and debt management—drives customer satisfaction and trust. This has been evidenced in the banking sector. A 2015 paper from the Financial Conduct Authority (FCA) which examined the impact of text alerts and mobile banking apps (new innovations at the time) found these commercial innovations had sizable impacts on customer outcomes (e.g. reducing

unarranged overdrafts). It concluded regulators need to think carefully about the incentives that exist for innovation and The retail energy market has much to learn from this approach.

The energy market is emerging from a period of significant volatility which is creating a healthier, more dynamic market. Suppliers are competing with innovative offerings for customers driven by the energy transition. This market has seen rapid growth - Figure 1 demonstrates that there have been almost 50 new innovations launched in Q2 this year. This shows that suppliers are able to innovate within the licence. There is the potential to go further with greater innovation to drive better outcomes - further digitalisation and automation will improve customer service and AI also has a role to play. This has not been straightforward and there are barriers to innovation to overcome. For independent suppliers, Ofgem's financial resilience regulations tie up huge amounts of capital for regulatory requirements, which cannot be used for investment.

Ofgem has a great opportunity to unlock more innovation in the retail market. New products and services built around consumer flexibility will be one of the biggest areas of innovation in the energy system. We need to remove all barriers to consumers adopting low carbon technology and deliver market-wide half hourly settlement (MHHS) as soon as possible, and widen access to markets for demand flexibility. We provide more information on these in our response. These would potentially be more impactful in driving innovation than reforms in the retail energy licensing arrangements. Ofgem has also at times taken an approach to compliance which is not proportionate. This pushes suppliers to be more cautious and takes resources away from innovation.

We urge Ofgem to be cautious about the proposals in this consultation and to fully consider the potential unintended consequences. In particular, we urge Ofgem to be cautious about reforming routes to the supply market which erode universal service obligations and enable "suppliers" to serve specific groups of customers. This is more likely to lead to market participants serving "higher value" customers only, rather than developing solutions to serve lower income or prepayment meter customers which Ofgem mentions throughout the consultation. Universal service is a form of consumer protection and without it there's a risk lower income/lower use customers face less choice and miss out on the benefit of innovation. There must be a solid, evidence-backed case for moving away from the supply licence before it should be considered.

We are also concerned about the potential consequences of different rules for different players. There must be a consistent regulatory framework for all firms interacting with customers, including third-party intermediaries and aggregators. This will also ensure there is a level playing field for those providing energy products and services, driving more innovation and competition.

We look forward to collaborating with Ofgem and the Government moving forwards to continue to unlock innovation in the energy market.

Yours faithfully

Alexandra Meagher
Group Head of Regulation

Responses to questions

Question 1: What innovation is currently happening in the domestic and non-domestic retail markets? What is the scale of this innovation?

We are seeing a growing level of innovation in retail energy markets. This is happening from licensed suppliers and a range of other players.

In our response to this question, we focus on (i) examples of the innovative products and services Octopus offers; (ii) the increasing range of innovative products and services offered by energy suppliers; and (iii) the depth of innovation that happens outside products and services/tariffs. It's crucial that in its focus on driving innovation, Ofgem looks beyond innovation as just new products and services to new ways of delivering "core" services. This type of innovation can often have a wider reach and deliver positive outcomes for customers.

(i) Octopus's smart products and services

At Octopus, we have a diverse range of innovative products and services available for domestic and non-domestic customers, including:

- **Intelligent, automated tariffs** for low carbon technology. We have passed 1GW of shiftable electricity capacity in managed EVs alone with our Intelligent Octopus tariff¹ - enough to power a typical evening in both Leeds and Birmingham combined. We have also recently launched Snug Octopus, the UK's first smart tariff for traditional storage heaters which could save the average customer almost £140 a year.² Over 180,000 housing association homes rely on electric storage heaters for heating.
- **Time of use tariffs**, where the customer shifts their electricity usage to cheaper periods. We started back in 2018 with Agile Octopus,³ one of the world's first time of use energy tariffs. We now have a range of tariffs available to customers who have different types of low carbon technology (e.g. a battery, solar panel, EV or heat pump). Smart tariffs are growing in popularity and we now have c.700,000 customers on a smart tariff.
- **Flexibility campaigns, like Savings Sessions, Free Electricity Sessions and Power Ups**, which offer one-off opportunities for customers to reduce their energy bills and help balance the system through shifting their energy use. There are over a million customers signed up for these campaigns which have paid out over £10.5m over the last two years. These are widely accessible as customers only need a smart meter.
- **Zero Bill homes**,⁴ a next generation energy tariff with zero energy bills for at least five years, guaranteed, for new homes kitted out with the right combination of solar

¹ <https://octopus.energy/press/Intelligent-Octopus-Go-1GW/>

²

<https://octopus.energy/press/feeling-snug-octopus-energy-launches-uks-first-smart-tariff-for-traditional-storage-heaters/>

³ <https://octopus.energy/blog/agile-report/>

⁴ <https://octopus.energy/blog/introducing-octopus-zero/>

panels, home battery and heat pump. These include social and private homes. We are also developing a product for retrofit.

- **Electric Match**,⁵ which links our business customers to specific renewable energy generators, enabling businesses to access cheaper, greener energy and track and report scope 2 emissions right down to the half hour, as they can see precisely where their energy came from.

Our customers have embraced this. For example, around 10% of our customer books are on smart tariffs, while over the last two winters we have had 1.6 million sign-ups to Saving Sessions, paying out over £10.5 million while providing 1,972MWh turn down.

(ii) The increasing range of innovative products and services offered by energy suppliers

This type of innovation is now becoming more mainstream for suppliers. Figure 1 demonstrates that many new innovative products are being launched each quarter. For consumers, this is still at an early adopter stage. But the interest in our products like Saving Sessions and Free Electricity demonstrate that there is a widespread appetite for innovations which save consumers money and support net zero.

Map of new products launched by all suppliers 2018-2024

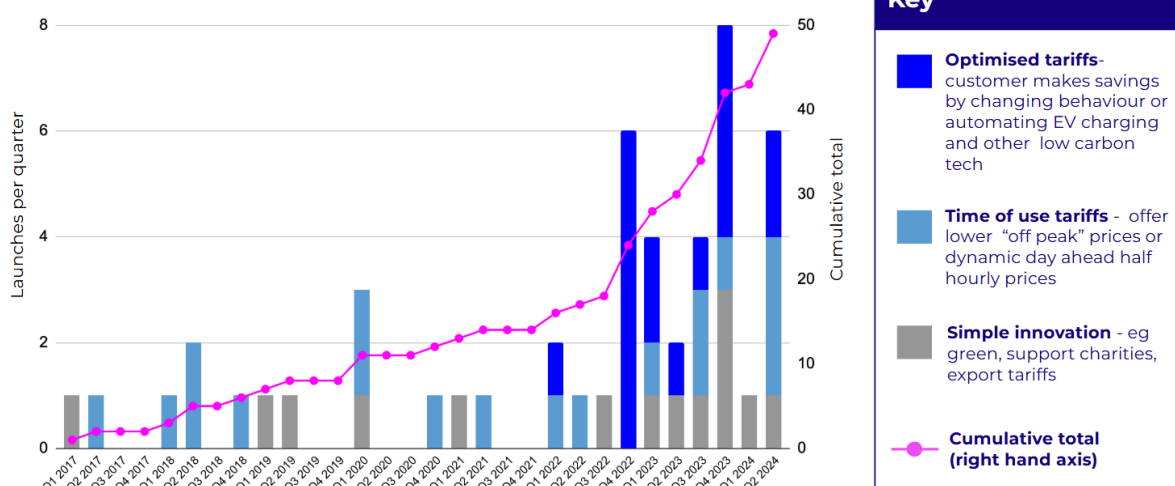


Figure 1. Map of new products launched by all suppliers 2017-Q1 2024. Source: Octopus commissioned analysis of public data (last updated July 2024)

(iii) Innovation beyond tariffs

As an energy and technology company, innovation is core to how we look after customers. We take an iterative and creative approach to customer care, which embraces new forms of technology. This kind of innovation is crucial and should be encouraged, enabled and monitored by Ofgem. Here are some illustrative examples:

⁵ <https://octopus.energy/electric-match/>

- **Increasing our use of AI, including asset optimisation and customer operations.** Kraken Optimisation is an example of using machine learning to dispatch assets and provides real-time intelligent portfolio optimisation. This underpins our Intelligent Octopus products, with over 1GW of domestic assets in Great Britain. Advanced machine learning techniques allow Kraken to predict how fleets of devices will behave and respond to prices to create system-optimal charging plans. This technology has improved energy management and enhanced grid stability by allowing almost immediate responses from assets in line with system needs at the command of the system operator, or in response to price signals.
- **Using generative AI to support our team of Energy Specialists to answer certain customer queries more quickly.** This frees up agents to provide more support to those who need it most. Our focus here has been how to provide a better customer experience - this was launched in response to the energy crisis. We are seeing improved productivity (e.g. better email responsiveness, better support for energy specialists to handle difficult calls). We are also seeing high customer satisfaction rates. For example, internal data from last year saw higher customer satisfaction scores from human + generative AI responses than humans alone.
- **Core customer service** - our technology-enabled 'universal agent' model has set new standards for customer satisfaction and efficiency. Octopus Energy has an NPS score that is +39 points above the energy supplier average - the highest difference across any of the sectors that Bain surveyed - and one of the highest company NPS in any sector. We have been awarded the Which? recommended energy supplier seven years in a row.
- **Rethinking energy communications** to find new and better ways to talk to customers - improving customer engagement and satisfaction.⁶
- **Creating a rewards programme** - Octoplus - where smart meter customers can earn money for making smarter energy choices.⁷
- **Developing better solutions for billing and payment arrangements.** Modern solutions enable us to allow customers to pay at a frequency to suit their needs, and many Octopus customers prefer to make weekly payments towards their energy consumption rather than monthly. This enables customers to make payments in line with patterns of income and helps to prevent bill shock.⁸

Question 2: What innovation should happen to meet consumers' needs and meet net zero?

Meeting the needs of current and future consumers and meeting net zero requires us to (i) drive forward electrification of heating and transport and (ii) harness consumer flexibility as part of a least cost zero carbon transition.

As organisations including the Climate Change Committee (CCC) and National Infrastructure Commission have identified, electrification is the key to decarbonising the UK economy. As electrification proceeds, there is a huge potential to make this demand smart and flexible through time of use tariffs, dispatchable demand side flexibility and ad hoc customer

⁶ <https://octopus.energy/blog/why-we-do-things-differently-from-love-power-to-the-wheel-of-fortune/>

⁷ <https://octopus.energy/blog/octoplus-unique-customer-rewards-scheme/>

⁸ Noting a Q1 2024 typical dual fuel customer would have received an £800 energy bill.

response campaigns such as the Demand Flexibility Service (DFS).⁹ This is the kind of innovation Octopus is already delivering (as set out in question 1). Harnessing consumer flexibility will enable us to achieve Clean Power 2030, be on course for net zero and provide a near-term 'dividend' for consumers. Innovation should unlock this. This does not just benefit customers on smart tariffs - it lowers costs for everyone by having a smarter, more efficient energy system.

Question 3: What will be the impact on consumers of new, innovative products and services? How can we maximise the benefits and minimise the risks?

New, innovative products will meet consumer needs and enable them to reduce their bills and carbon footprint. Smart tariffs will deliver significant savings to customers who are able to shift their energy consumption, while also providing savings for everyone by reducing overall system costs. They will help customers feel more engaged with the energy system. We are already seeing the positive impacts. For example, over the last 24 months our Intelligent Octopus Go customer base has grown to over 200,000¹⁰ and they are the most satisfied customers versus other suppliers.¹¹

We acknowledge concerns that these types of products may be less accessible to some customers because of cost or other means. That is why we are increasingly developing products that can benefit those who don't have any low carbon technology, for example Free Electricity Sessions, Power Ups and Saving Sessions. We are also expanding our reach to electric storage heaters, through Snug Octopus, which are often in lower income homes or social housing. Further, the cost savings of a more efficient energy system should be passed through to customers on standard variable tariffs.

AI will be increasingly used in the energy sector over the coming years. We use AI and machine learning for asset optimisation, network intelligence and monitoring and over the last year we have integrated AI into our customer operations to provide better customer experiences. For example, using generative AI to support drafting customer emails and summarising email or phone conversations to free up time for Energy Specialists to solve more complex queries from customers who need support the most. We have protections in place for this, which we have shared previously with Ofgem. Careful adoption of AI is key, as well as being transparent with the customer when something has come from AI and ensuring there is human oversight of AI generated products. We look forward to further detail from Ofgem on how it will implement its pro-innovation approach to AI and how it will promote and build consumer trust.

More broadly, we would like Ofgem to consider how it creates an agile and adaptive customer protection framework in expectation of more innovation and a greater use of AI. Monitoring and a principles-based approach to regulating new products and services is the

⁹ [Centre for Net Zero \(CNZ\) modelling](#) estimates £5bn in savings each year from demand flexibility in domestic heat and transport alone. Households will see direct benefits through their bills, including 52% lower wholesale electricity costs in 2040, according to [Cornwall Insight](#), or £375 off the average household bill.

¹⁰ <https://octopus.energy/blog/The-growth-of-Intelligent-Octopus/>

¹¹ Intelligent Octopus Go customers [had the highest satisfaction rating](#) of all those in WhatCar?'s home EV charger survey at 95%.

right approach. We have done a lot of thinking on this area and we encourage Ofgem to bring different parties together to discuss this further.

As a starting point, below are some of the things we do to ensure our customers have the confidence to switch to smart products and trust they will be protected.

- Supporting customers to choose the right tariff: we email our customers our tariff options which might be a good fit and we have a quiz on our website which helps customers identify which tariffs (or combination of tariffs) might work for them.
- Switching is easy: customers can switch to another tariff instantly, without any exit fees.
- Capping the price risk: some dynamic time of use tariffs have periods of higher prices when demand exceeds supply. In these instances, we protect customers with Price Cap Protect, which caps the maximum price they will be charged.
- Customers remain in control: customers can override our automated products if they need to, through our highly rated app. The app makes it easier for customers to control their tech.
- Excellent customer service: we provide excellent customer service as standard, but we recognise customers on smart tariffs with low carbon tech may have complex queries. We have specialist teams located in offices across the UK trained up to address the specific needs of our smart tariff customers. Since we introduced the teams, we find that while the calls take a little longer, customers tend not to need to call back as their issue has been resolved.

This regulatory regime should be supported by price protection. Ofgem should keep the price cap but needs to consider how it should evolve as the energy market changes. We have provided our thoughts on this in our responses to the Government's call for evidence on the future of default energy tariffs¹² and Ofgem's Future Price Protection discussion paper,¹³ and provide further thoughts in our response to question 11.

We also need a customer-focused smart meter rollout. The current programme is too focused on the meter, rather than the products and savings they unlock that make it attractive for customers to have a smart meter, and does not incentivise suppliers to fix non-operational smart meters. These risk customers rejecting smart meters. Ofgem should support DESNZ with placing consumers at the heart of the smart meter rollout. This means:

- Enabling suppliers to go where people want a smart meter;
- Incentivising suppliers to give all smart customers a great experience, instead of leaving faulty meters on the wall;
- Prioritising the people who need smart the most - those with legacy pre-payment meters;
- Focusing on where system and customers gains are higher, not just on replacing all meters; and
- Incentivising suppliers to ensure that customers receiving smart meter installs can access products and services that will take full advantage of the smart meter.

¹²

<https://www.gov.uk/government/calls-for-evidence/default-energy-tariffs-for-households-call-for-evidence>

¹³ <https://www.ofgem.gov.uk/call-for-input/future-price-protection-discussion-paper>

Finally, we must ensure consistency of consumer protections across the entire energy sector. There are currently loopholes in consumer protections with third party intermediaries, including aggregators, and these are rapidly growing industries. There must be regulations in place to ensure customers are protected.

Question 4: Are there any additional enablers or barriers to innovation?

Ofgem has identified a number of drivers for innovation in the consultation. Below, we focus on potential drivers which are acting as barriers to innovation when they should be enablers and how Ofgem could play a role in addressing these barriers.

Competition between firms:

Competitive pressures enable innovation particularly when there is a diversity of firms. This makes competition deeper and wider, driving deeper and wider innovation. This means innovating in new products, customer service, engagement experience and use of technology, rather than narrow competition solely on price (e.g. between fixed and standard variable tariffs). In our response to question 1, we set out a variety of innovations we have brought forward, which do not just include new products. We entered the market as a technology-focused challenger and have been able to innovate through investment in a sophisticated technology platform and taking time to trial and evolve products and processes until they work. We have spent many tens of millions on this and been patient about earning margins.

In the supply market, we are concerned about the impact of financial resilience on competition. We discuss this in greater detail in our response to question 12. We urge Ofgem to conduct a proper economic evaluation of the impacts of these reforms immediately, including on competition, and to take corrective action where there are unintended consequences.

More broadly, competitive markets rely on a level playing field between all actors. We are concerned by differing levels of regulation between different firms. Ofgem must ensure that its approach to regulating different players in the energy market is consistent and there are consistent consumer protections in place. We discuss this further in our response to question 7.

Price signals for net zero (electrification of heat and transport)

Ofgem's consultation also puts forward price signals for net zero as an enabler. However, current price signals are inefficient. Electrification and new low carbon technology should be an enabler of innovation but this is not being unlocked to its full potential. For example, the allocation of policy costs onto electricity bills disincentivises takeup of low carbon technology (e.g. EVs and heat pumps) and final consumption levies are a blocker for consumer flexibility.¹⁴ We praise Ofgem for calling in the recent Standing Charges Options Paper¹⁵ for the Government to consider how to reduce the burden of policy costs on electricity bills,

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<https://octopus.energy/blog/reforming-final-consumption-levies-is-essential-to-scaling-domestic-flexibility/>

¹⁵ [Standing charges: domestic retail options](#) (Ofgem, 2024) paragraph 5.15

including recovering them through taxation and looking at the balance of recovery between electricity and gas bills. We encourage Ofgem to continue to raise this with the Government.

Market structure enablers

One of the biggest areas for future innovation is consumer flexibility. We are concerned that the consultation misses the main enabler for innovation in consumer flexibility which is access to markets. We do not mean that we have not been able to engage consumers with flex products, we mean that flexibility is unable to compete in the full range. Lack of market access is currently holding back the full potential of flex. We strongly support competitive markets, but there is not a level playing field - all other flexible resources competing with demand flex have access to many different markets that are closed to demand flex. Other markets pay out-of-market availability payments which enable these other assets to price competitively in real-time markets. See further in question 5.

Reputational and regulatory risk

We are supportive of Ofgem protecting consumers and taking action where there is detriment, but this should be reserved for where significant consumer harm has occurred and/or this has not been put right quickly, as part of a proportionate, principles-based approach to regulation. In certain circumstances, the risk of reputational damage and financial penalties may have a chilling effect on innovation, for example if Ofgem were to make a public announcement about a small error.

Consumer trust

Consumer trust is a prerequisite to innovation. As the consultation acknowledges, new innovative products and services may create new consumer protection challenges that risk damaging trust and engagement. For customers to engage with innovations they need to trust that their interests will be protected. This means there must be equal consumer protections in place across suppliers, TPIs, aggregators and any other organisation providing products and services for customers. Ofgem must ensure this framework is in place. If customers can trust the energy market and know they will be appropriately protected, they will be much more willing to engage with new and innovative products and services. See further in question 7.

Question 5: What is the most significant barrier to innovation? Why?

As discussed in our response to question 1, innovation is broader than new products and services. However, new products and services built around consumer flexibility will be one of the biggest areas of innovation, present and future, in the energy system. The most significant barrier to firms engaging in consumer flexibility is market access. By this, we do not mean that we are facing significant barriers to get flex products to customers. We mean demand flex is unable to bid into the range of markets available for energy services. There are other meaningful barriers which are technical (metering and data requirements, commercial (NESO service design) and regulatory (metering rules). Below are some actions that the Government and Ofgem can take to help unlock innovation in consumer flex:

- Do not delay the implementation of Market-wide Half-Hourly Settlement

- Increase the participation of small flexibility assets in all markets, including through reform of the DFS and designing the CM to ensure it reflects the needs of reaching Clean Power 2030 and the role of demand flexibility in achieving this
- Strengthen locational signals, through reform to wholesale market pricing, and dynamic Distribution Use of System (DUoS) charges
- Provide clarity around asset meter rules and address Measuring Instruments Regulation and operational metering requirements
- Review the impact of Final Consumption Levies / policy costs on small scale flexibility as well as heat decarbonisation
- Immediately instruct NESO to fix the computer systems that are skipping Balancing Mechanism (BM) capacity, and increase the transparency of skip rate incidents by introducing an agreed methodology and data collection to ensure NESO is held to account appropriately and that it is proactively identifying problems
- Standardise Distribution Network Operator (DNO) flexibility services.

Stepping back, we are concerned about the pathway for demand flexibility and the support it has from Ofgem, NESO and Government. For example, we were disappointed by Ofgem's decision to approve the Demand Flexibility Service (DFS) at a much lower value than last year. In this decision, NESO and Ofgem focused on the cost competitiveness in the narrowest £/MWh sense, but did not consider the broader system benefit of flex, how it needs to scale to meet 2030 goals (NESO modelling suggests demand flexibility capacity needs to reach 10-12GW by 2030)¹⁶ and the role that DFS could play in the journey. We strongly support competitive markets, but markets are not open equally for flex. Other flexible resources, including gas, have access to many different markets that are closed to demand flex. For example, the Capacity Market (CM) paid £1.29 billion for Capacity Year 23/24. Although a very small amount of domestic flexibility is active in the CM, DFS capacity is not permitted to participate, while the CM is a large source of revenue for thermal generators. Unlocking the full potential of demand flexibility needs open markets.¹⁷

Question 6: What innovation is not happening because of regulatory barriers?

Overall, we do not see the supply licence as a significant barrier to innovation, either in innovating services or in the development of new products and services. We note in question 11 some specific suggestions around where the price protection regime could evolve to support smart tariffs.

We are more concerned that the restrictions on use of capital (financial resilience rules - see further in question 12) and risk of regulatory action (compliance approach - see further in question 8) limits the speed with which we move.

Looking more broadly, we highlight a Financial Conduct Authority (FCA) research paper from 2015, which examined the impact of text alerts and mobile banking apps - two new innovations at the time - on consumer banking behaviour.¹⁸ The FCA concluded that regulators need to think carefully about the incentives that exist for innovation in the market

¹⁶ [National Energy System Operator advice on achieving clean power for Great Britain by 2030](#)

¹⁷ [Octopus Energy: Full-scale demand flexibility needs open markets \(2024\)](#)

¹⁸ FCA, [Occasional paper no 10: Message received? The impact of annual summaries, text alerts and mobile apps on consumer banking behaviour](#), 2015.

and whether these are sufficient, and regulators need to consider what the public sector can do to enhance these incentives without just making rules for firms. The paper also recommended that regulators should work to reduce the costs of entry and provide incentives for challenger institutions to develop disruptive new technologies in the interests of consumers.

Question 7: Should we do further work to improve routes to market?

We are yet to see convincing evidence that this is a significant barrier to innovation which merits further work on routes to market for parties wanting to supply energy, and we are concerned it may undermine existing market innovation and consumer protections. We can see a strong case for Ofgem focusing on:

- Enhancing incentives and abilities for suppliers and new firms to enter the demand-response/flexibility market. We set out some of the ways Ofgem could open up accessibility of flexibility markets in question 5.
- Ensuring there are consistent consumer protections for customers engaging with the energy market. Ofgem is well placed to start designing these common protections - and avoiding the incentive for regulatory arbitrage - with DESNZ's plans for a new licensing regime for load control activities and regulation over third party intermediaries.

These areas complement - and go beyond - Ofgem's plans to look at "*making sure the consumer protection framework is fit for a more varied and dynamic market*" (para 41.5 of the consultation). We welcome that work, but suggest that it is re-scoped to cover actors beyond suppliers.

We are concerned the routes to market reform options (see question 8) could create a two tier licensing regime which is both unhelpful for consumers, and has competition impacts by creating an uneven playing field.

We strongly support competitive markets and welcome new firms that are driving innovation, but we are concerned there could be the development of "one way bets" by non-supply firms that take the upside of consumer flex market participation, but socialise the downside. Ofgem must be careful to ensure this does not happen. It can do this by ensuring there are common consumer protections. We attach at Annex A a table which compares the supply licence with the proposed licence for demand side service response providers and current voluntary regimes and highlights the inconsistencies. While we realise licensing for load controllers is not part of this consultation, the table illustrates the two tier market could easily emerge. When further considering this area, we recommend DESNZ and Ofgem:

- Update the supply licence to ensure it covers load control services. Licensed energy suppliers should not have to be double licenced.
- Take the supply licence as the starting point for conditions for DSRSPs - and carve out certain conditions that don't apply to them.

If Ofgem does see the case for looking further into reforming "routes to market", there must be an exceptionally high bar before removing or diluting licence requirements. Ofgem's criteria for assessment in Appendix 2 is a good start. We would add some general litmus tests:

- If the licence rules are not required for some firms - why are they needed for energy suppliers? Could they not be removed all together?
- What happens in the case of firm failure? How will customers be protected?
- What would happen if the majority of the current market took up this new route to market - would this work? If not, why not?
- What if all suppliers dilute the licence? There needs to be a rock solid case before switching off licence or moving away from universal service.

Question 8: Which routes to market are most attractive and why?

From our own experience as a licensed energy supplier that is also a leading innovator (see some examples in question 1), the supply licence as a regulatory structure has not been a barrier to us innovating.

However the way Ofgem approaches the supply licence can limit innovation. In particular, we would like to see Ofgem:

- In its overall approach to retail regulation, focus more on enabling competition and supporting a diversity of business models and approaches in the market. We have concerns that the new financial resilience framework may have unintended consequences for competition and innovation because of how it treats legacy suppliers versus independent challengers. See further in response to question 12.
- Ensure its enforcement of regulation does not inadvertently limit supplier risk-taking. Public pronouncements and press releases about technical licence breaches - where the issue has already been fixed for those customers by the suppliers - will only drive less innovation and risk taking from suppliers, and serve to undermine trust in suppliers generally. We note that this is not the approach that other regulators - such as the FCA - take.
- Rapidly evolve how it monitors compliance, particularly in the light of feedback from MCRs. Ofgem should enhance and improve its monitoring, compliance and enforcement, making it more proportionate and risk based. How Ofgem monitors the market and implements the standards is as important - if not more - than those standards.

Question 9: If you think that we need to improve routes to market, which option do you think should be our top priority and why?

As set out in question 7, while we appreciate Ofgem's desire to move quickly to drive innovation, Ofgem's options for route to market reform are not necessary and potentially a distraction.

In terms of improving routes to market, we urge Ofgem to focus on designing consistent consumer protections and a level playing field for the unregulated firms which are about to be regulated, namely demand-side response service providers/load controllers¹⁹ and third

¹⁹ [DESNZ SSES Programme: consultation on proposals for a load control licence \(2024\)](#).

party intermediaries.²⁰ Getting this right will build strong foundations for trust in the retail energy market as it develops and avoid the risk of one bad actor damaging a nascent market.

We are concerned Ofgem seems to be pre-empting governmental decisions by saying that licensed suppliers will need both a supply licence and a load controller licence.²¹ This matter has not been decided by DESNZ and is still subject to consultation.²² Ofgem should not overcomplicate by requiring suppliers to be double licenced. It would be more straightforward and less regulatory burden to just update the supply licence to ensure it covers load control services.

Question 10: What are your views on the options presented for amending routes to market? What would be the risks and benefits of each option?

We are yet to see a strong case for these reforms and provide comments on the specific options below. If Ofgem does see the case for looking further into reforming “routes to market”, there must be an exceptionally high bar before removing or diluting licence requirements - some ideas on this in question 7.

Reform derogations regime: Not convinced that this would be particularly helpful for flexibility products, however it is in principle helpful. We have used the derogations process to good use, but it would be helpful if derogations could move more quickly. Appendix 3 to the consultation is a good starting point, but overall it would not be helpful to see more transparency in this area. If Ofgem was more consistently transparent about what derogations have been granted - and enable derogations to be granted to more than one supplier - this could also be helpful to enable innovation. We share Ofgem’s concerns about potential consumer risks and market distortions with derogations.

Restricted licence / individually modified licence: Both these options would be a fundamental change to the universal service model and the supplier hub. Before further fundamental changes such as MHHS or higher low carbon tech penetration have been embedded, this radical change is premature. We also suspect that this kind of reform is more likely to lead to market participants serving “higher value” customers only, rather than developing solutions to serve lower income or prepayment meter customers which Ofgem mentions throughout the consultation. Universal service is a form of consumer protection and without it there’s a risk lower income/lower use customers face less choice and miss out on the benefit of innovation. Accordingly, we agree with Ofgem that this approach might lead to competition and consumer risks. There are significant questions from a financial resilience perspective about what would happen to these firms in case of failure. We suggest firms would need to have the same (if not better) financial resilience requirements. There must be

²⁰ [DESNZ consultation on regulating third-party intermediaries in the retail energy market \(2024\)](#)

²¹ [Ofgem consultation on innovation in the energy retail market](#), paras 1.3, 3.6 which says “Companies undertaking both supply and load control activities would need both a supply licence and load control licence.”

²² [DESNZ SSES Programme: consultation on proposals for a load control licence \(2024\)](#). In response to question 1, Octopus noted “we do not support duplication of licences. Licenced suppliers are already engaging in load control and have sufficient obligations to protect customers and support competition in the market. Therefore the scope of the new DSRSP licence should be limited to parties that are not already licenced suppliers.”

a solid, evidence-backed case for moving away from the supply licence before it should be considered - we have not seen that case.

Reform licence lite: Given the high number of supplier failures in recent years - and the significant costs this imposed on customers, and the regulatory response, a renewed focus on licence lite is inadvisable. The recent new rules on financial resilience, resource adequacy, fit and proper tests etc all been put in to address concerns on supplier operational and financial capabilities. It seems nonsensical to dilute these rules for some “special cases”. If these rules are getting in the way of innovation/entry then they should be reviewed for all licenced suppliers.

Enable licence exempt supply: This approach seems complex and requires more thinking. In general, we recommend that all customers who engage with energy activities have the same protections, so would not recommend an approach where as Ofgem says “*customers are not provided the same level of protection as those supplied by a licensed party.*”

Question 11: To facilitate innovation, which supply licence conditions would most benefit from being reformed (e.g. adding derogation powers)?

As per question 6, we do not see significant regulatory barriers to innovation in terms of the licence. However, there are areas of the supply licence particularly relating to price protection which will need to evolve to reflect the future energy market. We have raised these points with Ofgem in other specific consultations but highlight here that:

- **The Ban on Acquisition Tariffs** should be made permanent as a step towards building a fairer market. We are glad Ofgem has committed to extending it, but it cannot continue indefinitely in its current form. Ofgem should use the additional time it has given itself through the BAT extension to bring in enduring regulations which protect and enable better outcomes for loyal and disengaged customers. This involves finding a solution that does not require the current market-wide derogation.
- **Ensuring the price cap works in a world of more smart tariffs.** The price cap will need to evolve as the energy market changes (e.g. as MHHS is implemented) and there are more and more customers on smart tariffs. We are encouraged that Ofgem is working on how the price cap is updated to reflect a world of MHHS. One additional area to consider is the risk of bill shock for customers on time of use tariffs (where these are also fixed term deals) if they roll off onto a single rate default tariff and lose the benefit of cheaper rates out of peak times. These customers might reasonably be counted as active and engaged and therefore can have a different default arrangement. There are a range of potential options here such as a simple time of use default arrangement, or a principles-based approach to default arrangements. Without appropriate price protection, there is a risk that confidence in smart products is dented and this inhibits take up.

Question 12: Are there any other improvements to routes to market which should be considered as part of enabling significant innovation in the retail market?

As flagged in question 8, we have ongoing concerns about the impact of Ofgem’s approach to financial resilience - and in particular the capital adequacy rules - on competition and innovation. Our ability to innovate has been underpinned by significant investment in building

a sophisticated technology platform, developing apps and other customer interfaces and trialling and evolving products until they work. We have spent many tens of millions of pounds on this. This will be very challenging for new entrants under the new regulations.

We are concerned they could act as a barrier for new entrants to the supply market, and will constrain investment by suppliers in what Ofgem calls “smart, low-carbon, specialised services”. This constraint applies particularly to independent suppliers who do not have access to parent company guarantees to enable RO ringfencing or to meet the capital requirements. As a result, the only options available to these firms are tying up cash and capital for regulatory reasons - rather than using this for investment. We are not suggesting Ofgem revisit the financial resilience proposals in detail, but we would like Ofgem to consider amendments to the rules which would remove these competition impacts. For example, Ofgem could consider reviewing how below-investment grade credit ratings can be used to meet part of the capital adequacy requirements. This is standard practice with other creditors. This approach would continue to manage risk, whilst also freeing up capital for licensed firms to invest in “smart, low-carbon, specialised services”.

Further, we are concerned that - despite NESO’s Clean Power 2030 report seeing a role for almost 12GW of demand flexibility - the mechanisms for scaling demand flexibility do not exist, e.g. demand flex is still not on a level playing field with other resources, there is slow progress on MHHS and there are high blockers to Capacity Market and other market entry for demand side flex. We recommend Ofgem look at this in detail.