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### **Supplier Licensing Review: Ongoing requirements and exit arrangements.**

Thank you for the opportunity to respond to Ofgem's consultation regarding proposed changes to licensing for existing suppliers, including arrangements for orderly market exit. Please note we have also contributed to the response submitted by our trade association, ICoSS.

None of the information provided here is confidential and we would be happy to discuss our views in more detail, should you feel it beneficial.

### **Background**

BES Utilities is a non-domestic only supplier. We began supplying gas in 2005 followed by electricity in 2010 and, as one of the first totally independent suppliers, all of our customers have actively engaged in the energy market at some stage. Our innovative products and ability to respond quickly to a changing market have enabled us to stand the test of time.

Our main target market has historically been the change of tenancy (CoT) and new business sector. We have very minimal credit requirements for new customers and seek to manage this credit risk by offering Direct Debit only products, plus by building an element of risk into our pricing. In simple terms, our niche has been to offer a competitive price to a high-risk group of customers who would struggle to access the market without paying a significant up-front security deposit.

### **Summary**

- BES supports the view that more must be done to protect domestic customers and the wider market from supplier failure events.
- We do not believe the same levels of risk or detriment exist in the non-domestic market and this appears to show through in Ofgem's proposals – for example, several of the proposals refer solely to domestic consumers. As such, any additional measures should focus on the domestic market.

- Mutualisation of debts should be targeted towards the market sector in which they originate – i.e. non-domestic customers should not bear the costs of domestic supplier failures.
- Ofgem has a key role to play in ensuring suppliers are financially viable and also that they have in place the required infrastructure to provide a high standard of customer service. That said, any additional scrutiny on suppliers should be risk-based, i.e. where a potential problem is identified.
- While we have no object to the 'fit and proper' requirements or living wills, we do not believe they will achieve their intended purpose. Instead Ofgem should instead focus on the analysis of existing data and use of existing powers.
- Additional regulatory intervention creates a further cost burden for suppliers and, ultimately, customers.

## Consultation questions

We have set out below our responses to Ofgem's consultation. Please note we have only responded below where we Ofgem's proposals relate to the non-domestic market, and where we have additional comments not covered by the ICoSS response:

*Question 1: Do you think the proposed package of reforms will help to reduce the likelihood of disorderly market exits, and the disruption caused for consumers and the wider market when suppliers fail? Are there other actions you consider we should take to help achieve these aims?*

We believe the proposed reforms will place significant additional financial and operational burdens on non-domestic suppliers and, ultimately, customers, who will once foot the bill for problems in the domestic sector. Supplier failures, almost exclusively in the domestic sector in the last 18 months, have contributed to an already challenging environment for all suppliers. These failures have negatively affected the credit rating of the entire sector, limiting the availability and raising the cost of capital.

In this context, increasing the financial robustness of suppliers is to be welcomed, but Ofgem should look to the FCA capital requirements post the global financial crisis in 2008 as a guide on how long such changes to capital structures can take to implement, especially when the wider capital markets have little appetite. If this wider context is not properly considered, we believe that an aggressive deployment of these policies could lead to further failures, possibly on a systemic level.

In our view any additional measures should focus on the domestic market, as the risk of non-domestic supplier failures and resultant socialisation of costs has proven to be extremely low.

As suggested by various parties at Ofgem's recent workshop, we share the view that the frequency of government scheme payments should be increased to quarterly, or even monthly, to reduce the 'big hit' impact on suppliers once per year.

*Question 2: Do you agree with the outputs of our impact assessment?*

We do not agree. In our view Ofgem has not considered sufficiently the impact on (particularly smaller) companies of providing cover for customer credit balances and government schemes.



We are not convinced that there is the appetite for the financial services market to offer this type of insurance and, if BES was able to secure such cover, the cost would be exponentially higher than suggested by Ofgem. Referring to our previous comments, access to, and cost of, capital in the current environment could potentially cause these proposals to disrupt business models, ultimately translating to a sector level rise in costs, that would have to be borne by customers.

The implementation timeframes proposed do not reflect the time needed for business model change, procurement processes, and long-term changes in capital structures. We believe in a stable, positive environment compliance with these proposals may be achieved in a 12 month window, but in the medium term it is more likely that a compliance window of 18-24 months would be required.

*Question 6: Do you agree with our proposal to introduce new milestone assessments for suppliers? Do you think the milestones we have proposed and the factors we intend to assess are the right ones? Are there additional factors we should consider to help us to identify where suppliers' may be in financial difficulty?*

As the proposed milestones relate solely to domestic suppliers, there will be no impact our business. To be clear, such milestone assessments are not required in the non-domestic market.

*Question 7: Do you agree with our proposal to introduce an ongoing fit and proper requirement? Are there additional factors, other than the ones we have outlined, that you believe suppliers should assess in conducting checks?*

We do not object to this proposal and we agree that more must be done to prevent irresponsible or unscrupulous individuals from damaging the market. However, we do not believe the current proposals will be effective and we also have questions about how they would work in practice, given the diverse range of supplier sizes and models. For example, how would Ofgem determine and police who within each company is a 'senior manager'?

Current company law exists to require anyone running a business to be 'fit and proper' and we believe it would be more effective, both operationally and financially, to enforce existing powers instead of creating new legislation.

*Question 8: Do you agree with our proposal to require suppliers to produce living wills? What do you think we should include as minimum criteria for living will content?*

Again, we question the value of this proposal, as in all likelihood a failing supplier would pay little attention to such a document when faced with collapse and the resultant pressures. The only guaranteed outcome would be an increase in supplier costs to implement and maintain the living wills.

It is worth adding that suppliers already provide a significant amount of data to Ofgem on a regular and ongoing basis. Company financial information is also publicly available. As a starting point, Ofgem should look to coordinate its information gathering and analysis more effectively, instead of placing additional burden on suppliers.



Another option could be an annual RFI to capture any relevant information not already in Ofgem's possession, although we would not encourage this unless the benefits could be proven to outweigh the administrative burden on companies.

*Question 9: Do you agree with our proposed scope for independent audits? Please provide rationale to support your view.*

In our view any audit of this nature should be requested only where Ofgem has identified a high level of risk – for example, an incident triggering concerns about a company's financial viability, or a significant increase in customer complaints which might suggest problems with the supplier's service.

*Question 11: Do you think there is merit in taking forward further actions in relation to portfolio splitting or trade sales? What are your views of the benefits of these steps? Are there any potential difficulties you can foresee?*

Yes. We believe the current arrangements place non-domestic only suppliers at an unfair disadvantage. In our view there should be the facility for Ofgem to place domestic and non-domestic customers of a failed supplier with different companies.

If you have any questions regarding this response, or any other matter, please do not hesitate to contact me via the details shown above.

Yours sincerely,



Joel Chapman  
Head of Regulatory Affairs & Compliance