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Dear Jonathan,

Ofgem's Strategic Review of the microbusiness retail market

We welcome Ofgem's Strategic Review of the microbusiness retail market, as we believe it is important that microbusinesses can get a good deal from the market and appropriate protections whichever way they choose to engage.

Drax Group plc (Drax) owns two retail businesses, Haven Power and Opus Energy, which together supply renewable electricity and gas to over 350,000 business premises. Drax also owns and operates a portfolio of flexible, low carbon and renewable electricity generation assets – providing enough power for the equivalent of more than 8.3 million homes across the UK. This is a joint response on behalf of Haven Power and Opus Energy and is non-confidential.

It is our view that microbusinesses are already afforded appropriate protections in areas where they may face the greatest risks. We have yet to see evidence of this group of consumers suffering harm due to a lack of Supplier regulation, and therefore do not consider there to be justification for onerous regulatory intervention. However, we acknowledge there are aspects of the customer journey that warrant more review by Ofgem to ensure microbusinesses can get good outcomes.

We outline our key points as follows:

- We recognise this review is intended to uncover evidence of consumer harm, but we do note there is a lack of robustness in the evidence currently cited. Ofgem has considered various pieces of industry and consumer engagement research in forming their theories of harm. However, that includes only one piece of new research since 2017 – a joint 2018 study by Bristol University and the Money Advice Trust, which interviewed 22 small businesses. If research is to be relied upon to inform regulatory intervention, then it must be based on statistically robust sample sizes, rather than solely anecdotal evidence, otherwise Ofgem could inadvertently impose unnecessary and undue regulatory costs on the microbusiness market.

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- Ofgem's research shows the majority of microbusinesses are actively engaged. The 2018 Micro and Small Business Engagement Survey¹ concludes that micro and small businesses are becoming increasingly engaged in the energy market, comparison of prices is increasing and more businesses are renegotiating contracts. In 2018, 68% of businesses surveyed engaged in the market. The same survey indicates that most who do switch are aware of price differentials between suppliers, with 89% of those who switched or compared tariffs doing so to achieve cost savings. More than half of those questioned (51%) believe it is easy to compare prices between suppliers. This is strong evidence of the market working effectively.
- It is in suppliers' interests to engage their customers in order to retain them. The vast majority of microbusiness consumers have fixed term contracts and they are actively engaged in bilaterally negotiating those contracts. Both Haven Power and Opus Energy proactively raise microbusiness awareness of the benefits of renegotiating their contract at various touch points throughout the customer journey. We seek to understand our microbusiness customers' needs, and it is in our, and our customers', interests to agree a contract that is fair and appropriate in order for our relationship with that customer to grow and endure.
- Suppliers already have obligations that protect microbusinesses. Licence conditions require us to engage with consumers at specific points across the customer journey bringing key information to their attention. And the obligation to treat customers fairly covers a range of designated activities ensuring customers are provided with information that is complete, relevant, accurate, not misleading and communicated in plain intelligible language.
- Third-Party Intermediaries (TPIs) are an important part of the market but their microbusiness customers are afforded little protection. A large segment of the microbusiness market uses TPIs to source and manage their contract, yet TPIs still remain an unregulated player in the energy market. We view the practices of some TPIs operating in the non-domestic market as posing the most significant risk to microbusiness and the greatest potential cause of consumer harm. We continue with our long held view that TPIs should be regulated through a market-wide Code of Practice.

Our responses to the specific consultation questions in the Opening Statement are appended. We would be happy to discuss any of our response with you further if it would be helpful.

Yours sincerely

Matt Young

Group Head of Regulation
Drax Group Plc

¹ <https://www.ofgem.gov.uk/publications-and-updates/micro-and-small-business-engagement-survey-2018>

Appendix - Consultation Questions

Question 1 - Do you agree that our theories of harm represent the most significant and impactful areas of consumer detriment?

Microbusinesses are commercial enterprises that should be familiar with budgeting, overheads and making commercial decisions. Energy suppliers are supplying products and services to these businesses, as are other trading counterparts, and it would be inappropriate and economically inefficient to burden the whole of the market with regulatory costs in order to protect a few commercial businesses that choose not to act prudently or engage effectively. That said, we fully support Ofgem looking into the stated theories of harm further, and in particular highlight the need to give attention to the CMA Database Remedy, TPIs and customers' experience when in debt. We discuss the CMA Database Remedy below. Our views on TPIs can be found in our response to question 6 and on the debt-path in our response to question 7.

CMA Database Remedy

In its 2016 Energy Market Investigation final report, the CMA established a package of remedies to promote effective competition, helping microbusiness consumers engage, while at the same time protecting those less able to engage to exploit the benefits of competition. The Database Remedy was part of that package but has to date not been implemented in the domestic or microbusiness markets. If Ofgem conclude that the same concerns that the CMA found persist, then we suggest these could be addressed by an evolution of the remedy the CMA proposed. We would be fully supportive of those microbusinesses that have been on a default tariff for more than 3 years to form the basis of a Collective Switch that tenders tranches of customers. Those tranches should be of a manageable size (where the customer/meter type is selected randomly) thereby allowing as many suppliers as possible to participate. We would also suggest customers selected for each tranche to be from a variety of incumbent suppliers, rather than tendering for a single supplier's default portfolio at any one time.

Question 2 - Are there any other key areas of consumer harm that should form the focus of our review?

New players in the market

Energy is a market in transition and the greatest risk to consumer detriment arises from the proliferation of unregulated third parties. Increasing complexity of the energy market risks consumers being ill-informed about the products and services they are choosing. Arrangements involving multiple providers make the market more complex and so, rather than becoming more engaged, there is a risk that consumers will either become marginalised or simply switch off. Where time is a precious commodity, expecting small businesses to spend more time interacting with multiple providers could be detrimental compared to a single relationship fostered through the current supplier hub model.

Additionally, convergence across markets is likely to lead to consumers increasingly interacting with unregulated businesses. A refresh of Consumer Protection laws to reflect this evolving landscape is overdue and could go some way to future-proofing protections for microbusiness by deterring mis-selling of inappropriate products and services by parties not governed by a supply licence.

Loyalty Penalties

The vast majority of microbusiness consumers have fixed term contracts and they are actively engaged in bilaterally negotiating those contracts. There are also already very effective regulatory requirements on suppliers to prompt customers into action at the end of their fixed contractual period, as well as restrictions on imposing onerous exit terms on default products and limits on what prices can be charged to customers on Deemed contracts. Perhaps most importantly, the Supply Licence already provides protections to microbusinesses against all six harmful business practices highlighted by the Secretary of State in his recent letter² to the CMA, and by which the Government expects regulators' intervention and enforcement action to be guided. This is a positive reflection of the steps Ofgem and the CMA have already taken to tackle this potential risk of consumer harm in the non-domestic energy market.

Question 3 - Do you think awareness raising materials/initiatives would be of significant benefit to microbusinesses? What key information should any new materials focus on and how would they best be delivered to microbusinesses?

There are already quite extensive awareness raising regulatory obligations in place that protect microbusinesses, some of which are highlighted here:

- Obligations under SLC 7A to engage microbusinesses at specific touchpoints along the customer journey, in particular, to remind them of their contract end date and bring essential information to their attention, including the charges that may apply if they do not take action.
- Customers on deemed contracts are afforded further protections (under SLC 7), requiring suppliers to proactively provide the Principal Terms of the Deemed Contract, noting that alternative contracts may be available and how information about such contracts may be obtained.
- Under SLC 14 and 7A suppliers are required to provide clear information around exit rights.
- Suppliers have obligations to adhere to the Complaint Handling Standards, and make these clear to consumers, including providing each customer with information concerning their rights and options regarding dispute settlement.
- Suppliers have a number of obligations through the Smart Metering Installation Code of Practice (SMICoP) to provide microbusinesses with awareness raising material regarding their Smart meter and energy efficiency advice. We agree with Ofgem that it is imperative microbusinesses are aware of the benefits they can access through smart metering.

In spite of these protections, we feel there may be benefit from introducing a “*how to engage the energy market*” guide, tailored specifically to microbusinesses, could be a helpful enhancement to the information already provided by suppliers. This guide could highlight consumer protections as well as actions consumers can take themselves to get the best deals and outcomes – for example, having a Smart meter installed, ensuring value for money from TPI services, providing meter reads, and promptly reporting changes of tenancy. This guide could be co-branded by Ofgem and the Citizens Advice Service to give it impartiality and

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809592/Tackling_the_loyalty_penalty_SoS_letter.pdf

credibility, and be distributed in both pamphlet form and utilising more modern, innovative and engaging mediums.

Importantly, responsibility for raising awareness shouldn't fall solely on suppliers. Targeting the distribution of this guide at times that are likely to coincide with businesses naturally entering the energy market may prove most effective, such as by banks (providing advice and/or loans to small businesses, particularly start-ups), commercial letting agents or when installing Smart meters. Other effective channels could include exploiting the reach of industry trade bodies, such as the Federation of Small Businesses (FSB), Association of Convenience Stores (ACS) and the British Chambers of Commerce (BCC), making use of their existing communication routes to reach relevant business customers.

Question 4 - Our evaluation of the CMA's price transparency remedy (published alongside this document) has identified a number of issues at this stage of the customer journey. What do you see as the most impactful issues hindering microbusinesses attempting to effectively browse the market in search of an improved deal/service offering? Please provide quantitative and/or qualitative evidence demonstrating why you believe these issues to be most impactful.

Product complexity and variety

Suppliers design products and propositions with the sole purpose of being attractive to current and prospective customers. As a result, there are a variety of options available to smaller business customers. This is a sign of healthy competition as suppliers seek to differentiate themselves in the market. Any concerns around product complexity and variety should be tempered by the regulatory protections already in place. In particular, suppliers have a licence obligation under the Standards of Conduct to provide information to microbusiness consumers that is complete, accurate, not misleading and communicated in plain intelligible language. We are also obligated to ensure that information relates to products and services appropriate to the microbusiness consumer to whom it is directed.

Prevalence of PCWs

We note that Price Comparison Websites (PCWs) aren't active in the non-domestic market. This could be because parties who would have the capability to fulfil those roles, find it more lucrative to operate as unregulated TPIs rather than a lower-margin PCW provider. This is possibly sustained by a lack of transparency in TPI commissions and consumer awareness of how to get value for money from TPI services. We believe this may be a market failure, limiting the options available to microbusinesses attempting to browse the wider market.

CMA Price Transparency Remedy

We agree with Ofgem's conclusion that the CMA's price transparency remedy is a positive development, reflecting the move towards more digitally enabled engagement. However, the prescriptive rules currently in place inhibit customers from browsing the market quickly and easily. Our own experience shows that only 7% of customers go beyond the initial display of prices to then join, negotiate or have prices emailed to them. Consumer feedback received by us indicates the Price Transparency Tool doesn't provide easily comparable information. Ofgem's own research notes that aspects of the remedy are not yet working as well as intended, highlighting that awareness, and therefore use, is low and generating a long list of prices means it can be difficult for microbusinesses to interpret and determine which prices are best for them.

The main issues with the CMA's remedy as implemented are:

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- Customers cannot easily compare available prices, as suppliers' quotation tools are hosted independently requiring the customer to input the same information on multiple occasions.
- The requirement to display TPI and renewal prices adds to the confusion.
- Prescriptive requirements restrict the remedy's effectiveness as the current primary inputs severely limit our ability to tailor a quote.
- The requirement to display the highest price for all products, does not facilitate price discovery at competitive levels and thus is not helpful for consumers or suppliers.

Therefore, we propose the following steps to improve the effectiveness of the Price Transparency Remedy:

- 1) Citizens Advice, a not-for-profit statutory consumer body, to provide a central consolidated repository of suppliers' PTT results to remove the need to review multiple websites. Upon providing a single view of prices and products, customers could then contact suppliers directly to discuss their specific needs and contract accordingly.
- 2) Ofgem to permit suppliers to seek additional primary information (e.g. contract start date or company details such as SIC code) during the online quotation stage, in order that we can tailor a better price.
- 3) Ofgem to replace the prescriptive rules with principles-based rules around this price discovery process. Relaxing the existing prescriptive approach will enable suppliers to make the tool more user-friendly and to offer products that are easy to understand at competitive prices.

Question 5 - What do you see as the key issues microbusinesses face when they come to enter into a new contract for their energy supply? Please provide quantitative and/or qualitative evidence demonstrating the extent and impact of the consumer harm caused by these issues in the form of both financial and non-financial detriment.

Clear and transparent information

Suppliers have obligations under the Standards of Conduct to provide microbusinesses with information that is complete, accurate, not misleading and communicated in plain and intelligible language. Since the inception of the Standards of Conduct, Haven and Opus have refreshed all our consumer facing documents, including contracting material, to ensure the content is presented in a clear and appropriate manner consistent with the fairness objective, and we keep them under constant review. Ofgem has powers to take enforcement for non-compliance with the Standards of Conduct, so we do not see the need for additional regulation on suppliers.

Additionally, as discussed under question 4, there are a variety of product and pricing options available to smaller business customers. Any concerns around product complexity and variety should be tempered by the regulatory protections already in place and we would caution against restricting innovative products and pricing. With differing customer needs and a rapidly evolving market and technology landscape, versatile and innovative products and pricing is key to engaging consumers and achieving decarbonisation goals.

Switching Process

We agree with Ofgem's observation that the mechanics of the switching process itself need to run smoothly to support a positive customer experience. While we recognise there are reliability issues, we are confident those will be addressed by industry as part of Ofgem's Faster More Reliable Switching Programme.

TPIs

It is critical to acknowledge the extensive role that TPIs play in the contracting process and the potential for consumer harm created by TPIs not having appropriate obligations to provide unbiased, clear and transparent advice. While TPIs have a valuable role to play in the market, without effective consumer protection in place (such as through a mandatory TPI Code of Practice) then consumers will continue to be exposed unnecessarily to the sharp practices of some market participants.

Question 6 - Do you have evidence demonstrating the extent and impact of malpractice by brokers dealing with microbusinesses? We are seeking both qualitative and quantitative evidence demonstrating consumer harm in the form of both financial and non-financial detriment

Cornwall Insight analysis

In 2018, Cornwall Insight were commissioned by Citizens Advice to compile a report examining the role of TPIs in the SME and microbusiness sectors. Cornwall's analysis concludes that, while the majority of TPIs provide a beneficial and equitable service to their customers, the misconduct by a minority risks adverse economic outcomes for the affected customers. We encourage Ofgem to read this report as part of their evidence gathering, as it provides a valuable illustration of the kind of sharp practices that continue to result in consumer detriment in this sector.

Our own experience

In terms of our own experience and evidence of malpractice and poor behaviour, there are many discrete examples which we would be happy to share confidentially without identifying the party concerned.

In lieu of that, we would highlight Opus Energy point-of-sale complaints between August 2018 and April 2019, which shows over twice the percentage of complaints from customers contracting via a TPI than those coming direct.

We would also highlight that customers can get the same price, if not better, by coming direct to us than through a TPI. This differs to the domestic market where consumers are offered the same price irrespective of channel (i.e. PCW versus Direct). It is therefore imperative in the non-domestic market that the cost of TPI services (i.e. commissions) is transparent so that consumers can proactively assess the value for money of the TPI services they are agreeing to.

Our recommendation

To tackle these manifest issues, we do not believe direct regulation of TPIs would be proportionate. However, we do believe that a Code of Practice which binds suppliers and TPIs will deliver improved customer outcomes. We are supportive of voluntary initiatives already underway on this by different

industry participants and believe a harmonisation of these initiatives could provide a basis for an effective interim solution. However, any such voluntary initiative will only ever be partially effective, which is why we support a principles-based and mandatory, market-wide Code of Practice which is governed by a Code administrator and enforceable by Ofgem. We also believe it will be increasingly important to create an appropriate redress scheme, and extension of the existing Complaint Handling Standards, to ensure microbusinesses who use TPIs can have an effective, affordable and expedient means of redress.

Question 7 - Can you provide evidence demonstrating the extent and impact of any consumer detriment caused by providers approaches to dialogue with consumers about debt management issues? We are seeking both qualitative and quantitative evidence demonstrating consumer harm in the form of both financial and non-financial detriment.

We are not aware of significant consumer detriment caused by approaches to dialogue with microbusinesses about debt management issues nor more broadly relating to the wider debt path itself. Both Haven Power and Opus Energy have robust debt and disconnection processes incorporating proactive and tailored communication and signposting to third party support. We promote fair practices, explaining the warrant process, considering vulnerability of the end-user and applying only cost reflective charges. Disconnection is a last resort and only happens at the end of a lengthy process. We encourage dialogue and offer a degree of flexibility on back-dated rates for both renewal and change-of-tenancy contracts. However, we do acknowledge that suppliers' approaches to debt management are inconsistent and feel more could be done as discussed below.

Domestic-like prescriptive rules

We would caution against replicating the prescriptive domestic debt and disconnection rules across to microbusinesses. Introducing burdensome obligations will ultimately impose more costs on the sector. There would also likely be unintended consequences of imposing burdensome debt path treatment, such as a greater likelihood of suppliers insisting on large security deposits or refusing to offer terms to consumers without a good credit history. This has the potential to foreclose the market to newer businesses.

Utilising Smart meters

Smart meters are seen as a key tool to get consumers more engaged with their energy use. Given the aim of Smart meters is to save consumers time and money through the provision of automatic readings, accurate bills and insight into consumer habits, more obligations could be put on consumers to accept one. We would greatly support a new obligation on businesses that permits suppliers to mandate a Smart meter installation in certain events, e.g. the customer falls into debt and requires a payment plan, previous instances of energy theft, when entering or renewing a lease on commercial premises, new businesses starting up, meter recertification, and in all council and public-sector owned or occupied premises.

Signposting independent advice

We have built up a beneficial relationship with Business Debtline who have been invaluable in passing on their specialist knowledge and experience of working with businesses in financial difficulty, and providing useful customer communication materials and training. We feel suppliers should be obligated to signpost

to an independent advisory service, such as Business Debtline or Citizens Advice, at appropriate points in the customer journey.

Debt collection and treatment Code of Practice

We would fully support a new requirement mandating suppliers to only work with debt collection agencies who are affiliated members of the Credit Services Association (CSA), or equivalent, and as such adhere to an appropriate Code of Practice to ensure consistent best practice is adopted across the sector.

Question 8 and 9 - Are you aware of microbusinesses facing significant and impactful issues when they come to exit a contract with their provider? Please provide evidence of the extent and impact of consumer detriment caused by the issues you have commented on in response to the above question [8]. We are seeking both qualitative and quantitative evidence demonstrating consumer harm in the form of both financial and non-financial detriment.

We are not aware of any significant or impactful issues for microbusiness consumers seeking to exit a contract. Suppliers are required to provide microbusiness consumers with clear information around contract termination at various stages of the customer journey. We also have licence obligations governing how we can Object to a customer transfer ('Customer Transfer Blocking'), restrictions from imposing onerous exit terms on default products, and requirements to avoid and resolve erroneous transfers.

Objection rights

We agree that the switching process should be smooth and swift, but it is important to understand the Objection rules and the importance of fixed term contracts. Negotiating a contract for energy supply enables suppliers to hedge against adverse price movements and secure favourable prices for consumers for a fixed term. This in turn provides the budget certainty small businesses desire. Without the ability to object to customers leaving mid-contract, suppliers would be unable to offer price certainty at minimum cost. Similarly, suppliers would face additional risk if customers were free to change supplier while having an outstanding debt, which would ultimately result in increased charges for all customers.

We believe that, when used correctly, objections can protect both customers and suppliers. There is no reason why, when conducted correctly, they should act as an undue barrier to switching.

CMA Auto-rollover Remedy

In 2016, the CMA Energy Market Investigation identified an area of customer detriment, which they subsequently addressed with the auto-rollover remedy, making positive changes to the rules governing contract extensions. As a consequence, suppliers can no longer automatically renew microbusinesses on to another fixed-term contract if they do not actively negotiate a renewal. And since microbusinesses outside of fixed-term contracts can switch supplier with only 30 days' notice, it is in the supplier's best interests to proactively engage with microbusinesses to agree a contract at the point of renewal. We welcomed the CMA's intervention and have seen a notable increase in the number of SME customers negotiating fixed-term renewal contracts since this remedy was implemented at the beginning of 2017.

Non-domestic suppliers having to supply domestic consumers

Domestic consumers sometimes find themselves on supply with a non-domestic supplier following a change of tenancy or as the result of an erroneous transfer. Non-domestic suppliers can try to persuade these domestic consumers to switch to a domestic supplier but the consumer is not obliged to and the non-domestic supplier cannot initiate that process themselves. However, non-domestic suppliers are not set-up to manage domestic consumer needs nor do they have processes or procedures to meet the licence obligations of domestic suppliers. This means these consumers are not getting the protections they may need and would benefit from. For instance, in our experience Domestic consumers in these circumstances are likely to accumulate debt and non-domestic suppliers' debt and disconnection processes are not designed to accommodate domestic consumers, meaning either the debt accumulates or the consumer does not get the protections they would otherwise receive.

We would highly recommend action by Ofgem, specifically to introduce an arrangement allowing domestic consumers to be automatically switched to a willing domestic supplier who is set up to meet their needs.