

Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU
licensing@ofgem.gov.uk

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**ICoSS consultation response to Statutory Consultation – Supplier Licensing Review:
Ongoing requirements and exit arrangements**

The Industrial and Commercial Shippers and Suppliers (ICoSS) group is the trade body representing non-domestic industrial and commercial (I&C) suppliers in the GB energy market. Our members collectively supply three-quarters of the gas needs of the non-domestic sector as well as half of the electricity provided by non-domestic independent suppliers¹.

Executive Summary

- We agree with the need to address weaknesses in the domestic energy market that exacerbate the impacts of disorderly market exits by domestic energy suppliers, leaving other suppliers, including non-domestic suppliers, to foot the bill for bad debt and defaults on payments of government schemes.
- Since Ofgem concluded its previous consultation in this area, in December 2019, we have seen and will continue to experience additional issues with bad debt due to the economic and social impacts of the COVID-19 pandemic. We again highlight the differences in the domestic and non-domestic sector and need to target cost recovery to the market sector in which they originate. We trust that Ofgem will continue to refine its policy to address these market issues in the coming months and will align the gas market with the electricity



market when allocating SoLR costs. We note that UNC Modification 0687, which achieves this, has still not been decided upon.

- Some of the obligations proposed new conditions are intended as overarching conditions and Ofgem must set out how they will operate in practice.
- We are concerned that these Licence conditions may not deter unscrupulous suppliers from increasing the risk and impact of cost mutualisation if there are short-term gains to be made.
- We urge Ofgem to engage early with stakeholders and update its Impact Assessment prior to further policy reforms. Assumptions may need to be updated considering the information already provided by stakeholders and the unprecedented economic, financial and societal impacts of the ongoing COVID-19 pandemic.

Response to the proposals

We have set out below our views on specific areas contained within the consultation document and proposed Licence modifications relevant to non-domestic suppliers.

Operational Capability (new Standard Condition 4A)

We understand that responsible suppliers already have systems and processes in place to comply with relevant legislation and other regulatory obligations. Where (smaller) suppliers may have good intent to run robust systems and processes, but are new to implementing such systems or may require further clarification on regulatory policy, Ofgem can best support these suppliers and the market in general through comprehensive guidance to how it might measure efficient and effectively implementation of these conditions.

This could be included as part of guidance issued under 4B.3 as it is relevant to the scale and scope of financial arrangements required to support these operations. The guidance should be flexible to allow larger, more established players to optimise their operational systems as appropriate to their business model and operating structure.

Given the wide range of business models and company structures in the energy market, we suggest that the guidance recognises the checks and balances made across the wider UK regulatory landscape, seeks to acknowledge good practice in companies and avoids replication of regulatory oversight where companies already comply with their obligations under UK corporate law and other relevant or similar regulation (including in other comparable jurisdictions such as the European Union).

Financial Responsibility Principle (new Standard Condition 4B)

We support the principle that domestic suppliers should be required to exercise appropriate risk management to reduce the costs to the market in the event of a disorderly exit from the market. We note that such a requirement does not exist in the non-domestic market. Although a broad licence obligation on financial responsibility will highlight Ofgem's intentions to continue to seek safeguards against cost mutualisation, we remain concerned that it will not deter unscrupulous suppliers from poor cost and risk management in the domestic market, where there have been a number of failures already.

Whilst there has been a track record of disorderly market exits from domestic suppliers, the challenges posed by the COVID-19 has highlighted that even the most well-managed businesses will be impacted by *external* shocks to economic and financial systems, coupled with societal consequences which are outside of their control, and outside the models of consumer harm presented by Ofgem for the Supplier Licensing Review in November 2020. Structural issues are different between the domestic and non-domestic sector, for example customer bad debt is not recoverable in the non-domestic sector as many businesses will go bankrupt and exceptionally low non-domestic demand means suppliers must sell energy back to the market at a loss due to over-supply (in contrast there is higher than normal demand in the domestic market).

We expect that Ofgem's guidance document will clearly set out the different levels of intervention that the Authority would undertake, alongside the penalties for non-compliance, and will describe a proportionate level of monitoring based on sector risk (including structural differences) and past performance.

We note that Ofgem will monitor closely the financial actions of suppliers accessing network charge deferral scheme which is an example of proportionate application of the Financial Responsibility Principle.

Fit and Proper Requirement (new Standard Condition 4C)

We are concerned that this condition acts retrospectively and implies that decision-makers who have left a supplier 12 months prior to a Last Resort Supply Direction may face reputational consequences through no fault of their own, possibly having tried to remedy the situation. Self-certification may not deter unscrupulous suppliers from poor decision-making. Also, it is not clear

whether the specific wording of this condition will sit comfortably alongside current employment law.

Drafting also duplicates other regulations already enforced under UK law and responsible suppliers already have systems and processes in place to ensure they comply with wider UK regulations (or similar regulations in other jurisdictions).

We note that the Care Quality Commission and the Financial Conduct Authority (referred to in the consultation document) have detailed guidance in place^{2,3,4} to help providers undertake their duties on the fit and proper person requirement and suggest that this best practice could be applied in energy, to support smaller suppliers and companies registered outside of the UK or comparable jurisdictions.

Customer Supply Continuity Plans (new Standard Condition 19C)

We consider Customer Supply Continuity Plans will prove ineffective at the point of collapse of any supplier and suggest that engagement with at-risk suppliers as is current practice enables more targeted advice and information requests by Ofgem.

Trade Sales (new Standard Condition 19D)

It is not clear from the licence drafting how the Authority will take steps to determine and notify suppliers negotiating a Trade Sale, whether it considers that Trade Sale will make it more likely that costs will be mutualised, between this condition and the reporting in (the new) Standard Condition 19AA. The drafting does not reflect fully the policy intent stated in the consultation document. Since Trade Sales can be an effective and efficient way of protecting consumers against a disorderly market exit, there needs to be a robust process in place if the Authority has powers to intervene in such sales, and not delay such key transactions. We also expect that time would be required to update Customer Supply Continuity Plans (new Standard Condition 19C) in the event of a Trade Sale, and that the Authority would be pragmatic in such cases.

Milestone Assessments (new Standard Condition 28C)

We are a non-domestic trade body, so we do not have a view on the milestone assessments applied to domestic suppliers. We support any proposals that seek to manage the costs that non-domestic customers incur as a result of failures in the domestic market.

² <https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-19-fit-proper-persons-employed>

³ <https://www.cqc.org.uk/guidance-providers/regulations-enforcement/fit-proper-persons-directors>

⁴ <https://www.handbook.fca.org.uk/handbook/FIT/1/3.html>

Interaction with the CSS

We note a discrepancy between this Supplier Licence Review (SLR) statutory consultation and the Consolidated Segmental Statement (CSS) [initial proposals consultation](#) published in May 2020, which suggests the 50,000 threshold discussed in the SLR applies to both domestic and non-domestic suppliers. Since the SLR consultation clearly states milestone assessments are intended for domestic suppliers on reaching 50,000 or 200,000 domestic customers, we anticipate that any proposed changes to the CSS will be consistent with the SLR.

Impact Assessment

We urge Ofgem to engage early with stakeholders to enable it to update its Impact Assessment. Assumptions which need to be updated in light of information already provided by stakeholders and the unprecedented economic, financial and societal impacts of the ongoing COVID-19 pandemic. This would include the impact of covering government obligations, any proposed changes to covering customer credit balances and additional costs to consumers in administering the new policies particularly where Ofgem might propose short timescales for implementation. We would also like to see a comparison of costs and structural risks across the gas and electricity markets, and the domestic and non-domestic sectors, to enable stakeholders to make a fully informed response to policy proposals.

Please get in touch should you wish to discuss any aspect of this response further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Evans'.

Gareth Evans
ICoSS