Microbusiness Strategic Review: Policy Consultation

Thank you for the opportunity to comment on Ofgem's initial proposals to address the issues that exist in the microbusiness energy market. This response is on behalf of both E.ON and npower (and as such, any reference to E.ON unless otherwise shown includes npower).

Executive Summary

E.ON acknowledges the importance of properly servicing microbusiness customers, especially given the central role they play in the UK economy[1], the retail energy market and by extension in the ongoing efforts to meet decarbonisation and "net zero" targets.

As Ofgem is aware, E.ON has worked hard to ensure we have already played our part in addressing the root cause of actual harm experienced by both microbusiness customers and suppliers resulting from poor third-party intermediary (TPI) or broker behaviour ('broker' and 'TPI' are used interchangeably). In August 2012, at E.ON (but not npower), we introduced our own code of practice to ensure the TPIs we work with are fair, honest and transparent when they sell energy. We review our code of practice regularly to ensure it reflects current Ofgem licence conditions and principles. If we find a TPI to be in breach of our code of practice, we enforce consequential actions which can include terminating our agreement with them.

We continue to work hard to improve our debt management process to ensure that come the end of a customer's contract, we are confident that objecting to a switch for debt-related reasons is the fair thing to do.

We undertake significant direct customer interactions ourselves to encourage customers to either switch, renew or negotiate their energy plans and improve their engagement when browsing and signing up to deals. We ensure that our bills and promotional materials are as engaging as possible given the prescription that is required on them and ensure customers are aware of their rights and related information regarding our complaints process; we have an effective and long standing professional relationship with the Ombudsman Services: Energy (OS:E).

Suppliers as regulators

Despite our continued efforts, there still remains harm for microbusiness customers, but we believe, and have evidence, that these harms are mainly the result of bad processes in unregulated areas, such as TPI's which this package of proposals only goes some way to addressing.

Ofgem acknowledges there is "weak broker regulation"[2] and outlines in this policy consultation that Government "may" develop statutory regulation of TPIs[3]. We agree with this and this needs to move further and faster in this area. We implore Ofgem to use its powers and influence with Government to do this. Acknowledging the key role that microbusinesses do and will play to reach net zero,

[1] House of Commons Library (2019), https://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf
[2] https://www.ofgem.gov.uk/system/files/docs/2019/05/opening_statement.pdf
[3]https://www.ofgem.gov.uk/system/files/docs/2020/07/microbusiness_strategic_review_policy_consultation.pdf

broker regulation will be a key forerunner to ensuring confidence in the marketplace for microbusiness customers and in achieving Government targets that are now enshrined in law.

We very much welcome the introduction of the broker dispute resolution principle and the associated requirement for suppliers to only work with brokers signed up to an alternative dispute resolution scheme. If implemented and managed properly, we believe this will go a long way in beginning to hold poorly behaving brokers to account. However, as we say above, what is urgently needed is appropriate, independent regulation of the TPI sector and not a requirement for suppliers to act as regulators for them, which some of the proposed licence conditions require. This goes above and beyond supplier's' area of expertise and remit as well as their being used as a proxy for a current lack of an appropriate regulatory body.

As it currently stands, where proposals require a supplier "must" ensure a broker does something in licence, this is completely unenforceable on either the part of the supplier or Ofgem who have no jurisdiction to take enforcement action on poorly behaving TPIs. By the same token, suppliers should not be penalised for something outside of their direct control. As a result, brokers will represent a threat to suppliers' licences if proposals remain as they are, and this is wholly unacceptable.

Notwithstanding the above, suppliers will each interpret their responsibilities in terms of "regulating" brokers differently, resulting in each broker effectively being regulated by several different "regulatory" bodies (i.e. each supplier that they relationship with) . This makes it increasingly difficult and expensive to undertake their role in the energy industry. Ultimately, this will be of detriment to the microbusiness customer in terms of the quality of experience they receive. Having these various "regulatory" bodies will result in different handling of customers, increased confusion and unnecessary complexity for them with each supplier they contract with and, potentially leading to less competition in the marketplace with microbusiness customers potentially wanting to *avoid* these consequences by not switching. It is our view that the Government should put legislation in place to effect Ofgem's requirements and/or appoint a proper regulator to oversee Broker activities as a matter of urgency.

Our views are expanded further and addressed in our responses to Ofgem's questions regarding the proposed policy measures and associated licence conditions below.

Awareness: Knowing about opportunities and risks

Question: What are the most effective ways to ensure that microbusinesses can access key information about the retail energy market?

We agree with Ofgem's view as stated in the consultation and the associated draft impact assessment, that doing nothing is not an option. We agree that working collaboratively with leading consumer groups is the most effective way for microbusiness customers to access key information about the retail energy market. Whilst we offer various information to our customers to support them in their interactions with the market, consumer groups are well established and well trusted in the marketplace and so are best placed to disseminate key information about the market in a comprehensive and uniform way to microbusiness customers.

However, it is important to note that most suppliers do provide a significant amount of information to microbusinesses already. For example, on entering into a contract and no more than 30 days before the end of that contract, and on each bill or statement of account, customers are reminded of their contract end date and the date by which a termination notice is required. On entering into a contract, customers are provided with details of what will happen if they do not terminate their contract in a timely manner; this is included in our terms and conditions, renewal offer letters, and written contracts in addition to being included in the verbal script both E.ON colleagues and TPI's read to microbusiness customers when contracting verbally. E.ON provide information on our website to help customers become energy efficient and we also provide annual forecast consumption in renewal offers. As Ofgem points out in the consultation when citing some evidence of this theory of harm, it is not that the information is not there already (for example online supplier tools), it is the take up of them that is low.

We believe the key issue for microbusinesses is lack of time: they may read the information provided but may not fully digest it and may not have time to shop around when their renewal is due. This is probably the main reason these customers make use of the services provided by brokers.

In that regard, it would be wasteful and foolish of Ofgem to implement any of its proposals where there is a lack of evidence that sufficient take up of any proposal can be guaranteed. Under current market conditions, most suppliers, including E.ON and npower, are operating on very limited margins and it is not efficient to implement something that does not have either sufficient merit or the required confidence of its full and/or proper use after implementation.

Further, with regards to the costs associated with implementing awareness-raising activities, regardless of source, we encourage Ofgem to consider the impact that the introduction of the package of proposals would have if introduced altogether. During the Ofgem workshop on switching-related proposals on 14 October, it said it might consider a phased approach with different provisions being introduced at different times. We would support this. Ofgem should consider prioritising implementation of key impactful measures that are applicable to the majority of the market with a view to implementing other proposals related to switching in line with related key industry changes, for example the faster and more reliable switching programme. This will ensure that any information microbusiness customers receive will be coherent and sensible, regardless of the source of information, meaning they do not have to be changed just a few months later if consultation proposal timescales are at odds with wider industry change; ultimately avoiding duplication of effort and wasted cost.

Browsing: Searching for deals

We note that Ofgem's State of the Energy Market 2018 report[4] states that *"two-thirds of small and microbusinesses have engaged in the market in some way in the past 12 months"*; given the large number of customers who contract for periods longer than 12 months, we believe this is higher than might be expected. This shows that customers are very aware of their ability to shop around, and have taken action to look at competitive prices even where they are already in a contract. "Research

[4] https://www.ofgem.gov.uk/system/files/docs/2017/10/state_of_the_market_report_2017_web_1.pdf

commissioned by Ofgem[5] found that, in 2016, businesses were broadly satisfied with their current supplier; for those with no employees satisfaction was 85%, and for small microbusinesses, 86%. This may provide an explanation for customers not switching; rather than being disengaged, they are happy with the deal they have and do not want to switch. Our own recent research, where we asked a number of questions of SME customers supplied by a variety of different suppliers, indicates that 63% agree that they can negotiate a good deal with their supplier at renewal, and 72% believe their supplier's pricing and tariffs are fair; these customers will perceive little benefit in shopping around. We note from the same report that there is inconsistency in the way suppliers have implemented the price transparency remedy and consider that Ofgem should take action against suppliers who are not applying the rules correctly. Only when all suppliers have properly implemented the solution will it be possible to evaluate its effectiveness.

We believe it would be useful for Ofgem or Citizens Advice to maintain a list of links to suppliers' online quote tools, for the ease of customers.

We have seen that there is a lack of transparency by some suppliers on what is included in their contract prices and what is passed through at cost. These suppliers often term their contracts as 'fixed' when, in fact, there are a number of elements that are not included within the fixed price. We believe this is misleading and that existing regulation is sufficient for Ofgem to take action against suppliers that engage in such practices.

Principal Terms

Question: Do you agree with our proposal to strengthen the requirements to present a written version of the Principal Terms to customers?

E.ON takes very seriously its commitment under current licence requirements regarding Principal Terms and does not believe the proposal to strengthen requirements is required. We have a very robust telephone contracting process and when contracting verbally on the telephone directly with customers, our current processes provide the Principal Terms before contracting so they are fully aware they are entering a legally binding agreement. Customers are given the choice to hear Principal Terms verbally or via email during the conversation where they have access to an appropriate device. This is not dissimilar to the provision of contracting processes which can be seen in the communications sector in particular. This process works well, as is evident by the minimal number of complaints raised relating to this issue.

The brokers we work with also have a written contract which includes all Principal Terms which they can send to the customer to agree and return. Under current proposals and associated licence drafting, Ofgem would effectively require the policing of brokers by suppliers to ensure compliance of this in all cases. This would be extremely difficult and costly in a market where many hundreds of TPI's and brokers operate and would require an overly burdensome process for both brokers to provide the evidence required and for suppliers to process the evidence to satisfy the requirements of a licence where it "must" be ensured. Current monitoring and auditing processes of broker activity already comes at cost and to require the level of monitoring required to *ensure* brokers bring

[5] https://www.ofgem.gov.uk/system/files/docs/2017/04/ofgem_-_micro_and_small_business_engagement_2016_-_research_report.pdf

Principal Terms to customers attention as licence directs would come at significant *increased* cost to suppliers which could not be absorbed, making narrow margins even thinner.

Further, in a process where contracting via the telephone in which there are no means for the customer to see the Principal Terms at the time of the conversation, they would be required to be sent via the post if email cannot be used; this would delay the signing of the contract, by which time the customer could miss out on the deal if it has elapsed. We would argue that if a cooling off-period is to be introduced by Ofgem, specifically and only for those who are unable to see the Principal Terms at the point of contracting, then this would negate the need for the strengthening of the licence in the way proposed here. Again, this was something Ofgem said it would look at in its workshop on broker dispute resolution on 12 October.

Where the activities of brokers are called into question and it is felt that the behaviour of a minority of brokers is introducing a detriment to customers, adequate independent regulation of brokers is required. In the meantime, the proposed alternative dispute resolution scheme would serve to ensure customers are redressed where they have been adversely impacted.

Broker commission

Question: Do you agree with our proposal to require that suppliers disclose the charges paid to brokers as part of the supply contract, on bills, statements of account and at the request of the microbusiness customer?

Broadly, we agree with the requirement for suppliers to disclose the charges paid to brokers as part of the supply contract. However, there are a number of issues that Ofgem needs to consider if this is to be implemented and be effective for microbusiness customers, if not the information presented is of little use. The proposal in its current form is unnecessarily complex and would be costly to implement for little benefit.

As Ofgem notes in the consultation, regarding contract complexity and opacity, this can result in difficulty for microbusiness customers to compare contracts, prices and terms etc on a like-for-like basis.

For the commission information to be of use to microbusiness customers, the structure, formatting and content of the information needs to be comparable and reflect what the commission actually provides. This will enable the consumers to decide if the brokers are adding good value in brokering a deal on their behalf. Whilst displaying commission costs may go some way in beginning to help customers understand what they are paying, under the current proposals, it is unlikely to help them compare between brokers due to different commission models used across the market.

Further, we remind Ofgem that suppliers will only be able to disclose commissions in respect to brokers fees that they are aware of. On that basis, the licence condition drafting should be more specific and only relate to fees that are directly related to the fees and charges for energy switching only. If the commission figure includes a variety of elements that are not separately priced, comparing against multiple quotes will only add confusion rather than clarity. Browsing for a new contract will become much more confusing and difficult for microbusinesses, a harm Ofgem is striving to remedy.

With regards to where this information is most helpful to be displayed, we are supportive of the proposal over-all relating to displaying commission information on bills and statements of accounts. However, the increased complexity on bills needs to be considered.

Additionally, Ofgem needs to consider the scenario when a customer decides to stop working with a broker. Customers are not required, and often do not, inform us of this. Adding broker commission to bills and statements of account following cessation of their partnership will likely cause concern and confusion.

Overall, unless these proposals are simplified to include only commission costs directly relating to energy switching, Ofgem needs to ensure it conducts a more thorough and comprehensive analysis with regards to its requirements and the impact on associated implementation and benefits of this proposal prior to statutory consultation. Due to the complexity and difference that exists within and across commissioning and cost models, evidence should be gained by Ofgem to understand exactly what can be provided by suppliers and what will ultimately be of use and, more importantly, provide comparability for the customer.

Question: Do you think that further prescription or guidance on the presentation and format of broker costs on contractual and billing documentation would be beneficial? If so, how should broker costs be presented?

As noted earlier, for the commission information to be of use to microbusiness customers, the structure, formatting and content of the information needs to be comparable and reflect what the commission actually provides. This will enable microbusiness consumers to decide if the brokers are adding good value in brokering a deal on their behalf. We recommend that commission costs relating to energy switching only need be displayed to be of most use to the customer and that if a particular format should be prescribed, this should be displayed as total monetary cost that businesses can then easily compare against their annual business spend.

There are many different cost models that exist currently in the market including p/kWh, fixed cost, sometimes payment or part-payment in advance as examples. Because of all these differences, specific prescription or guidance on the presentation of broker costs on contractual and billing documentation would not be beneficial and in any case would be difficult to prescribe.

If the complexity Ofgem requests in current proposals is to remain, it would be better to allow suppliers to determine the best way to present information to their customers.

Question: What challenges do you think suppliers and brokers may face implementing these proposals?

Further to the comments already made, Ofgem also must take into consideration the cost and time required to implement these proposals for suppliers. As Ofgem is aware, for E.ON in particular, we are currently undertaking a significant system upgrade involving the gradual migration of our customers to a new platform over the next two years. Our current customer servicing systems do not show broker commission and are held in a different platform not visible or available to customer service advisors. It is important to note that currently for E.ON, where commission is paid to brokers,

it is based on consumption so the cost would be dependent on this. Any requirement to implement this proposal is likely to require system developments to both platforms and billing systems, this would take considerable time and only be useful for a short period in the old platform until migration is complete. This would not be an efficient use of our resources.

An estimated costing of the development to our existing systems alone at this point would be a minimum of £500k plus and would take some months to develop and implement. Npower systems would also require development until the migration is complete which would come at further significant cost. These costs do not account for any development time to understand the best way to present the information or any additional costs relating to the actual provisioning of the information to the customer nor associated monitoring of the information provided once in flight.

We would need adequate time to complete a full impact assessment in order to understand all associated costs.

With regards to views on how this proposal may impact the microbusiness supply market, we anticipate that provision of this information may serve to drive down and encourage competition in broker charges. It should have the potential to root out particularly poorly behaving TPIs who charge excessive brokering costs. However, it may also encourage obfuscation of broker charges and make it even more confusing for customers. We remind Ofgem that brokers already use a variety of methodologies to calculate and apply their charges and it would not be reasonable to expect suppliers to regulate this by only working with brokers who price in a particular way; this could result in suppliers missing out on valuable sales and fewer choices available for customers.

One suggestion posed to Ofgem during its workshop event on commission transparency on 15 October outlined the potential for brokers to adopt a consultancy-based approach to contracting with customers. Brokers could charge customers directly for their services including commission, rather than having suppliers collect it for them. This should ensure customers were fully aware of what they were paying. However, this would add complexity for suppliers working with TPIs. Consideration for the industry would be required so suppliers could recover costs associated with working with brokers where those costs are currently included in a TPI customer contract price.

Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

We remind Ofgem that simplicity is required with regards to ensuring a single, easily comparative figure would best serve consumers and should therefore only include any fees or charges to brokers resulting from energy switching. The term “benefit of any kind” is too loose and would be open to too many different interpretations resulting in confusion for the customer rendering the figure incomparable.

Question: Do you think there are other changes which would better address the consumer harm that has been identified?

With regards to the harms that Ofgem notes during this section of the customer journey, we remind Ofgem that ultimately what is required is effective, independent regulation of TPI/broker activity

and urge Ofgem to lobby Government to proceed at pace with activates already undertaken regarding future retail market design. Adequate and extensive research over recent years conducted by both us and Ofgem justify the need for this action.

Contracting: Signing up to a new contract

Broker conduct principle

Question: What do you think the impact of our proposal to introduce a broker conduct principle will be? Are there any particular reasons why suppliers/brokers couldn't achieve the broker conduct principle?

We agree, as Ofgem makes reference to in the consultation, that TPIs play an important role in the non-domestic energy market. We are also acutely aware of the significant damage that poorly behaved brokers inflict individually both on their customers and to suppliers and the wider market; E.ON have experienced first-hand the fraudulent activities that some have undertaken.

We have taken great lengths to establish and implement strong controls to monitor broker activity, including the introduction of a comprehensive code of practice that TPIs must agree to adhere to before we will accept business from them and, for any brokers who breach the code, we take action against them, including, in some cases, terminating our partnerships with them.

In spite of this, poor practice remains in the marketplace, not because of a lack of suppliers' efforts to try and monitor broker activities, but because unscrupulous brokers know that suppliers ultimately have no jurisdiction over them and cannot legally enforce any remedies against them. If one supplier ceases to do business with a broker because of poor practices, they can work with other suppliers; there is no transparency of poor broker behaviour or any guide for microbusinesses on which brokers offer the best service. This could be achieved by a consumer body such as Citizens Advice providing a star rating, as they do for suppliers.

The introduction of a broker conduct principle would have the effect of suppliers becoming the unofficial regulators of brokers; this is neither fair for the brokers nor for the customers they serve. Brokers would have multiple 'regulators' each having their own expectations of how brokers conduct their businesses and the complexity of managing different interpretations of the rules would increase costs which could filter through to commission rates. Confusion for both customers and brokers would be commonplace given the number of different suppliers and different interpretations and methods associated with monitoring the Standards of Conduct. It could entirely be possible that one supplier terminates a partnership with a broker for not following its rules, whilst another supplier may be perfectly happy with performance under its interpretations of the rules. This is not helpful for customers, brokers or suppliers in bringing clarity, confidence and efficiency to the sales process and market generally.

Given both the current and future significance of microbusinesses to the UK economy, and the part they will play in helping to reaching decarbonisation targets, it is difficult to see why Ofgem does not seek with more urgency to ensure appropriate independent regulation of the TPIs and brokers that serve them. Ofgem should prioritise lobbying Government to develop appropriate statutory

regulation and appoint an independent regulator of TPIs, especially those operating in the non-domestic energy market.

In the absence of an independent regulatory body in the short term, we propose that Ofgem should implement a universally agreed code of practice with basic essential principles that brokers are required to sign up to. This would not prevent suppliers keeping existing codes of practice that then go further should they wish. We would be happy to support Ofgem with this given the experience we have gained administering our own code of practice since 2012.

Much like the ADR scheme, if a broker is not signed up to the centralised code of practice, suppliers can then be mandated through licence not to work with them. The ADR scheme and code of practice requirements can be linked to ensure that any repeated misdemeanours on behalf of brokers can be managed through appropriate redress through the ADR scheme provider in addition to impacting brokers' compliance to the code of practice. This will then ensure that there is more uniformity in the implementation of the code of practice and will root out poor broker and TPI behaviour at the same time.

Sales and Marketing requirements

Question: Do you agree that our proposal to introduce specific sales and marketing requirements on suppliers and the brokers they work with is important to help customers make more informed choices and increase trust in and effectiveness of the market? If so, do you agree that face-to-face marketing and sales activity should be covered alongside telesales activity under these proposals?

As already noted, E.ON has robust direct telesales processes in place. Where customers have access to email during a contracting telephone conversation, we present via email a written version of the principal terms and information necessary for customers to make informed decisions, so they are aware they are agreeing a legally binding contract.

We already follow the specific sales and marketing requirements Ofgem outlines in its proposals, including the storing of telesales activities and contracting during face to face marketing activities as well as insisting the brokers we work with do the same. There are some suppliers who do not work with partnered brokers in the same way, so we see that there is some merit in requiring all suppliers through licence to not only implement these practices themselves but to require the brokers they work with to have the same goals.

However, as noted previously, whilst we can take steps to work with brokers as we do currently to require them to sell and market appropriately and fairly, in practical terms it would be extremely difficult to ensure it in every instance. Likewise, we cannot legally employ the full enforcement measures that would be required to root out and remedy the most severe cases of detriment caused by some brokers relating to fraudulent sales and marketing activities. We reiterate again the importance of third-party regulation for ensuring brokers keep such requirements and not to be mandated through the supply licence. Especially when it is widely observed that, relatively speaking, it is a minority of poorly behaving brokers whose specific sales and marketing practices are causing the most detriment and poor outcomes for customers and suppliers.

In the absence of a regulator in the short term, we refer to our previous recommendation of a centralised code of conduct. Managed by Ofgem perhaps, as part of the conduct a minimum requirement could include the specific sales and marketing requirements noted in the proposal. Suppliers could be mandated through licence to only work with brokers who are signed up to the code of practice and this would ensure uniformity in approach and appropriate oversight and remedy of any breaches of these requirements through the ADR scheme. This would ultimately serve more effectively to not only root out poor behaviour of some brokers, but promote positive behaviour of other brokers and competition of positive behaviour, especially if the ADR scheme provider were to work with consumer advice bodies such as Citizens Advice to produce a "star rating" for brokers signed up to the scheme.

Cooling off

Question: Do you agree that our proposal to introduce a cooling-off period for microbusiness contracts represents an effective way to protect consumers during the contracting process? If so, do you agree that the length of the cooling-off period should be 14 days?

Whilst on the surface a cooling off period seems appealing, further consideration needs to be given to the practicalities of administering such a proposal in addition to addressing the root cause of the issues that may lead a customer to take advantage of a cooling off period. Sufficient consideration should also be given to the unintended negative consequences that are highly likely to occur if introduced, which will exacerbate the very harms that Ofgem are trying to prevent elsewhere in the proposal.

As a result of microbusiness customers not understanding contract terms (which are expected to be remedied through the proposals to present a written version of the Principal Terms to customers) and poor telesales/pressurising tactics from some brokers and potentially suppliers (remedied through sales and marketing requirements proposal), it seems there is little need for a universal approach to a cooling off period for microbusiness customers.

Current analysis of our internal complaints figures for 2019 indicate that only a minority of customers complained and wanted to cancel a contract during the initial 14 days of their contract, of those the majority came from brokers/TPIs. As a result of the implementation of a centralised code of practice and associated ADR scheme whereby brokers would be required to account and pay for any detriment resulting from their poor practices and behaviours, this would further serve to diminish the need for a cooling-off period.

Further, Ofgem should understand that if implemented, it would be open to purposes outside of the policy intent and specifically open to abuse by the very brokers Ofgem is trying to target through many of the proposals in the consultation.

Upon a customer agreeing to a contract with a broker, often a second broker may seek to find a 'better' deal, or another broker is alerted to the new deal and then issues a requote. It can be expected then that during any cooling-off period introduced, there would be a high chance of a

microbusiness customer being bombarded with unwanted telesales calls trying to win business leading to unnecessary confusion and pressurising.

Another likely scenario to be considered is the frequency of customers disputing ever agreeing to the contract and therefore refusing to pay for any energy consumed during the period. Whilst the ADR scheme proposes provisions for ensuring the at-fault party covers any financial losses, these would be significant amounts and potential processes and costs of such scenarios should be carefully assessed before the introduction of the policy proposals concerned.

Furthermore, as suppliers hedge against customers with whom they contract with, a cooling-off period that allows a customer to leave without facing additional charges would have a detrimental effect. As an example, customers (or brokers) often contract up to six months in advance, and is possible for them to contract up to 365 days in advance, at which point it is not uncommon that suppliers lock in energy prices for the length of the contract term. If we were then to receive a termination notice, we would have to look to sell back the energy booked for that customer, potentially at a loss to us. If cooling off periods were to be implemented, this would require the introduction of a significant risk factor premium to ensure protection against such losses.

Further, in conjunction with the ramifications of similar purchasing issues associated with the 30-day extension period Ofgem proposes, these may serve to increase costs substantially for the microbusiness customer far beyond the benefits they may receive from taking advantage of either of the measures.

It could be argued that the purchasing issue could be remedied by waiting to purchase energy for the agreed contract until after the associated cooling-off period has completed; however where the purchasing of energy is delayed, prices may have risen and costs would need to be increased anyway to reflect the additional risk that this option also presents.

As per the current proposals, having the cooling-off period start once written terms are received would also cause issues given the time difference between posting and emailing of the terms. Instead, if a cooling off period is introduced, the start date should be aligned across all customers and makes sense to be from the date the contract is agreed. This is also inline with cooling off processes across other industries.

Ofgem also needs to consider the complexities that the faster-switching programme will bring to both implementing and administering cooling-off periods if introduced. For example, where the supply start date has passed (post-faster-switching implementation) and the customer cancels their contract within 14 days, this could potentially lead to increased erroneous transfers. Where suppliers have hedged and purchased associated energy, they would potentially make a further loss here also.

There is also a signifcant impact that Ofgem has not considered with regards to New Connection customers. Here, under the proposed licence condition, Ofgem would be facilitating suppliers fronting and covering the signifcant cost that comes with these customers, only to then allow them to switch to another supplier. This opens up significant challeneges relating to the recovery of costs incurred as part of that process once a customer has moved to another supplier.

Another issue for Ofgem to consider relates to the costs associated with the payment of commission to brokers. Sometimes, commission payments are required up front and therefore paid on contracting. If the cooling off period allows for the contract to be cancelled, potentially multiple times, there will be substantial difficulty retrieving these commission payments.

The introduction of a cooling-off period would be a significant and fundamental change in the way the non-domestic market works for microbusiness customers. It also comes at significant cost to implement. Current estimations of system development alone for E.ON would be in excess of £500k. A thorough and detailed impact assessment would provide further indications of any other costs that may need to be factored in.

If all information customers need is provided pre-contract (e.g. if principal terms are sent to customer before the contract is agreed), then we argue this proposal should not be necessary. It adds cost and complications to the whole industry for little if any actual material benefit and in fact may be detrimental to customers both in terms of higher prices and unintended complications.

Given Ofgem has presented little evidence that this proposal would be used in the way it is intended, nor has a thorough analysis been conducted to understand the full impacts of implementation (especially relating to the complications faster switching brings to a cooling off period) , we urge Ofgem to at least pause the introduction of this proposal until sufficient research has been conducted. In the meantime, the increased provisions afforded microbusiness customers though the Principal Terms requirements, implementation of the ADR scheme and associated centralised Code of Conduct relating to broker conduct would suffice in addressing the majority of harm identified in this proposal.

Question: What challenges do you think suppliers and brokers may face implementing these proposals?

Another consideration Ofgem should account for includes non-domestic suppliers who have a mixed portfolio of microbusiness and non-microbusiness customers. Implementing changes could be costly as different rules would need to be applied to non-microbusiness customers for commercial reasons. For example, given current practices for npower, there would need to be significant system and process changes to separate the treatment of micro-business and non-microbusiness customers. There should also be a consideration for portfolio size, where a supplier has a small microbusiness customer base (compared to their overall portfolio) and their general purpose or drive is to contract with larger, corporate-sized business and the majority of microbusiness customers come as a result of a change-of-occupier process, the cost to develop and implement the change suggested here could be unreasonable. It would not be appropriate, however, to exempt these suppliers from this process as this would create an even further unlevel playing field.

Further, Energy UK large supplier members are lobbying for design certainty – and a potential extension of 19 weeks to the overall switching programme. It is foreseen that the introduction of a microbusiness cooling off period would be ‘against’ design certainty, meaning further changes would need to be introduced to the switching design model.

Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

As the proposals currently stand, the 'must/shall ensure' is not realistically acheivable. By definition, the proposed licence wording means suppliers must guarantee that a broker meets the Standards of Conduct in all instances. As mentioned already, we have strong controls in place to monitor broker activity and redress where issues are found in an efficient manner, but utlimately suppliers do not run the TPI business, so are unable to guarentee their overarching compliance to this licence condition. If proposals remain as they are, poorly behaving brokers in particular represent a threat to a supplier's licence which cannot be faciliated by Ofgem.

We also draw Ofgem's attention to the impact of the proposed drafting of licence condition:

> 0A.3b) iv.
>
> *in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and/or Broker and the Micro Business Consumer in favour of the licensee and/or Broker*

With the addition of the proposals relating to broker commission transparency, these may conflict with the wording of this licence.

Further, with regards to the defintions of "Broker" and "Broker Designated Activities" we argue these should cover third parties who tender and negotiate energy supply contracts on behalf of a non-domestic customer only. The definition should not extend to other intermediaries who may only service customer accounts by way of bill validation or audit (i.e. non-energy contract services), for example, and over which we have no remit in relation to these activities.

With regards to condition 7A.13.4, this should be clear that the contract entered date and the written principal terms date shoud be the same; as the proposal is to provide written terms before customers agree a contract. This then negates the need to have 7A.13E.4 (b).

Question: Do you think there are other changes which would better address the consumer harm that has been identified?

The ADR scheme would provide and ensure financial remedy for any customer who experiences a detriment related to any mis-selling. In addition, the costs will be appropriately attributed to the party causing the detriment. At least in the mid-term until faster switching is introduced, Ofgem should monitor outcomes as a result of the strengthening of requirements around provision of Principal Terms and the ADR scheme. This would allow Ofgem to conduct further, more detailed research as to how effective a cooling-off period is in reality, in addition to working with the industry to understand better the associated costs and whether the cost versus benefits would be beneficial for customers in the long term. This would also allow for a more efficient roll-out of any cooling-off period in line with faster switching requirements should the proposal still be deemed necessary.

Dialogue: Two-way communication with service providers

We support the need for effective dialogue and communication with microbusiness customers throughout their journey and have various customer processes and specialist customer advisors in place to deliver excellent customer outcomes regardless of concern. We provide a proportionate, proactive approach to debt collection for microbusiness customers and look to work with them early on. We make available flexible repayment plans and have taken additional steps to tailor support to microbusiness customers impacted by the Covid-19 pandemic.

Ofgem also cites lack of awareness of Ombudsman Services: Energy (OS:E). We currently provide this information alongside our complaints process: we believe this is required by SLC 20.5: *"The licensee must provide to each of its Customers information concerning his rights as regards the means of dispute settlement available to him in the event of a dispute with the licensee by providing that information on any relevant Promotional Materials sent to the Customer and on or with each Bill or statement of account sent to each Customer in relation to Charges or annually if the licensee has not sent such a Bill or statement of account to him."*

Ofgem has the power to take action against any supplier in breach of this requirement.

That said, we agree with Ofgem and the Money Advice Trust in their CFI response[6], that a clear protection gap results from the absence of an independent dispute resolution service for microbusiness where the dispute involves, or is caused by, broker behaviour. We welcome the mandating of suppliers to only work with brokers who are signed up to an appropriate ADR scheme.

However, we have significant concerns with the effectiveness of having more than one ADR scheme provider to deliver these services and further outline in response to the questions below our specific concerns in addition to providing suggestions that could mitigate potential issues. We also note that we have reached out to OS:E in connection with their request for suppliers to participate in the pilot of the scheme and await their response regarding next steps.

Question: Do you agree that our proposal for a mandated ADR scheme represents an effective way to fill the existing consumer protection gap where a microbusiness has a dispute with their broker?

We strongly believe that the implementation of a mandated ADR scheme, subject to the appropriate conditions, represents an effective way to not only fill the existing protection gap where a microbusiness has a dispute with *their* broker, but also has the opportunity to provide a platform to support microbusinesses generally who experience a detriment because of poor broker behaviour. For example, in the cases where brokers employ pressurised speculative telesales and cold calling that result in harm and nuisance, microbusinesses will now have a route to complain and receive appropriate redress also.

6

http://www.moneyadvicetrust.org/SiteCollectionDocuments/Policy%20consultation%20responses/Unilateral%20responses/Money%20Advice%20Trust%20response%20to%20Ofgem%27s%20opening%20statement%20strategic%20review%20of%20the%20microbusiness%20retail%20market.pdf

If administered appropriately, the scheme will provide consistency of approach with relation to solving issues and ensure that the at fault party, i.e. the broker where this is found, is held to account in so far as current powers allow.

We also see the wider potential this scheme has to ensure increased transparency across the market relating to the promotion of good brokers by acting as a vehicle to facilitate a centralised code of practice relating to broker conduct.

As with domestic customer complaints, it could be beneficial for the approved ADR scheme provider to work with a consumer body such as Citizens Advice, who provide a star rating for suppliers. In time, this will provide microbusiness customers a trusted platform to see who the best and worst performing brokers are relating to handling complaints, subsequently rooting out some of the poorest behaving brokers from the market.

Question: What challenges do you think suppliers and brokers may face implementing our proposal regarding dispute resolution?

Whilst the scheme will come at cost, primarily for brokers, we believe the benefits for both well respected and behaving brokers in addition to customers will far outweigh those costs.

Customers could have their complaints against brokers heard by a third party and a recommendation on redress could be provided. Whilst it does not replace the requirement for ongoing independent regulation of brokers in the long term, the ADR scheme should serve as an effective route to remedy and root out poor broker behaviour and also poor brokers from the marketplace. Whilst suppliers will be required to stop working with brokers who fail to honour ADR decisions, independent regulation is ultimately required to ensure redress for customers can be enforced.

In order to be most effective however, careful consideration as to the scheme's set up and continued management are vital. We are pleased that Ofgem has sought the expertise of the Energy Ombudsman in order to gain some of this insight.

We would argue that consistency of approach in particular to resolving issues, the application of remedies and reporting the outcomes of cases is crucial. This would militate against there being more than one ADR provider. As such, we would go as far to say that we are unsure how the scheme would be effective if proposals allowed for brokers to be signed up to any number of registered ADR scheme providers instead of just one provider. In particular, if the broker ADR is different to the supplier ADR, complaints could go back and forth between the two ADRs when understanding who is to blame (and could result in resolution being delayed). Having more than one ADR scheme provider with differing approaches to resolution, including evidence gathering, will be far too confusing for the market. We strongly recommend that Ofgem require a single ADR scheme provider is appointed/approved for use and argue it would be best if the broker has the same ADR as suppliers. The ADR is then better equipped to gather appropriate evidence and allocate blame, if necessary, and any decisions more effectively as a result.

This would be seen in cases where the most detriment is often observed i.e. where mis-selling by a broker has been found and supplier involvement is necessary to gather evidence or implement a

remedy (i.e. the cancellation of a supply contract). It is vital that there is consistency in the way this is done to ensure best outcomes for the customers as well as commercially for the suppliers in order to recover any lost monies, i.e. broker commissions, as a result of the cancellation of the contract. It is essential to ensure that the at fault party (i.e. the broker where this is found) should be liable for all of the costs a supplier faces associated with the implementation of the remedy. To navigate this process with any number of different ADR scheme providers would be unmanageable.

A single ADR scheme provider would also provide a route to administer a centralised code of practice. Brokers could be required to sign up to the code of practice, as they would the ADR scheme. Clear consequences could be set out that ensured if cases were seen by the ADR scheme provider that were particularly bad or even fraudulent in nature, results could be published in a way that could have an impact to any rating associated with both complaints handling and adherence to the code of practice.

A single ADR scheme provider also provides simplicity and efficiency for both customers and suppliers as there will be one source of information for either party to check whether any given broker is a member of the corresponding scheme.

Suppliers who are mandated to use only brokers that are signed up to the ADR scheme could also be mandated to use only brokers who are signed up to the code of practice, and if by result of repeated mishandling of complaints or even fraudulent behaviour was found, consequences could be governed through the code of practice, i.e. brokers who are repeat offenders of mis-selling or found to be fraudulent could have any status or membership of the code of practice revoked.

Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

In conjunction with our recommendation in our response to the previous question, we recommend the licence drafting should reflect the necessity for a single ADR scheme provider. It should not allow for the remit of any other such organisation that offers settlement relating to Broker Designated Activities.

Regarding 30.5A we also recommend the drafting should reflect the necessity for the supplier to ensure they are working with brokers who are signed up to the ADR scheme provider and not that suppliers are necessitated to ensure brokers are members of a Qualifying Dispute Settlement Scheme as it currently reads. It is neither possible, nor within our remit, to ensure brokers are members of such schemes.

Question: Do you think there are other changes which would better address the consumer harm that has been identified?

We again reiterate the need for independent regulation of non-domestic TPIs and brokers in particular. Only then will the market be able to have full confidence and enjoy more of a level playing field. We reiterate the need that the ADR scheme provider should be the same for suppliers and brokers.

Exiting: Switching away from an old contract

Question: Do you agree that termination notice requirements represent an unnecessary barrier to switching and should be prohibited? If so, do you agree that a prohibition on notification periods should apply to both new and existing contracts?

There seems to be limited information Ofgem provides regarding the evidence that confirms this practice is harmful to customers. However, we do understand the need for microbusiness customers to be able to switch easily away from an expiring fixed-term period, and can see how the removal of the requirement (where one exists) to provide a 30-day notice period at the end of a fixed-term period may support this effort, especially for microbusiness customers who carry their own administrative responsibilities and do not pay for brokers to support them in this regard, where this typically is not an issue.

We also understand the reasoning relating to the application of this proposal to both new and exisiting contracts however, this would come at some cost to suppliers to implement, especially if requirements are worded in such a way that would require administration of variations to microbusiness current terms and conditions.

Given the added complexity of still requiring termination notices for some types of contract (negotiated Evergreen contracts) and for customers to be aware that the consequences of either attempting to switch, or switching away, during a fixed term plan remain unaffected by these proposals, this would be a helpful topic for Ofgem to include in its proposed awareness raising activities with consumer groups to help microbusiness customers access key information about the retail energy market (for example, paying a supplier's reasonable costs when terminating early).

30-day contract extension following blocked switches

Question: Do you agree that our proposal to require that suppliers continue to charge consumers on the basis of the rates in place prior to a blocked switch for up to 30 days represents an effective approach to limiting the financial impact of switching delays? If so, do you agree that the time period should be 30 days?

We agree that where a blocked switch is due to the acts or emissions of the 'losing' supplier, by incorrectly blocking a switch for example, or taking longer than is needed to process objections, then the proposal as outlined by Ofgem would be reasonable. However, where a switch is blocked due to a customer issue i.e. where the customer has not agreed a new contract in time, it would be unfairly detrimental to the supplier to require them to cover the costs of the additional energy consumed at the fixed price rates.

This is especially so when hedging and purchasing of energy, sometimes months in advance, would for the period of the contract extension require the additional purchasing of energy, potentially at a significant loss to the supplier. As a result, such financial risk would have to be factored into the overall costs of a microbusiness contract through some sort of risk premium.

We honour a customers' contract prices until the end of their plan. If a customer has neither switched away nor agreed a new fixed plan, only then will the customer move to a variable priced product. Internal analysis of blocked switching rates indicates therefore that only 5% of relevant customers for E.ON would be eligible to benefit from the proposal of a 30-day contract. There is some argument as to whether the proposals will deliver the benefit Ofgem envisages as a result.

The variable product a customer moves to when they have neither switched away nor agreed a new fixed plan are made clear before agreeing a contract, as are the consequences relating to the process regarding unresolved debt at the end of a fixed term plan. As a result, we do not agree with Ofgem's proposal in respect of switches blocked due to the customer being in debt. At E.ON, we go to great lengths throughout the period of a microbusiness customer's contract to take proactive steps to work with those who are in debt. If at the end of their fixed term plan, debt remains unresolved, it would be wholly unreasonable to expect the supplier, and thereby other customers, if the debt remains unpaid in the long term, to allow an additional 30 days' worth of energy at contracted rates.

Question: What challenges do you think suppliers and brokers may face implementing our proposals regarding improving the switching experience?

There are a number of challenges and risks implementing a contract extension period alongside implementing the changes required of the faster switching programme. We have outlined some aspects that Ofgem should consider in this regard.

Time required to deliver the compliant system solution (i.e. necessary system configuration)

There are significant complexities for 30-day contract extensions, as we and many other suppliers have experienced in the domestic market. This would take considerable time and cost to resolve. Changes may also be necessary to our designs for the faster switching programme, and this would involve further cost.

Internal release management, internal testing and industry testing for switching activities as part of the Ofgem "User Integration Tests"

It is foreseen that the key industry tests for faster switching will have passed before this change is implemented as proposed. Clarity would be required from Ofgem and, or, the System Integrator whether a further cycle is required if this is likely to be the case.

Switching go-live – considerations for Central Switching Service (CSS)

Ofgem should be aware that there will be industry change freezes within the industry switching plan, so consideration must be given to when a change of this nature, if agreed, is best placed.

Switching go-live – considerations for legacy systems pre-CSS

As Ofgem is aware, E.ON and npower are currently undertaking significant system upgrade involving the gradual migration of our customers to a new platform over the next two years. It would be

inefficient to develop these changes in legacy systems, given the short period of time they would be needed for. This would not be an efficient use of our resources.

Again, with this in mind, any introduction of a cooling-off period for microbusiness customers should be implemented following post-go live of faster switching. There are complex technical interactions that need to be carefully understood before any final decisions regarding implementation timescales are proposed.

Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

Ofgem does not currently account for any limit to the number of objections. Clarity in licence would need to ensure that if a 30-day contract extension is introduced, it should not be extended further with each objection.

Regarding 7A.13B, the term 'out of contract Contract' doesn't read well. If used, we believe this term should be defined.

Question: Do you think there are other changes which would better address the consumer harm that has been identified?

In addition to existing comments, we have no further comments in relation to this question.