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Microbusiness Strategic Review, Vulnerability and Consumer Policy
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Dear Jonathan

Microbusiness Strategic Review

EDF is the UK's largest producer of low carbon electricity. We operate low carbon nuclear power stations and are building the first of a new generation of nuclear plants. We also have a large and growing portfolio of renewable generation, including onshore and offshore wind, as well as coal and gas stations and energy storage. We have around five million electricity and gas customer accounts, including residential and business users. EDF is committed to building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

We welcome the overall objectives of the Microbusiness Strategic Review. We agree that the biggest opportunity for improving outcomes for microbusinesses lies in addressing the role of brokers and intermediaries, who play a key role in this sector. The following proposals will help microbusinesses engage more effectively in the energy market:

Broker arrangements

- A transparent declaration of the total fees a broker receives for an energy sale is required, to ensure customers can make an informed decision, on whether they wish to proceed with a sale, once they have knowledge of how much they are paying for energy and how much for the broker's services. However, rather than the principles-based approach proposed, broker fees for the whole contract duration should be displayed consistently across brokers and suppliers in a simple prescriptive format. A prescriptive approach will ensure that commission fee information is provided consistently and so is comparable for customers.
- Until direct regulation of brokers is possible, we support licence requirements for brokers to treat customers fairly, using Informed Choices Principles. We would welcome the opportunity to engage with Ofgem on the compliance framework that will be implemented, as more clarity is required about Ofgem's expectations of suppliers in monitoring broker behaviour. There must be equity in assurance standards across all suppliers, and robust consequences where suppliers cannot provide adequate evidence of

their brokers' behaviours, including Ofgem restricting a supplier's ability to continue to sell if that evidence is not available.

- Ofgem should also consider how it will act if an unscrupulous broker works across a number of suppliers.
- The new broker obligations can only apply to brokers that a supplier has a direct contractual relationship with, as suppliers do not have full oversight of any sub broker network. Direct oversight could only be achieved in the future, if all brokers were mandated to reveal their sub broker networks, and if sub brokers were also mandated to provide suppliers direct access to their processes for assurance purposes.

Microbusiness Consumer Protections – Exiting a Contract and Cooling Off

- There is no evidence of harm within Ofgem's own research in relation to a customer leaving a supplier. The requirement for termination notices in fact creates a benefit for customers as it enables those on our roll-over products to have lower prices. In the absence of any evidence of harm, the proposal to remove this requirement therefore risks customer detriment rather than providing clear benefit.
- The proposed 30-day price hold period is similarly not supported by evidence of consumer harm, has unproven consumer benefits and will be a costly change for suppliers to implement. If a decision is still made to implement this change, it should be consistent with, and not exceed, the 20-day protections given elsewhere in the licences for domestic consumers.
- We support a cooling off period, but it must be aligned with faster switching changes and should be explored further in Ofgem's upcoming consultation on this topic

We consider that any changes implemented by Ofgem should be reviewed after six to twelve months to ensure they are working effectively. Ofgem should set out their success criteria for each policy, in advance of any review, to inform this assessment.

In the longer term, there are wider issues across the broker market that Ofgem should explore to ensure all microbusinesses get a fair deal:

- Commission transparency will help to ensure that customers can make an informed decision when deciding whether to engage a broker that is working on behalf of supplier, but this will not enable informed decision making where a broker works on behalf of a customer, for example, if a customer delegates authority to a broker to auto switch their supply. Ofgem must ultimately look to mandate brokers who act on behalf of customers, to inform customers of the ongoing fees they receive. This must be *prior* to the broker agreeing a contract on a customer's behalf, if the microbusiness is to make an informed choice on whether to proceed, with full knowledge of how much they are paying for energy and how much they are paying for broker's services.
- In addition, brokers should not be able to insist on contractual clauses with suppliers that limit customers' choices. For example, any that prohibit suppliers making, and customers receiving, competitive offers.

- Ofgem should also pursue opportunities to mandate brokers to be transparent with microbusinesses about the basis of their recommendation when negotiating contracts.

Our detailed responses, including a response to your draft impact assessment in annex 1, are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Nicola Pope or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely

A handwritten signature in black ink that reads 'R. Beresford'.

Rebecca Beresford
Head of Customers Policy and Regulation

Microbusiness Strategic Review

EDF's response to your questions

Awareness: Knowing about opportunities and risks

Q1. What are the most effective ways to ensure that microbusinesses can access key information about the retail energy market?

To engage effectively in the energy market, it must be easy for microbusinesses to directly access suppliers' prices so that they can compare tariffs and find the best deal that works for them. The Price Transparency Remedy already provides a mechanism for microbusinesses to easily access suppliers' prices directly, however, as the consultation acknowledges, there is still little awareness among microbusinesses that this is available.

It should be easy for a microbusiness to access supplier price points through relevant contact details and websites of all suppliers. This could be achieved by Ofgem and Citizens Advice providing information clearly on their website where links to suppliers pricing information can be accessed. To support this further research could be undertaken to understand where microbusinesses look for energy prices.

Ofgem should also monitor suppliers' websites to make sure that their online prices are easily accessible, transparent and complete. We note that there are currently some variances between the approaches taken by different suppliers, with some suppliers showing some elements of non-energy costs separately, such as the Feed In Tariff levy. This inconsistency could be confusing for customers, as they are not comparing like-for-like terms.

Browsing: Searching for deals

Q2. Do you agree with our proposal to strengthen the requirements to present a written version of the Principal Terms to customers?

Yes, we agree with the proposal to strengthen requirements for both brokers and suppliers to provide a written version of Principal Terms to microbusiness customers. This is the right thing to do and should minimise the occurrence of misleading sales.

Q3. 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?

We fully support transparency on broker commission throughout the customer journey, if implemented through prescriptive requirements.

Brokers should be required to transparently declare the fees they receive for a sale to a customer, to ensure customers are making an informed choice about engaging a broker. Some microbusiness customers believe that using a broker is a “free” service due to a lack of transparency over the fees paid when in fact the average level of commission paid can be several hundred pounds per meter point. If customers are aware of the level of commission a broker receives upfront then they can make their own decision as to whether this represents a fair value for the service received.

Q4. 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?

Yes. A consistent and transparent approach across suppliers is of the utmost importance, as it is the only way that we can be certain microbusinesses can compare broker fees easily, and make an informed decision on whether to proceed with a contract.

A prescriptive approach will create a level playing field across brokers and will deprive them of any opportunity to switch to only work with suppliers that have a less transparent format for displaying their fees. If suppliers can determine their own methodology for presenting broker costs, there is a risk the lack of transparency that this change is intended to mitigate, could continue.

Commission fees must be displayed in a simple format, so that it is easy for customers to compare fees, as well as straightforward for suppliers to display the information clearly on their communications. Recognising that suppliers will operate a number of different commission models, the simplest and clearest way to provide details of broker commission would be the total estimated cost (£), for the whole contract duration. The estimated cost should be accurate at time sent, as far as this is reasonably practicable. We would welcome further opportunity to discuss what should be considered reasonably practicable. As commission fees are likely to be higher for a longer contract, suppliers should also specify the contract duration alongside the fee.

It is important that commission fees are presented as a cost for the *whole contract* and not broken down by year, as for a customer agreeing a longer contract; this could be misleading as it would make the commission fees appear significantly lower than they actually are. Equally, fees must not be presented at a very granular level (e.g. per unit or kWh) as this could also make fees appear much lower than they are.

Only a prescriptive approach can guarantee that broker fees are displayed accurately and transparently across suppliers. However, if Ofgem do not take forward our recommended approach and adopt a principles-based approach, we recommend a review of outcomes in six to twelve months to ensure the changes are working effectively.

Q5. What challenges do you think suppliers and brokers may face implementing these proposals?

The proposal to display commission payments as a specific charge for a billing period will be confusing for customers.

Broker commission payments do not directly relate to a customer's charges and consumption for a billing period. Most of our microbusiness commission fees are estimated and paid upfront at the point of sale based on a customer's expected consumption, and reconciled at the end of the contract based on the customer's actual usage. This could include potential recovery of some payments made to brokers if a customer's consumption is lower than expected. This means if a customer consumes less than expected, commission payments would appear as a minus figure on a bill but there would be no genuine credit due to the customer, or if consumption is higher than expected a broker could get an extra payment, with no extra charge for the customer.

Our proposal to display commission fees as the total estimated cost (£) for the contract duration would overcome these issues, and enable all suppliers, irrespective of their commission model, to easily display commission payments in the same transparent manner.

While we will pay the commission fees for brokers we have a direct contractual relationship with, we will not be privy to or have the right to understand the commercial terms of an aggregator arrangement, which could include a number of smaller sub brokers that have no direct relationship with us. Any requirement to be transparent in regard to commission payments should only be in respect of the fees we pay, and only for those brokers where there is a direct contractual relationship.

Q6. Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

We recommend that commission, fees, and benefit in kind are defined terms in the supply licence so all suppliers have the same understanding of what they should be including when providing details of these costs to customers. This should include guidance not just in respect of cash payments, but also other financial structures that could be in place to the broker's benefit for example:

- Brokers claiming cash back for arranging deals.
- A supplier funding a broker indirectly (e.g. paying for staff members).
- A broker that is contracted to work on behalf of a supplier but may also have a Letter of Authority to directly represent the end customer.

While we fully support commission transparency, we will only be able to provide details of commission payments we make directly to a broker, as we do not have sight of those subsequently made through any sub broker network. Therefore, the definition of 'Broker' in the Supply Licence should be explicit that a broker only includes those where a supplier has a direct contractual relationship. The licence must also be clearer that the definition of 'Broker' only includes those brokers that suppliers have a contract with, not those where a customer contracts with the broker. The current drafting is unclear on this point.

Q7. Do you think there are other changes which would better address the consumer harm that has been identified?

Alongside these changes, Ofgem should work with suppliers and consumer groups to raise awareness of the Price Transparency Remedy, so that microbusinesses have the tools they need to easily browse deals directly with suppliers as well as via an intermediary.

Contracting: Signing up to a new contract

Q8. 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?

In theory, the introduction of a broker principle could potentially improve the standards of some brokers in the microbusiness energy market. If all suppliers are obligated to ensure the brokers they work with treat their customers fairly, this should make it more difficult for certain brokers to simply switch and only work with those suppliers that are more lenient in their approach; as all suppliers should be working to the same outcomes.

In practice, the principle will be difficult to monitor as each broker contracts with a number of suppliers, meaning some brokers could continue to move to suppliers with less robust standards. We welcome the opportunity to engage with Ofgem on the detailed compliance framework they expect suppliers to implement to monitor broker behaviour. It is vital that a framework is agreed to ensure all suppliers take a similar robust approach. For example, would it be unacceptable for suppliers to meet their obligations just by having relevant clauses in their broker contracts that a broker must achieve the Standards of Conduct? Or does Ofgem expect suppliers to have direct oversight of their agents, for example, by completing assurance or auditing for each broker they work with? As a supplier, we work with a number of brokers so it will be a time consuming and costly challenge to have a detailed level of oversight over each of them. This is achievable, but will only be effective if all suppliers are clear that they are expected to take a similar approach. Ofgem should restrict suppliers' ability to sell new contracts if they cannot provide evidence of their brokers' behaviours.

Suppliers will not be able to achieve the broker principle for any brokers they work with that are aggregators. Aggregators will have a number of smaller sub brokers that operate on their behalf that suppliers do not have direct oversight of. Comparison can be made with learnings from delivering the Energy Company Obligation, where due to the level of assurance required by suppliers, only one level of sub broker is now allowed. This would not be effective in the broker market currently as a great number of brokers work solely with a large sub broker network. As a result, any introduction of a broker principle must only apply to those brokers where suppliers have a direct contractual relationship. It is not feasible for suppliers to be held accountable for brokers they do not have oversight of.

Q9. 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?

Yes, we agree with the proposal to introduce supplier and sales and marketing 'Informed Choices' principles for microbusiness consumers, as these narrow principles act as an important mechanism for suppliers to understand and effectively implement wider principles of the Standards of Conduct. We agree that face-to-face marketing and sales activity should be covered alongside telesales.

Suppliers will face similar challenges to the 'Broker Principle' when implementing these standards for third parties. We would welcome the opportunity to engage with Ofgem on the compliance framework they expect suppliers to implement when introducing this change. Are suppliers expected to have direct oversight of all their brokers and maintain evidence of their compliance? Or would a contractual arrangement setting out that a broker must comply with the Informed Choices principle be sufficient for a supplier to meet their obligation?

To ensure all suppliers monitor broker's behaviour robustly, Ofgem should restrict suppliers' ability to sell new contracts if they cannot provide evidence of their brokers' behaviours.

The requirement to maintain evidence of sales contracts for up to two years could create specific additional issues for suppliers if the broker maintains the information, as there are frequent examples of brokers leaving the market or operating under a differing commercial entity. This could make it impossible to locate any original evidence of a sale.

Suppliers will not be able to achieve the informed choices principles for any brokers they work with that are aggregators. Aggregators will have a number of smaller sub brokers that operate on their behalf where suppliers do not have direct oversight. As a result, the informed choices principles must only apply to those brokers where suppliers have a direct contractual relationship. It is not feasible for suppliers to be held accountable for brokers they do not have oversight of.

Q10. 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?

Yes, we agree that introducing a cooling-off period is the right course of action to take to allow for cases where a microbusiness no longer wishes to continue with a recently agreed contract.

We agree for simplicity that the cooling-off period should reflect the domestic cooling off period of 14 calendar days. However, as we outline in our response below this should not be implemented before faster switching goes live in the summer of 2022.

While we support this change, Ofgem should monitor any microbusiness cooling off period to ensure there are no unintended impacts that could result in consumer harm. For some of our microbusiness customers, especially those in our larger I&C systems, we purchase energy for a contract as soon as it is sold to a customer. A cooling off period creates a risk that if market prices drop just after a sale, a customer will cancel their contract, and agree a lower price. This could be detrimental to consumers if suppliers increase their overall prices by including a risk premium to mitigate this risk. Ofgem should be mindful of this, when defining their final proposals.

Q11. What challenges do you think suppliers and brokers may face implementing these proposals?

The introduction of a cooling off period would require system changes, and suppliers could face significant challenges if there is any expectation to introduce a change before faster switching goes live in the summer of 2022. Therefore, and to avoid suppliers having to make system changes twice, the introduction of any cooling off period should be aligned with faster switching.

Once faster switching goes live, suppliers will be required to register non-domestic customers within two working days. If we register a supply during the cooling off period, there will be instances when we will acquire a microbusiness customer that subsequently wishes to cancel their contract. Similar to the domestic market, there should be a process in place that enables the customer to easily cancel the contract. Ofgem should ensure that this is explored in their upcoming faster switching consultation.

As there has never been a cooling off period for microbusinesses, it is difficult to know for certain how this change would impact consumer behaviour. Nonetheless, while we support this change we should be mindful of the impact it could have once faster switching is in place. Customers will be able to change their supplier every few days and, if they cancel within the cooling off period, avoid termination fees. There is a risk that microbusinesses (or brokers acting on their behalf) could switch frequently in order to avoid paying small sums that may not be cost-effective for suppliers to recover. This could lead to unrecoverable debt, the cost of which is borne by those who pay their bills.

As above, a high cooling off period cancellation rate could also impact suppliers hedging strategies. If a customer cancels, for example on the offer of lower prices, this could potentially lead to an overall uplift in prices by suppliers to account for this risk. This would be an undesirable outcome with potential for both consumer and supplier detriment, so any change should be monitored carefully.

Q12. Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

Cooling off

It is sufficient that the cancellation period begins the *'day on which a Micro Business Consumer enters into a Contract'* and there should be no additional requirement to prove the customer has

been provided with a copy of the Principal Terms. We are already required to provide the Principal Terms under 7A.4 (b) and 7A.9 (a). This additional obligation would add an unnecessary additional administrative burden on suppliers to prove that the Principal Terms had been provided, and an extra layer of confusion for the customer about when the cooling off period begins and therefore ends.

The drafting should be future proofed to account for upcoming faster switching changes. For example, if we gain a supply in the cooling off period, it will not be appropriate to not '*apply terms and conditions or Charges for the Supply of Electricity which are not under the Micro Business Consumer Contract*' for an indefinite period. In the Domestic proposals, there is proposed grace period of up to 30 days for a customer to take action, before a supplier is allowed to place a customer on Deemed or Out of Contract rates.

We recommend that '*cancellation*' and '*termination*' are defined terms so it is clear what supplier obligations are in respect of each different process, and so that it is explicit that the cancellation period is only 14 days.

Broker definition

We will not be able to monitor the behaviour of sub brokers, against the Broker and Informed Choices principles. Therefore, the definition of '*Broker*' in the Supply Licence should make it explicitly clear, that a broker only includes those brokers a supplier has a direct contractual relationship with. The licence must also be clearer that the definition of '*Broker*' only includes those brokers we contract with, not those where a customer contracts with the broker. The current drafting is unclear.

Broker and Informed Choices Principles

As we do not have direct market power over each broker we work with, we can only have limited responsibility for their behaviour. As a result, the draft licence should be amended so that suppliers are only required to take '*all reasonable steps*' to ensure that *Brokers, achieves the Standards of Conduct*' and Informed Choices Principles.

Q13. Do you think there are other changes which would better address the consumer harm that has been identified

Yes, direct regulation of brokers is still required by Ofgem.

While the changes proposed should lead to the improvement of some brokers' behaviours, suppliers can only have limited oversight over those brokers they have a direct contractual agreement with, and no oversight over smaller sub brokers that work for a larger aggregator. Suppliers must not be held accountable for the behaviour of brokers they do not have at least some oversight of. As a result, there will still be significant opportunity for rogue behaviour until Ofgem are able to take decisive action against *all* broker activity.

Direct regulation would also lead to a more effective assurance framework for monitoring broker behaviour with a single point of contact (Ofgem) rather than numerous suppliers monitoring exactly the same brokers with likely slightly differing expectations on outcomes. In the interim there should be a procedure that enables suppliers to report unscrupulous broker practice to Ofgem.

Dialogue: Two-way communication with service providers

Q14. 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?

Yes, we agree that an Alternative Dispute Resolution Scheme (ADR) could fill the existing consumer protection gap where a microbusiness has a dispute. We would welcome the opportunity to review a more detailed proposal once this is available to ensure the scheme set up achieves the right outcomes for consumers and is cost effective. We must ensure brokers that are members of the ADR are responsible for the costs.

There should only be one single ADR scheme as otherwise this could create confusion for a customer around who to contact should they have a dispute with a broker. Numerous schemes would also make it more complex for a supplier to ensure they direct a customer to the correct ADR entity. For simplicity the ADR Ombudsman could be the current Energy Ombudsman.

Q15. What challenges do you think suppliers and brokers may face implementing our proposal regarding dispute resolution?

The key challenge will be to ensure enforcement against brokers until the ADR is effective. If a broker is a repeat offender, and is consistently subject to redress under the ADR, this could have implications for a supplier's own compliance against Standards of Conduct and Informed Choices Principles. Any ADR must make the outcomes of their investigations available to the relevant suppliers that work with that broker. This is the only way suppliers will be aware of any specific issues with a broker, and be able to take appropriate corrective action.

As there are a large number of brokers, it will make it very difficult for an ADR to police brokers effectively and ensure they comply with the findings of any ruling against them. This may be a particular challenge where a broker changes their name or begins to operate under a different commercial entity, which is a common practice in the energy market. In such a scenario, even expulsion from the scheme would not prevent a broker from signing up to the ADR again under a different name, and therefore being able to work with suppliers again. Any scheme will need to have robust procedures to manage this risk, while also ensuring the scheme remains cost effective.

Q16. Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

The drafting should be amended so there is only one Qualifying Dispute Scheme that all brokers use.

Q17. Do you think there are other changes which would better address the consumer harm that has been identified?

Yes, the direct regulation of brokers by Ofgem.

Even if successful, the ADR Scheme will only be able to provide redress for brokers that work directly for suppliers. Brokers that represent customers directly, or work as part of a wider sub broker network, cannot be mandated by suppliers to sign up to the scheme. This means a large number of brokers will still be able to continue with unscrupulous behaviour, with no means of redress for the microbusiness consumer.

Exiting: Switching away from an old contract

Q18. 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?

We do not agree that termination notices represent an unnecessary barrier to switching. Our ability to request notice is a benefit to customers by allowing those on our roll-over products to have lower prices.

Termination notices allow us to better manage our customer base by making sure pricing is cost and risk reflective. Customers on our Out of Contract 'Extended Supply' rates (where no notice is required), are three times more likely to require a debt provision than those customers on our roll-over Easy Fix product (which requires 30 days' notice). As a result, our provision for bad debt is significantly higher for customers on Extended Supply. If we stopped requiring customers to give notice, we would need to pass the additional debt risk that we see in Extended Supply to all Easy Fix customers. This would be of significant detriment to those customers on our roll-over prices.

We make it easy for customers to provide notice and as well as in writing, microbusiness can also terminate online and by phone. We have made our online process as simple and quick as possible for our customers, so it should only take around two minutes to complete. Additionally, microbusinesses are made aware throughout the customer journey how to give notice to leave – at the point of sale, renewal and on every bill – so they should have all the information they need to terminate their contract quickly.

Q19. 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?

No, we do not agree that suppliers should continue to charge customers on the basis of rates prior to a blocked switch for a period of up to 30 days. The consumer benefit of such a change will be minimal both in terms of numbers of customers impacted, and savings made for microbusinesses.

Only a very small number of microbusiness would benefit from this change. For our large microbusiness base only a very small number were on Out of Contract Extended Supply rates for 30 days or less.

For such minimal potential benefits the cost to suppliers would be significant. We have estimated that the cost to make system changes for our I&C systems which only have a very small number of microbusinesses to be in the hundreds of thousands, and this would not be a proportionate cost to bear.

As the benefit to microbusiness consumers is minimal we do not agree that the 30 day price hold is a cost effective change.

Q20. What challenges do you think suppliers and brokers may face implementing our proposals regarding improving the switching experience?

If suppliers are unable to request termination notice during an Initial Fixed Period, this could lead to unintended consequences that could result in microbusiness consumer harm.

Termination notices gives a chance for the customer to ensure they are making the right decision, and for a supplier to understand a customer's intention. If suppliers receive a loss flow during an initial fixed term period but we do not ask for termination notice we will not know whether a customer intends to switch supplier, and therefore is happy to pay any Early Termination Fee (ETF) or, if this was in error. A customer might decide not to switch if they have to pay an ETF, it might be as simple as the new supplier applying too early, or an unscrupulous broker switching a supplier without the customer's consent.

Without a termination notice, suppliers face two options in an initial fixed period – to object as the customer is under contract, or to let the supply leave – both of which could result in consumer detriment.

If we let the supply leave and this was not the customer's intention they could be faced with a termination fee that they do not wish to pay. Termination Notice effectively gives the customer the ability to discuss their options, and make an informed decision of what is the best outcome for them at a particular point in time.

If on the other hand, we decide to object to a transfer under SLC14 because a customer is in an Initial Fixed Period, then the customer will still need to contact us so we can establish whether they wish to pay an ETF, or for their supply to remain with us until the contract ends. Removing the requirement for notice in this instance would provide no additional benefit.

Q21. Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

Termination notice requirements

If microbusinesses can no longer be required to provide Notice to terminate a contract (other than Evergreen) but only to prevent a roll-over, there are number of consequential changes needed to the licence to remove reference to a customer providing termination notice. These include: 7A.6 c (iii); 7A 10B (b) (ii); 7A10B c (i), 7A13D.

For '*Information on Bills*' if a contract does not contain a Roll-Over period the proposed policy would mean that a microbusiness must not have to give a notice to terminate at the end of a contract, and therefore there would no longer be, '*the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract*' as no notice could be asked for. There would also be no requirement for an accompanying statement to explain the '*latest notice date*'.

Suppliers will still be able to object to a customer switching if they are in a Fixed Period under SLC14, therefore the wording for '*Termination during Initial Period of Micro Business Consumer*' under proposed 7A.11 should be amended so that it is clear that no notice is required to terminate the contract or switch supplier, but the switch must be for a date that is *after* the initial fixed period has ended.

A 30 day contract extension following blocked switches

The licence must include wording to clarify whether the 30 days to hold microbusiness prices following a blocked switch, is calendar or working days.

The drafting of the licence gives microbusiness customers greater protections than a domestic customer. The wording currently requires a supplier to hold a customer's prices for up to 30 days, following a switch that has been objected to, irrespective of whether the customer subsequently ends up switching. However, in the domestic market suppliers are only required to hold prices for 20 days if a customer resolves the objection reason and switches '*within a reasonable timeframe*'. If the domestic customer does not switch then the price change becomes effective from either the end of the fixed contract, or the original date included in the price change notification sent to the customer.

(iii) 30 days from the day after the day that the licensee prevented the Supplier Transfer, at which point the licensee may choose to charge the Microbusiness Customer under a Deemed Contract or Out-of-Contract Contract if any fixed term period has come to an end

The current wording would obligate suppliers to hold a Microbusiness customer's prices if there was a price change on 'Out of Contract rates', as well as when moving from a fixed to Out of Contract rate. It is not clear whether this is Ofgem's policy intention.

*14.3A Where the licensee has prevented a Proposed Supplier Transfer in relation to a Microbusiness Customer **the licensee must continue to supply the Microbusiness Customer on the basis of the rates which applied immediately to the date on which the outgoing supplier received notification of the proposed switch** until the earlier of:*

Q22. Do you think there are other changes which would better address the consumer harm that has been identified?

We do not consider there to be any harm that a microbusiness consumer encounters when switching supplier. We note that in Ofgem's customer journey, 'Exit' also does not have a corresponding theory of harm and clear evidence from which to make policy proposals.

EDF
October 2020

Annex 1 - Microbusiness Strategic Review: Draft Impact Assessment

EDF's response to your questions

Broker conduct principle

- **What additional costs may stakeholders incur through the introduction of a broker conduct principle**

The costs suppliers will incur when implementing a broker principle will depend on the compliance framework that Ofgem expect suppliers to implement to monitor broker behaviour.

If suppliers are expected to monitor behaviour primarily through their contractual arrangements with brokers then costs would be minimal just to cover the legal costs for amending contracts. If suppliers are expected to introduce a more comprehensive framework of training and quality assurance, we would expect costs to be significant and wide ranging given the number of different intermediaries that we work with. We welcome the opportunity to engage with Ofgem on the compliance framework they expect suppliers to implement to monitor broker behaviour.

- **Evidence and data on existing broker and TPI monitoring costs and how these may change with the introduction of a licence obligation requiring monitoring broker conduct**

For our SME customers, where most of our microbusinesses sit, our existing broker and TPI monitoring costs, are minimal and based on quality metrics, rather than direct monitoring and assurance. We would expect costs to increase if a broker principle was introduced, but the extent to which they will increase will depend upon the compliance framework Ofgem expect suppliers to implement. We welcome further discussion on this point.

In our I&C customer base, where a small number of microbusinesses sit, our TPIs work directly on behalf of the customer; this includes a TPI agreement with expected standards of behaviour. We would not expect a broker principle to cover this type of relationship, as we will not have direct oversight or control over the TPIs behaviour. Nonetheless, if any broker misconduct was brought to our attention by a customer, we would continue to take appropriate action against the TPI.

- **Views on the impacts this proposal will have on microbusinesses; these impacts can be financial and non-financial**
- **Any other views on how this proposal may impact the microbusiness supply market; these impacts can be financial and non-financial**

In theory, a broker principle should improve broker behaviour in the microbusiness market, and therefore create more positive outcomes for consumers engaging in the energy market. However, this will depend on **all** suppliers monitoring brokers under a similar uniform robust compliance framework. This is paramount - as suppliers do not have market power, and each broker contracts with a number of suppliers, even with the introduction of a broker principle, brokers could continue to move to suppliers with less robust standards. Ofgem must give clear direction on what is expected of suppliers to mitigate this risk.

The 'broker principle' can only be expected to improve the behaviour of brokers that suppliers have a direct contractual relationship with. Suppliers have no visibility of sub broker behaviour, or the behaviour of brokers that contract directly with a customer. It must therefore be recognised that even with significant intervention by suppliers, to audit and assure the brokers they work with, until there is direct regulation of TPIs, there will still be scope for sharp practices among some brokers in the energy market.

ADR scheme

- **What additional costs stakeholders may incur through the implementation of an ADR scheme**

Until there is a more detailed proposal on how the ADR will be set up, and how it will be run on an ongoing basis, it is difficult to quantify the likely costs we will incur as a supplier. This will in part depend on the extent to which suppliers are expected to fund the scheme, compared to brokers who the scheme will support. As the scheme is primarily aimed at reducing the incidence of poor broker practice, we would expect brokers to pay the most significant portion of costs.

Once the scheme is in place, there will also be internal costs, including:

- Updates to communications to make to sign post the ADR scheme to microbusinesses and raise awareness.
- Internal training, and increase of resource in our complaints team (expect around 3 F.T.E).
- Potential costs for any changes to regulatory reporting.
- Dependent on whether suppliers are made aware of rulings against brokers they work with, costs to take appropriate corrective action.

- **Information and evidence on the benefits of implementing an ADR scheme**

This could have a positive impact for microbusinesses as an ADR scheme will provide microbusinesses with the opportunity for redress directly against a broker, rather than having to go via their supplier.

Any scheme will only be successful if brokers comply with any redress action taken against them, and ultimately broker behaviour improves as a result. Given the large numbers of brokers that operate in the energy market, it will be very difficult to police brokers effectively,

and ensure they comply with the findings of any ruling against them. This will be a particular challenge where a broker changes their name or begins to operate under a different commercial entity, which is a common practice in the energy market.

An ADR scheme will also only provide redress to consumers against brokers that have a direct contract with suppliers. Suppliers could potentially ask that any brokers they work with should also mandate their sub brokers to sign up to the scheme, but this would be very difficult to monitor. There will also continue to be no redress for customers that delegate an intermediary to work directly on their behalf, as the scheme would in effect be purely optional for brokers that operate in this capacity.

- **An estimate of existing costs incurred by stakeholders in resolving microbusiness disputes**

We do not separate the costs incurred in resolving microbusiness disputes. The cost to resolve an Ombudsman complaint is £340 plus subscription fees. This is significantly higher than the cost to resolve a complaint internally.

- **Any other views on how this proposal may impact the microbusiness supply market; these impacts can be financial and non-financial.**

There should only be one single ADR scheme as otherwise this could create confusion for a customer of who to contact should they have a dispute with a broker. Numerous schemes would also make it more complex for a supplier to ensure they direct a customer to the correct ADR entity. For simplicity, and to help ensure the scheme is cost effective, the role of ADR Ombudsman could be fulfilled by the current Energy Ombudsman.

Changes to the contracting process

- **An estimate of how many contracts may be impacted by a cooling-off period. This could be based on the number of existing contracts that microbusinesses query or wish to amend within the proposed cooling-off period.**

We do not know how many customers will cancel during this period, as microbusinesses do not have this option at present.

- **Any other views on how this proposal may impact the microbusiness supply market; these impacts can be financial and non-financial.**

A cooling off period is beneficial to microbusinesses, as it will enable customers to cancel their contract with no financial penalty. This will prevent any detriment from misleading sales, and enable consumers to take up any offer of lower prices from another supplier in the 14 day period.

Suppliers will have to implement system changes to accommodate a cooling off period so costs will be significant. The current policy proposals do not consider how the cooling off period for microbusinesses will work once faster switching is in place – this must be explored in Ofgem’s upcoming consultation. We will be able to give a more definite figure of expected costs once a more detailed proposal has been provided. However, as we would expect costs to be significant, we recommend that a microbusiness cooling off period is only introduced once faster switching goes live, so suppliers do not have to make system changes twice.

The introduction of a cooling off period could have other unintended consequences that may not be beneficial. Once faster switching is in place, there is a risk that microbusinesses (or brokers acting on their behalf) could switch frequently in order to avoid paying small bills that may not be cost-effective for suppliers to recover. This could lead to unrecoverable debt, the cost of which is borne by those who pay their bills.

A high number of cancellations in the cooling off period could also impact suppliers’ hedging strategies. If a customer cancels, for example on the offer of lower prices, this could potentially lead to an overall uplift in prices for microbusiness customers by suppliers to account for this risk. This would be an undesirable outcome with potential for both consumer and supplier detriment, so any change should be monitored carefully.

For microbusinesses in our I&C systems, we can only apply a cooling off periods if a contract is agreed with a *single* customer. We also offer flex and tripartite agreements, where the pricing we offer is based on a number of customers being signed up to the same agreement – if one customer cancelled their contract, this would change the offer we can provide to all the customers that are part of the arrangement. We would welcome clarity on how Ofgem expect cooling off to work with more complex contract arrangements.

Broker commission

- **If stakeholders consider there are significant additional costs associated with these proposals**

Yes, there would be significant system costs to provide commission fees as part of the Principal Terms and on bills. The exact cost will depend on the complexity of the information we have to provide to a customer.

Based on understanding of the current proposals, for broker commission we estimate that the cost of system changes to add commission values to contracts and bills would be in the hundreds of thousands. The cost to make changes to bills will be significantly higher, than for contracts, as our commission payments do not relate specifically to a customer’s billing period. This would require further more complex changes as we would need to adjust the commission fee from an actual payment we have made to a £/% value for a billing period.

This cost for bills would reduce if we could display commission as a single figure - the total estimated cost (£), accurate at time sent, for the whole contract duration. This simple prescriptive approach would also ensure that commission fees are provided consistently across suppliers, enabling consumers to easily and transparently compare fees.

- **Evidence and views on the impact this proposal could have on the energy brokers and TPI market. These impacts can be financial and non-financial**

Commission transparency could bring about some changes to the energy broker and TPI market, if microbusinesses change their behaviour as a result of a greater awareness of the fees brokers receive. If customers perceive that some broker fees are too high, this could lead to an increase in customers contracting directly with suppliers rather than via an intermediary. As well as leading to a reduction in broker commission fees, this could also drive smaller brokers who rely on high uplifts out of the market.

- **Evidence on the additional costs to suppliers of providing additional written information to microbusinesses on bills and account statements**

Based on the current proposals, we expect the cost to display commission payments on bills and statements of accounts to be in the hundreds of thousands.

- **Evidence and views on the impact this proposal will have on microbusinesses. These impacts can be financial and non-financial**
- **Any other views on how this proposal may impact the microbusiness supply market; these impacts can be financial and non-financial.**

If Brokers transparently declare the fees they receive for a sale to a customer this will ensure customers can make an informed decision on whether to engage with a broker and proceed with a contract. It is vital that for this change to have the desired effect, suppliers implement a consistent, simple prescriptive approach to ensure that fees are comparable and equally transparent across all suppliers.

30-day contract extension following blocked switches

- **The number of microbusinesses who are temporarily placed on or OOC contracts due to problems with the switching process and the length of time they are on those rates**

Only a very small number of microbusiness customers have been temporarily placed on our 'Out of Contract' Extended Supply Rates this year following an objection. For our I&C customers where only a small number of microbusinesses sit , between January and September 2020 less than 100 customers would have benefited from this change.

- **The difference between contractual rates and out of contract rates microbusinesses are temporarily placed on due to problems with the switching process**

Our Out of Contract 'Extended Supply' prices are higher than our contract prices, as customers on our 'Out of Contract' rates are significantly more likely to require a debt provision for bad debt.

- **Any other views on how this proposal may impact the microbusiness supply market; these impacts can be financial and non-financial.**

The change will provide only a small benefit to microbusiness consumers who will be able to maintain their existing contract rate for up to 30 days. This benefit is minimal compared to potential system costs for suppliers, which we expect to be in the hundreds of thousands.

Switching notification window

- **An estimate of costs, if any, of implementing this measure**

We would not expect this change to significantly impact supplier costs, although we would need to make changes to our SME processes to not object to customers leaving us for failing to provide adequate notice.

Termination notices allow us to better manage our customer base by making sure pricing is cost and risk reflective. Customers on our Out of Contract 'Extended Supply' rates (where no notice is required), are three times more likely to require a debt provision than those customers on our roll-over Easy Fix product (which requires 30 days' notice). As a result, our provision for bad debt is significantly higher for customers on Extended Supply. If we stopped requiring customers to give notice, we would need to pass the additional debt risk that we see in Extended Supply to all Easy Fix customers. This would be of significant detriment to those customers on our roll-over prices.

- **The impact removing this measure will have on the switching process**
- **Any other views on how this proposal may impact the microbusiness supply market; these impacts can be financial and non-financial.**

If termination notice is prohibited, there are two possible changes to the switching process for customers that attempt to switch in an Initial Fixed Period, both of which could result in consumer detriment.

If the customer leaves, and this was not the customer's intention they could be faced with a potentially high termination fee that they do not wish to pay. Termination Notice effectively gives the customer the ability to discuss their options, and make an informed decision of what is the best outcome for them at a particular point in time.

If, on the other hand, a supplier objects to a transfer under SLC 14 because a customer is in an Initial Fixed Period, then the customer will need to contact the supplier anyway so they can

establish whether the customer wishes to pay an ETF, or for their supply to remain with them until the contract ends. Removing the requirement for Notice in this instance would provide no additional benefit.

Sales and marketing rules

- **An estimate of the costs of implementing these measures**

The costs will be largely similar to those for implementing the broker principle, and will depend upon the compliance framework Ofgem expect suppliers to use when implementing the change. We welcome clarity on this point. In addition, there will also be costs for any internal changes we make to monitor our internal sales agent's behaviours against the new principles.

- **Any other views on how this proposal may impact the microbusiness supply market; these impacts can be financial and non-financial.**

Informed Choices Principles, should improve broker behaviour in the microbusiness market, and therefore create more positive outcomes for consumers engaging in the energy market. However this will depend on all suppliers monitoring brokers under a similar uniform robust compliance framework. This is paramount - as suppliers do not have market power, and each broker contracts with a number of suppliers, even with the introduction of a broker principle, brokers could continue to move to suppliers with less robust standards. Ofgem must give clear direction on what is expected of suppliers to mitigate this risk.

Informed Choices Principles can only be expected to improve the behaviour of brokers that suppliers have a direct contractual relationship with. Suppliers have no visibility of sub broker behaviour, or the behaviour of brokers that contract directly with a customer. It must therefore be recognised that even with significant intervention by suppliers, to audit and assure the brokers they work with, until there is direct regulation of TPIs, there will still be scope for sharp practices among some brokers in the energy market.