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Call for input on review of non-domestic market

Headline assessment

Document: [Ofgem](#)

Consultation period: 28/02/2023 - 31/03/2023

Impact classification: High: Non-domestic suppliers

Action if desired: Respond to the call for input

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10 March 2023

1. Assessment and recommendation

On [28 February](#), Ofgem published a call for input on a proposed review of the non-domestic gas and electricity markets. Views are sought on three key areas, including:

- The pricing and contract behaviour of suppliers, with particular concern for “unnecessarily” high premiums.
- An examination of competition within the market and how easy it is for consumers to procure a contract.
- The potential for extended regulatory support for specific groups of customers, such as SMEs and domestic consumers behind a non-domestic contract.

We recommend that non-domestic suppliers respond to this call for input, as it may guide the scope of a wider review that Ofgem is planning to undertake and may enable focus to be drawn to any issues demonstrated. Responses are requested by 31 March 2023.

Cornwall Insight comment: *This call for input has the potential to broaden the regulatory protections that are in place across the non-domestic market, demonstrating Ofgem’s intent to address the recent reports of harm. Where it has previously taken a lighter approach within the non-domestic sphere, the regulator now appears set to focus on this area.*

2. Background

The volatile market conditions of the last 18 months have created a great deal of uncertainty for consumers across both domestic and non-domestic markets. The regulator outlined the consumer harms that it had been alerted to in a [letter](#) to non-domestic suppliers in November 2022. It has since engaged with non-domestic suppliers, outlining areas of [good practice](#) that could help to address some of these harms, specifically management of debt and disconnection for non-domestic customers. Ofgem now considers a call for input is necessary to explore the issues it outlined in greater detail, requesting feedback from not just suppliers, but also consumers, consumer groups, and other relevant parties. While it recognised that issues such as affordability and pricing policy lies with the government, the regulator is seeking to understand whether these are temporary issues or isolated to specific suppliers, or if systemic problems show that changes in regulation are needed.

3. Themes of concern

The themes outlined by Ofgem highlight the main areas of concern, based on the reports of consumer harm that have arisen in recent months.

3.1. Pricing and contract behaviour of suppliers

As a result of higher prices and the current “challenging economic environment”, Ofgem recognises there are more customers being moved to higher risk categories, coupled with a decrease in creditworthiness. Subsequently, there are less contracts available on the market as suppliers attempt to manage their risk. This also may have caused the pause of new offers or an increase in risk premia, as well as higher security deposits where deals are being made.

The main areas of concern here are whether suppliers are taking proportionate action in response to the difficult market conditions. Specifically, Ofgem has noted that cost of risks should be shared fairly across the customer base of a supplier. Furthermore, in 2022 the regulator was made aware of unnecessarily high premiums being placed on contract terms and unreasonable requests for security deposits, up-front payments, or other obligations to secure a contract. There have also been concerns around compliance with

the Energy Bill Support Scheme (EBSS), as well as obligations around deemed rates and ensuring they are not ‘unduly onerous’, as specified in the Standard Licence Condition (SLC) 7.

The regulator is seeking to understand whether there is evidence of disproportionate charges from non-domestic suppliers, if there have been any suggested solutions to the issues described above, and if there have been improvements in the opportunities to contract as the market has gradually begun to settle.

3.2. Competition within the market

While the non-domestic market has historically been viewed as competitive, the recent state of the market has skewed typical activity. Low market liquidity has led to concerns that any contracted energy to supply may not be easily sourced in the market. Some segments of the market are still struggling to secure contracts, which Ofgem understands this may be due to suppliers focusing their offers to lower risk customers. The regulator considers that less competitive pressure could lead to an overall drop in standards, and less innovation in the market.

Some of the other specific concerns Ofgem has outlined include behaviours around disconnection and debt, as reflected in the good practice letter issued in December 2022. It is also investigating contract related interactions, after concerns that customer service may have been deprioritised in the current environment. The regulator highlights the importance of maintaining transparency and clarity with customers, for example in making it easier to find contact details and the complaints process. It also considers the issues surrounding the Change of Tenancy (CoT) process, stating there are claims of new tenants facing unnecessary and onerous requirements regarding the evidence that they are required to produce to show they are new tenants/occupiers. In more extreme cases, Ofgem recognised there have been reports of the CoT process being used fraudulently to avoid paying debts.

Ofgem is seeking views as to whether its best practice steps are being followed, if the communication from suppliers to customers is clear, and how significant the CoT issues are and how they might be resolved.

3.3. Greater regulatory support for wider customer groups

For this specific point of concern, Ofgem notes how in recent years, much of its regulatory support has been directed at microbusinesses, which must fit into Ofgem’s definition. This is currently:

- Uses less than 100,000 kWh of electricity a year
- Uses less than 293,000 kWh of gas a year, or
- Have fewer than 10 employees (or their full-time equivalent) and an annual turnover total not exceeding 2 million Euros.

However, the regulator is considering that the microbusiness definition could be extended to other groups, for example some Small to Medium Enterprises (SMEs) who fall outside the microbusiness definition, also find it difficult to engage with the energy market and can lack resources to deal with their poor treatment from suppliers. The regulator is looking to determine how these other groups may be defined.

Another area of concern is where there are domestic consumers behind a non-domestic contract, for example in a mobile home or residents of managed flats. Ofgem’s concern lies with vulnerable customers in this situation as they are not afforded the same protections as a domestic customer ordinarily would be due to being in such a non-domestic supplied residence. Thus, Ofgem is asking for views on what the appropriate safeguards may be for these cases.

4. Next steps

The responses to this call for input are requested by 31 March. Once it has concluded and the assessment of the feedback is completed, Ofgem intends to publish the formalised market findings and proposed next steps in early Summer 2023. Where actions can be taken without modification to licence conditions, the regulator intends for these to be undertaken in the Summer. If SLC changes are required, a statutory consultation will be issued in Autumn 2023, with changes implemented in Winter 2023, before the year end.

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