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**14 January 2022**

Dear Retail Financial Resilience team,

We are writing in response to your statutory consultation on strengthening milestone assessments and additional reporting requirements. This submission is non-confidential and may be published on your website.

We welcome Ofgem taking actions, as part of its Building Energy Market Resilience programme, to reform the retail market<sup>1</sup>. The recent spate of energy supplier failures, many of whom were not financially sustainable, left 2 million customers going through the supplier of last resort process, and resulted estimated £2.6 billion bill that will be put on consumer bills, not including the cost of special administration regime for Bulb<sup>2</sup>. Citizens Advice welcomes the following proposals on milestone assessments, fit and proper persons requirements and notification requirements as efforts to help minimise the risk of poorly managed suppliers and unsustainable practices in the energy market.

As we outlined in our original response to the Supplier Licensing Review we are supportive of milestone assessments and fit and proper requirements<sup>3</sup>, the current version of which came into effect in March 2021. However those reforms did not go far enough, and have not been well enforced, so we support Ofgem's new proposals to require suppliers to pause acquisitions whilst going under assessment by Ofgem to assess the sustainability of the supplier. Of the suppliers who have recently failed, some had grown at a rapid rate, offering below market tariffs, using customer credit balances to finance their operations. Many of these were providing poor service, and were often near the bottom of the Citizens Advice star rating. The failures of these companies, like Avro, who held more than £90 million in credit balances at the time of default, is due to put an estimated £2.6 billion onto customers' bills. Given that milestone assessments

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<sup>1</sup> Ofgem (2021) [Building energy market resilience](#)

<sup>2</sup> Citizens Advice (2021) [Market Meltdown](#)

<sup>3</sup> Citizens Advice (2019) [Citizens Advice response to Ofgem's statutory consultation on Supplier Licensing Review, Ongoing Requirements and Exit Arrangements](#)

have been in effect since March 2021, we would welcome more insight on the current efficacy of the assessments and how these have been conducted, and whether any compliance actions or company improvements have been taken as a result.

We've identified cases where suppliers appear not to be offering services which they are required to, and which are vital for consumers, including suppliers that have publicly stated they passed their milestone assessments. This includes requirements to offer a broad range of payment methods, making these tariffs openly available and easy to select, and enabling consumers with a range of needs and preferences to easily get in touch and make complaints by telephone. Where milestone assessments or other compliance work uncovers areas where Ofgem's understanding or application of the rules has changed in respect of published guidance or other documentation, or differs to previous compliance and enforcement findings, it should promptly update licensees and stakeholders.

Pausing acquisitions to allow Ofgem to assess the company's position and practices may provide a useful touch-point to identify risks in company business practices which may result in consumer detriment. We believe that gathering this information will also aid Ofgem's monitoring and compliance function, and provide the opportunity to flag issues with the supplier's practices and monitoring and compliance, particularly, with the Financial Responsibility Principle. While data about company performance is shared regularly between Citizens Advice, the Energy Ombudsman and Ofgem via the tripartite arrangements, these milestones should be an opportunity to consider this data in depth and supplement it with information from other interested sources and stakeholders, including other charities and consumer groups.

Whilst we acknowledge that this may have an effect on the ability for challenger suppliers to compete with larger suppliers, the ability to provide the data in the run up to meeting these milestones, and for Ofgem to suspend the pause, allows well prepared suppliers to minimise the pause in acquisitions and encourages good data collection and sustainable practices.

We also welcome Ofgem adding flexibility into the proposals allowing Ofgem to adjust the milestones after a period of data collection, if it becomes apparent that the milestones should be adjusted.

However we believe that any new regulatory functions must be backed by additional monitoring, compliance and enforcement resource. As highlighted in Citizens Advice's recent report, we have concerns that Ofgem has not been adequately enforcing existing rules, with Ofgem's enforcement function resource falling by a quarter over the past 4 years.

**Patron HRH The Princess Royal**      **Chief Executive Dame Clare Moriarty**

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We also supported the introduction of fit and proper requirements and now also support the new proposals to introduce notification requirements on significant commercial developments and personnel changes.

Under current licence conditions, suppliers are required to notify Ofgem before entering into binding trade sale or purchase agreements and to notify of key changes in personnel. The new proposals strengthen these by requiring a set time period of notification for Ofgem to assess the activity and its impact on consumers. Ofgem mentions trade sales and purchase agreements as some of the 'significant commercial developments' this would include. We think Ofgem should provide more detail on the scope of this and whether this would, for example, also include taking on significant new loans or investments. We've been concerned by reports of some failed suppliers loaning money to or from other companies controlled by the same owners. We would also welcome more detail from Ofgem on how it will assess the individual commercial developments and what potential action that Ofgem could take if they identify concerns. In addition we would like clarification on whether this also applies to parent companies as well as the licensee themselves.

In the new proposals it also includes notification requirements for significant personnel changes. Under current licence conditions suppliers are already required to undertake fit and proper assessments of directors and other key personnel. We would welcome information on how this has been monitored and whether any action has been taken to date on suppliers who have been in breach of this.

Generally we are supportive of the new proposals to strengthen the existing milestone assessments and notifications on significant commercial developments and personnel changes, as we believe this will strengthen Ofgem's ability to intervene with unsustainable suppliers and prevent consumer harm from commercial developments. They are not sufficient however, and it's important that the other steps in Ofgem's financial resilience action plan are taken forward, including stress tests of companies, rules on the use of credit balances and changes to the Renewables Obligation.

In addition, we note that these proposals are only focussed at domestic suppliers, currently. The market has recently seen a number of non-domestic suppliers fail as well, and we believe Ofgem should consider future plans to achieve similar outcomes for non-domestic suppliers to protect microbusiness customers.

Yours sincerely

Connie Thorn, Policy Researcher

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