

Via email to: FWP@Ofgem.gov.uk

28th February 2022

Consultation: Ofgem 2022/23 Forward Work Programme

Dear Sir or Madam,

The Federation of Small Businesses (FSB) is a non-profit making, grassroots and non-party political business organisation that represents 160,000 members in every community across the UK. Set up in 1974, we are the authoritative voice on policy issues affecting the UK's 5.5 million small businesses, micro businesses and the self-employed.

Ofgem aptly recognises that the retail energy market needs a clear vision for the future. The 2022/23 Forward Work Programme needs to focus on re-establishing confidence in the market and paving the way towards a net zero retail energy market.

Restoring confidence among the small business community will be particularly important considering the economic hardship businesses experienced in the past two years.

Over the pandemic, the number of small businesses declined from 5.9 to 5.5 million businesses. In addition, FSB's latest Small Business Index (SBI) revealed that over three-quarters of small businesses are reporting a rise in costs, with half (49%) of those surveyed flagging input costs as the primary driver of higher outgoings, followed by fuel (46%) and utilities (45%).¹

At the moment small businesses suffer a lack protection from price hikes, while access to the Energy Ombudsman is restricted to microbusinesses.

¹ FSB, FSB Voice of Small Business Index, Quarter 4, 2021, <https://www.fsb.org.uk/resources-page/400-000-small-firms-threatened-by-late-payment-as-costs-surge-new-study-finds.html>

Ofgem's Forward Work Programme should indicate how it plans to re-establish confidence among the business community and increase protection for small businesses.

We believe that this can be done by expanding access to the Energy Ombudsman to all small businesses and ensuring that all credit balances are protected. In addition, recommendations from the Microbusiness Strategic Review need to be swiftly implemented while progress needs to be made on the Third Party Intermediaries (TPI) regulation.

Finally, changes to the energy market due to net zero should not disadvantage businesses in rural parts of the country or unable to benefit from off-peak tariffs. We firmly believe that the new retail energy market should empower the UK's 5.5 million small businesses, microbusinesses and the self-employed to contribute towards the UK's transition to a low carbon economy.

The Retail Energy Market

The ongoing energy crisis has put an unprecedented level of pressure on businesses. It has also highlighted the lack of support and protection available for small businesses.

Small firms saw their energy bills reach record high levels when renewing their contracts or when they were moved to a new supplier after their initial supplier had ceased trading.

However, unlike most domestic customers, businesses do not benefit from protections such as the price cap or any support announced by the Chancellor on 3rd February.

We believe that the Forward Work Programme is an opportunity for Ofgem to demonstrate that they recognise that small companies require more support.

A review of business protections would signal to them that the UK Government and energy providers are committed to improving their understanding of the diverse small business customer base.

We believe that the following recommendations will help create a robust retail energy market and ensure better consumer protection for non-domestic customers:

- **Access to the Energy Ombudsman:** Access to the Energy Ombudsman should be expanded. The threshold should be raised from ten employees to 50 employees, and the usage threshold should be increased by a multiple of five.

- **Credit balance protection:** The Government should set a limit on the size of a credit balance that a supplier is allowed to hold before returning it to the business customer. In addition, credit balances for microbusinesses should be protected in the same way as they are for domestic customers.
- **Clear terms and conditions:** Suppliers of microbusinesses must provide clear terms and conditions and honour the agreed fixed-price business contracts. Ofgem should adapt the Code of Conduct to guarantee that suppliers cannot be able to make retrospective changes. In addition, changes made to the contract will have to be agreed to by both parties. Similar to domestic customers, business customers should be given at least 30 days' notice of changes in tariff levels.
- **Mutualisation costs:** Costs of supplier failures should not be passed to consumers of other suppliers – another way to fund these should exist, possibly from general taxation, but the impact on the treasury could be shielded by an industry “pot” where generators, transporters, shippers, Distributors and suppliers contribute to on basis of size, and is capped at a certain size.

The Microbusiness Strategic Review

FSB has long argued that small and, in particular, microbusinesses are more akin to domestic customers when deciding on their energy provider.

Previous FSB research identified several areas where smaller businesses are disadvantaged compared to larger companies and domestic consumers. In addition to a lack of expertise in purchasing energy, small firms often lack time when making purchasing decisions and bargaining power when negotiating contracts.

We recognise that the energy crisis and pandemic has put additional pressure on Ofgem. However, we are concerned that Ofgem has not yet implemented the recommendations from the Microbusiness Strategic Review.

Ofgem had previously announced that it would issue a final decision in summer 2021, followed by a policy implementation from autumn 2021.

Implementation Microsoft Strategic Review: We believe that it will be vital that Ofgem's Forward Work Programme includes a proposal for a swift implementation of the solutions put forward in the review.

Third Party Intermediaries

We believe that a significant regulatory gap remains for Third Party Intermediaries (TPIs). TPIs have a vital role in helping small businesses navigate their way through the complexities of the energy market and can play a critical role in assisting small firms in securing the best possible energy deals. However, less than one in three (27%) microbusinesses believe that the entity (supplier, PCW, TPI) with which they were negotiating a new energy deal was mainly working in the interest of their business.²

However, the role of TPIs will further evolve during the transition to net zero. Decisions around tariffs become less about price and more about overall service, including energy efficiency advice, renewably sourced energy and smart technology. With an ever-expanding portfolio, businesses should be confident that TPIs find the best possible service for their needs.

We recognise that the Department for Business, Energy and Industrial Strategy is currently reviewing the long-overdue regulation of the TPI market.

- **TPI regulation:** As the transition to net zero further accelerates, clear standards for TPIs operating in the non-domestic retail market are urgently required. Ofgem and BEIS should be working together to ensure a swift implementation.

The future retail energy market

The transition to net zero is uncharted territory for energy operators and customers. Ofgem should take steps now to ensure that businesses which are based in rural parts of the country or unable to shift their demand to off-peak hours, will not be disproportionately disadvantaged.

It will be critical for Ofgem to address potential challenges in the transition to net zero, including:

- **Support rural businesses:** The future retail energy system must be fair for urban and rural locations. There are more registered businesses per head of population in predominately rural areas of the UK.³ Although the costs of supporting the rural grid are higher than the grid in concentrated urban areas, small businesses should be face higher consumer prices. In addition, investment should be distributed equally and not centred around urban clusters.

² FSB, "Time and Energy: An FSB review of the microbusiness retail energy market", May 2020, <https://www.fsb.org.uk/resource-report/time-and-energy.html>

³ Department for Environment, Food & Rural Affairs, Statistical Digest of Rural England, March 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984879/Businesses_March_2021_final_with_cover_page.pdf

- **Energy demand:** The future energy market will provide more flexibility for businesses. For example, some companies will be able to shift demand to off-peak electricity times. However, businesses that are unable to move their demand, such as businesses in the hospitality sector, should not be disadvantaged and require reassurance that they are not paying for the savings of other sectors.

Yours sincerely,

Paul Wilson

Paul Wilson, Policy Director
Federation of Small Businesses

For further information please contact:

Friederike Andres
Friederike.Andres@fsb.org.uk
Federation of Small Businesses
2 Catherine Place, London SW1E 6HF