

Ofgem non-domestic market review

Make UK's response to Ofgem's consultation on the 'Non-domestic Review'

Introduction

Make UK welcomes the opportunity to respond to the Ofgem's consultation on the '[Non-domestic Review](#)' on a package of proposed measures to address non-domestic retail energy market issues regarding harmful supplier behaviour towards non-domestic consumers.

Background information on Make UK and the manufacturing sector

1. The core of Make UK's mission is to back the manufacturing sector in the UK. The UK manufacturing sector has a key part to play in the transition to an energy-resilient and a net-zero carbon economy, by both cutting its own greenhouse gas emissions, and more through the creation of innovative low-carbon products, processes and services that will become an integral part of the green industrial revolution attracting thousands of highly skilled, well-paid, and rewarding green jobs across the supply chain, and throughout all regions of the UK contributing to the UK Government's 'levelling up' agenda.
2. A fundamental requirement for industry to operate smoothly is a reliable supply of energy at a reasonable price. The energy crisis put many manufacturing businesses at risk, sometimes due to a chaotic retail market and unruly supplier behaviour and were left with no choice but to suffer the consequences.
3. While energy prices have since decreased and stabilised, for manufacturing businesses which need energy to make their products, energy costs have now become of their largest budget items, along with raw materials and employment.
4. Combined with the fact that they are operating in an unfavourable investment environment, manufacturers need as much protection and support as possible to keep going and accelerate their decarbonisation plans. During this transition phase, it will be crucial that the UK Government and other bodies like Ofgem provide the right level of infrastructure and policy support.

Summary of our response

1. Improve transparency in pricing and contracting:

- **Pricing transparency should be much improved.** Clear (and consistent across suppliers) information on how suppliers set their prices in their bill should be mandatory.

Bills should also be itemised with much more detail around what standing charges, policy costs and especially hidden charges consist of exactly. This will encourage a healthy competition as customers can understand their bills better.

- **Credit risk management needs a greater transparency**, in the stated tolerance, mechanisms and criteria for managing it.
A security deposit should not exceed the amount of the total (annual or as relevant) bill. Ofgem should clarify whether the manufacturing sector is considered a 'high-risk' sector by suppliers and if so the reasons why.
- **Future energy support funds should include not only electro-, but also gas-intensive industries** and the Government should ensure that a fair list of relevant SIC codes applies.

2. Improve customer service

- The complaints handling requirements in the Complaints Regulation for suppliers should be expanded:
A standard (and reasonable) list of documents that can be required by suppliers should be established. Plain intelligible language should be used throughout. This would contribute to making contract applications and/or complaint handling a lot more efficient. A statutory timescale or SLA for suppliers to respond to non-domestic customer complaints (e.g. 8 weeks to achieve a resolution seems a reasonable time).
- **The manufacturing sector should be given access to the Energy Ombudsman. With their Alternative Dispute Resolution (ADR) scheme** to seek redress with for unresolved complaints with suppliers the Energy Ombudsman would be more equipped than the Citizen's Advice Bureau to deal with industrial-type issues. The current regulation should be amended to provide broader access more non-domestic consumers.

Similarly **Standards of Conduct should be expanded** to more non-domestic consumer groups.

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Call for Evidence questions

General remarks

Given the level of energy consumption by manufacturing businesses, Make UK has received, during the period of spring 2022 to spring 2023 constant feedback on our members concerns around energy.

Energy cost concerns had never reached such a height and there were real concerns regarding their impact on businesses, whether large or small. At the time, 13% of members were saying their business could be at risk of closure from this energy crisis.

The concerns and behaviours we have heard match those described in the consultation document, notably not being able to obtain offers for new contracts or being asked for extortionate security deposits exceeding many times the annual bill. The threat of not being able to maintain operations or being able to find a solution was causing businesses huge anxiety and we need to ensure this is not repeated. Many facilities had to change their mode of operating during that time, shifting working patterns (to nights) or temporarily or permanently reducing running times, with consequences on employment.

Manufacturers welcomed the EBRs, although they flagged up that it would have been more helpful it had included also the gas intensive industries (and not just the electro-intensive users or EIs) who have to combust a gas to achieve the high temperatures required for their processes.

The EBDS, which included these gas-intensive industries, is however not expected to be triggered and a proportion of the businesses who were still on peak price contracts will have faced a cliff-edge on energy costs this spring or will do so this autumn when their contracts come up for renewal.

Make UK welcomes the actions taken by Ofgem to encourage suppliers to engage with their customers to find solutions, acknowledging there is no one-size fits all. Manufacturing businesses have taken years to establish themselves, having heavily invested in capital machinery. Unlike high-street businesses, they are not able to change premises at will and are more motivated to make things work and are very reluctant to let go of their specialised staff.

Make UK had supported the letter from industry asking the Secretary of State to request the regulator to look into the matter, and we are therefore very pleased that Ofgem have been reviewing this.

It is not clear whether the manufacturing sector is considered a 'high-risk' sector by suppliers (as is considered the hospitality sector). What is clear however, is that the sector is taking a big hit on energy and this is still continuing with energy being one of the highest costs of doing business, whether the business is small or large.

Apart from the energy intensive industries (EIs), whose energy costs would have already approached 20% pre-crisis, energy costs for general manufacturing would have represented around 2% of total business costs. But since the crisis, the bracket of manufacturing businesses with energy costs amounting to 10% and 20% (and above) of their total business costs has increased considerably, significantly eroding margins and forcing end-product prices up.

In fact. It has been shown that the proportion of energy used in medium sized to is mid-market (250-

1000) companies is higher than in large companies (where it is diluted by more office space due to more employees), and than in small companies (who don't use that much). This is the business 'population' that is not being supported by most energy or carbon support schemes, which are dedicated to SMEs and to EILs. Moreover, they do not have the collateral, unlike their bigger brothers, to ride such crises as we have seen in the last two years.

We therefore believe that there is a real need for Government to ensure that the proposals are firmed up, and that this should be done at least for all SMEs (including the medium-sized ones e.g. 50-249 employees), with due some consideration for the mid-market companies.

1. Pricing and contract behaviour

Transparency of pricing is key. Make UK has been consistent in asking for transparency of pricing.

Even very large businesses who have dedicated staff scrutinising energy costs and who might use TPIs told us that they could not fully make sense of their bills nor understand what their best options for changing tariff were, especially during the height of the crisis), leaving them to guess.

Question 1: Do you agree with our proposal to agree voluntary improved pricing transparency?

We do agree with improving pricing transparency but we recommend that some aspects should be mandatory. There should be a mandated set of clear information on how suppliers set their prices in their bill, which should be (as much as possible) consistent across suppliers. This could be done on the supplier's website or on the bill itself.

Bills should also be itemised in much more detail, particularly around what standing charges, policy costs and especially hidden charges consist of exactly.

Still today, manufacturers haven't seen their energy bills improve even though the tariffs being offered are better as the hidden charges (on top of the network charges) have gone up so much. Since the supplier and/or TPI does not provide an itemisation of what is in these charges on the energy bill, it makes it more difficult to dispute them and there is a sentiment of helplessness and unfairness.

Question 2: Do you agree with our proposed definition of 'significantly exceeds'? Please provide your reasons.

Security deposits should indeed be maintained as an option to obtain a contract that a contract would otherwise not have the credit-worthiness to secure. However, greater transparency is also needed in the stated tolerance, mechanisms and criteria for managing credit risk, and we welcome the new Security Deposit Best Practice Guide.

We support the definition of 'significant increase' regarding deemed contracts, but 'many more times' should be better defined.

We have had some cases of members being asked for extortionate security deposits exceeding many times their total annual bill and putting them into financial trouble as a result. Therefore we would suggest that the security deposit should not exceed the amount of the total (annual or as relevant) bill.

Question 6: Do you have any other comments on the other proposals in this Pricing and contract behaviour section?

It would be helpful to know whether the manufacturing sector is considered a 'high-risk' sector by suppliers and the data behind it. Once these known, clarification at a general level may be able to allay some of the concerns. Make UK would be happy to discuss with Ofgem on that topic.

EBRS: we have not had specific reports of concerns around compliance with EBRS. It will be important for future energy support funds to include not just electricity-, but also gas-intensive industries and for the Government to make sure that the complete and fair list of SIC codes (including precious metals and forges which are clearly energy intensive activities) is listed.

2. Competition in the market and customer service

We support the two proposals to expand the complaints handling requirements in the Complaints Regulation for suppliers, and on the other for Ofgem to work with Government to amend regulation for broader access to redress. We are therefore keen to see rules for micro-businesses apply to at least all SMEs (and with due consideration to the larger mid-market companies).

Question 9: Is an obligation requiring efficient and timely complaints handling needed? If so what are the costs and benefits associated with introducing this?

(see below)

We support the idea that there ought to be a statutory timescale or SLA for suppliers to respond to non-domestic customer complaints (e.g. 8 weeks to achieve a resolution seems a reasonable time).

Long waiting times are of no benefit and increase the chances of the situation becoming more serious and complex as time passes.

Question 10: Is an obligation requiring recording, handling and processing of complaints in accordance with consistent rules needed? If so, what are the costs and benefits

associated with introducing this?

We believe that the more consistent the recording, handling and processing of complaints the more effective and transparent and predictable it will be, but we are not minded to request an obligation, with some areas of exception e.g timescales (see question 9).

A standard (and reasonable) list of documents that can be required by suppliers should be established. This would contribute to making contract applications and/or complaint handling a lot more efficient.

The rules of plain intelligible language with more important information being given prominence should apply not just to micro-businesses but to all businesses, and at least to all SMEs.

We believe that no business should be left 'high and dry' without a contract on the horizon just a few days before the current one ends. No solution is not a solution and it should be made that some form of temporary compromise (or resort to a redress scheme) should be reached to help

bona fide manufacturers continue operating while awaiting for redress.

Question 11: Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not be expanded to apply to all non-domestic customers?

In terms of the business size which would get access to redress, the proportion of microbusinesses in the manufacturing sector is relatively low, the vast majority being SMEs. We recommend including all SMEs, including especially the medium-sized ones (e.g. 50-249 employees). The inclusion of all SMEs is being supported by the FSB and the IOD. We would also like to see some of the mid-market sized^{1,2,3} companies (up to 500 employees at least, which would correspond to as some SME definition used by the DESNZ/HMT for some schemes), and preferably all large customers (up to 1000 employees to *approach* the definition used by Sage³). With this last cut-off of 1000 employees the vast majority of manufacturing businesses would be captured. The work conducted in the past (2014) by BEIS on mid-market size businesses seems still valid for the major part and could be built upon to define a new business population.

Question 12: We are seeking stakeholder views on our suggested proposals to government around increasing access to the Energy Ombudsman. Should there be a threshold on who can access the Energy Ombudsman? If so, where should this be set?

We know that some members had particularly distressing experiences including and not knowing whom to turn to. In the rare occasion, Make UK had to intervene to ensure that help could be found.

Manufacturing businesses feel they have a responsibility as employers to maintain production and are also important contributors to the economy particularly in some key sectors.

Most of them would not choose the legal route for lack of resources. We would prefer for the manufacturing sector to have access to the Energy Ombudsman we feel would be more equipped than the Citizen's Advice Bureau to deal with industrial-type issue through their Alternative Dispute Resolution (ADR) scheme to seek redress with for unresolved complaints with suppliers.

Question 15: What are your views on our proposal to expand SLC 0A (non-domestic Standards of Conduct)? Do you have any views on which consumers they should or should not apply to? Please provide any views on costs and benefits of making this change.

¹ [Understanding mid-sized businesses, HMRC research report 305, 2014](#)

The [Mid-sized Businesses Growth Review](#) uses a definition based on turnover, £25m-£500m per year. £25m is the upper bound of the SME turnover definition, whilst £500m was chosen as a cut-off point for these 'smaller' large firms
Mid-sized businesses, UK Gov, 30 June 2012

² Mid-corporate companies (250- 2000 employees) constitute 24% of Make UK's membership. Using the 250-1000 employee number threshold, they still constitute 20% of Make UK's membership.

³ In the UK, mid-market firms are those with between £15m and £800m of annual revenues¹. The average UK middle market firm has revenue of £78 million (€98 million) and employs 500 people.

Most mid-market firms will have between 100 and 2,000 employees

Mid-market enterprises or businesses will have sizeable revenues that fit between small businesses and billion-pound giants, Mid-market business definition, [Sage](#)

In the light of the many concerns highlighted by our members, we do see that Standards of Conduct should be expanded to more non-domestic consumer groups, including industrial customers of all sizes, but at the very least SMEs and mid-market companies (up to 1000 employees).

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