The Office of Gas and Electricity Markets,
10 South Colonnade,
Canary Wharf,
London,
E14 4PU

21st June 2019

ICoSS response to the Strategic Review of the Microbusiness Retail Market

The Industrial and Commercial Shippers and Suppliers (ICoSS) group is the trade body representing non-domestic industrial and commercial (I&C) suppliers in the GB energy market. Members collectively supply three-quarters of the gas needs of the non-domestic sector as well as half of the electricity provided by non-domestic independent suppliers[1].

Executive Summary

We are responding to these questions to provide an understanding of the microbusiness market that can provide context to Ofgem's assessment that the energy market has in some fundamental sense failed to accommodate the needs of the microbusiness sector. In light of this additional evidence and we would encourage Ofgem to re-examine the causes of consumer detriment in the microbusiness sector

TPIs should be recognised as providing an essential role in the business energy market by stimulating competition, driving innovation and signposting customers etc. We support increased regulation and oversight of the Third Party Intermediary (TPI) market, as opposed to their restriction, which will believe will build confidence and will allow the creation of a robust brokerage framework. We note that Ofgem has previously developed a working regime whereby suppliers must only utilise accredited suppliers and we continue to support this solution.

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[1] :

More widely as we see the market is fundamentally sound, we do not see the case for significant change to either how suppliers engage in the market, or the information that is provided. These have the potential to work against the interests of microbusiness customers, as we believe the changes introduced by the CMA remedy have done.

Question Responses

Questions 1 & 2:

Do you agree that our theories of harm represent the most significant and impactful areas of consumer detriment?

Are there any other key areas of consumer harm that should form the focus of our review?

Microbusiness Sector

We are responding to this question on the basis that we disagree with the theories of harm that Ofgem have identified because they do not accurately represent the high levels of engagement and competitive environment found in the non-domestic sector.

- Currently in the UK domestic sector there are 64 dual fuel energy suppliers with 9 supplying either electricity or gas. In comparison, the Non-domestic market has as of June 2018, 90 active licensed suppliers, of these, 43 supplied both gas and electricity, 26 only gas and 21 only electricity. There is more choice for a non-domestic customer.
- Ofgem presented analysis in the 2018 market report[2] using the Herfindahl-Hirschman Index (HHI) where 1 is a perfectly competitive market and 10,000 is a monopoly; In both gas and electricity large business segments, the HHI was at or just below 1,000. For the small gas and electricity segments, the HHI was, respectively, at 1,196 and 1,195, indicating a moderate level of concentration, while in the domestic market in 2018, the HHI was around 1,500 in gas and 1,250 in electricity.
- Competition particularly thrives in the non-domestic sector, Ofgem's own analysis from its state of the market report[3] show that the proportion of small and microbusinesses that have had some engagement with the energy market, either through switching supplier, tariff or comparing deals, has increased from around 66% in 2016 to 68% in 2017. In 2018, reported switching between suppliers increased from 21% to 24%in the non-domestic sector[4] which exceeds the average across the industry of 19% (up from 17% the year before)[5].

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[2] State of the Energy Market Report - 2018
[3] ibid
[4] Microbusiness Research Synthesis.
[5] State of the Energy Market Report - 2018

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

- There has also been an increase in renegotiated contracts in the non-domestic sector, from 39% in 2016 to 45% in 2017[6].

From this high-level overview it is clear that the fundamental parameters of the market are sound and that any theories of harm need to be assessed against this background.

Microbusiness Sector
Specifically, with regards to the individual theories of harm that Ofgem identifies we have the following responses:

"The smallest microbusinesses cannot effectively engage with the current market given its complexity, including the very wide range of offerings and providers. At present their size and lack of expertise places them at a significant disadvantage when engaging with providers, leading to them ending up on expensive and/or unsuitable deals."
"The cost of disengagement is higher for microbusinesses than disengaged domestic consumers leading to disengaged microbusinesses overpaying for their energy."

Ofgem identified in its State of the market report – 2018[7] that in 2017, more than a quarter of businesses (38%) believed that it was too time-consuming to find a new tariff or supplier. This is interpreted in the current strategic review as microbusinesses being fundamentally unable or without a route or mechanism to engage with the market. There are opportunities for microbusinesses of all sizes to be able to effectively engage with the market via third-party intermediaries (TPIs) that can carry out the time consuming task of sourcing a new supplier or renegotiating an existing tariff and fill the skill gap, providing expertise where there is a lack of experience in the microbusiness organisation. As we set out below in question 4 TPIs represent the only viable route to market as online switching services are no economical.

ICoSS members consider it disproportionate for further measures on suppliers to be considered, when there is availability of a market expertise to microbusinesses and no penalties to switching from out of contract deemed rates. Furthermore, ICoSS members consider that there needs to be a point where regulatory intervention is required to improve market performance ends, and where customers must be given the choice to maximise upon the benefit of the resources given to them that are at their disposal or not, as the case may be, further intervention would be construed as interfering unduly with personal choice and further measures may have additional unintended consequences that result in constriction of choice for those microbusinesses who do

6 Microbusiness Research Synthesis
7 State of the Energy Market Report - 2018

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

actively engage with the market. From evidence collated by ICoSS the Energy Market Investigation (Microbusinesses) Order 2016 has not had the intended effect and, in some cases, has had a negative impact.

As TPIs represent the main route to market, ICoSS considers that there would be a positive impact in promoting the use of responsible TPIs to smaller microbusinesses in order to improve their engagement with the market and in finding the best deals available, this, over time, would over time have a beneficial effect on competition and bolster the TPI segment. We support some form of formal accreditation or licensing of TPIs to achieve this.

"Barriers to accessing, using and sharing consumption data are preventing some microbusinesses fully benefiting from smart data and other technological innovations. This is hampering their ability to make informed switching decisions, use energy more efficiently and budget effectively."

ICoSS disagrees with Ofgem's assessment that lack of access to data is a cause of disengagement which leads to insulation from innovation and informed switching decisions. Our position is on the basis of BEIS' findings that "even where microbusinesses were aware of their ability to access and act upon information derived from the energy consumption data, almost half (47%) had not done so."[8] Furthermore, only 30% of customers use the data that is supplied to them, so it is abundantly clear that customers who want access to their data will seek it out. We are aware of a number of suppliers who provide energy information free to their customers as part of their service offering.[9] We are concerned that by placing a mandate to provide the data the standard becomes benchmarked which removes a crucial differentiator between suppliers. It is also undermines the Energy Data Service sector that has developed to provide data services to customers. We also are of the opinion that mandating free data provision will be costly which will ultimately be a price borne by the customer, many of whom will not benefit.

"The supplier/TPI contracting process is, or is perceived to be, overly complex, costly and opaque, leading to some consumers ending up on costly contracts with disadvantageous terms."
"Microbusinesses often rely on brokers to switch and weak broker regulation is allowing room for sharp practices by some brokers. Gaps in current consumer redress mechanisms add further to this harm."

[8] Consultation on proposals to improve nondomestic consumers' smart metering awareness and data access
[9] For example SSE Clarity service – free to all business customers

ICoSS members have for a long time supported the concept of regulation for TPIs in order to reduce the complexity and opacity of the contracting process for smaller businesses and were disappointed at Ofgem's decision to curtail the project to introduce regulatory oversight to TPIs.

We remain to be of the opinion, that the primary barrier to greater reliance on TPIs is lack of trust by consumers, reinforced by the fact that at present they are unregulated. The correct regulatory regime that governs the TPI segment properly implemented would increase the uptake of microbusiness customers to TPIs, increase competition between TPIs and between suppliers, as well as making it easier for microbusinesses to engage with the energy market and understand the complex issues within it that arise from time to time.

We support the introduction of more formal regulation in this area, though any regulation must be undertaken by TPIs and Ofgem - supplier involvement must be limited to remove any conflicts of interest.

"The absence of rules concerning debt management in this segment of the market is resulting in some microbusinesses who are struggling with debt being treated unfairly and not benefiting from customer-focused debt management policies and processes."

ICoSS members do not agree that it is the role of one business to manage the finances of another, particularly when suppliers are exposed already to the risk of bad debt through business failure. We note that there are a number of mechanisms in microbusiness customers can provide support such as Business Debtline, which ICoSS support. Increased visibility of these support mechanisms from the regulator will help these businesses.

Unless wholesale changes are made that protect microbusinesses from all parties that they may owe money to when in financial difficulty, it seems disproportionate that only energy suppliers should shoulder this burden. Allowing business to avoid paying energy costs will shift those costs onto other customers and will give an advantage to those customers over their competitors.

Question 3:

Do you think awareness raising materials/initiatives would be of significant benefit to microbusinesses? What key information should any new materials focus on and how would they best be delivered to microbusinesses?

Ofgem stipulates that *"Microbusinesses should be aware that they can switch to better deals and access better/different service offerings."* Ofgem's own analysis shows that there has already been a significant increase over time in the proportion of consumers saying they had engaged in the energy market having steadily increased for four consecutive years. In 2018, 41% of

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

consumers said they had engaged in the energy market in at least one of these ways[10]. By contrast 65-68% of microbusiness customers engaged in the market in 2018[11].

In the 2018 Micro and Small Business Engagement Survey[12] Ofgem has identified six customer segments, all of who are aware of the need to manage energy.

Engagement in the market is hindered by lack of trust of the brokers that operate it, not a lack of awareness of the ability to switch. The CMA considered that low TPI penetration among microbusiness customers could be driven in part by TPIs preferring to focus on larger businesses with greater commission potential, but it also identified apparent distrust of TPIs by small businesses as a potential factor: Ofgem's 2014 survey found that only 20% of businesses with 1-9 employees had a positive view of energy brokers. The most recent Ofgem survey shows 50% of small businesses having negative or very negative perceptions of brokers in 2016.[13]

The above notwithstanding, TPIs are in a good position to provide clarity to complex issues where microbusiness customers may lack expertise and as we set out in Question 4 below, they represent the only viable mechanism for comparison of the market offering available. Appropriate regulation would considerably improve consumer confidence in them and therefore uptake resulting in improved microbusiness market engagement

Question 4&5:
Our evaluation of the CMA's price transparency remedy (published alongside this document) has identified a number of issues at this stage of the customer journey. What do you see as the most impactful issues hindering microbusinesses attempting to effectively browse the market in search of an improved deal/service offering? Please provide quantitative and/or qualitative evidence demonstrating why you believe these issues to be most impactful.
What do you see as the key issues microbusinesses face when they come to enter into a new contract for their energy supply? Please provide quantitative and/or qualitative evidence demonstrating the extent and impact of the consumer harm caused by these issues in the form of both financial and non-financial detriment.

[10] State of the Energy Market Report - 2018
[11] Micro and Small Business Engagement Survey 2018
[12] ibid
[13] The role of third-party intermediaries in business energy procurement

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

Ofgem stipulates that *"Microbusinesses should be able to browse the market for alternative offerings quickly and easily, with the option of using the online or offline channel that works best for them"*. There are four key reasons as to why an online price comparison service has not been developed:

- The size of the market is far smaller. There are 27m domestic households in GB[14], and only 2.4m non-domestic meter points, a large proportion of which will be supplied by SME or large I&C businesses [15]. PCWs are primarily fixed-cost services that require large numbers of transactions to make them viable.
- The average size of the individual contract for a microbusiness customer is likely to be much higher, which can consumer up to 100,000kWh electricity or 293,000kWh gas a year. A single microbusiness customer also has a median higher average consumption. Though many customers will have very small consumption as the value of the customer, the value of an individual microbusiness customer will be much greater so bilateral discussion between a broker and the customer is viable.

	Domestic[16]		**Non-domestic**	
	Gas	**Electricity**	**Gas**	**Electricity**
Mean Energy	13,057kWh	3,781kWh	689,364kWh	68,460kWh
Median Energy	11,618kWh	3,028kWh	N/A (owing to wide variation)	8,046kWh

- Prices are not set tariffs, instead being created on a bespoke basis. By contrast with domestic tariffs which vary rarely (once or twice a year), the prices for microbusiness customers varies daily as they move to wholesale market costs. In addition the credit-worthiness of the customer and the risk the supplier is prepared to take will vary on a daily basis, as the market is competitive. An automated mechanism to take these factors into account will vary massively. Brokers can and do seek to negotiate the final price for a customer around these risk factors, which is not viable on an automated process.
- Non-domestic suppliers are under no obligation to supply non-domestic customers. All suppliers therefore operate a credit policy where customers are assessed against Experian credit requirements, or other criteria. Examples of existing minimum credit worthiness are as follows:

Supplier	**Minimum Delphi Credit Score[17]**
BES	0

[14] Office of National Statistics –Families
[15] Sub-national Gas and Electricity Consumption Statistics 2016
[16] ibid.
[17] Source: www.businessjuice.co.uk.

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

British Gas	30 electricity/41 gas
CNG	30
Crown	43
Dual	16
EDF	0
Extra	22
First Utility	50
Gazprom	0 electricity/35 gas
Haven	51
Npower	16
Opus	0
Ovo	35
Scottish Power	31

It is not realistic for credit checking (which uses a separate system) to be fully integrated into a PCW website engine (which also could be used to check business credit worthiness without their knowledge). As credit checks are done separately, this would result in many online switches either being declined are varied as customers are asked for credit deposits or fail the credit checks available.

All of these factors operate against the creation of automated, web-based, transfer process as the number of factors (which Ofgem characterises as "challenges") which that must be taken into account at any contract negotiation is far more than in the domestic market, as would be expected in a business-business relationship.

This accounts for the failure of the CMA remedy to require suppliers to move customers using online quotations. ICoSS members report less than 100 successful customer transfers via these online tariffs, despite 10,000s of microbusiness customers switching last year. An online service is not feasible and direct engagement is required. The focus should therefore be on ensuring that the TPI is robust so that the factors that a supplier and a customer need to take into account before any contract is signed is taken into account.

Question 6:
Do you have evidence demonstrating the extent and impact of malpractice by brokers dealing with microbusinesses? We are seeking both qualitative and quantitative evidence demonstrating consumer harm in the form of both financial and non-financial detriment.
ICoSS fully supports regulation of TPIs. The CMA cited reports of poor TPI behaviour including making misleading claims, using pressure sales techniques, and even claiming to be acting for

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

official purposes, telling customers they had to register their meter with the TPI[18]. Concerns were also raised about the commission paid to TPIs which was not well-understood by non-domestic customers, and the CMA noted that TPIs may face incentives to sell certain products, or may not cover all suppliers, meaning that business customers are not offered the most appropriate available rates.

With a robust regulatory framework in place to moderate TPI behaviours and practices, more microbusiness customers would have the confidence to engage with the energy market with confidence and benefit from the market expertise of the TPI and the collective buying power of all of the customers that TPIs represent. We support previous attempts by Ofgem to develop and create a TPI code of practice, underpinned by legislation, and we see that an effective way forward.

Question 7:
Can you provide evidence demonstrating the extent and impact of any consumer detriment caused by providers approaches to dialogue with consumers about debt management issues? We are seeking both qualitative and quantitative evidence demonstrating consumer harm in the form of both financial and non-financial detriment.

Ofgem has stated*: "Microbusinesses should benefit from open dialogue with service providers that is responsive to their needs on a range of issues while they are in-contract, e.g. debt management"*. As we have stated earlier in our response, ICoSS members do not agree that it is the role of one business to manage the finances of another. That notwithstanding, it is not typically the case that customers in the non-domestic sector approach their supplier requesting assistance with debt management with respect to their energy bills.

Support does exist for microbusiness customers and ICoSS actively promotes this. ICoSS engages with Business Debt Line, which is our official charity, and members support their activities. It should be noted that from information provided by Business Debtline to ICoSS in 2018 that over 94% of contacts are NOT energy-related:

[18] CMA Energy Investigation full report

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

Top five priority debts	2016 Callers %	Q3 2017 Callers %
Council tax	17.4	19.9
Business income tax	11.5	11.4
Business VAT	10.3	8.3
Vehicle contract	9.1	12.7
Business energy	9.0	5.7

A key message from our engagement from Business Debtline is that any form of debt management should be seen holistically as otherwise energy suppliers are simply supporting unsustainable businesses which may distort competition in their sector, as well as increase energy prices.

Questions 8 & 9:
Are you aware of microbusinesses facing significant and impactful issues when they come to exit a contract with their provider? Please provide evidence of the extent and impact of consumer detriment caused by the issues you have commented on in response to the above question

Ofgem states that *"Microbusinesses should experience a smooth, transparent, and not overly complex switching and contracting process where they are treated fairly by all providers."* and that *"Microbusinesses should be able to exit contracts without facing unnecessary fees, obstacles or complications."* There are no barriers to prevent a customer from switching supply once the original duration of their supply contract expires, as the licence clearly require suppliers to allow those customers to switch. The objections process also exists in order to prevent customers transferring in error, while they are under contract or have an unresolved outstanding debt. They are a necessary protection that can prevent customers from being billed twice for the same energy, which Ofgem recently recognised[19]. If licence contraventions regarding switching are occurring we would support Ofgem in addressing these breaches through enforcement action.

It should be noted however, that elimination of contract roll-overs has had the natural consequence that when a supply contract expires, a deemed rate is applicable which is typically a more expensive tariff. ICoSS members have noted that the number of microbusiness customers on deemed rates has significantly increased as result. Members report up to 28%

[19] Decision on review of domestic and non-domestic objections

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

more customers on deemed rates as a result of the ban of rollovers. Weakening supplier certainty over contract duration will remove supplier abilities to fix wholesale costs for that customer, so increasing costs. Any market intervention is this areas is therefore likely to be counter-productive.

Please do not hesitate to contact me should you have any questions with respect to this response

Yours sincerely,

Gareth Evans
ICoSS
01473 822503
gareth@icoss.org

Attachment 1 – Letter to Citizens Advice dated 28 February 2019

Elizabeth Errington
Non Domestic Policy Team
Citizens Advice

28 February 2019

Dear Elizabeth,

<u>Treatment of micro businesses in "vulnerable" situations</u>

The Industrial and Commercial Shippers and Suppliers (ICoSS) group is the trade body representing non-domestic industrial and commercial (I&C) suppliers in the GB energy market. Members collectively supply three-quarters of the gas needs of the non-domestic sector as well as half of the electricity provided by non-domestic independent suppliers[20].

Through our attendance at your non domestic supplier event towards the end of last year, we have been made aware of plans by Citizens Advice (CAB) to consider implementing the concept of a "vulnerable business" across the industry. We understand this relates in particular to treatment of customers in debt.

We believe the current regulatory framework provides sufficient protection of micro-businesses in debt, and, in fact, many ICoSS members already go above and beyond their obligations to support indebted customers.

For example, numerous non-domestic suppliers now signpost customers to free and independent sources of debt advice, such as Business Debtline. Not only that, but we are aware that a variety of "hardship fund" models have begun to appear in the non-domestic sector, one of which was

[20] :

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

created by an ICoSS member. Members also consider appropriate repayment terms wherever possible, provided the customer notifies them of a problem.

We enclose as an appendix a number of case studies from member companies which serve to demonstrate the importance suppliers already place on treating customers fairly.

In summary, there is already adequate support available to micro-businesses who may be struggling with financial hardship, without the need for further formal regulation.   As our members lead the way in terms of some of the best practice outlined above, we wanted to extend an invitation to one of our monthly meetings, in order for us to gain a better understanding of CAB's current thinking and plans in this area.

Please contact me to arrange a suitable date (we meet on the second Thursday of each month), or if you have any questions in relation to this letter.

Yours sincerely

Gareth Evans
Chair ICoSS

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

Appendix 1.

Case studies – Treatment of micro-business customers in debt:

Case Study 1

Company A supplies gas to a restaurant customer, who has a fixed gas supply contract until 2022.

The customer contacted the company's Credit Control team and explained that they were experiencing cash flow problems. This was due to a new cinema development taking place next to their business which had resulted in local road closures and car parks being closed down.

The customer explained that they were previously bringing in £19,000 per week, but this had now reduced to only £4,000 per week as a result of the development works preventing trade from being able to reach their restaurant. Once the cinema opens the customer expects their business to pick up.

Company A agreed that a payment plan for the outstanding balance (£5,000) was the most sensible approach so that the customer would avoid bankruptcy. Going forward, once business improves the customer will increase their Direct Debit payments.

Case Study 2

Company B supplies electricity to a hair dressers salon who contacted them to let the supplier know were struggling with a number of debts including their energy.

Company B provided the customer with contact details for Business Debtline and also suggested that the customer may wish to consider to the company's independently managed hardship fund.

The customer contacted Business Debtline, completed an income and expenditure review and also applied for the hardship fund. At this point the customer's debt to the energy supplier was c£1,000.

The customer was provisionally accepted by the fund and as part of the arrangement, the current debt was placed on hold and the customer was asked to pay their next three monthly invoices, to show their commitment to getting back on track with their payments.

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com

All payments were made by the customer as agreed and the award was confirmed by the fund, meaning the debt was written off in full. The customer has since paid all four subsequent invoices in full and on time.

Case Study 3

Company B was contacted by the customer who runs a public house. The account holder was suffering with chronic ill health and, combined with seasonal trade due to the seaside location of the pub, had accumulated a debt of c £9,000 on their electricity account.

The customer applied for the supplier’s hardship fund but did not quite meet the fund criteria (i.e. they had not been on supply with the company for at least 12 months). However, following discussion with the customer, the supplier agreed to accept their application on a goodwill basis.

The customer made an initial payment of £800 and for the next three invoices were paid on time. As a result, company B used the fund to clear the historic debt and the account is now up to date with a further 19 monthly bills having since been paid in full and on time.

E: gareth@icoss.com T: +44 (0)1473 822503
icoss, 13 Thornton Hill, London, SW19 4HU
www.icoss.com