

Microbusiness Review Call for Evidence: Energy UK Response

21 June 2019

Introduction

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 680,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests over £12.5bn annually, delivers around £84bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

This is a high-level industry view; Energy UK's members may hold different views on particular aspects of the call for evidence. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Executive Summary

Energy UK welcomes Ofgem's call for evidence and its review of the CMA Price Transparency Remedy published alongside this opening statement. We also note Ofgem's subsequent publication of its research synthesis slide pack. We view this call for evidence as an important step in Ofgem building a robust, evidence-based rationale for any further interventions in the microbusiness market, and we expect that Energy UK's supplier members will be best placed to submit individual evidence to Ofgem on the specific areas outlined.

Market Features and Operation

Throughout the entirety of the strategic review, we consider it vital for Ofgem to remain cognisant of its understanding of the features present in the microbusiness energy market that makes it different to the domestic market, and to tailor its review accordingly. For example, the reliance on brokers, the prevalence of supplier-customer negotiations, greater scope for tailoring contracts, and the greater use of telephone-based interactions, all set the microbusiness market far apart. The features present in the microbusiness energy market must be a key consideration as Ofgem reviews evidence submitted, and progresses with the review.

As an example, Ofgem's research slides note a survey in which 30% of microbusinesses said that they only look at their energy costs every three years.¹ In the microbusiness market this may not be

¹ Utilita. (2017). *Powering the UK High Street*. Referenced in Ofgem Microbusiness Research Synthesis, page 9: https://www.ofgem.gov.uk/system/files/docs/2019/06/for_publication_research_synthesis.pdf

significant, given the more common occurrence of longer contracts than seen in the domestic market. Furthermore, when microbusinesses are not aware that they are microbusinesses, this does not mean that they are not engaged with their energy, or unaware of protections available to them.

As part of this contextual difference, Energy UK has historically argued that regulation of brokers should be direct in order to be most effective and Ofgem should therefore recommend to Government that Ofgem's regulatory oversight should be extended to brokers. We believe that this should be a priority, given that over two-thirds (67%) of small and microbusinesses used an energy broker to help choose their current energy plan, with 41% also using price comparison websites.² We would urge against introducing obligations in the Supply Licence requiring suppliers to police, and be held responsible for the actions of third parties as this would only reinforce the status quo, failing to address the cause of any detriment the customer experiences in the current regulatory regime.

In addition, Ofgem will need to ensure it gives due regard to the characteristics of microbusiness customers, which are far less homogenised than the domestic market in terms of energy usage, energy needs, energy engagement and stability as entities.

Ofgem has previously acknowledged that many classify a wider group of non-domestic customers as microbusinesses than the exact definition would dictate. Ofgem should, therefore, also ensure that its analysis of the evidence and subsequent policy considerations take these factors into account so as to avoid unintended, yet detrimental consequences to the wider SME energy market both in terms of costs and customer outcomes.

Price Transparency Remedy

Energy UK welcomes Ofgem's review of the CMA price transparency remedy and note its *Browsing* theory of harm. We believe that the current inflexible nature of the remedy could be improved upon by allowing suppliers more freedom on the products that they can publish, improving the browsing experience of microbusinesses. For example, the customer would receive more accurate information on the tariffs available to them if suppliers were able to ask for customers' current contract end date. However, this information is not required to be provided at the moment. Such improvements could be better realised through a principles-based approach, which would allow suppliers to best align their processes with the desired customer outcomes and enable beneficial innovations as the market continues to digitalise.

Some wider work on awareness and transparency could also be beneficial, such as the provision of a central repository for microbusinesses to access suppliers' online quotation tools required by the price transparency remedy. Such a service could be delivered by Citizens Advice or similar body, providing a first stop for microbusinesses to browse the market. This would have the additional benefit of monitoring that suppliers are complying with the requirements of the remedy.

Evidence Base & Existing Protections

We have an overarching concern that Ofgem has not yet been able to provide sufficiently robust evidence to rationalise its sweeping theories of harm, with some of the evidence presented in the research synthesis slide pack based upon very small sample sizes. For example, research undertaken by Bristol University and the Money Saving Trust is utilised on multiple occasions across the customer journey despite only having a sample size of 22 microbusinesses.³ Any research referenced should be based on statistically robust sample sizes rather than solely anecdotal evidence, which if relied upon could inadvertently lumber microbusinesses with unnecessary and undue costs through interventionist regulation.

Apart from the review of the price transparency remedy, some of which was based on interviews with just 30 microbusinesses, Ofgem has also not reviewed the effectiveness and enforcement of protections already in place for microbusinesses. We understand and welcome that this call for evidence exercise is the first step in plugging the evidence gap, and we would urge Ofgem to expand this evidence gathering by recognising the protections already in place for microbusiness customers. We would particularly note that Supply Licence Conditions already provide protections to microbusiness customers

² https://www.ofgem.gov.uk/system/files/docs/2018/10/micro_and_small_business_engagement_survey_2018_report.pdf

³ http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1802_supporting-small-businesses-with-energy-debt.pdf

against the six specific harmful business practices that the Secretary of State highlighted in his recent letter to the CMA, and by which the Government expects regulators' enforcement to be guided.⁴ For example, we believe that the CMA auto-rollover remedy has driven significant improvements for disengaged microbusiness customers. Consumers can now leave an automatically renewed contract at any time by providing 30 days' notice.

In addition, suppliers are already restricted by licence conditions on what costs can be recovered through the deemed rates that they charge, and the fair treatment of small business customers is required by Standards of Conduct (SoC). SLC 0A requires suppliers to provide written and oral information that is complete, accurate, and not misleading, communicated in plain and intelligible language. Important information must be given appropriate prominence and the information must relate to products and services which are appropriate to the microbusiness consumer. Standards of Conduct cover a wide breadth of designated activities, including contractual information, customer transfers and matters relating to deemed contracts. Ofgem has highlighted some of these activities in its Theories of Harm, but consideration has not been given to how microbusinesses are already protected by the SoC, which are enforceable by Ofgem.

Any policy or regulatory interventions that Ofgem considers as a result of this call for evidence should be proportionate with a robust, evidence-based rationale, and focussed on consumer outcomes rather than prescribing suppliers' actions. This should include full recognition of existing protections in place for microbusinesses.

Policy Overlap & Learnings

When reviewing evidence of experiences at each stage of the customer journey, Ofgem should also be cognisant of policy developments by Government that may impact customer outcomes during the lifetime of this review. This will be necessary to ensure that there are no unintended consequences from policy overlaps or contradictions, and also that Ofgem can act upon any relevant learnings.

For example, Energy UK recently responded to the BEIS consultation reviewing non-domestic customers' smart metering awareness and access to data. It is an important principle that consumers should be able to access their data, although members have reported limited demand from their non-domestic customers to date. BEIS has decided to address this limited demand by now also tasking Smart Energy GB with microbusiness specific campaigns. Customers' access and use of their data, alongside appropriate engagement, will drive positive behaviour change which is fundamental to realising the benefits case underpinning the smart programme. As noted in Energy UK's response to the BEIS consultation, data offers can be used as a differentiator by suppliers in this market, and that obligating suppliers to provide this data in a specific format would have a negative impact on innovation and costs. We would encourage Ofgem to liaise with BEIS in order to ensure that this review takes into consideration any available evidence on the benefits of the smart programme for microbusiness customers, which will continue to be realised as the roll-out progresses.

Further Research & Consideration

Energy UK has previously raised concerns with payment avoidance in the microbusiness sector, and in particular with the costs incurred by suppliers through change of tenancy fraud and businesses using insolvency process to avoid paying their debts ('phoenixing'), which in turn have impacts upon all microbusiness customers. We would urge Ofgem to undertake research or evidence collection to better understand the extent of these issues, and to consider any policy interventions to minimise their occurrence and impact.

If you would like to discuss the above or any other related matters, please contact me directly on 020 7747 2931 or at steve.kirkwood@energy-uk.org.uk.

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809592/Tackling_the_loyalty_penalty_SoS_letter.pdf