Enhancing outcomes for microbusinesses, whilst minimising market disruption.

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Abstract

This paper forms our response to key elements identified within 'Ofgem's Microbusiness Strategic Review: Policy Consultation'.

CNG (Group) Limited[1] (CNG) welcomes the opportunity to participate in this consultation and agrees that more can be done to enhance outcomes for certain microbusinesses. However, there is a risk that a number of the proposed policy measures will not lead to the desired outcomes.

Directly imposing additional licence conditions on suppliers will undoubtedly incur further cost and increase risk for non-domestic suppliers, ultimately resulting in increased prices for the customer, with little evidence to suggest that the proposals will be effective. Significant and costly systems changes would be required to support some of the recommendations and these changes will divert resource away from planned and ongoing extensive system changes within the industry. The introduction of a new cooling off period seems to conflict with the priority attached to implementing the Faster Switching Programme and may compromise timely delivery. We are more welcoming of changes such as the Informed Choices Principle (ICP) which we believe removes the requirement for some of the more technically reliant proposals.

Should these proposals be implemented, suppliers would need to rely upon existing commercial and contractual agreements to assure compliance of brokers and Third Party Intermediaries (TPIs). Determining a broker to be in breach of contract may have some limited commercial implications, but it does not carry the weight or impact of robust market regulation. It also does not prevent the broker from contracting with other suppliers. Suppliers do not have the resources, skills or capacity to regulate TPIs and brokers without incurring substantial additional cost, which will ultimately impact customer pricing.

CNG challenges whether indirect and diluted bilateral assurance via a third party through the proposed broker conduct principle is an optimal or appropriate response to tackle the otherwise unregulated broker market. We feel that the proposed licence conditions are not fit for purpose and that centralised and unilateral regulation of brokers and TPIs seems a more certain way to deliver the enhanced outcomes Ofgem is seeking for microbusiness consumers.

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1. Broker Interventions

Ofgem has undertaken numerous investigations into ways to optimise and enhance outcomes for microbusinesses who contract via a broker or TPI. From Ofgem's Retail Market Review (RMR): Non-domestic Proposals in 2011, outlining numerous policy and licence options to improve engagement and protection of microbusinesses to the implementation of the Competition and Market Authority's (CMA) price transparency remedy via the Energy Market Investigation (EMI) Microbusiness Order 2016.

Ofgem continues to acknowledge that the non-domestic energy market has different characteristics to the domestic market. Brokers and TPIs are a major differentiator in the market and the consumer/broker/ supplier relationship adds layers of complexity that in some areas make it difficult to compare with the domestic market.

Given that sharp practice of some brokers in a weakly regulated market is a cause for concern, we would challenge why there has been an ongoing reluctance from Ofgem to impose direct and decisive interventions upon brokers and TPIs.

1.1 Broker Conduct Principle

Whilst we agree that more work needs to be done to enhance rules and regulation within the energy broker and TPI market, we strongly challenge the methodology of channelling this regulation through a vehicle such as the supply licence. We believe the broker conduct principle places unnecessary burden upon suppliers, whilst failing to address the root cause of the issue.

We feel that a broad principle also may lead to multiple interpretations of 'best practice' with suppliers delivering numerous individual codes of conduct. This would undoubtedly make the industry more complex for brokers and TPIs to navigate, having to flex their approach depending on who they were doing business with. We feel this increases the risk of potential breaches and could even lead to further malpractice and unfavourable outcomes for microbusinesses. A standardised approach would remove these risks and deliver an even playing field for all parties

Given that our supply licence could be impacted by broker malpractice, we would be required to supervise broker activities at a granular level, including comprehensive auditing of all broker engagements. In comparison to existing process this would be an onerous and costly exercise that does not remove the risk of broker malpractice impacting our own licence compliance.

In the past, Ofgem has explored avenues such as gaining enhanced powers under the Business Protection from Misleading Marketing Regulations 2008 (BPMMRs)' and developing a single Code of Practice (CoP) for non-domestic TPIs. This was with a view to protecting the interests of microbusinesses by giving them confidence that when they use TPIs for energy related services, they will be honest, fair, appropriate and transparent and assist them effectively.

In 2014 Ofgem also consulted on a number of options for regulating non-domestic Third Party Intermediaries:

- *Voluntary TPI Code of Practice,*
- *Mandatory TPI Code of Practice (underpinned by licence conditions on Suppliers); and*
- *Direct licensing of TPIs.*

These proposals were developed through direct industry engagement across numerous participant workshops and over 30 industry responses were submitted and yet the consultation was subsequently closed and not progressed. Now in 2020 we find ourselves trying to overcome the same challenges in the microbusiness market, we feel there is definite value in revisiting these proposals.

If Ofgem were to look beyond the energy industry to a similarly complex industry such as UK financial services, they may see the immediate benefits and protections to consumers via direct regulation. This is an industry that is regulated by not one, but two bodies, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). Any firm or individual offering, promoting or selling financial services or

products in the UK must be authorised by the FCA. Consumers also have access to tools such as the 'Financial Services Register', the 'Unauthorised Firms List' and the 'Consumer Helpline' to provide additional support and reassurance.

Within our own industry there are existing, stable, mature and mandatory code-managed procedures in place to accredit and assure third party industry participants.

The Meter Asset Managers Code of Practice (MAMCoP) is a prime example of a process that could be adapted for the regulation of brokers and TPIs at minimal cost and effort of suppliers and would also remove the requirement for the introduction of additional licence conditions.

We strongly recommend Ofgem revisit the MAMCoP model or options proposed in 2014 as an alternative to indirect regulation via the proposed broker conduct principle. We feel such a code should be managed and maintained by Ofgem, alternatively it could be included within the remit of the Retail Energy Code (REC)

1.2 Broker Dispute Resolution

We remain committed to effective complaint management and dispute resolution (as displayed with our consistently positive complaints performance) and we are particularly supportive of the principle of working with brokers and TPIs who are willing to offer redress to customers when things go wrong.

A number of statements made within the consultation document, outlining 'systematic harm', and a 'lack of trust in brokers' suggest that Ofgem feel there is more than 'sharp practice' to be addressed here and we remain sceptical that the proposed ADR scheme will deliver the required outcomes without being reinforced by independent regulation.

We also feel the inherent complexities of the market add further challenges to the successful implementation of cross sector dispute resolution.

For example:

- Sometime into a consumer contract (e.g. 18 months into a 36-month deal), the MB customer raises a dispute via the ADR scheme, which is ultimately upheld, what would the outcome be for (a) the consumer, (b) the broker and (c) the Supplier?
- Would the contract be deemed null and void?
- Would the Supplier be required take action i.e. arrange for the customer to be returned to the original supplier? (and that supplier be required to honour the original contract?).
- Would the customer be compensated (If so would that be via the broker or Supplier)?
- What would the impact be if the Broker/Supplier refused to honour the compensation?
- If the broker was no longer in business, who would be responsible for compensation?
- Is there a chance that in some circumstances there would be risk of costs being mutualised? If so would this be across brokers or Suppliers?

The sheer complexity of such an example clearly displays that the implementation of such a scheme will need a lot of consideration and further development.

We are also aware that the Energy Ombudsman (EO) is commencing a broker redress pilot, highlighting costs of up to £340 plus VAT per case raised to the EO. Whilst these costs are proposed to be imposed directly upon the broker it is likely that these unforeseen costs would be ultimately absorbed by the customer. The EO also advises that the most common award for 'time and trouble' is £50, it is likely that these amounts are based upon existing domestic cases and we believe awards made to non-domestic consumers would be considerably higher, this needs to be taken into account should the scheme be developed further.

Whilst we would encourage a certain level of customer protection built in at all levels, would this proposal be well received by microbusinesses particularly if they were made aware that it would be ultimately at their own cost?

It is also proposed that though part of the remedy may be that the contract is cancelled and this element will be reliant on the energy supplier. As a supplier, we would not expect to be impacted commercially by a transaction that we have not been directly involved in and would require more information and guidance from Ofgem with regards to the mechanics of such a scheme.

As it is the licensee that must ensure that any Broker is a member of a Qualifying Dispute Settlement Scheme, commercial agreements will need to be reviewed. CNG, like other suppliers will have active contracts with brokers and TPIs, the proposed licence changes would require suppliers to either vary or exit the contract. Commercial negotiations like these will take time and potentially lead to increased costs to the supplier and customer. Has this process (and potential indirect impacts such as residual commissions) been considered by Ofgem during the development of the consultation? What would Ofgem recommend a supplier should do in these circumstances?

We believe that a code-managed process could envelop a route for dispute management and resolution and would be a more effective and appropriate proposal when compared with the proposed ADR scheme.

1.3 Broker Commission Transparency

We feel that a regulator or CoP manager could impose obligations directly upon brokers and TPIs to be open, honest and transparent with consumers in all areas including the make-up of charges, in particular broker and TPI commissions.

We would challenge the value or benefit to microbusiness consumers of repeatedly providing this information on every bill and/or statement when compared to the complexity and investment required to augment billing systems. We would recommend that brokers should be required to directly disclose any commission related information at point of sale and/or renewal. This would negate any need for this information to be provided by the supplier, we feel this would also be aligned with the proposed overarching Informed Choices Principle.

Back in 2018, the Northern Irish Utility Regulator (UR) consulted on a requirement for energy suppliers to publish TPI commissions on customer bills. Following the consultation, the UR decided not to proceed with the implementation of such an obligation, citing a number of risks associated with such a measure, such as unintended effects on competition, potential for customer confusion and a general concern over implementation, made it unsuitable for their energy market. We would recommend Ofgem reach out to the UR to understand further how their findings influenced this decision.

Should a requirement be placed upon suppliers to disclose commissions rather than the broker, we would recommend sharing this information within the contract pack sent at point of sale and renewal, this would still require time to implement any billing related system changes.

2. Sales and Marketing

Some smaller business customers, in particular sole traders and micro businesses, are likely to face similar challenges as domestic consumers when making purchasing decisions, especially when buying products or services that are not directly related to their particular line of business.

It's likely that microbusinesses will have more pressing priorities and 'distractions' than domestic consumers and the benefits to a small business of spending an extensive period of time researching and choosing the ideal energy contract, may be relatively limited.

We strongly believe that brokers and TPIs should continue to play a key role in the non-domestic energy market, brokers and TPIs can offer multiple value-adding products and services to microbusinesses beyond competitive energy prices. We do however feel that more can be done to directly address and regulate broker malpractice.

2.1 Informed Choices Principle

We agree that the structure, terms and conditions of microbusiness contracts should be clear and easily comprehensible. Earlier this year we made some changes to our standard terms and conditions in order to make them clearer and easier to understand and we are constantly looking for opportunities to simplify and streamline contracting processes whilst still meeting our legal and regulatory requirements.

With regards to the broker/consumer relationship, this relationship is usually formalised via the Letter of Authority (LOA) process. In the water utility industry, the Water Services Regulation Authority (Ofwat) have produced a standardised TPI LOA template which is a requirement for all microbusiness contracts under the Customer Protection Code of Practice (CPCoP) for the non-household retail water market.

It may be of benefit to introduce, via a central mandatory CoP, standardised LOA documentation to cover a number of areas of protection for microbusiness. This could be a simple and effective way of improving transparency and the general relationship between all parties and would further enhance the microbusiness sales and contracting experience.

At CNG, we're dedicated to ensuring that our customers, brokers, partners and employees align to our brand values (fun, care, honest, WOW, fair and open) and we place huge importance on doing the right thing. We firmly believe that all suppliers, brokers and TPIs should be open and honest with all customers including Microbusinesses. We believe that successful implementation of a well-rounded and considered Informed Choices Principle will deliver a number of the desired policy goals with minimal cost and disruption to Supplier core systems.

3. Contracts and Switching

Similarly, to sales and marketing proposals, we believe that the processing of the contract and the overall switching process should be seamless and without issue for any customer. We agree that microbusinesses should not be treated unfairly in any way during the contracting process.

We believe that any changes made at the point of contract processing or switching come too late in the process to resolve the root cause of the issues highlighted within the consultation, cool off periods and contract extensions will not address any instances of sales malpractice and will ultimately lead to increased cost for suppliers and consumers.

3.1 Cooling off Period

Whilst the complexity of the non-domestic market may be a factor in the historic levels of disengagement of microbusinesses, owners of these businesses are on the whole deemed as 'fit and proper' individuals who are in the business of regularly negotiating, procuring and selling goods and services to turn a profit. Although energy deals may not be seen as a priority in comparison to revenues and profits, microbusiness customers will generally have an elevated level of commercial understanding and experience and should understand and recognise the potential impacts of agreeing any fixed-term services agreement.

Such an implementation would have broad implications across a number of suppliers from system changes to pricing and energy procurement strategies. Alongside factoring any system and assurance related costs into pricing, suppliers will have no option but to factor more risk coverage into energy prices to cover the proportion of contracts that may not out-last the cooling off period. Whilst the ability to renege on a contract shortly after agreement may result in an increase of 'sharp practice' within the broker market as brokers actively pursue alternative deals and enhanced commissions.

If the ultimate goal of a cooling off period is to reduce or remove miss-selling or broker malpractice, we would argue that if suppliers and brokers were meeting their requirements with regards to the Informed Choices Principle this would remove this requirement entirely.

3.2 Contract Extensions and Banning Notification Requirements

We have a number of questions with regards to contract extensions, who will be required to cover the cost of this? Would the supplier be required to update energy prices in systems or will the broker be required to compensate the microbusiness customer directly for any shortfall?

We feel that the banning of notification requirements does little to enhance the microbusiness experience and the lack of visibility for suppliers will lead to increased risk coverage being built into energy prices.

Both the proposed changes will require significant system development to change how contract prices and notifications are handled. Having to deliver such changes in tandem with changes for the switching programme will put into question both delivery timelines.

Conclusion

Whilst the policy proposals seem to be addressing customer concerns on paper, we do have concerns around the complexities that may have not been wholly considered and costs that will ultimately lead to higher prices and potentially further disengagement within the microbusiness market, whilst also having unforeseen, adverse impacts on the broker and TPI market.

CNG is supportive of a number of proposals within this consultation to deliver more optimum outcomes for microbusiness consumers, in particular:

- ensuring microbusinesses are able to make informed choices,
- that the broker sales and contracting process is as open and transparent as possible, and;
- that any microbusiness customer should have a clear and robust process for dispute resolution.

We firmly believe that Ofgem needs to focus on root cause resolution which can only be addressed by independent and centralised regulation through a mandatory Code of Practice for brokers and TPIs.

CNG would welcome further bilateral and/or unilateral engagement with Ofgem to further develop and implement robust solutions to address gaps and failures in the microbusiness market.

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