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ICoSS response to Microbusiness Strategic Review Policy Consultation

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. Our 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 suppliers¹.

Executive Summary

We agree with Ofgem’s assessment that the microbusiness market, in comparison to the domestic market, enjoys high levels of engagement from customers who can access good service and competitive prices. We also agree with Ofgem that a minority of brokers engage in practices that negatively impact the market. We concur that there are issues that need to be addressed; we have severe concerns over the solutions proposed by Ofgem, however. The current proposals do not create a market-wide solution, instead relying on bilateral oversight by suppliers of brokers. They will significantly increase costs and risk for suppliers when engaging with brokers, making it far less attractive to use third party intermediaries. They will also be ineffectual in addressing the core issue, poor broker behaviour, as brokers will be able to switch between suppliers.

We believe that the issues identified in the strategy review can be resolved through centralised oversight of brokers. Ideally this should be done by Ofgem with clear regulatory powers, but in



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their absence a mandatory code of practice underpinned by supplier licence conditions and managed via the REC will address the problems identified.

Assessment of Policy Measures

Broker conduct principle

There are a number of challenges with suppliers being responsible for broker conduct via a prescriptive licence condition:

- Suppliers can only be responsible for the brokers they are engaging with and suppliers will be prevented from highlighting inappropriate broker conduct to other suppliers. This will mean that a supplier may find malpractice and cease to engage with a broker, only for that broker to move to another supplier.
- Suppliers would be directly affected by broker compliance failures as they would represent a licence breach. This would require suppliers to closely supervise broker performance, including fully auditing of all broker engagements. This be onerous and costly for the supplier and does not remove the risk of broker malpractice impacting a supplier's licence compliance.

Taken together these proposals do not address the root cause of poor broker practice, and places considerable cost and risk onto suppliers. We therefore expect that in many cases suppliers will not seek to engage with brokers and will instead take sales activity inhouse. This will reduce customer choice.

We do agree with the concept of holding brokers to an appropriate standard of conduct. A centralised, mandatory code of practice (as is used in metering) would allow market oversight of brokers and prevent brokers from moving between suppliers to avoid detection. This would also ensure an effective benchmark to be developed.

Broker dispute resolution

There are a number of challenges from any resolution process that is mandated via the supplier licence. It is unclear as to how a broker can be compelled to abide to an ADR's judgement, when the broker can simply put the company into liquidation and then set up a new one. It would also be unreasonable to hold a supplier to account for a broker not engaging with the ADR.

A centralised process, via a mandatory code of practice would prevent brokers from avoiding complaints and providing suitable redress. In any event brokers should be responsible for funding any complaint resolution process.

Informed contract choices

Making suppliers responsible for broker marketing will require suppliers to undertake onerous oversight and management of all broker sales. This will significantly increase costs for both brokers and suppliers and is likely to dissuade suppliers from engaging with brokers considering the additional risk of utilising a third party, compared to their own sales activities. It is also likely to be ineffectual as it will prove nearly impossible to prevent isolated incidents of broker mis-selling which we believe is the issue Ofgem is seeking to address. It is also likely to create significant differences in levels of enforcement between suppliers. A more proportionate and effective mechanism for managing broker sale activities is to create a common centralised standard all parties can rely on in dealing with alleged instances of broker malpractice.

Broker commission transparency

Requiring broker commissions on every bill will incur significant system costs as billing processes are amended. It would seem sufficient to provide this information at the start of the contract, in line with other established markets, such as mortgage broking. It would also be easy to circumvent provision of this information through shifting cost to other services (such as energy management). Mandating this information coming directly from the broker to the customer, rather than via suppliers, could be done via a mandatory code of practice and would remove the requirement for suppliers to provide this information.

Irrespective of our views above to avoid the costs of a providing historic information, any increase information provision on commissions should only take effect for new contracts agreed after any new obligations come into force.

Cooling-off period

We have substantial concerns regarding this aspect of the proposals, which we do not support.

Firstly, undermining the concept of a contract being binding at point of agreement will require substantial system changes to deliver. It should be noted that these proposals conflict with a major industry change to industry processes; the Switching Programme. It is not possible to

deliver both the proposed system changes for the Switching Programme, and the changes proposed through the Microbusiness Strategy review.

Secondly, removes the price certainty that suppliers can provide at the point of contract sale. Unlike the domestic market, which is required to operate a tariff model, Microbusiness customer contracts are built up of a number of price components such as creditworthiness, wholesale price at the time of sale, etc. Removing that price certainty and increasing the risk of inefficient costs from cancelled contracts will mean that costs will increase for all customers.

Thirdly, the ability to renege on a contract shortly after agreement will result in a feeding frenzy of brokers seeking to cancel new contract in a declining market as brokers actively pursue customers. This will create obvious negative impacts on customers who will be continually pestered by brokers at these times.

We believe that the intention of this interventionist approach by Ofgem is to address potential mis-selling cases. This can be more easily and effectively addressed through a centralised approach, with brokers directly held accountable.

Contract extensions & Banning notification requirements:

Both of these changes will require significant system development to change how contract prices and notifications are handled. Having to deliver such changes at the same time of providing the changes for the Switching Programme will put into question both delivery timelines.

The current licencing drafting also seems to contradict proposed licence drafting for the switching programme and so it is difficult to properly assess their impact.

Way forward

ICoSS is supportive of the principle of increased oversight and regulation of broker activities in the non-domestic market. We continue to believe that the most effective way to do this is through direct oversight by Ofgem with clear regulatory powers to do so.

Until this occurs, we support the concept of a mandatory Code of practice to which brokers operating in the non-domestic sector would have been held accountable to. In a manner similar to that operated regarding metering activities, suppliers would then be obliged by their licence to only engage with accredited brokers. This represents a reasonable balance between increased responsibilities for suppliers to only engage with reputable brokers, and for brokers to accede to

an accreditation scheme which ensured appropriate conduct. The RECCo would seem to be a suitable location for such a code of practice to be administered.

Appendix 1: Assessment of Licence Conditions

Broker Conduct Principle

Licence Section	Change	Comments
0A.2 (amended)	The licensee must <u>and must ensure that Brokers</u> , achieves the Standards of Conduct in a manner consistent with the Customer Objective.	This puts a very high standard on suppliers. It will be very difficult to ensure full compliance from brokers without extensive oversight and is likely to dissuade suppliers from engaging with brokers.
0A.3 (amended)	0A.3 Subject to 0A.4 and 0A.4A, the Standards of Conduct are that the licensee <u>and any Broker</u>	
0A.4A (new)	<i>0A.4A The licensee shall ensure that Brokers achieve the Standards of Conduct in respect of Broker Designated Activities</i>	
0A.9 (insertion)	<p><i>mean each of the following:</i></p> <p><i>c) any written or oral communications regarding Billing or Contractual Information;</i></p> <p><i>and</i></p> <p><i>f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer) and [Informed contract choices obligations]</i></p> <p><i>Together with any such other Designated Activities as the Authority may direct from time to time, following consultation</i></p>	

	Adding Broker to both “Contractual Information” and “Fair and Cognate Expressions”	
1.3 (new)	<i>means an organisation or individual that, either on its own or through arrangements with the other organisations or individuals, provides information and/or advice to a Micro Business Customer about the licensee’s Charges and/or other terms and conditions and whose payment for doing so is made or processed by the licensee</i>	The limitation of using the supply licence means that a broker can avoid being covered by this definition by either having a contract with the customer or providing broker advice through a bundled contract for other services.

Principal Terms and commission transparency requirements

Licence Section	Change	Comments
7A.4 (amended)	Before the licensee enters into a Micro Business Consumer Contract, it must take all reasonable steps to bring, and <u>ensure that any Broker brings</u> , the following information to the attention of the Micro Business Consumer and ensure that the information is communicated in plain and intelligible language: (a) a statement to the effect that the licensee is seeking to enter into a legally binding Contract with the Micro Business Consumer; and (b) the Principal Terms of the proposed Contract.	This puts a very high standard on suppliers, which in practice will be very difficult to achieve and implies a single failure would result in a licence breach. We request clarity on the basis on which Ofgem believes that the “all reasonable steps” threshold has failed. In addition, it will be very difficult to ensure full compliance from brokers without extensive record-keeping and considerable cost for many brokers.
7A.10C.1 (new)	<i>Where the licensee has entered into a Micro Business Consumer Contract, the licensee must disclose any form of fees and commission,</i>	We request some clarity from Ofgem that it can require disclosure of payments through the supplier licence as this cost does not directly impact the energy supply.

	<i>including a benefit of any kind, paid to a Broker in respect of that Micro Business Consumer Contract.</i>	At present in many cases the payments are dependent on the customer staying with the supplier for a period of time and so would be difficult to provide with certainty at the start of the contract.
7A.10C.2 (new)	<i>The licensee must ensure that the information that the licensee is required to disclose by virtue of condition 7A.10C.1: (a) is displayed on each Bill and statement of account in a prominent position, and provided to the Micro Business Consumer on request; (b) enables a Micro Business Consumer to understand the amount or proportion of those sums that it is due to pay which are, or are attributable to, fees, commission or any benefit in kind ultimately due to the Broker, as well as any Charges (so far as they are different) or other sums. This may be expressed in cash terms, or percentage terms if not possible given the method of billing or calculation.; and (c) is drafted in plain and intelligible language.</i>	It would require a significant system change to provide this information on every bill, so adding considerable cost onto customers. At present the licence drafting seems to imply that historic contracts would also require this information to be provided which would also be a significant exercise.

Microbusiness Consumer Cooling-off Period

Licence Section	Change	Comments
7A.13E.1 (new)	<i>The licensee must include a term in a Micro Business Consumer Contract that enables a Micro Business Consumer to cancel the Contract at any time in the cancellation period, without</i>	This proposal will prevent suppliers at contract start from purchasing energy for a customer at efficient wholesale market rates as the customer may end the contract. These market inefficiencies will therefore increase wholesale costs for all customers, but disproportionately for smaller supplier customers.

	<i>giving any reason, by giving notice of cancellation to the licensee.</i>	It is unclear how this would work in practice – would customers be required to be moved back to the original supplier and would they be prevented from moving again for a period of time whilst this is done?
<i>7A.13E.2 (new)</i>	<i>Notice of cancellation includes any communication by the Micro Business Consumer to the licensee, made in the cancellation period, setting out the Micro Business Consumer's decision to cancel the Contract.</i>	This implies that any form of communication would be taken as cancellation- would this include communications via social media or offhand statements to customer call centres? It also implies call centres will need to be staffed 24/7 to allow such communications to be accepted.
<i>7A.13E.3 (new)</i>	<i>The cancellation period begins the day on which a Micro Business Consumer enters into a Contract with the licensee and the Micro Business Consumer has been provided with a copy of the Principal Terms in accordance with paragraphs 7A.4(b) and 7A.9(a)</i>	How would a supplier be able to ensure that principal terms have been provided to the customer?
<i>7A.13E.4 (new)</i>	<i>The cancellation period ends at the latter of: (a) 14 days after the day on which the Contract is entered into; or (b) 14 days after the day on which on the Micro Business Consumer has been provided with a copy of the Principal Terms.</i>	This implies that cancellations can occur during weekends and public holidays and would need to be processed during these times. This will require many suppliers to provide 24/7 services would add considerable running costs for many suppliers and disproportionately affect smaller suppliers. How would a supplier be able to ensure that principal terms have been provided to the customer?
<i>7A.13E.5 (new)</i>	<i>Where a Micro Business gives notice of cancellation the licensee must not: (a) charge the Micro Business Consumer a Micro</i>	This proposal will prevent suppliers from passing the costs of contract cancellation to the customer, which is standard practice

	<p><i>Business Termination Fee; or</i> <i>(b) apply terms and conditions or Charges for the Supply of Electricity which are not under the Micro Business Consumer Contract; or</i> <i>(c) require payment of any Charges for the Supply of Electricity determined under the Micro Business Consumer Contract, other than in relation to what has been consumed by the Micro Business Consumer.</i></p>	<p>in other markets such as insurance. These market inefficiencies will therefore increase costs for all customers.</p> <p>There is also no concept of a “lock out period” and so a customer could repeatedly agree and then cancel contracts and avoid any penalty in doing so and potentially faster than systems would allow.</p>
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Termination notice requirements

Please note it is not clear what the final impact of drafting is as in a number of cases the proposed licence drafting here duplicates or overwrites existing provisions. Clarity is requested on the final set of changes proposed.

Licence Section	Change	Comments
7A.11 (new)	<p><i>In relation to a Micro Business Consumer Contract that contain a fixed term period, the licensee must ensure that during the Initial Period a Micro Business Customer is not required to give any form of notice to terminate the Micro Business Consumer Contract or to switch supplier.</i></p>	<p>This puts a very high standard on suppliers, which in practice will be very difficult to achieve and implies a single failure would result in a licence breach.</p>
7A.12 (new)	<p><i>In relation to Micro Business Consumer Contracts during the Roll-Over Period, the licensee must ensure that:</i> <i>(a) a Micro Business Customer is not required to give any form of notice to terminate the Micro Business Consumer Contract or to switch supplier; and</i> <i>(b) a Micro Business Customer is entitled to take steps to facilitate changing to any other Electricity Supplier at any time without having to pay a Termination Fee.</i></p>	<p>We believe this is 7A.12BAB with an additional requirement to facilitate supplier switches.</p>

<p>7A.12A (new)</p>	<p><i>This paragraph applies where the relevant Micro Business Consumer Contract is for a fixed-term period and contains a Roll-Over Clause.</i></p>	<p>We believe this is 7A.13 renumbered.</p>
<p>7A.12B (new)</p>	<p><i>Where paragraph [7A.12A] applies, the licensee may only extend the duration of that Contract for a further fixed term period if:</i></p> <ul style="list-style-type: none"> <i>(a) it has complied with paragraphs [7A.7] and [7A.8];</i> <i>(b) the Micro Business Consumer has not sent the licensee a notification in writing before the end of the Initial Period in order to prevent it from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and</i> <i>(c) the duration of the further fixed term period is 12 months or less.</i> 	<p>We believe this is 7A.13A renumbered.</p>
<p>7A.13A (new)</p>	<p><i>If the licensee supplies electricity to a Micro Business Consumer's premises under an Evergreen Micro Business Consumer Contract, the licensee must ensure that:</i></p> <ul style="list-style-type: none"> <i>(a) notice period for termination of any Evergreen Supply Contract with a Micro Business Customer is no longer than 30 days; and</i> <i>(b) a Micro Business Customer is entitled to take steps to facilitate changing to any other Electricity Supplier at any time without having to pay a Termination Fee.</i> 	<p>We believe that this is 7A.13B split in Evergreen and OOC processes, with a requirement to allow a customer to facilitate a switch to occur.</p>

7A.13AB (new)	<i>Where paragraph [7A.13A] applies, notice of termination must include but is not limited to a Proposed Supplier Transfer</i>	
7A.13B (new)	<i>If the licensee supplies electricity to a Micro Business Consumer's premises under an Out-of-contract Contract, the licensee must ensure that: (a) a Micro Business Customer is entitled to take steps to facilitate changing to any other Electricity Supplier at any time without having to pay a Termination Fee; and (b) a Micro Business Customer is not required to give any form of notice to terminate the Micro Business Consumer Contract or to switch supplier.</i>	

30 day contract extension following blocked switches

Licence Section	Change	Comments
14.3A (new)	<i>Where the licensee has prevented a Proposed Supplier Transfer in relation to a Microbusiness Customer the licensee must continue to supply the Microbusiness Customer on the basis of the rates which applied immediately to the date on which the outgoing supplier received notification of the proposed switch until the earlier of: (i) the Microbusiness Customer has entered into and is being supplied under a new Contract with the licensee; or</i>	Under proposals from the Switching Programme, a transfer may have been prevented by customer request ² . If so, does this mean the customers gain an extension on contract rates by request switches to be blocked, rather than paying rates other OOC customers would be charged. This change will require significant system changes to change how contract prices implemented for such customers.

² https://www.ofgem.gov.uk/system/files/docs/2020/07/electricity_supply_standard_license_conditions.pdf

	<p>(ii) the Microbusiness Customer has entered into and is being supplied under a Contract with another licensee ; or (iii) 30 days from the day after the day that the licensee prevented the Supplier Transfer, at which point the licensee may choose to charge the Microbusiness Customer under a Deemed Contract or Out-of-Contract Contract if any fixed term period has come to an end</p>	
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Microbusiness Alternative Dispute Resolution (ADR) scheme

Licence Section	Change	Comments
20.5 <i>(amended)</i>	<p>The licensee must provide to each of its Non-Domestic Customers information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute with the licensee <u>or, in the case of a Microbusiness Consumer, any Broker</u> by providing that information on any relevant Promotional Materials sent to the Non-Domestic Customer and on or with each Bill or statement of account sent to each Non-Domestic Customer in relation to Charges or annually if the licensee has not sent such a Bill or statement of account to them. <u>Such information must include, but is not limited to, how the procedures under any Qualifying Dispute Settlement Scheme can be initiated.</u></p>	<p>This puts a very high standard on suppliers, which in practice will be very difficult to achieve and implies a single failure would result in a licence breach.</p> <p>It also places an obligation on a third party that the supplier would have limited oversight on in practice and implies that suppliers would be required to assess all communications sent and compliance of brokers with the ADR scheme.</p> <p>We believe that Brokers can avoid handling complaints by simply putting a company into administration and setting up a new one.</p>
20.5A <i>(new)</i>	<p><i>The licensee must ensure that any Broker is a member of a Qualifying Dispute Settlement Scheme</i></p>	

<p>20.5B (new)</p>	<p><i>In this condition Qualifying Dispute Settlement Scheme means any scheme of dispute settlement, resolution and/or redress operated by the Relevant Energy Ombudsman or such other organisation as offers independent, fair, effective and transparent out-of court dispute settlement relating to Broker Designated Activities</i></p>	
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Informed contract choices - contract comparability and marketing (new licence condition)

Change	Comments
<p>The licensee must ensure that the structure, terms and conditions of its Tariffs or Micro Business Consumer Contracts are clear and easily comprehensible.</p>	<p>This puts a very high standard on suppliers, which in practice will be very difficult to achieve and implies a single failure would result in a licence breach.</p> <p>How will compliance with this requirement be measured as it is subjective?</p> <p>Does it require provision of tariff information in multiple languages or in braille for example?</p>
<p>The licensee must not and must ensure that Brokers do not mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Micro Business Consumers.</p>	<p>This puts a very high standard on suppliers, which in practice will be very difficult to achieve and implies a single failure would result in a licence breach.</p> <p>How will compliance with this requirement be measured as it is subjective?</p>

	<p>In addition, it requires oversight of all broker activities – it also implies that if a single broker/sales person, contrary to all training and oversight does undertake a “high pressure” sale then the supplier is in licence breach, even if the issue is rectified immediately.</p>
<p>The licensee must only Recommend and must ensure that its Brokers only Recommend, a Micro Business Consumer Contracts which are appropriate to that Micro Business Consumer’s characteristics and/or preferences.</p>	<p>This puts a very high standard on suppliers, which in practice will be very difficult to achieve and implies a single failure would result in a licence breach.</p> <p>How will compliance with this requirement be measured as it is subjective?</p> <p>What is the expectation on the supplier to verify the customer’s preferences and characteristics? We note that this is a domestic obligation being extended to the non-domestic sector.</p> <p>Microbusiness customers are extremely heterogenous in nature, unlike domestic customers, and so without extensive information gathering on a customer, it will be very difficult to ascertain whether a tariff is suitable. This requirement is likely to significantly reduce tariff choice as products become more standardised.</p>
<p>Where a Micro Business Consumer to whom the licensee or Broker has provided information in the course of Face-to-Face Marketing Activities or Telesales Activities enters into a or Non-Domestic Supply Contract with the licensee, the licensee must maintain, or ensure that the Broker maintains, a record of the information which it provided to</p>	<p>This puts a very high standard on suppliers, which in practice will be very difficult to achieve and implies a single failure would result in a licence breach.</p>

<p>that or Non-Domestic Customer in accordance with this licence condition for a period of 2 years.</p>	<p>In addition, it will be very difficult to ensure full compliance from brokers without extensive oversight and is likely to dissuade suppliers from engaging with brokers.</p>
<p>“Face-to-Face Marketing Activities” means any activities of the licensee or any Broker, that:</p> <p>(a) take place with the simultaneous physical presence of the licensee or Broker and a Micro Business Consumer; and</p> <p>(b) are directed at or incidental to identifying and communicating with Micro Business Consumers for the purpose of promoting the licensee’s or Micro Business Consumer Contracts to them and includes entering into such contracts with such customers.</p>	<p>Will this include marketing activities by Metering Agents during installations, as permitted by the SMICoP?</p>
<p>“Recommend” means communicating (whether in Writing or orally) to a Micro Business Consumer information about one or more Micro Business Consumer Contracts in a way which gives, or is likely to give, the Micro Business Consumer the impression that the Charges for the supply of Electricity with all other terms and conditions that apply to the particular contract is suitable for their characteristics and/or preferences.</p>	<p>No comments as a definition</p>
<p>“Telesales Activities” means any activities of the licensee or Broker that are:</p> <p>(a) conducted by telephone; and</p> <p>(b) directed at or incidental to identifying and communicating with Micro Business Consumers for the purpose of promoting the licensee’s Micro Business Consumer Contracts to them and includes entering into such contracts with such customers.</p>	

