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Dear Will,

**RE: Remedies to facilitate widespread energy market engagement by domestic and microbusiness customers**

The FSB welcomes the publication of the CMA's proposed remedies to address the issues faced by microbusinesses in the energy market. We have set out our specific responses to each of the relevant remedies below.

The policy changes proposed within each of the remedies will require careful impact assessments which, themselves, will necessitate a better understanding of the small and micro business audience by Ofgem and energy companies.

It is important to remember that the CMA's investigation comes at a time when the energy market is facing some broad changes as a result of the forthcoming smart meter upgrade and, hopefully, the accompanying smarter technology and services. For instance, access to real-time consumption information could increase awareness and empowerment, prompting consumers to increasingly engage with the market. Conversely, the introduction of time-of-use charges and half hourly settlement could potentially have an adverse impact on microbusinesses – depending on when and how they use their energy – and restrict market engagement. So the potential for this market transition to either benefit or harm small business customers will depend both on the roll-out of smart meters themselves, but also the principles and safeguards that the CMA lays down in the interim.

**Remedy 6 – Ofgem to provide an independent price comparison service for domestic (and microbusiness) customers**

The FSB supports proposals to increase the ability of small businesses to quickly understand and compare different offers from a range of energy suppliers. The first step

is to provide easy access to these various offers; the second step is to then enable one offer to be compared against another.

The ability to compare tariffs on a like-for-like basis is a fundamental pre-requisite for small businesses to feel empowered to engage with the market and, more importantly, trust that they have made the right choice.

Unlike the domestic market, small and micro businesses currently have to negotiate their contracts with energy companies on an individual basis. Suppliers argue that, in theory, this allows them to negotiate the best possible bespoke deal. However, in practice, this opportunity is not being taken advantage of by many small business customers who remain skeptical that these negotiations take place between “equals”. The associated opportunity cost (time and effort away from their business), combined with a serious lack of trust in an eventual positive outcome, means that the process just isn’t perceived as worthwhile for the average microbusiness with low energy consumption.

To ensure a price comparison website works for small and micro businesses, there are clearly a number of hurdles that the regulator will need to overcome. The speed at which a customer can access a quote must clearly be balanced against the accuracy and robustness of such a quote. For instance, without careful planning, credit-worthiness checks could potentially cause delays and uncertainties, making a comparison service unwieldy. Other markets, like mortgages and insurance, could provide a road map for potential solutions.

Again, with regard to comparability, a price comparison website must be able to demonstrate clearly what is and isn’t being quoted for. A major problem faced by small businesses under the current system is that bespoke quotes are provided against a broad set of variables, including standing charge, variable time-of-use tariffs, additional services and support, length of contract, and various other options, terms and conditions.

### **Remedy 7a – Introduction of a new requirement in the licences of retail energy suppliers to provide price lists for microbusinesses on their own websites and to make this information available to PCWs**

The FSB fully supports proposals to publish price lists for microbusinesses. If done well, this would provide microbusinesses with an excellent platform for comparing tariffs, quickly and easily.

However, the benefits of published prices will only be realised if a number of issues are adequately addressed, many of which are repeated from Remedy 6 above. Whether a price is published on an individual supplier’s website, or published alongside others on a price comparison website, the overriding principle must be that one offer can be compared against another with minimum effort.

The majority of FSB members say their energy bills and associated tariffs are currently difficult to understand and compare. Four in five FSB members say published tariffs would benefit their business. Published price lists would lower the significant opportunity costs associated with searching for a new deal.

Published prices should be done in a way that allows energy companies to compete transparently not only on cost per unit, but also the extent and quality of the additional services they provide (e.g. energy efficiency, customer service, innovation and technology).

The introduction of published tariffs shouldn't necessarily preclude individual negotiations. If mutually agreeable, a small business and supplier could maintain the ability to negotiate a deal that improves upon the initial, published offer, particularly around additional services like energy efficiency. TPIs could continue to play an important market role in this regard (see Remedy 7b). However, we acknowledge that the regulator would need to ensure that such a 'grey market' – operating outside of the published framework – did not unduly impact on the majority of microbusiness relying on published prices.

### **Remedy 7b – Introduction of rules governing the information that TPIs are required to provide to microbusiness customers**

The FSB is broadly supportive of the CMA's proposal to introduce rules governing the information that TPIs are required to provide microbusiness customers.

This proposal should be explored in the context of the wider work that Ofgem, alongside the FSB and others, have been carrying out to explore the wider benefits of a code of practice for TPIs. A good TPI can provide a valuable service to small and micro business customers who, otherwise, don't have the time or resource themselves to engage in the market and find the best deals.

However, the TPI industry is currently unregulated and many FSB members have had very mixed experiences with energy brokers. It is therefore critical to have a transparent, regulated TPI industry which is trusted by consumers.

Regulation should take a risk based approach that acknowledges that the costs of regulation should be proportionate depending on a pre-agreed set of criteria (e.g. turnover, risk, number of clients, scope of services etc).

A successful outcome from Remedy 7b will require careful thought about the type of information that a TPI will be required to share with their customers. Some areas are straight-forward, like the proportion of the market covered by the TPI and the nature of their relationship with suppliers. However, other areas may be less straight-forward. For example, if a TPI was required to publish the exact percentage commission they earn

from each successful contract, then this could actually reduce trust and further dissuade customers from using this type of potentially valuable service.

The lack of trust in the unregulated TPI industry, as well as in the wider energy market, means that customers are not currently in a position to establish whether the cost of the TPI (i.e. the commission) is worth the promised added value. So the rules governing TPIs must be developed in the context of improving trust across the wider market.

### **Remedy 8 – Introduction of a new requirement into the licences of retail energy suppliers that prohibits the inclusion of terms that permit the auto-rollover of microbusiness customers on to new contracts with a narrow window for switching supplier and/or tariff**

The FSB is totally supportive of the CMA's proposal regarding auto-rollovers. The FSB has long campaigned for an end to unfair auto-rollover contracts that lock businesses into uncompetitive terms. We acknowledge the recent commitments from the largest energy companies to end this kind of restrictive arrangement, a move which now protects a large majority of the microbusiness market.

The proposal to prohibit these auto-rollovers for all retail energy suppliers will provide an important message and steer to the market: restrictive auto-rollover contracts are unfair and put small business consumers at risk of exploitation.

It is important to acknowledge that an automatic continuation of a contract beyond the pre-agreed end-date (rolling on to out-of-contract rates) is not a bad thing in itself. Indeed, the alternative would be an interruption to energy supply which benefits neither the customer nor the supplier. These out-of-contract rates are usually higher, in theory reflecting the additional risk of this potentially transient arrangement. The level at which these out-of-contract rates should be set is a matter of debate. However, the important aspect in the particular scenario highlighted by Remedy 8 is the ability of small and micro businesses to renegotiate a new deal (either with an existing or alternative supplier) and the degree to which they are encouraged and empowered to do so (see Remedy 10 below).

### **Remedy 9 – Measures to provide either domestic and/or microbusiness customers with different or additional information to reduce actual or perceived barriers to accessing and assessing information**

It is critical that microbusiness customers are included alongside domestic customers in measures to address perceived barriers to accessing and assessing information. The FSB is supportive of the principle behind Remedy 9, but the devil will be in the detail. Much will hinge on the level of understanding of the small business audience and the type of information they will find useful.

The FSB acknowledges the gradual improvement in the clarity of billing information and end of contract terms and conditions, something we have been working closely with energy suppliers and the regulator on. However there is still work to do in this regard.

A successful outcome from Remedy 9 can only be achieved if retailers and regulators develop a much improved understanding of their diverse small business audience. Currently, energy companies do not categorise businesses by anything more granular than 'SME'. This simply cannot reflect the huge diversity of a group that contains sole-traders at one end of the scale and employers of up to 250 staff at the other. The variation in energy use, premises, risks and resources needs to be first understood if small businesses are to be subsequently engaged in the switching processes.

It is worth noting that smart meters will present a major opportunity to provide additional information to customers. A successful roll-out will help small businesses to understand and manage their energy, and provide new opportunities for accessing and interpreting information.

### **Remedy 10 – Measures to prompt customers on default tariffs to engage in the market**

The FSB is supportive of measures to prompt customers on default tariffs to engage in the market and look for the best deals. But like Remedy 9, the devil will very much be in the detail. Many small businesses don't switch because of a combination of a lack of time, a lack of transparency, a lack of perceived benefit, and a fear of things going wrong. It is important to remember that the lack of engagement by small businesses on default tariffs isn't just a failure of marketing and sales technique. There is also a huge trust issue to overcome.

Like Remedy 9, a successful outcome from Remedy 10 can only be achieved if retailers and regulators develop a much improved understanding of the diversity of small businesses and the variety of ways they interact with the market.

### **Remedy 11 – A transitional 'safeguard regulated tariff' for disengaged domestic and microbusiness customers**

It is important that microbusiness customers who have not felt empowered to pro-actively engage with the market are not left vulnerable to exploitation. Therefore, the FSB is supportive of the CMA's proposal to introduce a transitional safeguard tariff.

If set correctly, such a tariff will provide a baseline level of protection for the most vulnerable business customers and challenge suppliers to improve upon it. In addition to the unit cost of energy they offer, suppliers can seek differentiation in the market by competing on additional services like energy efficiency support and investment, customer service, compensation arrangements etc.

There is clearly a balance to be struck in terms of the level at which a safeguard tariff is set. It must not be too comfortable to act as a barrier to further engagement, not too harsh to act as punishment for the unengaged. This dynamic is largely affected by the length of time the safeguard tariff is available for, which in itself could depend on what expectation is placed on energy companies around pro-active engagement to encourage safeguard customers onto alternative arrangements. In this regard, the term 'transitional' must be defined.

Key questions will then be: what is considered a reasonable return for suppliers on this safeguard tariff; and how will the risk profile be spread across the market as a whole? There must be a balance between free-market competition and regulatory protection for consumers. Low-risk businesses should not pay a premium to cover high-risk businesses.

And finally, how universal would access to a safeguard tariff be? For instance, unlike domestic customers, microbusinesses are not guaranteed an energy supplier. So what are the implications for higher risk businesses with lower credit ratings, both if they are included and excluded from a safeguard tariff?

I hope this helps to adequately clarify the FSB's position. If you would like any further information or input from the FSB, please do let me know.

Yours sincerely,

Allen Creedy  
**Chairman of the FSB Environment and Water Policy Unit**