

## **11. Provisional decision on remedies**

- 11.1 In our provisional findings report and addendum, and pursuant to the updated analysis contained in our provisional decision on remedies, we have provisionally identified a number of AECs leading, in aggregate, to substantial levels of detriment for customers.
- 11.2 In this section we summarise our proposed remedies to address these provisional AECs and the detriment arising from them.

### ***The CfDs AEC***

- 11.3 The remedies package proposed to address the CfDs AEC and/or associated detriment is as follows:
- (a) A recommendation to DECC to undertake and consult on a clear and thorough impact assessment before awarding any CfD outside the CfD auction mechanism.
  - (b) A recommendation to DECC to undertake and consult on a clear and thorough assessment of the appropriate allocation of technologies and CfD budgets between pots.

### ***The Locational Pricing AEC***

- 11.4 The remedies package proposed to address the Locational Pricing AEC and/or associated detriment is as follows:
- (a) An order (the 'Locational Pricing Order') on National Grid (and amendments to National Grid's licence conditions) that would set out, among other things:
    - (i) the formula to calculate the transmission loss factors (which ultimately feeds into the imbalance charges) for this purpose;
    - (ii) an obligation on National Grid to create a load flow model;
    - (iii) an obligation on National Grid to create a networking mapping statement and collect annually relevant network data;
    - (iv) an obligation on National Grid to appoint third party agents to collect metered volumes data and to calculate annually the transmission loss factors pursuant to the principles set out in the order and using the models created, and information collected, pursuant to the order;

- (v) an obligation on National Grid to direct Elexon, as appropriate, to update the networking mapping statement and carry out other administrative tasks that are necessary to the calculation by the third party agents; and
  - (vi) an obligation on National Grid to raise any consequential code modification.
- (b) A recommendation to Ofgem to support National Grid by taking necessary steps that might facilitate the implementation of the Locational Pricing Order.

### ***Electricity Settlement AEC***

11.5 The remedies package proposed to address the Electricity Settlement AEC and/or associated detriment is as follows:

- (a) A recommendation to DECC to consult on amending the provisions of the Smart Energy Code that prohibit suppliers from collecting consumption data with greater granularity than daily unless a customer has given explicit consent to do so.
- (b) A recommendation to Ofgem to:
  - (i) conduct a full cost benefit analysis of the move to mandatory half-hourly settlement, including analysis of costs, benefits and distributional implications as well as mitigating measures;
  - (ii) start the process of gathering evidence for the analysis as soon as practicable;
  - (iii) consider the cost-effectiveness of alternative design options for half-hourly settlement such as a centralised entity responsible for data collection and aggregation; and
  - (iv) consider options for reducing the costs of elective half-hourly settlement, including (i) whether any of these options are likely to delay or accelerate the adoption of mandatory half-hourly settlement; and (ii) any challenges that may arise or benefits that may accrue from the existence of two settlement systems, including in particular the possibility of gaming/cherry picking behaviour.
- (c) A recommendation to both DECC and Ofgem that they publish and consult jointly on a plan setting out:
  - (i) the aim of the reform for half-hourly settlement;

- (ii) a list of proposed regulatory interventions (including code changes), and the relevant entity in charge of designing and/or approving such interventions, that are necessary in order to implement the half-hourly settlement reform;
- (iii) an estimated timetable for the completion of each necessary intervention; and
- (iv) where appropriate, a list of relevant considerations that will be taken into account in designing each regulatory intervention.

### **Gas Settlement AEC**

11.6 The remedies package proposed to address the Gas Settlement AEC and/or associated detriment is as follows:

- (a) A recommendation to Ofgem to ensure implementation of Project Nexus by 1 October 2016 through monitoring closely the progress made by the industry in meeting intermediate milestones and to take (where appropriate) further measures to achieve this objective.
- (b) An order on gas suppliers (and amendments to gas suppliers' standard licence conditions) to submit all meter readings for non-daily metered supply points in GB to Xoserve as soon as they become available, and at least once per year, save for non-daily metered supply points with a smart or advanced meter, which must be submitted at least once per month.
- (c) A recommendation to Ofgem to:
  - (i) take responsibility for the development and delivery of a performance assurance framework to increase accuracy of the gas settlement process as soon as reasonably practicable, and at the latest within one year of our final report;
  - (ii) establish a project plan and allocate responsibility to Uniform Network Code parties to take actions for its implementation;
  - (iii) supervise its implementation; and
  - (iv) take appropriate steps to ensure that failure to meet targets under the performance assurance framework are sanctioned.

## ***Prepayment AEC, RMR AEC and Domestic Weak Customer Response AEC***

11.7 The remedies package proposed to address the Prepayment AEC, the RMR AEC and the Domestic Weak Customer Response AEC (together, the Domestic AECs) and/or associated detriment comprises the proposed remedies set out below.

### *Proposed remedies specific to the Prepayment AEC*

11.8 The remedies proposed to address part of the Prepayment AEC and/or associated detriment are as follows:

(a) A recommendation to Ofgem to:

- (i) modify suppliers' standard licence conditions to introduce an exception to SLC 22B.7(b) so as to allow a supplier to set prices to prepayment customers on the basis of grouping regional cost variations which are applied to other payment methods within the same core tariff;
- (ii) deprioritise potential enforcement action pending the modification of SLC 22B.7(b) against any supplier to a prepayment customer that sets prices to prepayment customers on the basis of grouping regional cost variations which are applied to other payment methods within the same core tariff;
- (iii) take responsibility for the efficient allocation of gas tariff pages; and
- (iv) take appropriate steps to ensure that changes to the Debt Assignment Protocol are implemented by the end of 2016, and in particular in areas relating to objection letters, complex debt and issues relating to multiple registrations; including setting out clear objectives and a timetable with appropriate milestones, supervising progress against such objectives and milestones, and to take all steps, if and when necessary, to ensure delivery of these changes.

(b) The acceptance of undertakings from the Six Large Energy Firms or, absent such undertakings including the following three components:

- (i) a cap on the number of gas tariff pages that any supplier can hold (at 12);
- (ii) an obligation for suppliers to provide relevant information for Ofgem to monitor the allocation of the gas tariff codes; and

- (iii) a condition that allows Ofgem to mandate the transfer of one or more gas tariff pages to another supplier.
- (c) Absent such undertakings, we would recommend that Ofgem introduces a new licence condition in suppliers' standard licence conditions to include the three components set out above.

*Proposed remedies concerning the RMR AEC*

11.9 The remedies proposed to address the RMR AEC and/or associated detriment, as well as part of the Prepayment AEC and the Domestic Weak Customer Response AEC and/or associated detriment are as follows:

- (a) A recommendation to Ofgem to:
  - (i) modify gas and electricity suppliers' standard licence conditions to:
    - remove the following conditions (the 'Conditions'):
      - the ban on complex tariffs (SLC 22A.3 (a) and (b));
      - the four tariff rule (SLC 22B.2 (a) and (b));
      - the ban on certain discounts (SLCs 22B.3-6 and 22B.24-28);
      - the ban on certain bundled products (SLCs 22B.9-16 and 22B.24-28);
      - the ban on certain reward points (SLCs 22B.17-23 and 22B.24-28);
      - the prohibition against tariffs exclusive to new/existing customers (SLC 22B.30 and 22B.31); and
      - make any necessary minor consequential amendments; and
    - introduce an additional standard of conduct into SLC 25C that would require suppliers to have regard in the design of tariffs to the ease with which customers can compare value-for-money with other tariffs they offer;
  - (ii) deprioritise potential enforcement action pending the removal of the Conditions against any supplier that operates in breach of the Conditions;
  - (iii) remove the Whole of the Market Requirement in the Confidence Code and introduce a requirement for PCWs accredited under the

Confidence Code to be transparent over the market coverage they provide to energy customers.

*Proposed remedies concerning the Prepayment AEC and the Domestic Weak Customer Response AEC*

11.10 The remedies proposed to address part of the Prepayment AEC and part of the Domestic Weak Customer Response AEC and/or the associated detriment are as follows:

- (a) A recommendation to Ofgem to establish an ongoing programme (the 'Ofgem-led programme') to identify, test (through randomised controlled trials, where appropriate) and implement (for example, through appropriate changes to gas and electricity suppliers' standard licence conditions) measures to provide domestic customers with different or additional information with the aim of promoting engagement in the domestic retail energy markets, including a recommendation to conduct randomised controlled trials concerning the following shortlist of measures:
  - (i) changes to the information in domestic bills and how this is presented including a market-wide cheapest tariff message;
  - (ii) changes to the specific messaging that domestic customers receive in bills once they move, or are moved, on to an SVT and/or other default tariffs; and
  - (iii) changes to the name of the default tariffs.
- (b) Either the acceptance of undertakings from gas and electricity suppliers to participate in the Ofgem-led programme, or, absent a satisfactory number of undertakings being agreed with suppliers, either:
  - (i) a recommendation to Ofgem to modify gas and electricity suppliers' standard licence conditions to introduce an obligation on suppliers to participate in the Ofgem-led programme or requiring the provision of prescribed information;
  - (ii) an order on gas and electricity suppliers to participate in the Ofgem-led programme or requiring the provision of prescribed information, (including associated amendments to suppliers' standard licence conditions); or

- (iii) a recommendation to DECC to introduce legislation imposing a requirement on suppliers to participate in Ofgem-led research programmes.
- (c) An order on Gemserv to give PCWs access upon request to the ECOES database on reasonable terms and subject to satisfaction of reasonable access conditions.
- (d) An order on Xoserve to give PCWs access upon request to the SCOGES database on reasonable terms and subject to satisfaction of reasonable access conditions.
- (e) A recommendation to DECC to make the following changes to the current specifications of Midata phase two:
  - (i) Participation in Midata is mandatory for all gas and electricity suppliers.
  - (ii) The scope of Midata is expanded to include the following data fields: meter type, Warm Home Discount indicator, consumption data and time-of-use for those customers on Economy 7 meters or other time of use tariffs.
  - (iii) PCWs are given the ability to seek customer consent on the frequency with which they can access the customer's data through Midata; are required to present at least two options to a customer when seeking consent to access Midata (including one option concerning access on an annual or ongoing basis); and are given the ability to send updated tariff comparison information based on any subsequent access granted to a customer's Midata.
- (f) An order on gas and electricity suppliers requiring the disclosure to Ofgem, subject to certain use restrictions, of (i) certain details<sup>1</sup> (the Domestic Customer Data) of their domestic customers who have been on one of their standard variable tariffs (or any other default tariff) for three or more years (the Disengaged Domestic Customers), and (ii) updated Domestic Customer Data every six months, for the purposes of a creating, operating and maintaining a secure cloud database containing the Domestic Customer Data and allowing rival suppliers to

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<sup>1</sup> This would be the customer's full name, billing address, consumption address, fixed telephone number, current supplier, meter type (eg unrestricted, Economy 7 etc), name of their current tariff, annual energy consumption, MPAN/MPRN and, as regards a customer on a restricted meter, certain additional consumption data by specified time periods and details of the customer's standing charges and volume rates. For the avoidance of doubt, the Domestic Customer Data would exclude details relating to any Disengaged Domestic Customer that opted out following receipt of an Opt-out Letter.

access and use the data for the purpose of postal marketing. The order would also require suppliers, prior to disclosing the Domestic Customer Data to Ofgem, to send a prescribed letter to each Disengaged Domestic Customer, explaining the proposed use of the customer's details, and including an opt-out mechanism for the domestic customer, at any time, to object to and prevent the proposed disclosure and use of their details.

- (g) A recommendation to Ofgem to (i) create, operate and maintain a secure cloud database for the purposes of holding the Domestic Customer Data; (ii) hold the Domestic Customer Data; (iii) enter into agreements with suppliers including, access to, and use restrictions concerning the Domestic Customer Data; and (iv) provide access to the Domestic Customer Data by any rival supplier that has entered into such an agreement.
- (h) An order on gas and electricity suppliers with more than 50,000 domestic customers (and amendments to suppliers' standard licence conditions) (i) requiring such suppliers to make all their single-rate electricity tariffs available to all (existing and new) domestic electricity customers on restricted meters,<sup>2</sup> and (ii) prohibiting such suppliers from making their single-rate electricity tariffs available to domestic electricity customers on restricted meters conditional upon the replacement of their existing meter.
- (i) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions) requiring suppliers to (i) remind their domestic electricity customers on restricted meters, in their regular communications with them, that they have the option to switch supplier or to switch to a single-rate tariff without having to change their meter or incur replacement costs, (ii) provide their domestic electricity customers on restricted meters contact details for Citizens Advice, and (iii) provide, on a timely basis, Citizens Advice with the information it may reasonably require concerning customers on restricted meters in the format specified by Citizens Advice.
- (j) A recommendation to Citizens Advice to become a recognised provider of information and support to domestic electricity customers on restricted meters.

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<sup>2</sup> Including Economy 7 meters.

- (k) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions) requiring suppliers to ensure that the annual bills paid by prepayment customers (assuming a pre-determined consumption level) do not exceed a specified benchmark reference level, for a period until the end of 2020.

### ***The Microbusiness Weak Customer Response AEC***

11.11 The remedies package proposed to address the Microbusiness Weak Customer Response AEC and/or the associated detriment is as follows:

- (a) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions):
- (i) requiring suppliers to disclose the prices of all available acquisition and retention contracts to non-domestic customers falling within a defined category (the 'Proposed Segment') either through an online quotation tool made available on their website, or through one or more third party online platforms (and including a web link on their own website to direct non-domestic customers to such third party online platform(s));
  - (ii) requiring suppliers to disclose the prices of all their out of contract and deemed contracts on their websites;
  - (iii) prohibiting the inclusion of conditions in their existing and future auto-rollover contracts with microbusiness customers that:
    - prohibit the microbusiness customer from giving a termination notice up to the last day of the initial fixed-term period;
    - prohibit the microbusiness customer from giving a termination notice up to the last day of the fixed-term roll-over period; and
    - impose a termination fee and/or no-exit clause for the roll-over period;
  - (iv) prohibiting the transfer of microbusiness customers that have given a termination notice during the rollover period of an auto-rollover contract to a higher priced contract during the notice period; and
  - (v) prohibiting the inclusion of a condition in their existing and future out-of-contract, and evergreen contracts with microbusiness customers that include termination fees.

- (b) A recommendation to Ofgem to make any necessary minor consequential amendments to the suppliers' standard licence conditions.
- (c) A recommendation to Ofgem to establish an ongoing programme to identify, test (through randomised controlled trials, where appropriate) and implement measures to provide microbusiness customers with different or additional information with the aim of promoting engagement in the microbusiness segments of the SME retail energy markets.
- (d) An order on gas and electricity suppliers requiring the disclosure to Ofgem, subject to certain use restrictions, of (i) details<sup>3</sup> of certain of their microbusiness customers that have been on a default contract for three or more years (the 'Microbusiness Customer Data'); and (ii) updated Microbusiness Customer Data every six months, for the purposes of creating, operating and maintaining a secure cloud database containing the Microbusiness Customer Data for the purpose of postal marketing.
- (e) A recommendation to Ofgem to (i) create, operate and maintain a secure cloud database for the purposes of holding the Microbusiness Customer Data; (ii) hold the Microbusiness Customer Data; (iii) enter into agreements with suppliers including, access to, and use restrictions concerning the Microbusiness Customer Data; and (iv) provide access to the Microbusiness Customer Data by any rival supplier that has entered into such an agreement.

### **Governance AEC**

11.12 The remedies package proposed to address the Governance AEC and/or the associated detriment is as follows:

- (a) A recommendation to DECC to initiate a legislative programme with a view to:
  - (i) deleting paragraph 1C from both sections 4AA of the Gas Act 1986 and 3A of the Electricity Act 1989; and
  - (ii) set up a clear and established process for Ofgem to comment publicly, by publishing opinions, on all draft legislation and policy proposals which are relevant to Ofgem's statutory objectives and

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<sup>3</sup> This would be the microbusiness customer's business name, billing address, consumption address, fixed telephone number, current supplier, name of their current contract, annual energy consumption, and MPAN/MPRN.

which are likely to have a material impact on the GB energy markets.

- (b) A recommendation to DECC and Ofgem to publish detailed joint statements concerning proposed DECC policy objectives that are likely to necessitate parallel, or consequential, Ofgem interventions, setting out (i) a proposed action plan for the regulatory interventions needed and responsibility for these, (ii) an estimated timetable, and (iii) where appropriate, a list of relevant considerations in designing the policy.
- (c) A recommendation to Ofgem to:
- (i) publish annually a state of the market report (the 'State of the Market Report') which would provide analysis regarding issues such as (i) the evolution of energy prices and bills over time, (ii) the profitability of key players in the markets (eg the Six Large Energy Firms), (iii) the social costs and benefits of policies, (iv) the impact of initiatives relating to decarbonisation and security of supply, (v) the trilemma trade-offs, and (vi) the trends for the forthcoming year;
  - (ii) create a new unit (eg an office of the chief economist) within Ofgem, which would build expertise across the different areas of the energy markets with a view to publish annually the State of the Market Report; and
  - (iii) modify the licence conditions of the Six Large Energy Firms' generation and supply licences by introducing requirements to:
    - report their generation and retail supply activities on market rather than divisional lines;
    - report a balance sheet as well as profit and loss account separately for their generation and retail supply activities;
    - disaggregate their wholesale energy costs for retail supply between a standardised purchase opportunity cost and a residual element; and
    - report prior year figures prepared on the same basis.

### **Codes AEC**

11.13 The remedies package proposed to address the Codes AEC and/or the associated detriment is as follows:

- (a) A recommendation to Ofgem to:
- (i) publish a cross-cutting strategic direction for code development (the ‘Strategic Direction’);
  - (ii) oversee the annual development of code-specific work plans for the purpose of ensuring the delivery of the Strategic Direction;
  - (iii) establish and administer a consultative board that would bring stakeholders together for the purpose of discussing and addressing cross-cutting issues;
  - (iv) initiate and prioritise modification proposals that, in its view, are necessary for the delivery of the Strategic Direction;
  - (v) in exceptional circumstances, intervene to take substantive and procedural control of an ongoing strategically important modification proposal, as appropriate; and
  - (vi) modify the licence conditions of code administrators to introduce the ability for the administrator to initiate and prioritise modification proposals that, in its view, are necessary for the delivery of the Strategic Direction or to improve the efficiency of governance arrangements.
- (b) A recommendation to DECC to initiate a legislative programme with a view to:
- (i) giving Ofgem the power to modify industry codes in certain exceptional circumstances; and
  - (ii) making the provision of code administration and delivery services activities that are licensed by Ofgem and specifying that such licence conditions will include appropriate targets to incentivise code administrators to take on an expanded role to be able to deliver pursuant to the Strategic Direction.

***Provisional decision on remedies***

11.14 We have provisionally decided that we should introduce the package of remedies summarised in this section.

11.15 In our judgement, these represent as comprehensive a solution as is reasonable and practicable to the AECs and resulting customer detriment that we have provisionally found.

### ***Next steps***

- 11.16 The CMA expects to publish the full provisional decision on remedies report on its webpages by 17 March 2016.
- 11.17 The parties to this investigation and any other interested persons are requested to provide any views in writing, including any suggestions for additional or alternative remedies that they wish the CMA to consider, by 7 April 2016 either by email to [energymarket@cma.gsi.gov.uk](mailto:energymarket@cma.gsi.gov.uk) or in writing to:

Project Manager  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London  
WC1B 4AD