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Dear Project Manager,

**Energy Market Investigation – Statement of Issues**

I am writing in connection with the above Investigation to set out Haven Power's (Haven) views on the Statement of Issues that you have released for comment.

Haven is a non-domestic electricity supplier that has been supplying Small Medium Enterprises (SME) since 2007. In 2009, we entered the Industrial & Commercial (I&C) sector and have been steadily growing our customer base in both areas and currently supply ~35,400 and ~7,300 MPANS in the SME and I&C sectors respectively. We have grown our business to this size over a number of years by using a variety of sales channels – telesales, face-to-face, third party intermediaries (TPIs) and by developing direct relationships with consumers

Haven is owned by Drax Power and sources the majority of its Power, ROC and LEC requirements from Drax Power on an arm's length basis.

Haven has considered the four theories of harm raised in the Statement of Issues from a Retail perspective. Where these also bear on Generation (theories one to three) we have included our comments in the response that has been sent by Drax Power.

**Theory of harm 4: Energy suppliers face weak incentives to compete on price and non-price factors in retail markets, due in particular to inactive customers, supplier behaviour and/or regulatory interventions.**

Firstly, we note that the I&C retail electricity market is highly competitive resulting in very competitive customer prices. As such we agree with Ofgem that the I&C market should not be within the scope of the investigation, although it represents a good example of a well-functioning market that may be used to assess potential Adverse Effects on Competition. We thus concentrate our response on the Microbusiness end of the SME retail market in line with Ofgem's reference.

Haven has aggressively competed to win all of its customers (both SME and I&C) and observe that the Microbusiness and the general SME marketplaces (for engaged customers) are also very competitive. We often see prices in these markets below our view of costs. This is driven we believe by suppliers taking a lifetime view of cost. This leads to lower sales costs as the lower prices provide a bigger incentive for customers.

In a well-functioning market we would expect to observe customers seeking out (subject to search costs) the best available electricity supply product for their circumstances. This is the case for engaged customers. Only efficient energy suppliers would thrive. However, we agree that competition is likely to be weaker than could be expected in a well-functioning market. This is due to the existence

of inactive customers (evidenced by the high former incumbent market shares of the large domestic supply companies), but most importantly due to excessive and counterproductive regulatory intervention.

#### *Excessive regulatory intervention*

The sheer quantity of regulation makes it very difficult for independent suppliers to compete in the market. For example the number of pages in the Supply Licence has more than doubled since 2006. This creates a great deal of regulatory uncertainty making it more difficult for new entrants to compete in the market, as they usually have lower resource available to 'manage' and track the regulatory environment. The costs of simply keeping up with the scale of regulatory change are considerable. The costs of engaging at the right level with these changes are larger still. Smaller suppliers such as Haven simply do not have the people or management bandwidth to follow all the changes and to contribute fully to consultations and change process. The more the resources used to engage with the regulatory process, the less are available to focus on the needs of customers.

#### *Counterproductive regulatory intervention*

In addition, while relevant to the domestic retail market, Ofgem's RMR reforms limits the ability of new entrant suppliers to differentiate themselves to attract customers from incumbent suppliers. We are aware that a significant potential scale new entrant to the domestic market has decided against market entry principally due to the extent of political and regulatory risk prevalent in the market. We understand that it was felt that the degree of uncertainty and level of regulatory/political intervention made it almost impossible to grow a business.

Ofgem's tariff restrictions in the domestic market are an example of counterproductive regulation, but are only one component of what has become a 'wall of restrictions' on supplier activity. We have seen increasing prescription of business processes coupled with value judgements that take little or no account of non-cost factors. These are based on a pure commodity model and exhibit no understanding, nor take any account of, service, convenience, supplier differentiation and other non-commodity factors. In addition, the scope of the Micro Business definition is so wide that it covers almost all businesses.

The uncertainty in the regulatory landscape, lengthy timeframes for decisions to be reached via industry change processes and the continual re-visiting of regulation has become a large issue for us.

#### *The case for better targeted regulation*

While there may be a case for regulatory intervention in some circumstances (for vulnerable customers for example) we note that the best customer outcomes occur where there is the least burdensome regulation i.e. the I&C market. It is especially worrying when it is suggested that the regulatory interventions made in the domestic retail market should be extended to the SME market. While these interventions may be warranted for some of the smallest business customers who are very similar to domestic consumers, the current definition of Micro Businesses goes well beyond this and covers almost all the market. Therefore to extend the benefits associated with the I&C market to the SME market we consider that the level and prescription of regulation should be similar and regulation should be reduced.

Some parties argue that these Micro Businesses need the same protection as domestic customers, but these same businesses are subject to a host of other legal requirements ranging from the accounting obligations of the various Companies Acts to the wide range of secondary legislation that businesses have to comply with. It seems wrong to extend domestic protection to businesses that are required by Parliament to comply with a far wider and more complex range of obligations.

#### *Third party charges*

Finally, we note that the volatility and unpredictability of third party charges (i.e. distribution costs, transmission costs, Balancing Services Use of System (BSUoS) costs, Renewables Obligation costs, FiT costs and, in addition from 2015, CfD FiT costs and Capacity Market costs) faced by suppliers in

the retail market is a significant concern and is increasing costs for customers. All market participants are exposed to these charges and there is little if anything a supplier can do to manage the risks associated with their volatility and unpredictability. **This results in significant risk premia being passed on to customers.** Whilst not necessarily a competition problem, it does negatively impact customers.

This is an inefficient way of delivering Government policy and the costs of network operation and maintenance. Most of these Third Party Charges are also accompanied by intensive collateral arrangements. This further adds to the costs of participating in the market. To reduce the risk premiums applied by suppliers we recommend that third party charging volatility and unpredictability is eliminated by fixing these costs well in advance and recovering any shortfall/surplus by adjusting the charges in future periods.

Due to the short time available between publication of the Statement of Issues and deadline for consultation responses, there has been limited time to produce further analysis to supplement the points made in this response. We would welcome the opportunity to discuss the points that we have made with you face-to-face and help determine what additional analysis the CMA would find helpful in carrying out the investigation.

If you would like to discuss any of the views expressed in this response, please feel free to contact me.

Yours sincerely,

By email

Peter Bennell  
Chief Executive, Haven Power