

Energy market investigation

Notice of possible remedies

7 July 2015

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Introduction

1. On 26 June 2014, the Gas and Electricity Markets Authority in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (as provided for by section 36A of the Gas Act 1986 and section 43 of the Electricity Act 1989), made an ordinary reference to the Chair of the Competition and Markets Authority (CMA) for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for an investigation into the Supply and Acquisition of Energy in Great Britain.
2. The CMA is required to determine whether any feature or combination of features of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK.¹ If the CMA decides that there is such a prevention, restriction or distortion of competition, there will be an 'adverse effect on competition' (AEC).²
3. In its provisional findings, a summary of which was published on 7 July 2015, the CMA has provisionally found AECs and in Section 12 of the provisional findings identifies those features that the CMA provisionally finds give rise to the AECs and the resulting detrimental effects on customers. These features are replicated in the notice of provisional findings, published on 7 July 2015.
4. Where the CMA finds that there is an AEC, it has a duty to decide whether it should take action itself and/or whether it should recommend others to take action to remedy, mitigate or prevent the AEC or any resulting detrimental effects on customers.³ If the CMA decides that such action is appropriate it must also decide what action should be taken and what is to be remedied, mitigated or prevented. In deciding these questions the CMA has a duty to achieve as comprehensive a solution as is reasonable and practicable to the AEC and any resulting detrimental effects on customers.
5. This Notice of possible remedies (Notice) sets out and invites comments on possible actions which the CMA might take in order to remedy, mitigate or prevent the AECs or any resulting detrimental effects on customers. Prior to deciding what, if any, action should be taken and by whom, the CMA will take into account all comments received in response to this Notice and will consult further. The parties to this investigation and any other interested persons are requested to provide any views in writing, including any suggestions for

¹ See section 134(1) of the Act.

² As defined in section 134(2) of the Act.

³ Section 134(4) of the Act.

additional or alternative remedies that they wish the CMA to consider, by 31 July 2015.

Criteria for consideration of remedies

6. When deciding whether any remedial action should be taken and, if so, what that action should be, the CMA will consider how comprehensively the possible remedy options – whether individually or as a package – address the AEC and/or its resulting detrimental effects on customers, and whether they are reasonable and practicable.⁴ The CMA will assess the extent to which different remedy options are likely to be effective in achieving their aims, including when they are likely to have effect.⁵ The CMA will generally look for remedies that prevent an AEC by extinguishing its causes, or that can otherwise be sustained for as long as the AEC is expected to endure. The CMA will also tend to favour remedies that can be expected to show results within a relatively short time. Where we consider that the relevant competitive dynamics of a market are likely to change materially over the next few years, we will consider including sunset provisions to limit the duration of certain remedies.
7. The CMA will be guided by the principle of proportionality in ensuring that it acts reasonably in making decisions about remedies. The CMA will therefore assess the extent to which different remedy options are proportionate, and in particular it will be guided by whether a remedy option:
 - (a) is effective in achieving its legitimate aim;
 - (b) is no more onerous than needed to achieve its aim;
 - (c) is the least onerous if there is a choice between several effective measures; and
 - (d) does not produce disadvantages which are disproportionate to the aim.⁶
8. The CMA may also have regard to the effects of any remedial action on any relevant customer benefits arising from a feature or features of the market giving rise to the AEC.
9. In the event that the CMA reaches a final decision that there is an AEC, the circumstances in which it will decide not to take any remedial action are likely to be rare but might include situations in which no practicable remedy is

⁴ [Guidelines for market investigations: Their role, procedures, assessment and remedies \(CC3\)](#), paragraph 330.

⁵ [CC3](#), paragraphs 327 & 330.

⁶ [CC3](#), paragraphs 335–337.

available, where the cost of each practicable remedy option is disproportionate to the extent that the remedy option resolves the AEC, or where relevant customer benefits accruing from the market features are large in relation to the AEC and would be lost as a consequence of any appropriate remedy.⁷

Possible remedies on which views are sought

10. In this Notice we describe the remedy options that we have considered so far and which we believe could be effective in addressing the AECs or their detrimental effects on customers. We describe each of these remedy options in turn, explaining the feature(s) they are meant to address and how they are intended to work.
11. We have distinguished in this Notice between those remedies that we currently believe may be appropriate (ie effective and proportionate) and those that we currently believe would not be. At this stage we are only minded to consider further those remedies in the first category but we will consider further other remedies if parties are able to provide relevant evidence and reasoning as to why these alternatives would be appropriate.
12. We invite views on the effectiveness and proportionality of those measures that we are currently minded to consider, and on the most effective means of specifying and implementing them. For each of the remedies set out in this Notice, we invite submissions on:
 - (a) **whether the remedy may give rise to unintended consequences and, if so, what these might be and how they might be prevented or mitigated;**
 - (b) **any relevant customer benefits to which we should have regard as being affected by the proposed remedy;**
 - (c) **any other relevant costs and benefits that we should take into account when considering the proportionality of each remedy;**
 - (d) **whether there are any alternative remedies that would be as effective as the proposed remedy in addressing the AEC and that would be less costly and/or intrusive;**
 - (e) **whether the CMA should seek to implement the remedy itself via an order (eg to make a licence modification), or whether it should make**

⁷ [CC3](#), paragraphs 355–369.

a recommendation that another body, such as Ofgem or DECC, implement the remedy; and

(f) the duration of the remedy and whether a ‘sunset’ clause should be included as part of the remedy design.

13. In addition to views on the effectiveness and proportionality of each of the remedies set out in this notice, we invite submissions on how the remedies may function in combination with one another. For example, would certain remedies only be effective in combination with other remedies? Alternatively, would the effectiveness of certain remedies be undermined by the imposition of other remedies set out in this notice?
14. In paragraphs 131 to 154, we set out our reasoning regarding the remedies that we currently believe are not likely to be effective and/or proportionate and which, therefore, we are not currently minded to explore further.

Absence of locational adjustments for transmission losses

15. As set out in Section 5 of our provisional findings, under the current arrangements, transmission losses are recovered by adjustments to the metered volumes of parties to the Balancing and Settlement Code (BSC), which encourages generators to produce approximately 1% more than they are contracted for and suppliers to contract for approximately 1% more than their customers demand. Transmission losses⁸ are allocated to parties uniformly, and independent of location, based on each party’s metered energy: 45% of all losses are allocated to generators; and 55% to suppliers. Transmission Loss Multipliers (TLMs) are used to scale up or down metered volumes. This allocation of transmission losses does not take account of the location of generators or demand from customers within the network.
16. We have reached a provisional finding that the current system of uniform pricing for transmission losses creates a system of cross-subsidisation that distorts competition between generators and is likely to have both short- and long-run effects on generation and demand:
- (a) In the short run, costs will be higher than would otherwise be the case, because cross-subsidisation will lead to some plants generating when it would be less costly for them not to generate, and other plants, which it would be more efficient to use, not generating. Similarly, cross-subsidies

⁸ There are two types of transmission losses: fixed and variable. Fixed losses occur in transformers and overhead lines at the points at which electricity is generated and consumed and do not vary significantly with power flow. Variable losses, in contrast, are caused by the current flow and vary with distance.

will result in consumption failing to reflect fully the costs of providing the electricity.

(b) In the long run, the lack of locational pricing may lead to inefficient investment in generation, including inefficient decisions over the extension or closure of plant. There could also be inefficiency in the location of demand, particularly high-consumption industrial demand.

17. Estimates of the detriment arising from the short-run costs vary from £160 million to £275 million over a ten-year period. There has been no attempt to quantify the long-run costs.

Remedy 1 – Introduction of a new standard condition to electricity generators’, suppliers’, interconnectors’, transmission, and distribution licences to require that variable transmission losses are priced on the basis of location in order to achieve technical efficiency

How the remedy would work

18. This remedy would address the AEC by imposing a licence condition to introduce in the BSC a cost-reflective charging mechanism, for example, in the form of variable Transmission Loss Factors (TLFs) that vary by season and by zone. We note that the current arrangements⁹ already have provisions to enable a non-uniform (ie location-dependant) allocation of variable transmission losses, in the form of a locational TLF, but the value of the TLF parameter is currently set to zero:

Transmission Loss Multiplier for generators: $TLM = TLF + 1 + TLMO^+$

Transmission Loss Multiplier for suppliers: $TLM = TLF + 1 + TLMO^-$

$TLMO^+ = - (0.45 \times \text{total losses volume}) / (\text{total generation metered volume})$

$TLMO^- = (0.55 \times \text{total losses volume}) / (\text{total supply metered volume})$

$TLF = 0$

19. Further, the current allocation of losses between generators and suppliers may result in inefficiencies in terms of the incentives it provides when choosing a location, and whether or not it minimises costs. As a result, we are also considering whether an alternative allocation of losses would be more efficient.

⁹ Provisions to enable the allocation of losses on a locational basis were introduced in the BSC since the New Electricity Trading Arrangements came into force in 2001.

Issues for comment 1

20. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:
- (a) **What would be an appropriate method for ensuring that variable transmission losses are priced on the basis of location?**
 - (b) **How should the variable transmission losses be allocated between generators and suppliers?**
 - (i) **Is the 45-55 split appropriate or could efficiency be improved further by changing this allocation?**
 - (c) **What will be the distributional impacts of this remedy? Should the CMA take these into account in coming to a view on the proportionality of this remedy?**
 - (d) **Should the CMA implement this remedy directly, ie via an order, or should it make a recommendation to Ofgem to initiate a BSC modification instead? Are there any particular aspects of Ofgem's objectives and duties to which the CMA should have regard if implementing this remedy by a licence change?**

Administration of the Contracts for Difference mechanism

21. As set out in Section 5 of our provisional findings, we consider that it is reasonable to assume that had the projects that were successful under the Final Investment Decision enabling for Renewables (FIDeR) scheme instead participated in the competitive Contracts for Difference (CfD) allocation process, they would have had to bid below the level of support they were awarded under FIDeR in order to secure CfDs. This would have resulted in lower electricity prices for customers. We consider that without further constraints on DECC's ability to award contracts outside the competitive process (ie via the CfD auction mechanism), further contracts may be awarded that do not benefit from competitive pressures.
22. In addition, decisions relating to the division of the technologies into separate pots, and the allocation of budgets to each pot, determine the level of support granted to each technology and therefore are critical to assess the impact, and expected gains, of this support.
23. Given the large amount of support due to go to renewable generators through CfDs (CfD payments are due to rise to £2.5 billion per year in 2020/21), we regard it as extremely important that the Department of Energy & Climate

Change (DECC) bases such decisions on robust analysis, and communicates its findings to stakeholders in a transparent manner.

24. Overall, we have reached a provisional finding that the mechanisms for allocating CfDs are a feature of the GB wholesale electricity market giving rise to an AEC due to the absence of an obligation for DECC to:
- carry out, and disclose the outcome of, a clear and thorough impact assessment supporting a proposal to use its powers to allocate CfDs outside a competitive process; and
 - regularly monitor the division of technologies between different pots, which form the basis of CfD auctions, and provide a clear justification when deciding on the allocation of budgets between the pots for each auction.

Remedy 2a – DECC to undertake and consult on a clear and thorough impact assessment before awarding any CfD outside the CfD auction mechanism

How the remedy would work

25. This remedy would seek to ensure that DECC allocates any future CfDs that it awards outside the competitive process only in situations in which it can demonstrate not only that the benefits of doing so outweigh the costs, but also that the proposed CfD award is the most desirable in terms of the ratio of benefits to costs among the options considered. We would expect DECC to meet this requirement by carrying out and consulting on a clear, detailed and thorough impact assessment for each such award. This assessment should clearly set out the likely impact of awarding the CfD, both in terms of customers' bills, and in terms of each of the three elements of the trilemma. It would require DECC to clearly state any assumptions being made and the relative weight attached to each of the factors taken into account in coming to a decision on whether to make an award outside the CfD auction mechanism, highlighting, for example, the trade-offs implied in terms of the trilemma objectives. This should both prevent further CfDs being awarded at strike prices that overcompensate projects, and being awarded to inefficient projects, and should ensure transparency over policy trade-offs.

Issues for comment 2a

26. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Would the remedy ensure that CfDs that are allocated outside the auction mechanism are awarded only when the benefits of doing so outweigh the costs?**
- (b) **How much discretion should DECC retain in terms of the weight it places on each factor that it takes into account in coming to a decision on which projects to award CfDs outside the CfD auction mechanism? Should DECC be required to consult on and determine these factors and their relative importance in advance to enhance transparency? Should the weighting of each factor be constant across projects?**
- (c) **In which, exceptional circumstances should DECC be able to allocate CfDs outside the auction process? For example, for reasons of industrial policy, where there are wider market failures, or where there may be insufficient competitors to hold an auction?**

Remedy 2b – DECC to undertake and consult on a clear and thorough assessment before allocating technologies between pots and the CfD budget to the different pots

How the remedy would work

- 27. This remedy would seek to ensure that DECC considers explicitly the trade-offs it faces in allocating technologies between pots and the CfD budget to the different pots:
 - (a) on a regular basis, DECC would be required to review the allocation of technologies between pots; and
 - (b) in advance of each future auction, DECC would be required to publish a clear justification for its proposed allocation of the CfD budget to each pot.
- 28. This should ensure that CfDs are allocated in a way that ensures the decarbonisation of GB electricity generation at the lowest long-term costs.

Issues for comment 2b

- 29. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:
 - (a) **Would the remedy ensure that future decisions by DECC on the allocation of technologies and the CfD budget to the different pots are taken in a robust and transparent manner?**

- (b) **Is the remedy likely to result in a positive change in how DECC makes decisions regarding the allocation of the CfD budget to the different pots?**
- (c) **How regularly should DECC review the allocation of technologies between pots? What information should DECC publish when deciding to amend the allocation of technologies between pots? Should it also on a regular basis consult and/or publish reasons for not amending the allocation of technologies between pots?**
- (d) **Should DECC be limited in the maximum proportion of the CfD budget that it can allocate to each of the different pots?**

30. We note that we are not considering any remedies that would seek to ‘undo’ any of the CfDs that have already been awarded.

Weak customer response from domestic and microbusiness customers and the simpler choices component of the Retail Market Review rules

31. In this section, we consider remedy options to address the overarching features of weak customer response in the markets for the retail supply of gas and electricity for both domestic consumers and microbusinesses. While there are certain differences in the exact combination of features that contribute to the overarching feature of weak customer response in each case, we observe that there is significant overlap and, therefore, there is also significant overlap in the types of remedies that we are considering. In this section we also consider remedy options in relation to the ‘simpler choices’ component of the Retail Market Review (RMR) rules. We have grouped this particular AEC finding together with the AEC findings arising from weak customer response on the basis that Ofgem originally intended the simpler choices component of the RMR rules to address weak customer response from domestic customers. Therefore, it is logical to consider remedies to address distortions arising from this regulatory intervention alongside remedies to the problem it was intended to address.
32. Given the extent of previous regulatory interventions in the retail energy markets, before deciding whether to impose remedies in order to address the provisional AECs identified, it is important to achieve clarity on the general principles that could underlie regulatory interventions in the retail markets. We think that achieving clarity of regulatory principles is particularly important to ensure stability and consistency of approach; which in turn should enhance transparency and trust. Whilst we note the weight of previous regulatory

intervention in this sector and the desirability of minimising further interventions, our current view is that certain interventions are likely to be required in order to align the regulatory framework with the principles that we consider should prevail. We begin this discussion with a discussion of the rationale for our approach to remedies in the retail supply of energy.

Our approach to remedies in the retail supply of energy

33. The opening up of a market to competition has the potential to lead to significant benefits to consumers. However, in retail energy markets, competition requires a good level of customer engagement in order to be effective, in particular customers need to respond to price differentials by switching their custom to cheaper suppliers. This appears to have happened only to a limited extent in the GB retail energy markets since liberalisation. Moreover, since retail suppliers typically charge different prices to different segments of the markets, it is generally not the case that the need to attract those customers who are engaged keeps prices competitive for all customers. In gas and electricity, our analysis shows that there is wide variation in the prices that end-users pay for the same commodity, and that a significant proportion of end-users are paying more than they need to. Market liberalisation has also raised challenges in terms of customer engagement and trust, as a result of the complexity arising from traditional meters and bills, as well as from the complex structure of tariffs.
34. While one possible response might be to return to full price regulation, this would remove any prospect of reaping the benefits from the competitive process both now and in the future. The approach to remedies that we are considering is therefore based principally on enabling competition and supporting customer engagement, while considering the need for some form of protection from high prices for disengaged customers. On this basis, we have been guided by three key principles in identifying and considering potential remedies.

Principle 1: Provide the framework for effective competition

35. The evidence suggests that active customers have benefited from competition. In addition to lower prices, competition has the potential to drive innovation, both in terms of driving down costs and in terms of developing new products. With new technologies such as smart meters being rolled out in the future, the potential benefits from competition are likely to increase. In assessing remedies, we are mindful of the need to allow market forces to work in order to maximise the benefits to customers.

Principle 2: Facilitating widespread customer engagement

36. For liberalised retail energy markets to work effectively customers need to be adequately engaged. It is through customers shopping around and making choices between the offerings of rival suppliers that the benefits of competition emerge. We have, therefore, considered a range of remedies to address barriers to customer engagement.

Principle 3: Providing transitional safeguards for disengaged customers

37. While measures to promote customer engagement are likely to have a beneficial effect, there may remain a significant number of disengaged customers for the foreseeable future. The retail energy markets have been open to competition for 17 years and lack of engagement is still a significant issue. We have provisionally found this disengagement and weak customer response to be a feature of both the domestic and SME retail energy markets. We note that the key characteristics of both domestic and microbusiness energy demand are:
- (a) The gas and electricity that customers consume is a homogeneous good, entirely unaffected by the choice of supplier, which means that customers are likely to attach a particular importance to the price of energy.
 - (b) Traditional meters and bills do not allow for short-term demand response and are likely to create other barriers to engagement in energy markets.
38. Moreover, in the case of domestic customers, we observe that:
- (a) energy bills are a significant proportion of expenditure in many households, and a higher proportion for those on low incomes; and
 - (b) our survey evidence shows that there is a somewhat higher proportion of those with some of the characteristics of vulnerable customers among the most disengaged and inactive.

Therefore, we are considering whether it may be necessary to provide safeguards to protect the interests of disengaged domestic and microbusiness customers, alongside measures to increase engagement, at least for a period of transition to effective competition in retail markets.

Types of remedies considered

39. We next considered the broad types of remedies that may be effective in addressing the AECs resulting from weak customer response and the 'simpler choices' component of the RMR rules. The first type of remedies are 'enabling

measures', which seek to address at source one or more features of the domestic and SME retail energy markets that give rise to weak customer response, by encouraging customers to engage more actively with the markets. In our guidance,¹⁰ we highlight two types of enabling measures that are relevant to these AECs:

- (a) **Informational remedies**, which are aimed at giving customers information to help them make choices and thereby increase the competitive pressure on firms in a market; and
- (b) **Market-opening measures**, which are intended to open up a market to new sources of competition by removing or reducing barriers to entry or expansion, or to facilitate switching.

40. Our findings indicate that there is a spectrum of customers, ranging from those who are completely disengaged to those who are fully engaged. The rationale of imposing enabling remedies would be to increase the competitive constraint on energy suppliers by moving customers along the spectrum towards increasing levels of engagement.
41. In identifying potential enabling measures, we have considered how best to encourage different groups of customers to engage in the markets. Our current view is that different remedies are likely to be required for different types of customers (eg those on prepayment meters may require different enabling measures than those on traditional meters).
42. The second type of remedy is one which controls outcomes. This type does not seek to address the underlying features of the domestic and SME energy retail supply markets that give rise to weak customer response, but rather to mitigate the detriment to customers resulting from the feature. An example of such a remedy would be a price control. Our guidelines highlight that such measures are often used in regulated sectors where it may not be feasible to introduce effective competition.¹¹
43. We note that a number of enabling measures, including the provision of additional information and more rapid switching, have already been introduced by Ofgem, DECC and the European Commission to improve the functioning of retail energy markets. While we will take into account how these may influence the development of the markets over the next few years, our provisional findings indicate that these have not been effective (at least, to date) in ensuring that the markets work sufficiently well to prevent these AECs

¹⁰ CC3, paragraph 376.

¹¹ CC3, paragraph 378.

from arising. As highlighted in our guidelines, we will tend to favour remedies that can be expected to show results within a relatively short time frame. In addition, we generally prefer to implement remedies that address the underlying causes of the AEC, ie enabling measures. However, in order to fulfil our responsibility to achieve as comprehensive a solution as is reasonable and practicable to the AEC and any detrimental effects on customers, we will consider introducing measures which mitigate the harm to customers. We would regard any such measures to control outcomes as transitional in nature, mitigating the customer detriment arising while other remedies take effect, improving the functioning of competition. As a result we are currently considering a package of remedies that includes enabling remedies to encourage more engagement alongside remedies that control outcomes in order to protect disengaged customers.

Remedies that we are considering

44. In this section, we set out the remedies packages that we consider may be effective and proportionate in remedying the features identified and/or the detriment arising from the associated AECs. Following the principles set out above, we have organised these remedies into three categories:
 - (a) Remedies to provide a framework for effective competition between retail energy suppliers.
 - (b) Remedies to facilitate widespread engagement by domestic and microbusiness customers.
 - (c) Remedies to safeguard the interests of disengaged customers and encourage longer-term engagement.
45. Our current view is that measures from across these broad categories of remedies could constitute an overall package of measures that would together address the AECs we have identified, with important interlinkages between them in terms of facilitating the competitive process.
46. Within each category of remedies, we have set out a number of options that we are considering. We invite parties to comment both on the individual remedies proposed and on the effectiveness and proportionality of the potential package and the underlying logic of such a package as set out in this section.

Remedies to provide the framework for effective competition between retail energy suppliers

47. We have provisionally found that the ‘simpler choices’ component of the RMR rules is a feature that gives rise to an AEC in the retail supply of gas and electricity to domestic customers, through reducing retail suppliers’ ability to innovate in designing tariff structures to meet customer demand and by softening competition between price comparison websites (PCWs). We observe that innovation in products and/or services is one of the most important benefits that customers derive from a competitive market. Innovation is likely to become more important over time in the domestic electricity retail market in particular, as the introduction of smart meters creates greater opportunities for time-of-use tariffs and peak-load shifting, with the potential to reduce costs for electricity customers. Similarly, we consider that rivalry between PCWs, which provide comparison services of energy tariffs to domestic customers, is a particularly important channel by which competitive pressure can be exerted on energy suppliers to reduce prices to their customers. As PCWs help customers to choose the best value tariffs, energy suppliers must compete to offer lower prices.

Remedy 3 – Remove from domestic retail energy suppliers’ licences the ‘simpler choices’ component of the RMR rules¹²

- *How the remedy would work*

48. This remedy would seek to enhance competition between domestic retail energy suppliers by allowing them to offer customers as many tariffs and/or tariff structures as they wished. This would give domestic retail energy suppliers an incentive to tailor tariffs to the needs and/or preferences of different customers, allowing them to compete vigorously for these customers. For example, domestic retail energy suppliers could offer various combinations of standing charges and unit rates to appeal to customers with different levels of demand. It should also facilitate competition between PCWs by allowing them to negotiate tariffs with domestic energy suppliers, exerting downward pressure on prices.¹³
49. This remedy is intended to work alongside other key elements of the overall remedies package, including encouraging the development and use of PCWs

¹² We have not received any submissions raising concerns regarding the impact of Ofgem’s rules on doorstep selling. We recognise the importance of customers being provided with clear and accurate information in order to make informed choices regarding their energy tariffs. Therefore, we are not currently minded to consider remedies that would relax Ofgem’s required standards of conduct in relation to doorstep sales.

¹³ This competition between PCWs should exert downward pressure on both the prices charged by energy suppliers and on the levels of commissions charged by the PCWs themselves.

and measures to protect those consumers who are disengaged and may find it difficult to cope with increased tariff complexity.

50. We observe that the removal of the 'simpler choices' component of the RMR rules would allow energy suppliers to offer different tariffs on different PCWs, therefore increasing price competition between PCWs to attract domestic customers. This may create incentives for PCWs to seek to impose most-favoured nation (MFN) clauses on energy suppliers in order to reduce the competitive pressures they face. We note that such clauses may restrict competition and therefore infringe UK and/or EU competition laws. We would expect that any such conduct could be addressed through enforcement of UK and/or EU competition laws.

- *Issues for comment 3*

51. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Would this remedy be effective in increasing competition between domestic retail energy suppliers and/or between PCWs? What additional tariffs would energy suppliers be likely to offer that they currently do not due to the RMR restrictions?**
- (b) **Removing the four-tariff rule is likely to increase the range of tariffs on offer and result in different tariffs being offered on different PCWs.¹⁴ Are there, therefore, any remedies that the CMA should consider alongside this remedy, to encourage domestic customers to use more than one PCW in order to facilitate effective competition between PCWs and domestic energy suppliers?**
- (c) **We note that if this remedy were to be imposed, Ofgem's Confidence Code requirement for PCWs to provide coverage of the whole market appears likely to become impractical as the number of tariffs offered increases and PCWs agree different tariff levels and commissions with energy suppliers. Should this element of the Confidence Code be removed, therefore, as part of this remedy? If so, are alternative measures to increase confidence in PCWs required? For example, in order to maintain transparency and trust, should PCWs be required to provide information to customers on the suppliers with which they have agreements and those with which they do not?**

¹⁴ The four-tariff rule effectively ensures that all PCWs offer the same range of tariffs to customers as they cannot negotiate discounts with energy suppliers.

- (d) **Rather than removing all limits on tariff numbers and structures, would it be more effective and/or proportionate to increase the number of permitted tariffs/structures? If so, how many should be permitted and which tariff structures should be allowed?**
- (i) **For example, would requiring domestic energy suppliers to structure all tariffs as a single unit rate in pence per kWh, rather than as a combination of a standing charge and a unit rate, reduce complexity for customers, while avoiding restricting competition between PCWs? Alternatively, would such a restriction on tariff structures have a detrimental impact on innovation in the domestic retail energy markets?**

Remedies to facilitate widespread engagement by domestic and microbusiness customers

52. As set out in Section 12 of our provisional findings, we identified a number of features of the markets for the retail supply of energy to domestic customers that combine to give rise to an AEC through an overarching feature of weak customer response. These are:
- (a) customers have limited awareness of and interest in their ability to switch supplier due to the homogeneity of gas and electricity and the role of traditional meters and bills;
 - (b) certain customers face actual and perceived barriers in accessing and assessing information arising from:
 - (i) the complex information provided in bills and the structure of tariffs, which combine to inhibit value-for-money assessments of the available options, particularly on the part of customers who lack the capability to search and consider options fully; and
 - (ii) a lack of confidence in and access to PCWs;
 - (c) customers face actual and/or perceived barriers to switching, such as where customers have uncertified meters or experience erroneous transfers; and
 - (d) the use of prepayment meters by some customers with the associated technical constraints.
53. We identified a number of features of the markets for the retail supply of energy to microbusinesses that combine to give rise to an AEC through an overarching feature of weak customer response. These are:

- (a) customers have limited awareness of and interest in their ability to switch supplier due to the homogeneity of gas and electricity and the role of traditional meters and bills;
 - (b) customers face actual and perceived barriers for customers in accessing and assessing information arising from:
 - (i) a general lack of price transparency concerning tariffs; and
 - (ii) the role of third party intermediaries (TPIs), including alleged TPI malpractice and a lack of transparency over TPIs' incentives when providing advice and/or information to customers; and
 - (c) some microbusiness customers are on auto-rollover tariffs and are given a narrow window in which to switch supplier and/or tariff.
54. We note that the role of traditional meters and bills is a fundamental characteristic that contributes to the features of customers' limited awareness and/or interest in their ability to switch supplier concerning both provisional AEC findings. The roll-out of smart meters¹⁵ will potentially address these features in both of the retail energy markets. In addition, the introduction of smart meters (in combination with next-day switching)¹⁶ has the potential to address the features of barriers to switching and prepayment meters in the markets for the retail supply of energy to domestic customers. In paragraphs 56 to 65, we consult on potential additional remedies to the features of the domestic retail energy supply markets of barriers to switching and prepayment meters.
55. In the rest of the section, we consult on potential remedies to address the other features giving rise to an AEC in the domestic and SME retail energy supply markets, respectively.

Remedy 4 – Possible measures to address barriers to switching by domestic customers

56. We have provisionally found that customers face actual and perceived barriers to switching, such as uncertified meters and erroneous transfers. In Section 8, we set out the evidence that we have collected on two issues associated with meters. First, we observed that a proportion of domestic customers had uncertified electricity meters, which created additional

¹⁵ Smart meters have a range of additional functions as compared with traditional electricity and gas meters, including the ability to indicate to customers how much energy they are using and how much it is costing them via displays in their homes, and providing real-time meter readings directly to suppliers.

¹⁶ Ofgem (10 February 2015), [Decision on moving to reliable next-day switching](#).

inconvenience for them when switching suppliers (and costs for the supplier to which they switched). Second, we noted that while most energy suppliers had an obligation to inspect the gas meters of their customers every two years, Centrica had been granted a derogation from this obligation, allowing it to carry out these inspections every five years instead. As a result, when Centrica's customers switched to other suppliers, there was a 60% chance that their meters would be overdue for inspection, imposing additional costs on Centrica's competitors. We also noted that erroneous transfers have the potential to cause material detriment to those who suffer from them and may thereby impact customers' ability to switch as well as their perception of switching.

57. We note that, in addition to the roll-out of smart meters, the switching process is likely to be facilitated further by Ofgem's recent decision to replace the existing network-run gas and electricity switching services with a new centralised switching service, run by the Data and Communications Company, in order to facilitate reliable next-day switching.
58. We are currently considering a number of potential remedies to address barriers to switching for domestic customers.

Remedy 4a – Measures to address barriers to switching by domestic customers

59. We invite responses to the specific questions set out in this paragraph, including views on the effectiveness and proportionality of the remedies considered, as well as whether there are any alternative or additional remedies that we should be considering to address barriers to switching:
- (a) Will the roll-out of smart meters address the feature of uncertified electricity meters? If not, what additional remedies should we consider to address this feature?**
 - (b) Will the roll-out of smart meters address the barriers to switching faced by customers with Dynamic Teleswitched (DTS) meters? If not, what additional remedies should we consider to address this feature?**
 - (c) Should PCWs be given access to the ECOES database (meter point reference numbers) in order to allow them to facilitate the switching process for customers?**
 - (i) To what extent would this reduce the rate of failed switches and/or erroneous transfers?**

- (ii) **Are there any data protection issues we should consider in this respect?**
 - (iii) **Will access to this database still be relevant once smart meters have been introduced?**
 - (d) **Should there be penalties for firms that fail to switch customers within the mandated period (currently 17 days, next day from 2019)? How should these penalties be administered? At what level should the penalties be set? Should customers who suffer a delayed or erroneous switch receive the penalty as compensation?**
 - (e) **When next-day switching is introduced, will a ‘cooling-off’ period still be required? Could it be avoided by requiring that no exit fees are charged within two weeks of switching?**
 - (f) **Are specific measures required to facilitate switching for customers living in rented accommodation (either social or private)?**
60. In light of the introduction of smart meters, we are considering whether any other remedies may be required to address barriers to switching for domestic customers. For example:
- (a) **Does the ‘Midata’ programme, as currently envisaged, provide sufficient access to customer data by PCWs to facilitate ongoing engagement in the market? Should PCWs – with customer permission – be able to access consumer data at a later date to provide an updated view on the potential savings available?¹⁷**
 - (b) **Do customers need more or better information or guidance on how their new smart meters will work?**

Remedy 4b – Removal of exemption for Centrica on two-year inspection of gas meters

- *How the remedy would work*

61. This remedy would seek to ensure a level playing field between retail gas suppliers, by removing Centrica’s derogation from the requirement to inspect meters every two years.

¹⁷ For example, customers may wish to receive updates from PCWs when a better tariff becomes available for them.

- *Issues for comment 4b*

62. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:
- (a) **Would this remedy be effective in removing the distortion to competition that currently exists as a result of Centrica’s derogation on the inspection of gas meters?**
 - (b) **Would it be preferable to remove Centrica’s derogation, or extend the derogation to other suppliers?**
 - (c) **If Centrica’s derogation were removed, should it be phased out over a period of time? If so, how long should Centrica be given in this respect?**
63. We invite submissions on whether any of the potential remedies set out in paragraphs 59 to 62 would have beneficial effects on the supply of energy to microbusinesses?

Remedy 5 – Requirement that energy firms prioritise the roll-out of smart meters to domestic customers who currently have a prepayment meter

- *How the remedy would work*

64. As noted in paragraph 54, we consider that the roll-out of smart meters will address the feature relating to the use of prepayment meters. We observe that customers with prepayment meters stand to benefit from smart meters to an even greater extent than customers with traditional meters due to the technical constraints imposed by the former. This remedy would require domestic retail energy suppliers to prioritise the roll-out of smart meters to prepayment customers in order to facilitate access to a wider range of domestic tariffs. There are two potential specifications of this remedy:
- (a) Domestic retail energy suppliers would be required to stop installing ‘dumb’¹⁸ prepayment meters in customers’ homes and, from the point of implementation, ensure that all future installed prepayment meters are smart meters; or

¹⁸ I.e. electricity and gas meters that do not have the functionality of smart meters.

- (b) Domestic retail energy suppliers would be required to install smart meters in homes that currently have prepayment meters before seeking to install them in homes that currently have traditional meters.

- *Issues for comment 5*

65. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Would this remedy be effective in allowing prepayment customers to engage fully in the market and benefit from a wider range of tariffs? Would it be effective in reducing the costs of supply to prepayment customers?**
- (b) **Which version of this remedy would be more effective and/or proportionate?**
- (c) **Would any additional or alternative measures be required to ensure that this remedy comprehensively addressed the overarching feature of weak customer response arising in particular from those with prepayment meters?**
- (d) **What issues may arise as a result of prioritising the installation of smart meters in the homes of customers who currently have prepayment meters?**
- (e) **Would it be more effective and/or proportionate to require energy suppliers to accelerate the roll-out of smart meters across the retail markets as a whole, in order to facilitate engagement more broadly, rather than focusing on customers on prepayment meters?**

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

66. As explained in paragraph 47, PCWs are an important means by which effective competition can develop in the domestic retail markets. In particular, we note that PCWs are well-placed to:

- (a) raise awareness among customers of both their ability to switch energy suppliers and the potential benefits that they might obtain from doing so; for example, through marketing campaigns;
- (b) reduce search costs for customers, informing and guiding them as to the right products for their needs; and

- (c) exert competitive pressure on energy suppliers by enhancing price transparency and facilitating the purchasing process for consumers. We note that price transparency is particularly relevant when making choices regarding homogeneous products such as gas and electricity.
67. In order to function effectively as retailers, PCWs need to be trusted by customers. The remedy we consider in this section, therefore, is designed to improve trust in PCWs, and thereby, to encourage greater use by customers. In addition to the potential remedy set out below, we invite submissions on any other remedies that may be required to ensure that PCWs are able to operate as effectively as possible in order to facilitate engagement in the markets by domestic customers.
- *How the remedy would work*
68. Ofgem would operate an independent price comparison service with whole-of-market coverage. This approach has been taken in other markets, including Australia, where the energy market regulator operates a comparison website called EnergyMadeeasy.¹⁹ The rationale for setting up an independent price comparison service with all available tariffs listed is to allow domestic customers who have concerns about the quotes they receive on other PCWs to use this service to check the tariffs that they have been quoted elsewhere. Therefore, the aim of this remedy is to increase customers' trust in the services offered by PCWs, encouraging engagement and switching.
69. We also note our provisional finding of a similar feature in the SME retail energy supply markets of actual and perceived barriers to microbusiness customers from accessing and assessing information as a result of a general lack of transparency, and the role of TPIs. As we discuss in more detail in paragraphs 72 to 76, there are currently very few PCWs for microbusinesses. We note that this remedy concerning domestic customers could also be extended to include a price comparison service for microbusinesses, which could serve to remedy this feature of the SME gas and electricity markets.
70. As noted in paragraph 51(c), we recognise that the imposition of Remedy 3, which is likely to encourage an increase in the number of tariffs, is likely to create significant practical difficulties for any price comparison service that wishes to provide whole-of-market coverage. In the questions below, we invite submissions on a number of specific areas relating to how such an independent service should work in order to be most effective.

¹⁹ www.energymadeeasy.gov.au/offer-search.

- *Issues for comment 6*

71. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Would this remedy be effective in increasing customers' trust in PCWs and thereby encourage engagement in the markets and switching?**
- (b) **Should this service be online-only, or should it also operate over the telephone for those customers without access to the internet?**
- (c) **Is there a risk that such an independent service could undermine the development of other PCWs in the energy sector? How could this risk be mitigated?**
- (d) **Should the Ofgem website quote the energy suppliers' list prices only? Or should it seek to provide full details of all quotes available on the market (including on other PCWs), ie function as a meta-PCW?**
- (e) **How could we ensure that an Ofgem price comparison service was robust in terms of offering all tariffs available on the market? Should there be an obligation on retail energy suppliers and/or PCWs to provide information to Ofgem on their tariffs?**
- (f) **Should any price comparison service operated by Ofgem be transactional, ie be able to carry out switches for consumers, or should it provide information only?**
- (g) **What would be the likely costs to Ofgem of offering this type of price comparison service? Would Ofgem need additional funding and/or statutory powers in order to provide this type of service? If so, where should this funding come from?**
- (h) **How should customers be made aware of the existence of this service? Should information be provided by energy suppliers on bills/during telephone calls? Should PCWs be required to provide links to the Ofgem website during the search process to allow customers to cross-check prices?**
- (i) **Is there any additional information that Ofgem should provide on its website relating to energy suppliers and/or tariffs to facilitate the customer search and switching process?**

Remedy 7 – Measures to reduce actual and perceived barriers to accessing and assessing information in the SME retail energy markets

72. We have provisionally found that the microbusiness segment of the SME retail energy markets are characterised by a lack of price transparency, which results from many microbusiness tariffs not being published, a substantial proportion of microbusiness tariffs being individually negotiated between customer and supplier, and from the nascent state of PCWs for non-domestic customers.
73. In addition, we have provisionally found that the role of TPIs in the microbusiness segment of the SME retail energy markets is an additional aspect that contributes to a feature of actual and perceived barriers to accessing and assessing information in the SME retail energy markets. In particular, we observed that trust in TPIs is likely to have been reduced in the microbusiness segment due to alleged TPI malpractice, and that customers were not necessarily aware of the incentives (in the form of commissions that TPIs receive) not to give customers the best possible deal.
74. We note that Remedy 6 could also apply to microbusinesses and thereby serve to increase price transparency in the markets. In this section, we consider two additional remedies that would facilitate the development of TPIs and PCWs serving the microbusiness segment in particular.

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

- *How the remedy would work*

75. This remedy would provide greater price transparency by ensuring that microbusinesses were able to check prices for their gas and electricity supply on the energy suppliers' websites. We reasoned that it could also facilitate the development of PCWs in this segment of the SME markets and that the existence of these services would be likely to act as a competitive constraint on TPIs, both in terms of prices and in terms of the quality of service provided.²⁰ Several potential reasons were put forward to explain the relative lack of PCW involvement in the microbusiness segment of the SME markets, including the additional complexity associated with providing prices to microbusinesses, for example, as the result of the greater range of meter types in use and the greater levels of information required in order to provide

²⁰ As for domestic customers, we consider that PCWs could significantly increase the level of engagement in the markets by microbusinesses if they increased their focus and marketing activity in this area.

a quote.²¹ In addition, one PCW highlighted that the lack of standardised formats made it difficult to upload data to its website. However, we invite further submissions on the barriers to PCW involvement in the microbusiness segment and responses on the likely effectiveness of this remedy in that context.

- *Issues for comment 7a*

76. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Would this remedy be effective in increasing price transparency for microbusiness gas and electricity tariffs? Would it serve to make comparisons between different suppliers easier, either directly or by encouraging the development of PCW services for microbusinesses? If not, are there other measures that would encourage this development either as an alternative to this remedy or in conjunction with it?**
- (b) **Do microbusinesses have sufficient access to the information they need (for example on their meter types) in order to engage effectively in the search and switching process?**
- (c) **How long should energy suppliers be given to provide the required information?**
- (d) **Should energy suppliers be permitted to fulfil this requirement by providing an automated quoting service on their websites (where microbusinesses can put in their details in order to obtain quotes) rather than a list of prices?**

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

- *How the remedy would work*

77. This remedy seeks to address directly the aspect of a lack of transparency over TPIs' incentives to recommend the best possible deal to customers and its contribution to a feature of actual and perceived barriers to accessing and assessing information by microbusiness customers. It would require that TPIs

²¹ For example, Make It Cheaper told us that business customers would need to provide information on their SIC business codes and exact contract end dates. This could mean that the conversion rate of visitors to switches would be lower than in the domestic segment and that this complexity made it more difficult to ensure that an online calculator is accurate, compared to speaking to a customer directly.

provide microbusinesses with information on their incentives, including for example:

- (a) the extent to which they cover the markets, ie highlighting which suppliers they have agreements with and which they do not;
- (b) how they are paid for their services, eg by commission from energy suppliers; and
- (c) whether they will provide the customer with the cheapest quote (or cheapest quotes) among those firms with which the TPI has an agreement to supply customers, or whether only a selection of quotes will be provided.

78. We note that the issue of commissions has been addressed in a number of other markets, with a range of solutions up to and including the banning of all commission payments. We do not currently believe that such a ban would be justified in this case but we invite respondents to make submissions on whether there are models from other industries that we should be considering applying in this case.

79. We note that Ofgem has also identified this issue and has considered introducing a code of conduct for TPIs to address these concerns. Ofgem's draft code of conduct for TPIs sets out a number of requirements designed to improve the behaviour of TPIs and thereby increase trust and engagement in the market on the part of microbusinesses.²² We consider that this code of conduct would have a positive effect on TPI behaviour but our current view is that more stringent disclosure requirements may be required in relation to incentives.

- *Issues for comment 7b*

80. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Would this remedy be effective in improving transparency over incentives and trust in TPIs in the energy sector? How could the CMA ensure that this remedy was enforced, ie that TPIs were providing the specified information?**
- (b) **What information should be provided by TPIs to microbusinesses in order to enable them to make informed choices?**

²² Ofgem (2013), [Code of practice for non-domestic third party intermediaries](#) (draft).

- (c) **Could the provision of certain types of information have unintended consequences (eg customers choosing tariffs based on commission rates rather than total price)? If so, are there any steps that could be taken to mitigate this effect?**
- (d) **Should the specified information be provided to customers in writing or orally (or both)? At what stage in the sales process should this information be provided?**
- (e) **Should this remedy be introduced in addition to Ofgem’s proposed code of conduct? Or should only this remedy (or only Ofgem’s code of conduct) be introduced?**
- (f) **Are there any additional measures that should be implemented alongside this remedy to enhance its effectiveness?**

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

81. A further area in which we have provisionally found a feature giving rise to an overarching feature of weak customer response is in relation to auto-rollover tariffs where customers are signed up for an initial period at a fixed rate, with an automatic rollover for a subsequent fixed period at a rate the customers have not negotiated with no exit clause and a narrow window for switching supplier and/or tariff.

- *How the remedy would work*

82. This remedy would prevent energy suppliers from including in their contracts terms which allow them to automatically roll a customer on to another fixed-term contract if the customer fails to choose an alternative contract within the switching window. Firms would be free to roll customers on to flexible contracts, ie ones that the customer could exit having provided a reasonable period of notice to the supplier.

- *Issues for comment 8*

83. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Would this remedy be effective in allowing microbusiness customers greater opportunity to engage (by removing the narrow window in which they can choose not to roll-over automatically)?**
- (b) **Are there any means by which energy suppliers could circumvent this remedy to continue to lock customers into energy tariffs that they have not chosen for extended periods of time?**
- (c) **What is the minimum or maximum notice period that customers should be required/allowed to give in order to exit a contract that they have been rolled on to?**
- (d) **Should energy suppliers be required to inform customers that they are nearing the end of their contract and prompt them to switch?**

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

84. We have provisionally found that there are relatively high levels of dis-engagement among both domestic and microbusiness energy customers. Therefore, in addition to the remedies set out above, we are considering whether there are any additional measures that might be required to facilitate the process of accessing and assessing information in the industry. We invite submissions on whether energy suppliers should be providing their customers with more, less or different information in order to best encourage engagement. For example:

- (a) **Does the current format and content of energy bills facilitate engagement by customers? Is there additional information that should be included on bills? Should the quantity of information on bills be reduced to enhance clarity?**
- (b) **When customers seek to switch tariffs, are they given enough/too much information on the terms and conditions of their new contract?**
- (c) **Should customers be prompted to read their meters (quarterly or annually), either by information on their bill or by a phone call from their energy supplier? Would this increase engagement by improving the accuracy of billing?**
- (d) **Once customers reach the end of a contract period, should subsequent bills highlight that they have now been moved onto the standard variable tariff and/or other default tariff and encourage**

them to check whether they are on the most appropriate tariff for them?

Remedies to provide suitable safeguards for disengaged domestic and microbusiness customers

85. On the basis of our knowledge of the current market, it is possible that the potential remedies set out in the previous section, however well designed and implemented, will take time to deliver the benefits of competition to those customers who are disengaged. Therefore, as explained in paragraphs 37 to 43, in addition to remedies designed to enable the development of competition in the GB domestic and SME retail energy markets, and encourage widespread engagement, we are also considering remedies to provide protection for disengaged customers from the exploitation of market power by domestic and SME retail energy suppliers.
86. When considering remedies to provide protection, we have taken into account two key goals:
- (a) The means of providing protection to disengaged customers should not undermine engagement in the market. We took this into account both when considering the types of protection that might be offered to these customers and in considering additional measures (alongside those already discussed) to prompt the disengaged customers who may benefit from this protection against high tariffs to become more engaged.
 - (b) To provide transitional protection against high tariffs. For many households and microbusinesses, and particularly those who are disengaged, energy bills are a significant cost. There is therefore potentially a need to provide some transitional safeguards for disengaged customers, while also encouraging and enabling them to engage in the market.
87. We consider that an approach that is targeted specifically at these disengaged customers may be more proportionate than remedies that would affect all customers. We noted that focusing on customers who are on tariffs which they might not have actively chosen (ie default tariffs) was an obvious point to start from in considering remedies in this area. For domestic customers, these default tariffs are currently the standard variable tariffs, while for microbusinesses they may include evergreen, roll-over, deemed, and out-of-contract tariffs. By definition, these default tariffs are those that inactive customers find themselves on. As such, they potentially provide a good means for targeting measures to support those who are disengaged in the markets.

88. Remedies 10 and 11, therefore, aim to (a) prompt customers who are on tariffs that they have not actively chosen to engage in the markets and make an informed choice regarding their next tariff; and (b) prevent energy suppliers from rolling inactive customers, ie those who do not engage in spite of the prompts provided, on to default contracts on which they pay high prices. Rather, these customers should be rolled on to a safeguard tariff, as described in paragraphs 91 to 95.

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

89. Customers who are on tariffs that they have not actively chosen would receive 'prompts' to engage in the markets. We observe that previous interventions in retail energy markets appear to have had limited success in engaging inactive customers. Therefore, our current view is that any new remedies to prompt engagement may need to stretch beyond the provision of information in order to achieve their goal. We are interested to receive views on the forms these measures might take.
90. We invite parties to provide submissions on the following issues:
- (a) **What information should be included in the prompts to customers on default tariffs in order to maximise the chances that they are acted upon?**
 - (i) **Should customers who have failed to engage be informed that they are 'no longer under contract for energy', that they have been 'rolled onto a safeguard tariff', or an alternative message, for example, emphasising how many customers in their area have switched in the last year?**
 - (b) **How should prompts be communicated to customers? For example, there is some evidence from the financial sector that text prompts are particularly effective at raising awareness in terms of overdrafts etc.**
 - (c) **What should be the timing and frequency of prompts in order to balance effectiveness in terms of encouraging engagement with the cost and potential irritation that might arise from repeated prompts?**
 - (d) **Who should provide the prompts: customers' energy suppliers, Ofgem or another party?**
 - (e) **Are there particular groups of customers who should receive prompts at specific points? For example, should house-buyers be**

prompted to engage with the market on completion of their purchase?

- (f) Is there benefit in others in the markets, such as rival energy providers or TPIs, being made aware of which customers remain on default tariffs (or have been rolled on to the safeguard tariff)? In this respect, data protection issues would need to be carefully considered. The ability of other market participants to identify inactive customers, however, has the benefit of potentially encouraging the customer to switch tariffs once out of contract.**

Remedy 11 – A transitional ‘safeguard regulated tariff’ for disengaged domestic and microbusiness customers

91. For those customers who fail to respond to either the enabling measures set out in Remedies 3 to 9, or to the prompts set out in Remedy 10, our current view is that it is necessary to consider measures to prevent energy suppliers from rolling them on to relatively highly priced default or evergreen tariffs. Instead these customers would move on to a safeguard tariff.²³ A remedy of this type has the benefit of providing direct protection to disengaged customers, some of whom in the domestic markets are on low incomes or otherwise vulnerable. However, we observe that there are always risks with controlling outcomes in markets, and in exploring these options we will need to be sufficiently confident that such a remedy would not unnecessarily cut across the beneficial effects that competition has the potential to bring to customers. This will depend on the form and scope of the safeguard tariff being contemplated.

- *How the remedy would work*

92. Under this remedy, the maximum price level for default tariffs would be set by either the CMA or Ofgem. Customers who, in spite of the prompts provided, did not actively choose a new tariff at the end of their existing contract, would be rolled on to either a domestic or a microbusiness default tariff. No other evergreen tariffs would be permitted, including existing standard variable tariffs. As this would be a transitional safeguard price cap rather than a regulated price control, the means by which it should be set would need to differ from the standard RPI-X approach used by regulators of network industries such as water, and energy distribution and transmission. Most important would be the need to support competition alongside effectively

²³ This remedy would not seek to have customers who failed to re-contract with an energy supplier being disconnected, as we consider that the costs to customers in terms of the inconvenience that would result from disconnection would be very significant.

protecting the customer. The standard approach to price controls in network industries is for the regulator to aim to set prices at what it assesses to be a competitive level, based on a suitable measure of efficiently incurred costs. We consider, however, that to set the default tariffs in this way could have severe repercussions for competition, effectively reintroducing wide-reaching price regulation across the retail energy markets more generally. For the reasons set out above, we believe that this would be to the overall detriment of customers.

93. Consequently, a transitional safeguard price cap would need to include some 'headroom' in addition to an assessment of cost to allow for active and effective competition while still providing sufficient protection for customers. The level at which a safeguard cap is set has important implications. If it is set tightly, it will have a damaging impact on competition, undermining incentives for customers to engage in the markets. On the other hand, if set at too high a level, then at best it will provide no protection to customers, and at worst potentially provide a higher focal point for default prices to settle.
94. Such an approach has been used in New South Wales in Australia, and we are currently reviewing that example, both in terms of the approach used and the impact on the market.

- *Issues for comment 11*

95. We intend to explore different ways of setting a safeguard level for default tariffs, and the impact of each on competition. We invite views on the effectiveness and proportionality of this remedy and invite parties to comment on the following issues:
- (a) **Should the safeguard tariffs be set on a cost-plus basis, or should they be related to other retail prices?**
 - (b) **If the safeguard tariffs were set on a cost-plus basis, which approach(es) we should consider to determining the wholesale energy cost element of the tariffs? What are the relative merits of the proposed approach(es) in the context of the purpose of the safeguard price cap?**
 - (c) **Could the imposition of a transitional safeguard price cap result in energy suppliers reducing the quality of service offered to customers on this tariff? Is this risk reduced by customers' ability to choose alternative, unregulated tariffs?**

- (d) Should all domestic and microbusiness customers on default tariffs be rolled onto the safeguard tariff, or should this remedy only apply to a subset of these customers? If this remedy should not apply to all customers, why? And how should energy suppliers identify those customers who should be covered?**
- (e) How should the headroom be calculated to provide the right level of customer protection while not unnecessarily reducing healthy competition?**
- (f) What regulatory information would be required to set the safeguard tariffs?**
- (g) How long should the safeguard price caps be kept in place? Is it appropriate to include a specific sunset provision, or should there be a commitment to review the need for and level of the safeguard price caps after a certain period of time?**
- (h) How frequently – if at all – would the level of the cap need to be reassessed? If the cap is set on the basis of directly passing through wholesale and network costs, then it may not be necessary to revisit the safeguard price level.**
- (i) Which energy suppliers should be subject to the safeguard cap, and why? Should it be restricted to the Six Large Energy Firms, or should all retail energy suppliers be covered?**
- (j) How should the transition from the current arrangements be managed? We note that an immediate requirement to change the prices for all customers on standard variable tariffs, rollover, evergreen, deemed and out-of-contract tariffs might put pressures on certain suppliers more than others. Should there be, therefore, a period over which the safeguard price cap is phased in? If so, how long should this period be and how should the transition work?**
- (k) Would energy suppliers have the ability to circumvent the remedy, for example, by encouraging disengaged customers to switch on to less favourable, unregulated tariffs, and how such risks could be mitigated?**
- (l) Should the CMA set the level of the safeguard price caps itself, or should make a recommendation to Ofgem to do so?**

- (m) **Are there any potential unintended consequences of setting safeguard price caps, for example, in terms of their potential impact on the level of other, unregulated tariffs?**

Regulatory framework governing domestic and SME retail energy markets

96. We have provisionally found two further AECs concerning the regulatory framework governing domestic and SME retail energy markets. As set out in Section 12 of our provisional findings, these are:
- (a) the current system of gas settlement, which is a feature that gives rise to an AEC in the domestic and SME retail gas markets through the inefficient allocation of costs to parties and the scope it creates for gaming, which reduces the efficiency and, therefore, the competitiveness of domestic retail gas supply; and
 - (b) the absence of a firm plan for moving to half-hourly settlement for domestic and certain SME electricity customers and of a cost-effective option of elective half-hourly settlement, which is a feature that gives rise to an AEC in the domestic and SME retail electricity markets through the distortion of suppliers' incentives to encourage their customers to change their consumption profile, which overall reduces the efficiency and, therefore, the competitiveness of domestic retail electricity supply.
97. Remedies (12a and 12b) seek to address the feature of the current system of gas settlement giving rise to an AEC, while Remedy 13 seeks to address the feature of the current system of electricity settlement giving rise to an AEC.

Remedy 12a – Requirement to implement Project Nexus in a timely manner

- *How the remedy would work*

98. This remedy would require Xoserve and the gas suppliers, together, to ensure that Project Nexus is implemented within a given time frame in order to address most of the current inefficiencies in the gas settlement system without undue delay.

- *Issues for comment 12a*

99. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **How long should the parties be given to implement Project Nexus?**

- (b) **Should the CMA implement this remedy directly (eg via an order and/or a licence modification) or should it make a recommendation to Ofgem to implement the remedy?**

Remedy 12b – Introduction of a new licence condition on gas shippers to make monthly submissions of Annual Quantity updates mandatory

- *How the remedy would work*

100. We have provisionally found that the option available to gas shippers to provide Annual Quantity (AQ) updates allows for gaming of the system with shippers facing an incentive to prioritise the adjustment of AQs downwards and to delay the adjustment of AQs upwards. We do not currently consider that Project Nexus will address this issue. Therefore, this remedy would make it mandatory for energy shippers to update all AQs on a monthly basis in order to remove the scope for gaming.

- *Issues for comment 12b*

101. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Is it proportionate to require the mandatory monthly updating of AQs? Would it be more proportionate to require less frequent updating of AQs? Would less frequent updating still be effective in terms of removing the scope for gaming of the system?**

Remedy 13—Requirement that domestic and SME electricity suppliers and relevant network firms agree a binding plan for the introduction of a cost-effective option to use half-hourly consumption data in the settlement of domestic electricity meters

- *How the remedy would work*

102. This remedy would seek to ensure that, within a reasonable timetable, half-hourly consumption data could be used by domestic and SME electricity suppliers to settle electricity for customers falling into profile classes 1 to 4. This approach to settlement would give electricity suppliers an incentive to offer innovative time-of-use tariffs²⁴ to encourage peak load shifting, reducing

²⁴ Time-of-use tariffs vary the price paid by customers depending on the time/day on which they use energy. It gives customers an incentive to move their demand away from peak times, with the potential to reduce the total quantity of generation capacity needed in the system. In this way, peak load shifting has the potential to reduce costs of producing electricity substantially and is one of the most important benefits available from the introduction of smart meters.

the overall costs of generating and supplying electricity to customers. We note that an important prerequisite for this remedy to be effective is that these customers have smart meters installed, which are capable of measuring electricity consumption on a half-hourly basis.

- *Issues for comment 13*

103. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Would this remedy be effective in stimulating tariff innovation, in particular in terms of time-of-use tariffs?**
- (b) **How long should the parties be given to agree this plan?**
- (c) **What are the principal barriers to the introduction of a cost-effective option to use half-hourly consumption data in electricity settlement for profile classes 1 to 4? How could these be reduced?**
- (d) **Should the use of half-hourly consumption data in settlement for these profile classes (or certain of them) be optional for energy suppliers, or should it be mandatory? What are the advantages/disadvantages of each approach?**
- (e) **Are there any distributional considerations that we should take into account in relation to time-of-use tariffs? For example, might vulnerable customers end up paying more if they fail to change their consumption patterns? Or will the decline in the required generation capacity outweigh any increase in peak prices?**
- (f) **When should the (optional/mandatory) use of half-hourly consumption data replace settlement based on assumed customer profiles? Is it necessary to wait until 2020 when all domestic customers have smart meters installed? Alternatively, could the use of half-hourly consumption data be phased in for those customers with smart meters prior to 2020?**

Lack of robustness and transparency in regulatory decision-making

104. As set out in Section 11, we have provisionally found a combination of features which give rise to an AEC in the wholesale and retail gas and electricity markets in Great Britain that give rise to an AEC through an overarching feature of a lack of robustness and transparency in regulatory

decision-making, which, in turn, increases the risk of poor quality decisions which have an adverse impact on competition. More particularly, these features are as follows:

- (a) The lack of a regulatory requirement for clear and relevant financial reporting concerning generation and retail profitability.
- (b) The lack of effective communication of the forecast and actual impact of government and regulatory policies on energy prices and bills.
- (c) Ofgem's statutory objectives and duties which, in certain circumstances, may constrain its ability to promote effective competition.
- (d) The absence of a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making and implementation can be addressed transparently.

105. In addition to the potential remedies set out below, we invite submissions on any other remedies that may be required to improve the transparency and robustness of regulatory decision-making.

Remedy 14 – Remedy to improve the current regulatory framework for financial reporting

- *How the remedy would work*

106. As set out in Section 11, our provisional view is that improvements could be made to the current regulatory framework for financial reporting that would improve the robustness of information available to Ofgem, and hence overall transparency of generators' and suppliers' revenues, costs and capital employed.
107. In particular the current regulatory arrangements result in the Six Large Energy Firms reporting financial information to Ofgem based on individual firms' management accounting conventions and divisional structures, rather than reflecting the financial performance of generation and retail as stand-alone businesses selling their output and procuring energy on the open wholesale markets. We consider that this latter 'market-orientated' perspective is a more relevant basis for the regulator to assess profitability of activities across the value chain, and that a clear and consistent demarcation of activities between generation, trading and retail would lead to increased comparability across firms.
108. This remedy would comprise a recommendation that Ofgem develop a comprehensive 'market-orientated' regulatory accounting framework under

which the large domestic and SME energy generators and retail suppliers should report.

- *Issues for comment 14*

109. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Should the scope of the individual areas reported on align with the scope of the markets as set out for generation and retail supply in our provisional findings? For example, should a requirement to report wholesale energy costs on the basis of standard products traded on the open wholesale markets be imposed?**
- (b) **What regulatory reporting principles would be particularly relevant to the preparation of regulatory financial information in this sector?**
- (c) **Would summary profit and loss account and balance sheet information for each area be sufficient to enable the effective regulation of the sector and the development of appropriate policies? Or should the large domestic and SME energy suppliers be required to collect and submit additional, more granular financial information?**
- (d) **Should Ofgem require that the summary profit and loss and balance sheet information be audited in accordance with the regulatory reporting framework?**
- (e) **Should this remedy apply to the firms that are currently under an obligation to provide Ofgem with Consolidated Segmental Statements? Or should it apply to a larger or narrower set of firms?**
- (f) **What would be the costs of imposing such a remedy? We note that some firms' reporting systems are not currently capable of providing information on such a 'market-orientated' basis and that our remedy could require significant additional system requirements.**
- (g) **Should the CMA implement this remedy by way of licence modifications or by way of a recommendation to Ofgem?**
- (h) **To what extent should this financial information on performance be published?**

Remedy 15 – More effective assessment of trade-offs between policy objectives and communication of impact of policies on prices and bills

- *How the remedy would work*

110. The aim of this remedy would be to assist the effective formulation of policies as well as the communication to a wide audience of the impact assessments relating to policy proposals, and the interactions between policies and policy trade-offs. We are considering, therefore, how to ensure that this information is disseminated more widely and in an accessible format.

111. We invite submissions on how to improve the effectiveness of the communication of the trilemma trade-offs, including the impact of policies on prices and bills. While one option is the introduction of an independent body focused on these tasks, we note that the creation of a new institution would require significant justification.

- *Issues for comment 15*

112. While there is substantial analysis in the public domain examining the effects of policies, some of which has been undertaken by independent institutions, we invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

(a) Are such assessments of the impacts of policies on prices, bills and on the trilemma trade-offs carried out to a sufficient extent currently? Are there specific areas where such assessments are not currently carried out, or might be undertaken more comprehensively?

(b) Are the assessments sufficiently scrutinised?

(c) Are the assessments sufficiently disseminated to interested parties? Which parties need to be informed about these assessments?

(d) Is there an additional role for either Ofgem and/or DECC in carrying out assessments of the impacts of policies and trilemma trade-offs, or communicating the results of them?

(e) Should further, authoritative analysis be published to assist the public discussion? What form might this take? Which existing bodies are best positioned to undertake this role?

(f) Is there a sufficient case to justify creating a new, independent body tasked with scrutinising the impact assessments of policymaking

bodies and/or providing authoritative analysis to inform the public debate?

Remedy 16 — Revision of Ofgem’s statutory objectives and duties in order to increase its ability to promote effective competition

- *How the remedy would work*

113. We have provisionally found that changes made in the Energy Act 2010 to Ofgem’s statutory objectives and duties may have led Ofgem to carry out inefficient trade-offs between competing objectives, which in turn might have led to decisions that adversely impact competition. This remedy would therefore consist in a recommendation that Ofgem’s statutory objectives and duties be revised in order to increase the emphasis on Ofgem’s responsibility to promote competition as a primary objective.
114. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

(a) What specific changes should be made to Ofgem’s statutory objectives and duties in order to ensure that it is able to promote effective competition in the energy sector?

- (i) For example, would it be possible to revert to the role of competition that existed before the introduction of the Energy Act 2010?**

Remedy 17 – Introduction of a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making can be addressed transparently

- *How the remedy would work*

115. As set out in Section 11 we considered the independence and overlap of DECC’s and Ofgem’s roles. We note that DECC has a number of direct and indirect powers which it can exercise to influence Ofgem’s function and operation. However, short of regulating a particular area by way of statutory instruments, there are no formal powers for DECC to direct Ofgem to implement a specific change, nor clear formal processes for Ofgem and DECC to discuss transparently a strategy for the implementation of DECC’s policies.
116. We are concerned that, in the absence of such formal powers, DECC may exert institutional pressure on Ofgem by saying it will act to address a certain

issue in the event that Ofgem does not itself act to address the issue in question. We consider that the use of such an informal approach – if it encourages Ofgem to implement changes that it would not pursue in the absence of such pressure – risks harming transparency and the independence of regulation.

117. It is neither realistic nor credible for DECC always to refrain from exercising its discretion over elements of policy and we note that it is always possible that DECC and Ofgem will disagree on a particular area of policy. However, where this is the case we think that the absence of a mechanism through which such disagreements can be surfaced transparently, in particular allowing Ofgem to set out its views on particular DECC policy proposals and seek formal direction from DECC to pursue certain regulatory activities, so that stakeholders can understand why a particular decision is being made, leads to a lack of robustness and transparency in regulatory decision-making. We believe that such a mechanism may facilitate rational debate and promote regulatory stability.
118. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:
- (a) **In which circumstance should Ofgem have the right or duty to express views on DECC’s policies and DECC/Ofgem strategy for their implementation? What format should such views take? Should DECC have a duty to formally respond?**
 - (b) **In what circumstances should Ofgem have the right to seek a formal direction from Ofgem to implement a certain policy?**
 - (c) **Would DECC’s formal direction undermine (or appear to undermine) Ofgem’s independence?**
 - (d) **Would other measures be effective in promoting the independence of regulation?**

Industry-led system of code governance

119. We have provisionally found that parties’ conflicting interests and/or limited incentives to promote and deliver policy changes, in combination with Ofgem’s inability to influence the code modification process, are features of the energy markets in Great Britain which give rise to an AEC through stifling innovation and causing the energy sector to fail to keep pace with market developments and wider policy objectives.

120. We consider that there are two discrete areas where remedies could be targeted to improve the system of code governance to ensure that changes which are required to allow innovation and the implementation of other policy objectives happen in a timely manner. These are:
- (a) the development of changes to codes; and
 - (b) the implementation of changes to codes.

121. In addition to the three potential remedies set out below, we invite submissions on any other remedies that may be required to improve the system of code governance.

Remedy 18a – Recommendation to DECC to make code administration and/or implementation of code changes a licensable activity

- *How the remedy would work*

122. Code administrators and delivery bodies may play a significant role in developing and implementing changes to industry codes, and in facilitating the engagement of parties, in particular smaller ones.

123. By making the roles of code administration and delivery of code changes a licensable activity, this remedy would give Ofgem the power to efficiently monitor performance of these bodies, give them directions and impose sanctions when appropriate. This would also lead to more consistency between governance and modification arrangements across codes.

124. As a result, we would expect the process of developing changes to the codes to be accelerated, and modification proposals to be initiated and developed more efficiently (including within the context of cross-code modifications), improving outcomes for consumers.

- *Issues for comment 18a*

125. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Is this recommendation likely to result in a positive change in the initiation, development and/or implementation of code changes that pursue consumers' interests?**
- (b) **Would this remedy be more effective if certain functions currently carried out by code panels and/or network owners (eg setting up working groups) were transferred to code administrators?**

- (c) **Would this remedy be more effective if Ofgem or DECC were to impose stricter requirements relating to the selection (eg competitive tender), financing and/or independence of code administrators (and/or delivery bodies)?**

Remedy 18b – Granting Ofgem more powers to project-manage and/or control timetable of the process of developing and/or implementing code changes

- *How the remedy would work*

126. By granting to Ofgem powers to intervene directly in the development and/or implementation of code changes, Ofgem would be able, when it deems it necessary, to pursue consumers' interests, to project-manage code modification processes, or at least their timetable. This would complement Ofgem's existing powers ('significant code review') by allowing Ofgem, in the context of ongoing modification proposals, to take over certain functions from, or mandating certain action to, relevant bodies. As a result, Ofgem would be able to ensure that key modification proposals that further consumers' interests are developed and implemented timely and efficiently.

- *Issues for comment 18b*

127. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

- (a) **Is this recommendation likely to result in a positive change in the development and/or implementation of code changes that pursue consumers' interests?**
- (b) **Would this undermine the principle (and effectiveness) of industry-led code changes?**
- (c) **Should this power be limited to the completion of certain elements of the development or implementation phase (eg consultation, setting up working groups)?**
- (d) **Should Ofgem's ability to use this power be limited to defined circumstances (eg modification proposals which are relevant to Ofgem's principal objectives) or should it be left to Ofgem's discretion?**

Remedy 18c – Appointment of an independent code adjudicator to determine which code changes should be adopted in the case of dispute

- *How the remedy would work*

128. By appointing and giving appropriate powers to an independent code adjudicator, this remedy would aim to resolve disagreements between parties over code changes more quickly than is currently the case. We currently envisage that an independent code adjudicator would need to be granted Ofgem’s current role to approve or refuse code modification proposals. In addition, a code adjudicator would need to be granted more powers to project-manage and/or control timetable of the process of developing and/or implementing code changes (as envisaged for Ofgem under Remedy 18b).
129. The remedy would, therefore, help to ensure that the GB energy sector kept up with market developments and wider policy objectives. An independent adjudicator would also be impartial, with potential benefits in terms of the quality of the code changes implemented. As a result, we would expect improved outcomes for customers.

- *Issues for comment 18c*

130. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:
- (a) **Are there benefits in terms of independence, impartiality and/or industry know-how of an independent code adjudicator that are not available with Ofgem, given its other responsibilities, when undertaking the adjudicator role?**
- (b) **Would there be unintended consequences, arising for instance from an increased lack of coordination between code modification governance, licence modifications and legislation?**

Remedies we are minded not to consider further

131. We set out below the remedy options that we have considered but currently do not intend to pursue and explain our reasoning. Although we are minded not to consider these further we will do so if the parties to the investigation or other interested parties provide us with evidence or reasoning as to why we should take these remedies into account.

Remedy a – Price control regulation of all domestic and microbusiness retail energy tariffs

132. This remedy would impose price regulation (RPI-X) on all tariffs provided to domestic and microbusiness retail energy customers in Great Britain. Under this approach, for a period of time (eg five years), all tariffs that energy suppliers could charge domestic and microbusiness customers would be set by the regulator, based on a forecast of efficient costs. The basic formula is:

$$Total\ Revenue^t = r^t \cdot RAB^{t-1} + Opex^t + Dep^{25}$$

133. Price regulation is generally imposed where the supply structure of a market does not enable competition. This may be the result of statutory restrictions on competition in a market or due to the nature of an industry, for example, where it has natural monopoly characteristics.²⁶ Price regulation is often accompanied by some form of universal service (or access) obligation. The regulator's role can be seen as trying to proxy the forces that a competitive market would bring to bear in the form of increasing efficiency, and curbing excessive profits.
134. This type of remedy would provide a regulator with the capacity to prevent firms with market power from exploiting it to charge disengaged customers high prices, while maintaining their incentives to reduce costs (at least within review periods). However, we consider that the imposition of an RPI-X price control on the retail energy markets in Great Britain would result in a number of negative effects. In particular, we are concerned that a price control would lead to a reduction in competition between energy suppliers in terms of both the price charged and the level of innovation in the sector. In terms of price competition, we observe that a regulated maximum price tends to become the price in the market – and not just a price cap – encouraging market participants to price up to the regulated level rather than competing to reduce prices and attract customers. As regards innovation, we note that a price cap may reduce the incentives that energy suppliers have to innovate, for example in terms of time-of-use tariffs, as they are unable to charge a premium for new/innovative products. Moreover, we considered that a price control could deter entry and growth by potential competitors as there would be likely to be insufficient headroom within the regulated price level to allow them to invest in advertising and other costs associated with customer acquisition.

²⁵ Where 'r' is the allowed rate of return and 'RAB' is the regulated asset base or the value of the firm's invested capital, ie total investment less depreciation.

²⁶ In the case where there are statutory restrictions on competition in the market,

135. We observed that the costs of administering a regulated price on an ongoing basis are generally significant as the regulator needs to employ a team of experts and collect a large quantity of data from the regulated firm(s) in order to set prices. In addition, there must be systems in place to allow regulated firms to address the greater regulatory demands etc. Regulators, however competent, are invariably subject to an information asymmetry with the regulated firms, and there is inevitably a degree of judgement involved in the regulator's decisions.
136. Finally, we noted that price controls can create significant distortions in markets if the level of the controls are set inappropriately. If the regulated price is set too high, it will be less effective in constraining the regulated firm(s)' market power than it should be. In contrast, if the regulated price is set too low, the regulated firm will not have an incentive to invest in maintaining levels of quality. For these reasons, price controls are usually only implemented where there is no reasonable prospect of competition, and it is exceptional for them to be put in place where the supply structures enable choice.
137. For these reasons, we are not currently minded to consider this remedy further.
138. We note that this remedy differs significantly from the transitional safeguard price cap (Remedy 11). First, Remedy 11 is targeted only at tariffs used by disengaged customers (the default tariff), and not all tariffs. Second, Remedy 11 does not aim to set prices at the competitive level, at which level, an efficient firm cannot be expected to earn excessive profits. Rather, it explicitly allows for prices to be set above this level by incorporating some headroom in order to allow competition to operate alongside the safeguard tariff.

Remedy b – Requiring energy firms to inform customers about the cheapest tariff on the market (across all suppliers)

139. This remedy would extend Ofgem's requirement for energy suppliers to inform customers about the cheapest tariff for them offered by the same energy supplier. In effect, energy suppliers would be required to inform customers as to the cheapest tariff in the market for their particular circumstances. The aim would be to prompt customers to switch to the most competitive tariff on the market rather than just switching between tariffs offered by their existing supplier, increasing competitive pressures on energy suppliers.
140. We are not minded to consider this remedy further for two main reasons. First, we were concerned that by forcing energy suppliers to share detailed pricing

information, this remedy may weaken competition and encourage or facilitate some form of (tacit) coordination between suppliers. As a result, this remedy could have the opposite effect from that intended, resulting in increased prices for customers.

141. Second, we considered that requiring suppliers to advertise competitors' tariffs would not provide customers with the correct incentives to engage effectively in the market in the longer term, as they could rely on their supplier to conduct a search on their behalf and provide them with the results. This could encourage customers to remain relatively disengaged in the future, undermining our other remedies to facilitate widespread consumer engagement.

Remedy c – Opt-out collective switching of disengaged customers

142. This remedy represents the introduction of a form of 'competition for the market' whereby customers who have not engaged in the market in a given period of time (such as five years) are automatically included in an auction process unless they specifically opt out. Energy suppliers are invited to 'bid' to supply blocks of customers, with the lowest bidder winning the auction and supplying customers in the block for a given period of time, eg three years.
143. We considered that the main benefit of this approach was that the competitive auctioning process should push down prices to the competitive level, realising the benefits of competition without requiring customer engagement. In addition, this type of process would avoid the need for the collection and analysis of detailed cost information, with the attendant asymmetries of information, that arises with standard price regulation.
144. However, we concluded that this remedy suffered from several important weaknesses in the context of the GB energy retail market, including:
 - (a) The collective switching of large numbers of accounts at a single point in time could create significant confusion and disruption for customers. In particular, we were concerned that the number of erroneous transfers and delays in transferring customer accounts could increase significantly, resulting in material detriment; and
 - (b) By specifying the type and quality of service to be offered to customers in advance, this type of scheme may limit innovation as energy suppliers are unable to test and refine different products with customers.

Overall, we considered that these negative potential effects meant that this type of remedy would not be effective and proportionate.

Remedy d – Introduction of a single price for gas and electricity customers

145. This remedy would require that energy suppliers offer a single price (ie the same price) to all their gas and electricity customers. The aim would be to facilitate comparisons between energy suppliers as each supplier would offer only a single tariff. In addition, as energy suppliers would be required to offer the same price to all customers, those who were engaged in the market and therefore prepared to shop around could keep prices lower for those who were disengaged.
146. However, we considered that there were a number of issues with this type of remedy, including:
- (a) If energy suppliers were only able to offer a single price, they would have an incentive to increase their price towards the level currently charged to disengaged customers rather than to reduce it towards the level currently charged to engaged customers. This may happen even if some smaller entrants chose to offer a lower price, as the incumbents would be able to make more profits from charging disengaged customers a high price rather than charging a larger group of both engaged and disengaged customers a lower price.
 - (b) A single price for each energy supplier may facilitate (tacit) coordination between operators as a result of the increased transparency in the markets.
 - (c) It would prevent energy suppliers from innovating in terms of the structure and level of their tariffs in order to design products that appeal to different types of customers. We observe that such innovation is likely to increase in importance in terms of the benefits delivered to customers with the introduction of smart meters.
 - (d) It would limit competition between intermediaries (eg PCWs) in the markets to a significant extent, preventing energy suppliers from agreeing discounts with specific PCWs. We believe that this would reduce the level of competitive constraint acting on the energy suppliers.
147. Our current view is that this type of remedy would not be effective in reducing prices to disengaged customers, nor would it facilitate the longer-term development of competition in the market. Therefore, we do not propose to consider it further.

Remedy e – Introduction of price non-discrimination provisions

148. Non-discrimination provisions prevent firms from charging different prices to different groups of customers, although they may be adapted to allow price differences that are reflective of differences in the costs to serve. The aim of such provisions is to put pressure on firms to reduce the prices that they charge to their disengaged customers in order to maintain their market share among engaged customers. By ensuring that all customers pay substantially the same price for their energy, this type of remedy would also ensure 'equity' across engaged and disengaged customers. To the extent that incumbent firms do not lower their tariffs towards the competitive level, they could expect to lose market share to a competitive fringe of smaller firms, without a base of disengaged customers.
149. We reasoned that such provisions were unlikely to address the feature of weak customer response directly. In addition, we were concerned that such provisions would:
- (a) be ineffective at reducing the customer detriment identified as the incumbent firms may maximise profits by charging a high price to inactive customers and allowing their active customers to be competed away rather than lower their prices towards the competitive level;
 - (b) reduce incentives to switch for engaged customers, as firms could not target them with lower-priced offers, which may undermine the level of competitive pressure in the market in the longer run; and
 - (c) reduce innovation in products/services as firms would no longer be allowed to price discriminate, although we recognised that this disadvantage could be partially mitigated by exempting entrants (which do not have inactive customers) from the non-discrimination provisions.
150. Overall, we considered that this type of remedy would not be effective in reducing prices to disengaged customers, nor would it facilitate the longer-term development of competition in the market. Therefore, we do not propose to consider it further.

Remedy f – A transitional safeguard regulated price structure

151. Under this remedy, customers who did not actively choose a new tariff at the end of their existing contract would be rolled onto a default tariff structure, with no other evergreen tariff structures permitted. Default tariff levels would not be set, but instead there would be a regulatory requirement that these default tariffs were of a specific structure. For example, the default tariff might be of the general form:

Tariff = regulated network costs + wholesale energy costs + X

Where the regulated network costs and the wholesale energy costs are set by Ofgem but firms are free to choose the level of 'X'.

152. In this case, the safeguard would rely on the transparency of the tariff enabling a competitive constraint on each firm's default tariffs. The aim of the remedy is that the 'Xs' would be easily comparable between providers with the result that it would be clearer to customers that the price they were paying with their provider was higher than they could pay with others. It would also be easier for different retail energy suppliers to market themselves to customers on default tariffs by directly comparing the 'Xs' across markets. By putting the default tariffs into simple common terms, this remedy aims to introduce competitive pressure in spite of the absence of direct customer engagement.
153. The key advantage of this approach is that it would not require a regulator to make its own assessments of costs and the balance of customer protection and competition. Instead it would enable market mechanisms to achieve this. As a result customer protection would be provided with substantially less impact on competition, and the risks of wider regulatory impact are avoided.
154. However, we had significant concerns as to whether this type of remedy would, in practice, provide an adequate level of protection for customers given that a substantial proportion of customers are currently disengaged. If awareness of the 'Xs' (ie, the default tariff levels) remained low and/or customers did not act on this awareness, then this remedy would not provide protection to customers. We considered this outcome to be reasonably likely, therefore, we are not currently minded to consider this remedy further.

Relevant customer benefits

155. In deciding the question of remedies, the CMA may in particular have regard to the effect of any action on any relevant customer benefits (RCBs) of the feature or features of the market concerned.²⁷
156. RCBs are limited to benefits to relevant customers in the form of:
- (a) lower prices, higher quality or greater choice of goods and services in any market in the UK (whether or not the market to which the feature or features concerned relate); or
 - (b) greater innovation in relation to such goods and services.

²⁷ CC3, paragraphs 355–369.

157. The Act²⁸ provides that a benefit is only an RCB if the CMA believes that:
- (a) the benefit has accrued as a result (whether wholly or partly) of the features concerned or may be expected to accrue within a reasonable period of time as a result (whether wholly or partly) of that feature or those features; and
 - (b) the benefit was or is unlikely to accrue without the feature or features concerned.
158. In considering potential RCBs, the CMA will therefore need to ascertain that the market feature or features with which it has been concerned results, or is likely to result, in lower prices, higher quality, wider choice or greater innovation, and that such benefits are unlikely to arise in the absence of the market feature or features concerned. RCBs may include benefits to customers in the market in which the CMA has found an AEC and to customers in other markets within the UK.
159. If the CMA is satisfied that there are RCBs deriving from a market feature that has resulted in an AEC, the CMA will consider whether to modify the remedy that it might otherwise have imposed or recommended. When deciding whether to modify a remedy, the CMA will consider a number of factors including the size and nature of the expected benefit and how long the benefit is to be sustained. The CMA will also consider the different impacts of the features on different customers.
160. It is possible that the benefits are of such significance compared with the effects of the market feature(s) on competition that the CMA will decide that no remedy is called for. This might occur if no remedies can be identified that are able to preserve the RCBs while remedying or mitigating the AEC and/or the customer detriment.
161. Alternatively, the CMA, as a result of identifying RCBs, may choose a different remedy, for example a behavioural rather than a structural remedy. In this case, the CMA will have to weigh the disadvantage of a less comprehensive solution to the competition problem against the preservation of the benefits that result from the feature concerned.²⁹

²⁸ Section 134(7).

²⁹ CC3, paragraphs 360–369.

Next steps

162. 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 31 July 2015 either by email to energymarket@cma.gsi.gov.uk or in writing to:

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