

ENERGY MARKET INVESTIGATION

Notice of the CMA's intention to open a disclosure room to allow further review of data underlying the customer survey and certain economic analysis following publication of the provisional findings

As part of the energy market investigation (the 'Investigation'), the Competition and Markets Authority (the 'CMA') has received information and/or data from a number of parties which the CMA has used and taken into account in producing its provisional findings published on 7 July 2015 (the 'Provisional Findings').

In particular, the CMA has received data and/or information underlying:

- A) the economic analysis conducted to illustrate the manner in which domestic retail energy price changes are reflective of changes in costs, which is included in Appendix 7.2 entitled 'Cost pass-through' of the Provisional Findings Report (the 'CPT Appendix');
- B) the economic analysis conducted to calculate the potential savings for dual and single fuel domestic energy customers if they were to switch to a different tariff within the same or another supplier, which is included in the Appendix 7.4 entitled 'Analysis of the potential gains from switching' of the Provisional Findings (the 'GFS Appendix');
- C) the analysis conducted to generate descriptive statistics for the domestic retail energy markets using information provided by the Six Large Energy Firms which are included in Appendix 7.5 entitled 'Retail descriptive statistics' of the Provisional Findings (the 'Descriptive Statistics Appendix');
- D) the analysis conducted based on the results of the customer survey conducted by the company GfK NOP Ltd. on the CMA's behalf (the 'GfK Customer Survey'),¹ which is included in Appendix 8.1 entitled 'Customer Survey' of the Provisional Findings (the 'Customer Survey Appendix');
- E) the analysis conducted to determine the profit margins and ratios generated by the retail energy supply businesses of the Six Large Energy Firms included

¹ See CMA's [notice of intention to conduct a customer survey](#) dated 4 September 2014.

in Appendix 10.2 entitled 'Retail energy supply profit margin analysis' (the 'Retail Profit Margin Appendix');

- F) the profitability analysis conducted to determine the retail return of capital employed ('ROCE') of the Six Large Energy Firms included in Appendix 10.3 entitled 'Analysis of Retail Supply Profitability – ROCE and economic profit' of the Provisional Findings (the 'ROCE Appendix');
 - G) the analysis conducted to determine an appropriate competitive benchmark in retail energy supply against which the CMA compared the Six Large Energy Firms' prices and revenues in the domestic and SME retail energy markets, which is included in Appendix 10.5 entitled 'Assessment of the competitive benchmark in retail energy supply' of the Provisional Findings (the 'Competitive Benchmark Appendix');
 - H) the analysis conducted to compare bills across suppliers, payment methods and regions which is included in Appendix 10.7 entitled 'Domestic pricing analysis' of the Provisional Findings (the 'Domestic Pricing Appendix');
- together the 'Underlying Data'.

The Underlying Data includes confidential information provided by a range of parties, including Centrica, EDF Energy (EDF), E.ON, RWE npower (RWE), Scottish and Southern Energy (SSE) and Scottish Power (the 'Six Large Energy Firms'), other energy suppliers, Ofgem, Energylinx Ltd ('Energylinx'), and ICIS.²

Accordingly, the CMA considers that the Underlying Data includes 'specified information' within the meaning of section 238 of the Enterprise Act 2002 (the 'Act'), to which the general restriction on disclosure by the CMA in section 237 of the Act applies. The CMA has, pursuant to section 241 of the Act, decided to disclose the Underlying Data to certain parties by way of a disclosure room (the 'Disclosure Room') for the purpose of allowing such parties' advisers an opportunity to better understand the analyses included in the appendices identified above so that they can provide a better informed response to the Provisional Findings and thus facilitating the exercise by the CMA of any of its statutory functions under section 241 of the Act.

In light of the particularly sensitive and confidential nature of the Underlying Data, the CMA considers it necessary to disclose the Underlying Data to a limited number of approved external legal and/or economic advisers of the relevant parties through the Disclosure Room. Specific details of the Disclosure Room are set out below.

² ICIS is a market information provider owned by Reed Business Information Limited.

Disclosure Room

The Disclosure Room will include the information and data underlying the Customer Survey Appendix, the GFS Appendix, the Descriptive Statistics Appendix, the Retail Profit Margins Appendix, the Competitive Benchmark Appendix and the ROCE Appendix.

- A) In relation to the CPT Appendix, the Disclosure Room will include information and data on wholesale and retail energy prices and costs that the CMA has received from the Six Large Energy Firms, Ofgem and ICIS and has used to conduct the economic analysis contained in the CPT Appendix. In particular, the Disclosure Room will include the data underlying the tables and figures included in the CPT Appendix.
- B) In relation to the GFS Appendix, the Disclosure Room will include data on retail energy tariff prices and numbers of customer accounts, as well as data on domestic consumption that the CMA has received from the Six Large Energy Firms and Energylinx. In particular, the Disclosure Room will include the data underlying the tables and figures included in the GFS Appendix.
- C) In relation to the Descriptive Statistics Appendix, the Disclosure Room will include data on average revenue per kWh, acquisitions by tariff type and payment type, acquisitions by channel, customer numbers and data on 'length of tenure with current supplier'.
- D) In relation to the Customer Survey Appendix, the Disclosure Room will include the following:
 - (i) the data with anonymised responses of individual customers to the questionnaire used in the GfK Customer Survey and customer records provided by the parties (the 'GfK Customer Survey Underlying Data');
 - (ii) The RMR Baseline Survey data provided by Ofgem;
 - (iii) The data sourced from Ofgem's report entitled 'Retail Market Review Baseline Survey' and DECC's report entitled 'Public Attitudes tracking survey, wave 12'; and,
 - (iv) a set of tabulations including the results of the GfK Customer Survey.
- E) In relation to the Retail Profit Margin Appendix, the Disclosure Room will include data on the annual profit and loss (P&L) account information of the Six Large Energy Firms. In particular, the Disclosure Room will include the data underlying all tables and figures included in the Retail Profit Margins Appendix.

- F) In relation to the ROCE Appendix, the Disclosure Room will include the financial data underlying the analyses included in this appendix.
- G) In relation to the Competitive Benchmark Appendix, the Disclosure Room will include data on costs and balance sheet items underlying all tables and figures included in the Competitive Benchmark Appendix.
- H) In relation to the Domestic Pricing Appendix, the Disclosure Room will include the data on retail energy tariff prices and numbers of customer accounts, as well as data on domestic consumption that the CMA has received from the Six Large Energy Firms and Energylinx.

The Disclosure Room will be open on each CMA Working Day³ **from 13 July 2015 until 31 July 2015** inclusive. Its hours of operation will be from 9.30am until 5pm on each day. A set of rules will govern the operation of the Disclosure Room, including the equipment and software that will be provided by the CMA. Numbers of individuals allowed access to the disclosure room both generally and at any one time will be limited.

Access to the Disclosure Room

In order to safeguard the confidentiality of the Underlying Data, and in line with the CMA's Disclosure Room procedures,⁴ access to the Disclosure Room will be granted to a limited number of approved external legal and/or economic advisers of certain parties as noted above. These external advisers and their firms/employers will be required to sign undertakings and agree to comply with the Disclosure Room rules before they will be granted access to the Disclosure Room.

The draft undertakings that the external legal and economic advisers approved by the CMA (and their firms/employers) will be required to sign before they will be granted access to the Disclosure Room by the CMA are attached at Appendices 1 and 2 of this Notice.

The CMA is prepared to approve up to a maximum of seven external legal or economic advisers per party to access the Disclosure Room, subject to a maximum of five advisers per party at any one time. The CMA may reconsider the maximum number of advisers allowed to access the Disclosure Room at any one time based on the number of expressions of interest received.

³ CMA 'Working Day' means any day of the week, Monday to Friday, on which the CMA office is open, excluding public or bank holidays.

⁴ See the CMA's guidance documents 'Chairman's Guidance on Disclosure of Information in Merger Inquiries, Market Investigations and Reviews of Undertakings and Orders accepted or made under the Enterprise Act 2002 and Fair Trading Act 1973', [CC7](#); and 'Transparency and disclosure: the CMA's Policy and Approach', [CMA6](#).

This notice invites interested parties to submit expressions of interest to access the Disclosure Room, together with an explanation of their interest and the reasons for requesting access to the Disclosure Room, and details of the interested party's external legal and/or economic advisers (ie name, job title and employer) seeking entry to either the Disclosure Room.

This notice also invites parties expressing an interest to access the Disclosure Room to submit comments with regard to the CMA's approach to disclose the Underlying Data, including the attached draft undertakings and Disclosure Room rules. Comments in this regard should be supported with an appropriate explanation so that the CMA is in a position to properly consider the merits of the comments received.

Any expressions of interest together with any comments interested parties have on the attached documents must be submitted to the Investigation team at will.fletcher@cma.gsi.gov.uk **as soon as possible and in any event no later than 1pm on 9 July 2015**. The CMA will consider the comments and each expression of interest received within the above deadline, and the reasons given for access to be granted, before deciding, at the CMA's discretion, whether to grant access to the interested party to the Disclosure Room and whether any amendment is to be made to the attached documents.

ENERGY MARKET INVESTIGATION

**UNDERTAKINGS GIVEN BY [Name of Adviser] TO THE
COMPETITION AND MARKETS AUTHORITY REGARDING ACCESS
TO THE ENERGY DISCLOSURE ROOM FOLLOWING PUBLICATION
OF PROVISIONAL FINDINGS**

WHEREAS

- I. On 26 June 2014, Ofgem, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the 'Act'), made a reference to the chair of the Competition and Markets Authority (the 'CMA') for the constitution of a group under Schedule 4 of the Enterprise and Regulatory Reform Act 2013 for an investigation into the Supply and Acquisition of Energy in Great Britain (the 'Investigation').⁵
- II. On 24 July 2014, the CMA published an issues statement setting out a framework for the Investigation, including four candidate potential theories of harm. On 18 February 2015, the CMA published an updated issues statement setting out updated theories of harm and those issues which were likely to represent the focus of the Investigation in the period up to publication of the provisional findings (the 'Updated Issues Statement').
- III. On 7 July 2015, the CMA published its provisional findings (the 'Provisional Findings'). The Provisional Findings are based on further economic and financial analyses of the data received by the CMA during the Investigation from a number of parties, including the six large energy firms (the 'Six Large Energy Firms'), other energy suppliers and Energylinx Ltd. ('Energylinx'), and take into account the parties' representations received either in writing and/or at oral hearings. Some of these analyses are the following:
 - (a) the economic analysis conducted to illustrate the manner in which domestic retail energy price changes are reflective of changes in costs, which is included in Appendix 7.2 entitled 'Cost pass-through' of the Provisional Findings Report (the 'CPT Appendix');
 - (b) the economic analysis conducted to calculate the potential savings for dual and single fuel domestic energy customers if they were to switch to a

⁵ Ofgem (2014), [Decision to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain](#), dated 26 June 2014.

different tariff within the same or another supplier, which is included in the Appendix 7.4 entitled 'Analysis of the potential gains from switching' of the Provisional Findings (the 'GFS Appendix');

- (c) the analysis conducted to generate descriptive statistics for the domestic retail energy markets using information provided by the Six Large Energy Firms which are included in Appendix 7.5 entitled 'Retail descriptive statistics' of the Provisional Findings (the 'Descriptive Statistics Appendix');
- (d) the analysis conducted based on the results of the customer survey conducted by the company GfK NOP Ltd. on the CMA's behalf (the 'GfK Customer Survey')⁶, which is included in Appendix 8.1 entitled 'Customer Survey' of the Provisional Findings (the 'Customer Survey Appendix');
- (e) the analysis conducted to determine the profit margins and ratios generated by the retail energy supply businesses of the Six Large Energy Firms included in Appendix 10.2 entitled 'Retail energy supply profit margin analysis' (the 'Retail Profit Margin Appendix');
- (f) the profitability analysis conducted to determine the retail return of capital employed ('ROCE') of the Six Large Energy Firms included in Appendix 10.3 entitled 'Analysis of Retail Supply Profitability – ROCE and economic profit' of the Provisional Findings (the 'ROCE Appendix');
- (g) the analysis conducted to determine an appropriate competitive benchmark in retail energy supply against which the CMA compared the Six Large Energy Firms' prices and revenues in the domestic and SME retail energy markets, which is included in Appendix 10.5 entitled 'Assessment of the competitive benchmark in retail energy supply' of the Provisional Findings (the 'Competitive Benchmark Appendix'); and,
- (h) the analysis conducted to compare bills across suppliers, payment methods and regions which is included in Appendix 10.7 entitled 'Domestic pricing analysis' of the Provisional Findings (the 'Domestic Pricing Appendix').

IV. The CMA has decided to disclose the following by means of the Energy Disclosure Room (the 'Disclosure Room'):

⁶ See CMA's [notice of intention to conduct a customer survey](#) dated 4 September 2014.

- (i) the information and data on wholesale and retail energy prices and costs that the CMA has obtained from the Six Large Energy Firms, Ofgem and ICIS underlying the tables and figures included in the CPT Appendix;
- (ii) the data received from the Six Large Energy Firms and Energylinx on retail energy tariff prices and numbers of customer accounts, as well as data on domestic consumption underlying the tables and figures included in the GFS Appendix;
- (iii) the data on average revenue per kWh, average direct cost per kWh, acquisitions by tariff type and payment type, acquisitions by channel, customer numbers and data on 'length of tenure with current supplier' underlying the tables and figures included in the Descriptive Statistics Appendix;
- (iv) the data with anonymised responses of individual customers to the questionnaire used in the GfK Customer Survey and customer records provided by the parties (the 'GfK Customer Survey Underlying Data');
- (v) the RMR Baseline Survey data provided by Ofgem underlying the Customer Survey Appendix;
- (vi) the data sourced from Ofgem's report entitled 'Retail Market Review Baseline Survey' and DECC's report entitled 'Public Attitudes tracking survey, wave 12' underlying the Customer Survey Appendix;
- (vii) a set of tabulations including the results of the GfK Customer Survey;
- (viii) on the annual profit and loss (P&L) account information of the Six Large Energy Firms underlying all tables and figures included in the Retail Profit Margins Appendix;
- (ix) the financial information underlying the ROCE Appendix;
- (x) the data on costs and balance sheet items underlying all tables and figures included in the Competitive Benchmark Appendix;
- (xi) the data on retail energy tariff prices and numbers of customer accounts, as well as data on domestic consumption underlying the Domestic Pricing Appendix;

together the 'Disclosed Material'.

- V. The CMA considers that the Disclosed Material includes 'specified information' within the meaning of section 238 of the Act to which the general restriction on disclosure in section 237 of the Act applies. The CMA has

decided to disclose the Disclosed Material to certain parties (each a 'Relevant Party') in the Disclosure Room to be held between **13 July 2015 and 31 July 2015** pursuant to section 241 of the Act.

- VI. Access to the Disclosure Room is provided for the purpose of allowing the parties' advisers to review and understand the CMA's further analysis and/or modelling, and prepare submissions and representations to the CMA on the Provisional Findings and prepare and conduct an appeal against any decision of the CMA in connection with the Investigation, in the event of an appeal (the 'Permitted Purpose').
- VII. Access to the Disclosure Room will only be granted to an external legal and/or economic adviser who has been approved in writing by the CMA and who has given undertakings in such form as the CMA requires in accordance with paragraph VIII below (the 'Individual Undertakings') and in respect of whom written undertakings have been provided by such adviser's relevant firm/employer (the 'Firm Undertakings') (each such Adviser being an 'Authorised Adviser').
- VIII. The CMA must be informed of the date(s) on which each adviser is seeking entry into the Disclosure Room. The CMA must receive a signed copy of the Individual Undertakings by 4pm of the CMA Working Day⁷ before the date of first entry by the Adviser to the Disclosure Room. The CMA must receive the original signed copy of the Individual Undertakings before the time of first entry by the adviser to the Disclosure Room. The CMA must have accepted the signed Individual Undertakings before access to the Disclosure Room is granted to any adviser.
- IX. The Disclosure Room shall operate in accordance with the rules which are annexed to the Undertakings (Annex A – the 'Disclosure Room Rules') and subject to the Undertakings below.
- X. Disclosure of the Disclosed Material, or removal from the Disclosure Room of the Disclosed Material, or any part thereof, by the Authorised Advisers other than in accordance with the Individual Undertakings and the Disclosure Room Rules attached as Annex A, is not permitted without the express, and prior, written consent of the CMA. Breach of the Undertakings by any Authorised Adviser may result in:

(a) the CMA:

⁷ CMA 'Working Day' means any day of the week, Monday to Friday, on which the CMA office is open, excluding public or bank holidays.

- i. terminating the Authorised Adviser's access to the Disclosure Room and refusing the Authorised Adviser access to any subsequent disclosure room or confidentiality ring run by the CMA, whether relating to the Investigation or any other investigation;
 - ii. referring the breach to the Authorised Adviser's regulatory body, if applicable, which may decide to take disciplinary action in relation to the breach.
- (b) a breach by the Authorised Adviser of his or her obligations under Part 9 of the Act (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 245 of the Act.

NOW THEREFORE

I, [Name of Adviser], [Job title] at [Name of Firm], who has been engaged by [Name of Party] in connection with the Investigation, undertake to the CMA in my own name:

- A. To abide by the Disclosure Room Rules which are annexed hereto;
- B. To use the Disclosed Material for, and only for, the Permitted Purpose on behalf of [Name of Party];
- C. To hold the Disclosed Material in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make the Disclosed Material available in any other manner to any other person (including any other legal adviser, economic adviser, officer or employee of [Name of Firm] and [Name of Party], who is not an Authorised Adviser and excluding the CMA's staff and members of the Investigation;

Disclosure Room Report

- D. Not to make any electronic or non-electronic copy in any format of any of the Disclosed Material, or remove any of the Disclosed Material from the Disclosure Room, save as provided at paragraph E below;
- E. I may, subject to the following conditions, prepare in the Disclosure Room by myself or in connection with one or more of the other Authorised Advisers of [Name of Party] one report which may contain the Disclosed Material (the 'Report'):
 - a. I may copy the Disclosed Material only for the purposes of preparing the Report in the Disclosure Room, subject to sub-paragraphs E(b), E(c), E(d) and E(e) below;

- b. I will not copy in the Report or remove any Disclosed Material relating to the CPT Appendix concerning firm level cost forecasts;
- c. I will not copy in the Report or remove any Disclosed Material relating to the GFS Appendix and the Domestic Pricing Appendix, other than in aggregated form that will not allow the number of customer accounts of each party (other than [Name of Party]) to be identified (including the overall number of customer accounts and the number of customer accounts on a narrower segmented basis such as per tariff type);
- d. I will not copy in the Report or remove any Disclosed Material relating to the GfK Customer Survey other than in an aggregated form that will not allow any of the individual domestic customers that were interviewed by GfK to be identified;
- e. I will not copy in the Report or remove any Disclosed Material relating to the GfK Customer Survey that will not allow the number of customer accounts of each party (other than [Name of Party]) to be identified (including the overall number of customer accounts and the number of accounts on a narrower segmented basis such as per tariff type);
- f. The Report must be no longer than is reasonably necessary for the Permitted Purpose;
- g. Only one copy of the Report may be removed from the Disclosure Room to facilitate the Permitted Purpose on behalf of [Name of Party];
- h. I may make copies of the Report that has been removed from the Disclosure Room in accordance with the Undertakings solely for my use and for the use of any Authorised Adviser;
- i. I will keep the Report and all copies of the Report secure and will prevent the disclosure, transmission, communication or dissemination by any other means of the Report (or copies thereof), or of the information contained therein, to any person other than an Authorised Adviser or to the CMA, except as permitted in sub-paragraphs (i) and (j);
- j. A general summary of the Report may be disclosed to [Name of Party] but, in doing so, the following information will not be disclosed, transmitted, communicated or otherwise made known to [Name of Party]:
 - i. the Disclosed Material relating the GfK Customer Survey other than in aggregated form that will not allow (a) any of the individual domestic customers that were interviewed by GfK to be identified, or (b) any of the parties (other than [Name of Party]) to be identified;

- ii. the Disclosed Material, other than in aggregated form that will not allow the number of customer accounts of each party (other than [Name of Party]) to be identified (including the overall number of customer accounts and the number customer accounts on narrower segmented basis such as per tariff type);
 - iii. the Disclosed Material relating to prices;
 - iv. the Disclosed Material relating to costs; and,
 - v. the Disclosed Material relating to domestic energy consumption;
- k. For the avoidance of doubt, when providing the general summary of the Report to [Name of Party], such general summary must not enable or assist [Name of Party] to gain any understanding of its position or potential future position in any market, relative to any other market operator(s) (other than relative to a market wide benchmark) and, in particular, must not reveal any data that identifies numbers of customer accounts and prices concerning any party other than [Name of Party] or any other information that should not be given to the clients;
- F. To provide the Report to the CMA for inspection before or at **5pm on 31 July 2015**, and to remove it from the Disclosure Room only after the CMA has had reasonable time to ensure that they have been prepared in accordance with paragraph E above;
- G. Any analysis I undertake, or any report that I write for [Name of Party], or any knowledge that I obtain in the Disclosure Room, cannot be used in any way to disclose any part of the Disclosed Material which does not belong to [Name of Party], save as provided at paragraph E above;
- H. All but one copy of the Report containing the Disclosed Material must be destroyed or returned to the CMA at the conclusion of the Investigation or at the conclusion of an appeal to which [Name of Party] is a party or an intervening third party, in the event of an appeal, one copy being permitted to be retained for the purposes of compliance with [Name of Firm]'s professional indemnity insurance policy. That one copy of the Report must be stored securely in accordance with undertaking E. Prior to any disclosure of the Report by me or my firm under the terms of any professional indemnity insurance policy, I shall first consult with the CMA. In the event that material containing the Disclosed Material is to be destroyed, the party destroying shall notify the CMA as to the manner of, and date of, the destruction;

Disclosure Room Submission

- I. I may prepare in the Disclosure Room, by myself or in connection with one or more of the other Authorised Advisers of [Name of Party], one or more submission(s) to the CMA in respect of the Descriptive Statistics Appendix, the Retail Profit Margins Appendix, the Competitive Benchmark Appendix, and the ROCE Appendix (the 'Confidential Submission(s)'). The Confidential Submission(s) prepared in the Disclosure Room will constitute a 'response' to these Appendices and the relevant sections of the Provisional Findings, and may contain any of the Disclosed Material relating to the Descriptive Statistics Appendix, the Retail Profit Margins Appendix, the Competitive Benchmark Appendix, and the ROCE Appendix (the 'Sensitive Information').
- J. The Confidential Submission(s) must be provided to the CMA **by 5 pm on 31 July 2015** and must not be removed from the Disclosure Room except that drafts may be taken into a breakout room used for internal discussion (as described in the Disclosure Room Rules).
- K. I may prepare a non-confidential version of the Confidential Submission(s) (the 'Non-Confidential Submission(s)') which can be removed from the Disclosure Room, subject to the following conditions:
 - a. The Non-Confidential Submission(s) must not include any of the Sensitive Information, including the data underlying the Descriptive Statistics, the Retail Profit Margins Appendix, the Competitive Benchmark Appendix, and the ROCE Appendix;
 - b. The Non-Confidential Submission(s) can only be removed after the CMA has had reasonable time to ensure that the Non-Confidential Submission(s) do not include the Sensitive Information;
 - c. The Non-Confidential Submission(s) must be no longer than is reasonably necessary for the Permitted Purpose;
 - d. The Non-Confidential Submission(s) can be shared with [Name of Party] after a member of the CMA staff has inspected and approved it;
- L. To notify the CMA immediately if I become aware of or suspect that any of [Name of Party]'s Authorised Advisers have failed to comply with the Individual Undertakings or the Disclosure Room Rules, or any of the firms that such Authorised Advisers represent have failed to comply with the Firm Undertakings;

PROVIDED THAT

These undertakings shall not apply to any part of the Disclosed Material that:

- i. belongs or relates solely to [Name of Party] or to [Name of Party]'s business and which does not include any confidential information belonging to, relating to, or deriving solely or partially from, any other party to the Investigation, or to any individual domestic customers interviewed during the GfK Customer Survey;
- ii. at the time of disclosure is in the public domain or that subsequently comes into the public domain, except through breach of the Individual Undertakings or of the other undertakings given by external legal and/or economic advisers for any other Relevant Party in relation to the Disclosure Room; and
- iii. is required to be disclosed by law or regulation, so long as I consult with the CMA (except where prohibited) prior to disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure;

AND IN AGREEMENT THAT

These Undertakings and the Disclosure Room Rules shall be governed by and construed in accordance with English law, and I submit to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with, these Undertakings and the Disclosure Room Rules.

[Name of Party] has given full and informed consent to the restrictions placed upon [Name of Adviser] on the further disclosure of information, subject to the undertakings above.

[Name of Adviser] of [Name of Firm]

[signature]

[Date]

ANNEX A: RULES OF THE ENERGY DISCLOSURE ROOM FOLLOWING PUBLICATION OF PROVISIONAL FINDINGS

(‘the Disclosure Room Rules’)

- I. The Disclosure Room Rules apply to the Disclosure Room referred to in the Undertakings to which the Disclosure Room Rules are attached.
- II. Terms used in the Disclosure Room Rules have the meaning they are given in the Undertakings.
- III. The CMA will make the Disclosure Room available at its offices at Victoria House, Southampton Row, London, WC1B 4AD to the Authorised Advisers (as described in recital VII to the Undertakings).
- IV. Entry to the Disclosure Room, conduct within it and use of the Disclosed Material by an Adviser is permitted subject to the Disclosure Room Rules and is conditional on:
 - (a) The Adviser giving and complying with the Individual Undertakings; and
 - (b) Where relevant, the Adviser’s firm/employer giving and complying with the Firm Undertakings in respect of the Adviser.
- V. Only the Authorised Advisers will be allowed in the Disclosure Room, subject to a maximum of five Authorised Advisers per party to the Investigation (‘Party’) at any one time.
- VI. The Disclosure Room will be open on each CMA Working Day⁸ **from 13 July 2015 until 31 July 2015 inclusive**. Its hours of operation will be from 9.30am until 5pm on each day. Should the CMA decide to open the Disclosure Room beyond that time or period, access will continue to be governed by the Individual Undertakings, Firm Undertakings, and the Disclosure Room Rules.
- VII. At all times that the Disclosure Room is open, a member of CMA staff will be present to oversee compliance with the Disclosure Room Rules and shall be the person any Authorised Adviser should contact in the event of a query or difficulty concerning the operation of the Disclosure Room (including IT matters).
- VIII. In addition to the Disclosed Material, the following material will be made available in the Disclosure Room: a printed copy of the published Provisional

⁸ CMA ‘Working Day’ means any day of the week, Monday to Friday, on which the CMA office is open, excluding public or bank holidays.

Findings, the Customer Survey Appendix, the Descriptive Statistics Appendix, Retail Profit Margins Appendix, Competitive Benchmark Appendix, the ROCE Appendix, the Domestic Pricing Appendix; an electronic copy of the published GfK tabulations; and stationery.

- IX. The Disclosure Room will contain one laptop per Authorised Adviser with the following specification:
- (a) Word, Excel and PowerPoint software;
 - (b) Stata software;
 - (c) access to a specific subfolder containing the Disclosed Material;
 - (d) access to three printers;
 - (e) no storage medium other than the hard disk will be available (ie the USB ports and the CD writer – if any – will be disabled);
 - (f) no internet or email capacity; and
 - (g) the computers available for use by the Authorised Advisers of each Relevant Party will be networked to each other.
- X. Within reason, other software may be installed on one or more computer(s) in the Disclosure Room, provided that the following procedures are followed:
- (a) an Authorised Adviser must notify the CMA at least two CMA working days before the opening of the Disclosure Room if the Authorised Adviser wishes to have alternative software installed;
 - (b) such software must be provided on CD-ROM only, which must contain nothing other than the software to be installed;
 - (c) CMA staff will check such CD-ROM prior to installation;
 - (d) compliance with the licence arrangements for such software remains at all times the responsibility of the Authorised Adviser(s) wishing to install it.
- XI. All printing activity will be logged automatically.
- XII. Authorised Advisers will be provided with A4 sized envelopes in which they may store any printed materials and any handwritten notes. The envelope(s) will be sealed and placed in a secure location at the CMA's offices, which will be locked overnight. After the closure of the Disclosure Room any such materials will be destroyed by the CMA.

- XIII. In accordance with paragraph F of the Individual Undertakings, one copy of the Report, per Relevant Party, produced by the Authorised Advisers on the computers provided in the Disclosure Room, may be removed at the end of the Disclosure Room process. Where necessary, CMA staff will redact from the Report any information which may, in their opinion, lead to a breach of the Individual Undertakings. For the avoidance of doubt, Authorised Advisers will not be considered to have been in breach of the Disclosure Room Individual Undertakings where the CMA has deemed it necessary to redact information from the Report (hereby ensuring that such information is not removed from the Disclosure Room).
- XIV. Authorised Advisers may talk to each other in the Disclosure Room but any conversations must be kept as brief and as quiet as possible to avoid disturbing other users of the Disclosure Room.
- XV. The CMA will, upon request and subject to availability, provide a breakout room during the opening hours of the Disclosure Room for reasonable use by the Authorised Advisers for:
- (a) Discussions between Authorised Advisers who are present in the breakout room ('internal communications'); or
 - (b) External telephone conversations ('external communications')
- But a breakout room may not be used for internal communications and external communications at the same time.
- XVI. Requests to use a breakout room must be made to the CMA staff member present in the Disclosure Room on the day the Authorised Advisers wish to use the breakout room and when making the request an Authorised Adviser must indicate whether the breakout room is to be used for internal discussion or external communication. In the event that more than one Relevant Party wishes to use the breakout room, each party concerned shall be able to use the breakout room for a maximum of 2 hours at any one time and the priority given to parties will be determined by the order in which the Relevant Party's Authorised Adviser(s) made the request to the CMA staff member. In the event of a dispute, the matter shall be resolved by the CMA staff member in the Disclosure Room.
- XVII. No Authorised Advisers are to carry into the Disclosure Room or breakout room their own documents (eg notes, copies of working papers or other documents or textbooks) or any device allowing external communication (eg mobile phones, PDAs, laptop computers) or storage devices (eg memory sticks or dictaphones) except as permitted in the circumstances set out below.

XVIII. Where a breakout room is to be used for internal communications:

- (a) Authorised Advisers may take copies of their draft Report and/or Confidential Submission(s) and handwritten and printed notes prepared in the Disclosure Room into the breakout room but are reminded that, in doing so, they must not breach the Individual Undertakings.
- (b) Authorised Advisers must not carry into the breakout room any device allowing communication with a person outside the breakout room(s) (eg mobile phones, PDAs, laptop computers, memory sticks).

XIX. Where the breakout room is to be used for external communications:

- (a) Authorised Advisers may, with the approval of the CMA, carry mobile phones into the breakout room.
- (b) Authorised Advisers must not take into the breakout room copies of their draft Report, Confidential Submission(s) and/or any other material (whether in hard copy or electronic form) prepared in the Disclosure Room.

XX. The usual rules for access to the CMA's offices will apply. In particular, visitor badges must be worn visibly at all times. The Authorised Advisers must not leave the Disclosure Room at any time without informing a member of the CMA staff and outside the Disclosure Room may be accompanied by a member of CMA staff where appropriate.

XXI. A failure to abide by the Disclosure Room Rules by an Authorised Adviser:

- (a) will result in a breach of the Individual Undertakings which could result in the Authorised Adviser being removed from the Disclosure Room, and the Authorised Adviser may be barred from participation in any subsequent disclosure room or confidentiality ring whether relating to the same investigation or any other investigation run by the CMA;
- (b) will result in a breach of the Individual Undertakings which may be referred to the Authorised Adviser's regulatory body, if applicable, who may subsequently decide to undertake disciplinary action;
- (c) where Firm Undertakings have been given by an Authorised Adviser's firm/employer, may result in a breach of such Undertakings and the Authorised Adviser's firm/employer may be barred from participation in any subsequent disclosure room or confidentiality ring whether in relating to the same investigation or any other investigation run by the CMA;

- (d) where Firm Undertakings have been given by an Authorised Adviser's firm/employer, may result in a breach of such Undertakings which may be referred by the CMA to the firm/employer's regulatory body, if applicable, which may subsequently decide to undertake disciplinary action in relation to the breach;
- (e) may result in a breach by the Authorised Adviser of his/her obligations under Part 9 of the Act (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 245 of the Act.

XXII. The CMA may, at any time, (without consultation), vary the Disclosure Room Rules where it considers there is a good reason, which may include a reasonable suspicion that a breach of the Disclosure Room Rules, the Individual Undertakings, or the Firm Undertakings, has occurred. The variations will have effect as regards an Authorised Advisers (and, if relevant, an Authorised Adviser's firm/employer) as soon as the variations are notified to the Authorised Adviser (and, if relevant, the Adviser's firm/employer).

ENERGY MARKET INVESTIGATION

UNDERTAKINGS GIVEN BY [Name of Firm] TO THE COMPETITION AND MARKETS AUTHORITY REGARDING ACCESS TO THE ENERGY DISCLOSURE ROOM FOLLOWING PUBLICATION OF THE PROVISIONAL FINDINGS

WHEREAS

- I. On 26 June 2014, Ofgem, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the 'Act'), made a reference to the chair of the Competition and Markets Authority (the 'CMA') for the constitution of a group under Schedule 4 of the Enterprise and Regulatory Reform Act 2013 for an investigation into the Supply and Acquisition of Energy in Great Britain (the 'Investigation').⁹
- II. On 24 July 2014, the CMA published an issues statement setting out a framework for the Investigation, including four candidate potential theories of harm. On 18 February 2015, the CMA published an updated issues statement setting out updated theories of harm and those issues which were likely to represent the focus of the Investigation in the period up to publication of the provisional findings (the 'Updated Issues Statement').
- III. On 7 July 2015, the CMA published its provisional findings (the 'Provisional Findings'). The Provisional Findings are based on further economic and financial analyses of the data received by the CMA during the Investigation from a number of parties, including the six large energy firms (the 'Six Large Energy Firms'), other energy suppliers and Energylinx Ltd. ('Energylinx'), and take into account the parties' representations received either in writing and/or at oral hearings. Some of these analyses are the following:
 - (a) the economic analysis conducted to illustrate the manner in which domestic retail energy price changes are reflective of changes in costs, which is included in Appendix 7.2 entitled 'Cost pass-through' of the Provisional Findings Report (the 'CPT Appendix');
 - (b) the economic analysis conducted to calculate the potential savings for dual and single fuel domestic energy customers if they were to switch to a

⁹ Ofgem (2014), [Decision to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain](#), dated 26 June 2014.

different tariff within the same or another supplier, which is included in the Appendix 7.4 entitled 'Analysis of the potential gains from switching' of the Provisional Findings (the 'GFS Appendix');

- (c) the analysis conducted to generate descriptive statistics for the domestic retail energy markets using information provided by the Six Large Energy Firms which are included in Appendix 7.5 entitled 'Retail descriptive statistics' of the Provisional Findings (the 'Descriptive Statistics Appendix');
- (d) the analysis conducted based on the results of the customer survey conducted by the company GfK NOP Ltd. on the CMA's behalf (the 'GfK Customer Survey')¹⁰, which is included in Appendix 8.1 entitled 'Customer Survey' of the Provisional Findings (the 'Customer Survey Appendix');
- (e) the analysis conducted to determine the profit margins and ratios generated by the retail energy supply businesses of the Six Large Energy Firms included in Appendix 10.2 entitled 'Retail energy supply profit margin analysis' (the 'Retail Profit Margin Appendix');
- (f) the profitability analysis conducted to determine the retail return of capital employed ('ROCE') of the Six Large Energy Firms included in Appendix 10.3 entitled 'Analysis of Retail Supply Profitability – ROCE and economic profit' of the Provisional Findings (the 'ROCE Appendix');
- (g) the analysis conducted to determine an appropriate competitive benchmark in retail energy supply against which the CMA compared the Six Large Energy Firms' prices and revenues in the domestic and SME retail energy markets, which is included in Appendix 10.5 entitled 'Assessment of the competitive benchmark in retail energy supply' of the Provisional Findings (the 'Competitive Benchmark Appendix'); and,
- (h) the analysis conducted to compare bills across suppliers, payment methods and regions which is included in Appendix 10.7 entitled 'Domestic pricing analysis' of the Provisional Findings (the 'Domestic Pricing Appendix').

IV. The CMA has decided to disclose the following by means of the Energy Disclosure Room (the 'Disclosure Room'):

¹⁰ See CMA's [notice of intention to conduct a customer survey](#) dated 4 September 2014.

- (i) the information and data on wholesale and retail energy prices and costs that the CMA has obtained from the Six Large Energy Firms, Ofgem and ICIS underlying the tables and figures included in the CPT Appendix;
- (ii) the data received from the Six Large Energy Firms and Energylinx on retail energy tariff prices and numbers of customer accounts, as well as data on domestic consumption underlying the tables and figures included in the GFS Appendix;
- (iii) the data on average revenue per kWh, average direct cost per kWh, acquisitions by tariff type and payment type, acquisitions by channel, customer numbers and data on 'length of tenure with current supplier' underlying the tables and figures included in the Descriptive Statistics Appendix;
- (iv) the data with anonymised responses of individual customers to the questionnaire used in the GfK Customer Survey and customer records provided by the parties (the 'GfK Customer Survey Underlying Data');
- (v) the RMR Baseline Survey data provided by Ofgem underlying the Customer Survey Appendix;
- (vi) the data sourced from Ofgem's report entitled 'Retail Market Review Baseline Survey' and DECC's report entitled 'Public Attitudes tracking survey, wave 12' underlying the Customer Survey Appendix;
- (vii) a set of tabulations including the results of the GfK Customer Survey;
- (viii) on the annual profit and loss (P&L) account information of the Six Large Energy Firms underlying all tables and figures included in the Retail Profit Margins Appendix;
- (ix) the financial information underlying the ROCE Appendix;
- (x) the data on costs and balance sheet items underlying all tables and figures included in the Competitive Benchmark Appendix;
- (xi) the data on retail energy tariff prices and numbers of customer accounts, as well as data on domestic consumption underlying the Domestic Pricing Appendix;

together the 'Disclosed Material'.

- V. The CMA considers that the Disclosed Material includes 'specified information' within the meaning of section 238 of the Act to which the general restriction on disclosure in section 237 of the Act applies. The CMA has

decided to disclose the Disclosed Material to certain parties (each a 'Relevant Party') in the Disclosure Room to be held between **13 July 2015 and 31 July 2015** pursuant to section 241 of the Act.

- VI. Access to the Disclosure Room is provided for the purpose of allowing the parties' advisers to review and understand the CMA's further analysis and/or modelling, and prepare submissions and representations to the CMA on the Provisional Findings and prepare and conduct an appeal against any decision of the CMA in connection with the Investigation, in the event of an appeal (the 'Permitted Purpose').
- VII. Access to the Disclosure Room will only be granted to an external legal and/or economic adviser who has been approved in writing by the CMA and who has given undertakings in such form as the CMA requires in accordance with paragraph VIII below (the 'Individual Undertakings') and in respect of whom written undertakings have been provided by such adviser's relevant firm/employer (the 'Firm Undertakings') (each such Adviser being an 'Authorised Adviser').
- VIII. The CMA must be informed of the date(s) on which each adviser is seeking entry into the Disclosure Room. The CMA must receive a signed copy of the Individual Undertakings by 4pm of the CMA Working Day¹¹ before the date of first entry by the Adviser to the Disclosure Room. The CMA must receive the original signed copy of the Individual Undertakings before the time of first entry by the adviser to the Disclosure Room. The CMA must have accepted the signed Individual Undertakings before access to the Disclosure Room is granted to any adviser.
- IX. The Disclosure Room shall operate in accordance with the rules which are annexed to the Undertakings (Annex A – the 'Disclosure Room Rules') and subject to the Undertakings below.
- X. Disclosure of the Disclosed Material, or removal from the Disclosure Room of the Disclosed Material, or any part thereof, by the Authorised Advisers other than in accordance with the Individual Undertakings and the Disclosure Room Rules attached as Annex A, is not permitted without the express, and prior, written consent of the CMA. Breach of the Undertakings by any Authorised Adviser may result in:

(a) the CMA:

¹¹ CMA 'Working Day' means any day of the week, Monday to Friday, on which the CMA office is open, excluding public or bank holidays.

- i. terminating the Authorised Adviser's access to the Disclosure Room and refusing the Authorised Adviser access to any subsequent disclosure room or confidentiality ring run by the CMA, whether relating to the Investigation or any other investigation;
 - ii. referring the breach to the Authorised Adviser's regulatory body, if applicable, which may decide to take disciplinary action in relation to the breach.
- (b) a breach by the Authorised Adviser of his or her obligations under Part 9 of the Act (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 245 of the Act.

NOW THEREFORE

[Name of Firm], which has been engaged by [Name of Party] in connection with the Investigation, undertakes to the CMA that:

- A. Only the Authorised Advisers at [Name of Firm] shall be given access to the Disclosed Material;
- B. It will notify the CMA immediately if it becomes aware of, or suspects that, there has been any breach of these undertakings or that any Authorised Adviser at [Name of Firm] has failed to comply with the Individual Undertakings or the Disclosure Room Rules attached as Annex A; and,
- C. It will notify the CMA immediately if any Authorised Adviser has ceased employment with [Name of Firm] during the operation of the Disclosure Room or in the period of 12 months from the date of the Disclosure Room taking effect;

Further, [Name of Firm] also undertakes to the CMA to use all reasonable endeavours to ensure that each Authorised Adviser at [Name of Firm] instructed by [Name of Party]:

- D. Will abide by their Individual Undertakings; and,
- E. Will abide by the Disclosure Room Rules which are annexed hereto;

PROVIDED THAT

These undertakings shall not apply to any part of the Disclosed Material that:

- i. belongs or relates solely to [Name of Party] or to [Name of Party]'s business and which does not include any confidential information belonging to, relating to, or deriving solely or partially from, any other party of the Investigation or to any individual domestic customers interviewed;

- ii. at the time of disclosure is in the public domain or that subsequently comes into the public domain, except through breach of the Individual Undertakings or of undertakings given by external legal and/or economic advisers for any other Relevant Party in relation to the Disclosure Room; and,
- iii. is required to be disclosed by law or regulation, so long as [Name of Firm] consults with the CMA (except where prohibited) prior to disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure;

AND IN AGREEMENT THAT

These undertakings and the Disclosure Room Rules shall be governed by and construed in accordance with English law, and [Name of Firm] submits to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with, these undertakings and the Disclosure Room Rules.

[Name of Party] has given full and informed consent to the restrictions placed upon [Name of Firm] on the further disclosure of information, subject to the undertakings above.

[Name of Firm]

[signature]

[Date]

ANNEX A: RULES OF THE ENERGY DISCLOSURE ROOM FOLLOWING PUBLICATION OF PROVISIONAL FINDINGS

(‘the Disclosure Room Rules’)

- I. The Disclosure Room Rules apply to the Disclosure Room referred to in the Undertakings to which the Disclosure Room Rules are attached.
- II. Terms used in the Disclosure Room Rules have the meaning they are given in the Undertakings.
- III. The CMA will make the Disclosure Room available at its offices at Victoria House, Southampton Row, London, WC1B 4AD to the Authorised Advisers (as described in recital VII to the Undertakings).
- IV. Entry to the Disclosure Room, conduct within it and use of the Disclosed Material by an Adviser is permitted subject to the Disclosure Room Rules and is conditional on:
 - (a) The Adviser giving and complying with the Individual Undertakings; and
 - (b) Where relevant, the Adviser’s firm/employer giving and complying with the Firm Undertakings in respect of the Adviser.
- V. Only the Authorised Advisers will be allowed in the Disclosure Room, subject to a maximum of five Authorised Advisers per party to the Investigation (‘Party’) at any one time.
- VI. The Disclosure Room will be open on each CMA Working Day¹² **from 13 July 2015 until 31 July 2015 inclusive**. Its hours of operation will be from 9.30am until 5pm on each day. Should the CMA decide to open the Disclosure Room beyond that time or period, access will continue to be governed by the Individual Undertakings, Firm Undertakings, and the Disclosure Room Rules.
- VII. At all times that the Disclosure Room is open, a member of CMA staff will be present to oversee compliance with the Disclosure Room Rules and shall be the person any Authorised Adviser should contact in the event of a query or difficulty concerning the operation of the Disclosure Room (including IT matters).
- VIII. In addition to the Disclosed Material, the following material will be made available in the Disclosure Room: a printed copy of the published Provisional

¹² CMA ‘Working Day’ means any day of the week, Monday to Friday, on which the CMA office is open, excluding public or bank holidays.

Findings, the Customer Survey Appendix, the Descriptive Statistics Appendix, Retail Profit Margins Appendix, Competitive Benchmark Appendix, the ROCE Appendix, the Domestic Pricing Appendix; an electronic copy of the published GfK tabulations; and stationery.

- IX. The Disclosure Room will contain one laptop per Authorised Adviser with the following specification:
- (a) Word, Excel and PowerPoint software;
 - (b) Stata software;
 - (c) access to a specific subfolder containing the Disclosed Material;
 - (d) access to three printers;
 - (e) no storage medium other than the hard disk will be available (ie the USB ports and the CD writer – if any – will be disabled);
 - (f) no internet or email capacity; and
 - (g) the computers available for use by the Authorised Advisers of each Relevant Party will be networked to each other.
- X. Within reason, other software may be installed on one or more computer(s) in the Disclosure Room, provided that the following procedures are followed:
- (a) an Authorised Adviser must notify the CMA at least two CMA working days before the opening of the Disclosure Room if the Authorised Adviser wishes to have alternative software installed;
 - (b) such software must be provided on CD-ROM only, which must contain nothing other than the software to be installed;
 - (c) CMA staff will check such CD-ROM prior to installation;
 - (d) compliance with the licence arrangements for such software remains at all times the responsibility of the Authorised Adviser(s) wishing to install it.
- XI. All printing activity will be logged automatically.
- XII. Authorised Advisers will be provided with A4 sized envelopes in which they may store any printed materials and any handwritten notes. The envelope(s) will be sealed and placed in a secure location at the CMA's offices, which will be locked overnight. After the closure of the Disclosure Room any such materials will be destroyed by the CMA.

- XIII. In accordance with paragraph F of the Individual Undertakings, one copy of the Report, per Relevant Party, produced by the Authorised Advisers on the computers provided in the Disclosure Room, may be removed at the end of the Disclosure Room process. Where necessary, CMA staff will redact from the Report any information which may, in their opinion, lead to a breach of the Individual Undertakings. For the avoidance of doubt, Authorised Advisers will not be considered to have been in breach of the Disclosure Room Individual Undertakings where the CMA has deemed it necessary to redact information from the Report (hereby ensuring that such information is not removed from the Disclosure Room).
- XIV. Authorised Advisers may talk to each other in the Disclosure Room but any conversations must be kept as brief and as quiet as possible to avoid disturbing other users of the Disclosure Room.
- XV. The CMA will, upon request and subject to availability, provide a breakout room during the opening hours of the Disclosure Room for reasonable use by the Authorised Advisers for:
- (a) Discussions between Authorised Advisers who are present in the breakout room ('internal communications'); or
 - (b) External telephone conversations ('external communications')
- But a breakout room may not be used for internal communications and external communications at the same time.
- XVI. Requests to use a breakout room must be made to the CMA staff member present in the Disclosure Room on the day the Authorised Advisers wish to use the breakout room and when making the request an Authorised Adviser must indicate whether the breakout room is to be used for internal discussion or external communication. In the event that more than one Relevant Party wishes to use the breakout room, each party concerned shall be able to use the breakout room for a maximum of 2 hours at any one time and the priority given to parties will be determined by the order in which the Relevant Party's Authorised Adviser(s) made the request to the CMA staff member. In the event of a dispute, the matter shall be resolved by the CMA staff member in the Disclosure Room.
- XVII. No Authorised Advisers are to carry into the Disclosure Room or breakout room their own documents (eg notes, copies of working papers or other documents or textbooks) or any device allowing external communication (eg mobile phones, PDAs, laptop computers) or storage devices (eg memory sticks or dictaphones) except as permitted in the circumstances set out below.

XVIII. Where a breakout room is to be used for internal communications:

- (a) Authorised Advisers may take copies of their draft Report and/or Confidential Submission(s) and handwritten and printed notes prepared in the Disclosure Room into the breakout room but are reminded that, in doing so, they must not breach the Individual Undertakings.
- (b) Authorised Advisers must not carry into the breakout room any device allowing communication with a person outside the breakout room(s) (eg mobile phones, PDAs, laptop computers, memory sticks).

XIX. Where the breakout room is to be used for external communications:

- (a) Authorised Advisers may, with the approval of the CMA, carry mobile phones into the breakout room.
- (b) Authorised Advisers must not take into the breakout room copies of their draft Report, Confidential Submission(s) and/or any other material (whether in hard copy or electronic form) prepared in the Disclosure Room.

XX. The usual rules for access to the CMA's offices will apply. In particular, visitor badges must be worn visibly at all times. The Authorised Advisers must not leave the Disclosure Room at any time without informing a member of the CMA staff and outside the Disclosure Room may be accompanied by a member of CMA staff where appropriate.

XXI. A failure to abide by the Disclosure Room Rules by an Authorised Adviser:

- (a) will result in a breach of the Individual Undertakings which could result in the Authorised Adviser being removed from the Disclosure Room, and the Authorised Adviser may be barred from participation in any subsequent disclosure room or confidentiality ring whether relating to the same investigation or any other investigation run by the CMA;
- (b) will result in a breach of the Individual Undertakings which may be referred to the Authorised Adviser's regulatory body, if applicable, who may subsequently decide to undertake disciplinary action;
- (c) where Firm Undertakings have been given by an Authorised Adviser's firm/employer, may result in a breach of such Undertakings and the Authorised Adviser's firm/employer may be barred from participation in any subsequent disclosure room or confidentiality ring whether in relating to the same investigation or any other investigation run by the CMA;

- (d) where Firm Undertakings have been given by an Authorised Adviser's firm/employer, may result in a breach of such Undertakings which may be referred by the CMA to the firm/employer's regulatory body, if applicable, which may subsequently decide to undertake disciplinary action in relation to the breach;
- (e) may result in a breach by the Authorised Adviser of his/her obligations under Part 9 of the Act (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 245 of the Act.

XXII. The CMA may, at any time, (without consultation), vary the Disclosure Room Rules where it considers there is a good reason, which may include a reasonable suspicion that a breach of the Disclosure Room Rules, the Individual Undertakings, or the Firm Undertakings, has occurred. The variations will have effect as regards an Authorised Advisers (and, if relevant, an Authorised Adviser's firm/employer) as soon as the variations are notified to the Authorised Adviser (and, if relevant, the Adviser's firm/employer).