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

5 August 2015

Dear Mr Fletcher,

Energy market investigation: notice of possible remedies

Eggborough Power Limited (EPL) is an independent generator which owns and operates Eggborough Power Station, a 2,000 MW coal-fired power station situated in the Aire Valley in North Yorkshire. EPL has recently been acquired by the European energy group, Energetický a průmyslový holding (EPH), and the power station operates as an essentially merchant power plant in the wholesale market. EPL welcomes the opportunity to respond to the CMA's proposed remedies in its energy market investigation.

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

EPL considers that while the introduction of locational transmission loss factors would represent a more efficient outcome, the benefits of this change are likely to be limited. If the change is pursued, it could be raised by Ofgem.

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

EPL recognises that there may be specific circumstances where a CfD needs to be awarded outside of the standard CfD allocation mechanism. However, such instances should be rare and we expect would mainly relate to first-of-a-kind projects with a levelised cost which is substantially different to other low carbon technologies so that they could not participate competitively in an auction. We support the proposal that a thorough impact assessment should be carried out in these circumstances to provide transparency around DECC's decision. We hope that this would be normal practice for DECC when entering into significant financial commitments such as a CfD.

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

EPL supports this remedy to aid the robustness and transparency of decision-making. However, we are not convinced that it would of itself result in different decisions on CfD allocation to different technologies given wider government policy priorities.

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

No EPL comment.

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

No EPL comment.

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

No EPL comment.

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

No EPL comment.

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

The CMA’s conclusion is that there can be viable business models for PCWs aimed at both domestic and microbusiness customers, and EPL notes that it is aware of a specific business which is currently developing a new commercial switching solution for micro and small businesses. This service will offer enhanced transparency around prices in the SME sector as well as transactional capabilities. As the CMA has noted, this is technically more complex to achieve in the business sector than the domestic market and thus will be a unique offering compared to existing price comparison services. We are happy to discuss this solution with the CMA on a confidential basis.

We are concerned that the operation of an independent price comparison service by Ofgem may have an adverse impact upon competition in the sector and discourage the development of new commercial price comparison and switching services. In particular, we consider that:

- a price comparison service provided by a central regulator is likely to undermine the incentive for consumers to utilise commercially operated PCWs (particularly if the Ofgem site was to offer full transactional capabilities), creating a quasi-governmental monopoly;
- the provision of transactional capabilities on any PCW will require commercial arrangements with the energy suppliers. Such commercial arrangements may be a conflict of interest with Ofgem's status as an independent regulator;
- a regulator-run PCW with whole of market coverage is likely to have high set up costs, especially to accommodate the diversity of tariffs in the microbusiness sector, which would be difficult to justify when commercial alternatives are already being developed;
- such a price checking service could undermine the aim to increase competition by PCWs and suppliers agreeing special tariffs which would not be available through other channels;
- far from encouraging new entrants into the PCW sector, the operation of a centralised price checking service is likely to result in a reduction in the number of consumers

utilising commercial PCWs to compare the market, and possibly result in existing operators leaving the sector;

- we note that even if the Ofgem PCW were not to provide transactional services, it would be likely to undermine the existing PCW sector by reducing traffic from those consumers who speculatively use commercial PCW's to "check prices".

We consider a more appropriate approach to increasing consumer confidence in PCWs, which would not have any negative consequences upon competition, would be to introduce an accreditation process for such sites. Any list of accredited PCWs could be published on Ofgem's website and appropriate certification included on the PCW website. The accreditation scheme could also be advertised on customers' bills to raise awareness.

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

While we are largely supportive of the stated aim to increase accessibility to supplier prices, we note that there are a number of complexities around the provision of this information within the microbusiness sector:

- There are a large number of variables involved in assessing the relevant tariffs for each customer. These mean that "standard price" lists can be extremely large and extremely difficult for non-energy experts to interpret without utilisation of an appropriate price comparison/quoting engine. Publication of such price lists for end users is thus unlikely to improve customer engagement.
- We note that the CMA's evidence is that many suppliers already provide online quotes to microbusinesses. However, many smaller energy suppliers, and particularly new entrants to the market, operate on a much leaner cost base than the larger suppliers and as a consequence do not have their own sales functions. Such suppliers sell exclusively through TPI/PCW channels, and may not be in a position to publish price lists on their own websites or operate quoting services.
- EPL notes that there is currently no specific obligation on suppliers to quote for business customers. As a consequence, there are some tariffs which certain customers would not ordinarily be eligible and publishing these in a price list could cause confusion.

We therefore question whether the provision of price lists for microbusinesses should be mandated as the information is likely to be of limited benefit to customers in this format and the market is likely to address the issue of accessibility to microbusiness tariffs in other ways.

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

EPL is fully supportive of the requirement to increase transparency within the TPI sector. The recent report on Micro and Small Business Engagement in Energy Markets (BMG, April 2015) highlighted that there was a lack of transparency in relation to both commission charges and the breadth of market coverage obtained by TPIs. We consider a requirement to provide certain additional information prior to a customer proceeding with a recommended quotation will facilitate informed decision making by the customer and increase trust in the TPI sector.

As a minimum, we believe the additional information provided should include:

- Full details of all quotes obtained by the TPI, rather than their "recommended" quotes;
- Details of any suppliers in the market who were not asked to provide a quote;
- Disclosure of any remuneration receivable by the TPI;
- Where any remuneration receivable by the TPI is via a commission included within the quoted tariff (and is this ultimately paid for by the customer), a statement disclosing this fact should be included.

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

EPL considers that suppliers should be obliged to encourage business customers to investigate new tariffs and consider switching at the end of a contract period. However, we note that many energy suppliers have already stopped the automatic roll-over of micro-business customers.

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

No EPL comment.

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

EPL notes that energy is almost unique as a commodity in that there is no definitive purchase trigger because of the existence of default tariffs. We consider that increases in customer engagement and switching activity will be challenging to realise in such a market. A different approach to the process followed at the end of a contract term will therefore be required to increase levels of customer engagement.

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

EPL is concerned that the introduction of such a cap would represent too large an intervention in the market, and may have unintended consequences. We are concerned that the introduction of such a regulated tariff will act to stifle competition in the market, creating an artificial cap on prices and impact supplier differentiation. While such market interference may be appropriate in the domestic sector in order to protect vulnerable and low income consumers, such considerations would not be appropriate for micro and small businesses.

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

No EPL comment.

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

No EPL comment.

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

No EPL comment.

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

EPL agrees that improvements should be made to standardise segmental reporting for larger vertically integrated businesses to improve transparency in wholesale and retail markets.

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

EPL recognises that government regularly produces Impact Assessments (IAs) to accompany its policy proposals. However, our experience is that these tend to vary in quality and are not regularly updated as complex policy proposals develop over time, suggesting that this sort of analysis is retrospectively used to justify policy decisions. Furthermore, there is rarely a “plain English” summary of the IA made available in the main policy documents, which contributes to the analysis in the IA being overlooked by stakeholders. We therefore consider it may be appropriate to introduce the following requirements:

- All IAs should contain separate sections assessing the impact of policies on bills, security of supply and carbon emissions;
- IAs should be summarised in the main policy documents to improve visibility of their findings; and
- An independent expert panel should be appointed regularly to review a cross-section of IAs and determine whether the analysis is of sufficient quality.

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

EPL agrees that Ofgem’s primary duty should be to promote competition, although it should also take account of other government policy priorities as a secondary consideration. We therefore consider there may be merit in reverting to the role of competition that existed in its duties prior to 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

In general, EPL considers that there should be a clear distinction between government policy making and independent regulation, with a clear division of responsibilities between Ofgem and DECC. We are concerned that the introduction of a formal mechanism to raise ‘disagreements...over policy decision-making’ would blur that distinction. We hope that there is already regular dialogue between DECC and Ofgem on matters of importance to both parties to allow for mutual understanding of each other’s priorities and opinions.

The fact that the CMA has identified a concern over potential disagreements between government and the regulator over policy decisions suggests that there may be instances

where government decision-making is not sufficiently objective or evidence-based. The CMA should urge the government to ensure that its policies are formulated on the basis of fact and sufficiently scrutinised prior to adoption to prevent such disputes arising in the first place.

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

We agree that licensing of code administration could increase accountability and incentivise certain outcomes, such as swifter progression of modification proposals and increased coordination between administrators.

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

We do not consider that it would be beneficial to grant Ofgem additional powers to project manage the code change process. In particular, we are concerned that

- Ofgem already has powers to initiate code changes through the Significant Code Review process. Granting the regulator powers to propose changes, manage the modification process and decide code changes would fundamentally undermine the purpose of an industry-led change process;
- the delay in progressing some code change proposals results from their complexity. Setting an unrealistic timetable to progress a modification could lead to a reduction in the level of scrutiny and consideration which the proposals receive; and
- allowing Ofgem to “fast track” modifications through the process could discourage involvement by smaller participants in the change process as it is often difficult for companies with limited resource to engage fully with modification proposals at an early stage or to respond to consultations at short notice.

If the CMA’s concern is the possibility of unnecessary delay in the modification process, the process should be made more rigid and code administrators made more accountable rather than handing additional control to Ofgem. The CMA should consider whether maximum timeframes should be introduced across all codes for each stage of the modification process. There are circumstances in which these timeframes may need to be extended, but this should only be possible with the approval of Ofgem. If such a change is introduced, Ofgem should also be subject to maximum timeframes in which it can determine whether to approve a modification proposal.

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

EPL is not convinced that an independent code adjudicator is necessary or appropriate when the regulator can already perform this function.

EPL would be pleased to discuss any of the issues raised in this letter in greater detail.

Yours sincerely,

Alastair Tolley
Head of Policy and Regulation