

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

03 August 2015

Dear Sirs,

Good Energy's response to the Energy market investigation Notice of possible remedies

Thank you for the invitation to respond to the above document. Good Energy is a fast-growing renewable energy company, offering value for money, award-winning customer service and a developer of renewable generation. An AIM-listed PLC, our mission is to support change in the energy market, address climate change and boost energy security.

Executive Summary

Overall Good Energy welcomes the CMA's initial findings and remedies. We do however have several concerns with some of the remedies and some areas that the CMA has not proposed any remedies.

Our biggest concern is that the CMA has not proposed any remedies to reduce the amount of collateral that the industry has tied up in escrow accounts and not working for the benefit of consumers. This was identified as an issue in Ofgem's "secure and promote" findings, and was also identified as a problem in the CMA's findings, even though it found no evidence of harm in the wholesale market overall. Ensuring collateral was set at a level to reflect the real risk across the market would increase the competitiveness of existing players and open up the market to new players, both of which would also improve liquidity in the wholesale market. We have proposed three approaches we believe the CMA should consider to deliver this.

We are also concerned that the CMA seems to suggest in its findings that all SVTs are default tariffs. Whilst it is true that all default tariffs are likely to be SVTs, the reverse is not true. Many customers, including all of our customers, are on an SVT through choice. In our case, as with several other independent suppliers we only offer an SVT. In other cases, especially in high transit properties, customers prefer not to be locked in to a fixed term tariff deal, especially if they believe the market prices will fall in the near future. We believe the distinction between SVTs and default tariffs must be understood and clarified, especially if the CMA goes forward with its remedy on safeguard tariffs.

Whilst we welcome the CMA's investigation into the code governance we are disappointed that, apart from RMR, the CMA has made no proposals to review and reduce the amount of regulations over-burdening the market and stifling innovation and competition. Ofgem has kicked off a process to look at implementing Principle Based Regulation, but this is confined to the licences and does not consider the 10,000 pages of industry codes including the increasing 1,000 pages of the Smart Energy Code.

We would welcome an early opportunity to discuss these priority areas with the CMA investigation team and answer any questions the CMA has on other aspects of our response.

Below are a number of areas where we believe additional remedies are needed, but have not been considered by the CMA, followed by comments on each of the remedies the CMA has proposed, expanding our response where necessary,

Areas we believe further remedies are required

Listed below are 3 areas we believe further remedies are required:

1. Credit collateral

Whilst we agree with the CMA's conclusions that vertical integration does not create a barrier to liquidity we are surprised that the CMA has not recommended any remedies for credit collateral. The CMA in its findings has recognised this to be an issue especially for independent generators and suppliers, just as Ofgem's "secure and promote" investigation did.

We believe that credit collateral comes from two areas, Commercial and Governance. Commercial collateral could be improved if Investors in the market better understood the market and we believe Ofgem should issue clear guidance as to what happens in the case of default to provide investors with a clear view of this. In the interests of creating a level playing field, we also believe that all generation should have access to the offtaker of last resort scheme that is currently restricted to generators with a FiT CFD. This means that multi national companies building offshore windfarms and nuclear power plants are assured an offtaker, whilst independent generators building renewable generation capacity have no such support.

Governance collateral is collateral that is required by codes or monopoly service providers such as networks. Most governance functions have double mechanisms in place to cover default by parties. Firstly they require collateral to be posted; for small and medium sized parties this is likely to be cash. Parties in some areas can build up a good payment record, but because this can be lost by an accidental missed payment, parties are required not just to post collateral, but also to keep cash on demand for changes in collateral terms. Secondly, many codes also have mutualisation provisions, such that if the credit collateral provided is insufficient, then existing parties will mutualise the shortfall between them.

We believe that the combined collateral requirement over-compensate for the risks involved, in turn creating a barrier to initial entry into the markets and also making market participation disproportionately more difficult and expensive for independent suppliers. We believe the situation results in an adverse effect on competition in the market and have recent experience of it being used inappropriately by certain of the Big 6 in an attempt to foreclose on parts of the market. We would welcome the opportunity to discuss this experience with the CMA.

We hold the view that the best way to manage this risk without requiring parties to tie up working capital into escrow accounts would be to establish a single mutualisation process that all codes can rely on.

In relation to credit collateral, we therefore propose the following specific remedies:

Good Energy Proposed Remedy 1

Ofgem to set out clearly the process when a supplier or generator who is a PPA counterparty is placed in administration, and engage more with the investor community to facilitate investment by explaining the real risks and reducing perceived risks. This would be consistent with Ofgem's

stated ambition of becoming a trusted authority on data and information relating to the energy markets.

Good Energy Proposed Remedy 2

The Offtaker of last resort scheme should be made available to all generators, not just those who have a Fit CFD.

Good Energy Proposed Remedy 3

Credit collateral for governance bodies and networks should be abolished and a single industry mutualisation agreement put in place which is demonstrably cost and risk reflective.

2. Industry codes simplification

Whilst the CMA has considered the role of administrators in the codes process and the number of codes, we believe that there is significant scope to simplify the codes, including where appropriate moving to a more principle based regime. Ofgem has already indicated it wishes to move licenses to a more principle based approach, but unless the same approach is taken with the various industry codes, they will continue to be a significant barrier to entry.

We are especially concerned about the Smart Energy Code (SEC) which is already over 1,000 pages long and growing. Whilst we recognise some degree of uniformity is required for interoperability, we believe the SEC is over complicated.

Code administrators could undertake this simplification, but we believe this would be sub-optimal as they would not be able deal effectively with interactions between the codes, and the current process would require every change to go through a modification process. We therefore believe an independent body would be best place to do this review, perhaps under Ofgem's oversight.

In relation to code simplification, we therefore propose the following specific remedy:

Good Energy Proposed Remedy 4

Ofgem or an appropriate independent party to review the industry codes to rationalise and wherever possible take a more principle based approach.

3. Gas market entry

Most new entrants wish to enter as a dual fuel provider, and whilst the electricity market has a clear process for market entry, and very supportive code administrators, the gas market is very opaque as to what market participants are required to do, and where the boundary between gas supplier and shipper's responsibilities are. We believe if Ofgem's role is strengthened to promote competition, then it should be required to take steps to ensure new entrants have the advice and support they need at the appropriate time. For example, potential new entrants cannot get that support until they become parties, which they can only do once they have a licence from Ofgem (i.e. one has to have joined the market before having clarity as to what participation entails).

Given most new entrants now enter the retail market as dual fuel providers, we believe a one stop shop where potential entrants can get a clear understanding of the regulations and responsibilities before deciding to join the market would greatly assist competition. We propose Ofgem should take on this role.

In relation to gas market entry, we therefore propose the following specific remedy:

Good Energy Proposed Remedy 5

Ofgem to provide clear guidance on what new parties need to achieve to enter the gas (and electricity) market, in a manner that is available to both prospective and current market participants.

Comments on the CMA's remedies

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

We are supportive of this proposal provided it is implemented in a simple and efficient manner and not used as a vehicle to re-engineer the whole transmission losses regime, thus losing the simplicity of the remedy. To this end we believe the CMA should implement this remedy directly.

Whilst such a move would encourage more efficient generation signals, we believe that maintaining the split between demand and generation would also help encourage location specific demand side response options as well (including the location of storage) which should facilitate greater competition in the provision of peak demand from either generation or demand shifting.

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

We would support this remedy but believe it should be done in an efficient manner and not result in delay to the generator obtaining the CFD if awarded. Investors need timely decisions as any delay may mean that the data they based their support on could become out dated by the time DECC makes a decision. This may require the impact assessment to be carried out by a 3rd party with firm deadlines set for delivery.

CfDs should only be awarded outside the auction process where there is a demonstrable benefit to UK plc. This includes prioritising support for First of a Kind (FoaK) technology, or where the support would lead to significant benefit to the UK in terms of export potential and/or significant UK involvement in the supply chain. That said we would welcome transparency in these considerations and feel that DECC should consult on the weight it places on these factors and apply these consistently. The consultation should not however, cause delay in the decision making process. Decisions should also be made weighing up all relevant factors. For example, it would not be acceptable for decisions to be made based solely on a comparison of the requested strike price against other technologies. That approach would not take into account differences in trajectories for cost reduction (or increases) or different characteristics of the generating technology or different characteristics of the overall CfD terms requested.

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.

We are fully supportive of this remedy and believe any decisions should be based on reaching our carbon targets in an efficient and sustainable manner, whilst maintaining energy security. If investors have clear visibility of the decision making process then they will have greater confidence to invest in bringing projects to the point that they can apply for a CFD. Where the decision making process is opaque and investors are exposed to the risk of changes not based on evidence, investors are reluctant to bring forward projects, especially Independent generators, who may have to invest heavily even to reach the point of application. We would be happy to provide evidence of the proportion of total project costs that are spent to get a project to the point of application.

Reviews should be periodic as and when DECC believes the process is moving off the carbon target trajectory; however they should not lead to snap changes to allocation in the next auction round which would unsettle the market. Proposed or potential changes should be signalled several auctions ahead of time so that investors can make informed decisions as to where their capital can be best deployed.

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

We strongly agree that the ‘simpler choices’ component of the RMR rules operates contrary to the best interests of consumers and stifles competition and innovation and should therefore be removed. However, we are of the view that as well as removing ‘simpler choices’, the ‘information remedies’ must also be removed from retail energy suppliers’ licences. This level of prescriptive legislation further hinders innovation and competition, not least by making it difficult for suppliers to differentiate themselves from each other. The ‘information remedies’ contribute to customer apathy and disengagement with the market because they are bombarded with information that is both confusing and irrelevant and the prescriptive nature of the requirements means that suppliers have no flexibility to present relevant information in a format that is both informative and engaging.

Rules around discounts and bundled services also need to be removed as they harm competition and have a disproportionately adverse impact on independent suppliers. For example, for independent suppliers to attract “sticky” customers away from incumbent suppliers, they need to be able to offer incentives that engage customers into consider switching and help them realise the financial benefit of doing so. Whilst RMR rules allow suppliers to offer reward points, they prohibit cash incentives. This means larger parties who can negotiate with loyalty/reward point companies can offer discounts whereas smaller parties, who are not of a size to participate meaningfully in loyalty schemes, are not allowed to offer money off your first bill incentives. It is also a feature of loyalty/reward point schemes that participants will be granted exclusivity in their channel. This means that loyalty/reward point companies would be prevented from allowing an independent supplier to participate until the incumbent larger participant ceases its membership. This distorts competition in favour of the larger companies and removes the most effective means by which independent suppliers can compete for new customers.

Whilst we currently offer simplicity by only offering a single tariff, we believe the advent of smart metering raises the potential to better serve customers with tariffs that better suits their needs, demand profiles, technology adoption or changing consumption or generation behaviour. We would therefore advocate strongly for the immediate removal of restrictions on tariffs that help encourage behavioural change to allow demand side response and battery technology to be rolled out at a domestic level.

With regards to PCWs we believe that an increase in the number of tariffs available across the market should create an opportunity for PCWs to specialise in comparing particular types of tariff. It will however be vitally important that those PCWs that decide to specialise be permitted to sign the confidence code without an obligation to show all tariffs across the market. Examples would be PCWs wishing to specialise in Green tariffs, PPM tariffs, or looking forward demand side response tariffs or otherwise to highlight suppliers who offer exemplary customer service. In addition, the confidence code must require PCWs to explain up front what their criterion for selection is (e.g. We only display tariffs which pay us commission). If customers could trust specialist PCWs, then this may promote better competition with customers for whom price is not the most engaging aspect of deciding on their preferred energy supplier.

We believe that as long as a customer's bill contains both fixed and variable costs then a standing charge and unit rate(s) tariff structure is appropriate and limits cross subsidisation between low and high users. Customers should be able to find tariffs that best suit their consumption pattern by shopping around or using a PCW. Looking forward, there may be a reason why certain tariffs may follow a different structure (for example, tariffs for certain usage such as electric vehicles). As such, Good Energy believes it would be inappropriate for a tariff structure should be mandated and that this risks curtailing innovation and harming competition. It should be borne in mind that Ofgem has existing powers to take action if it considers that the tariff structure is intentionally meant to confuse under its Standard of Conduct licence condition.

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

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

As stated above we believe that RMR 'information remedies' should be removed from supply licences. In particular the prescriptive regulations around what suppliers need to communicate to customers has led to bills being confusing for customers and our research shows that information on bills is an inefficient way to communicate with customers, especially those who have online accounts. Customers should have access to information, but it should be available to the customer when they need it and in a format that they can understand and engage with. As with many other organisations, information should be clearly available on the company's web page, with appropriate alternatives for those without internet access.

We do not support PCWs having access to ECOES unless they are licenced as without regulation it would put customer's data at risk of misuse.

With regard to penalties for not switching within the 17 day window, there will be many occasions when the customer opts for a specific date of switching (e.g. when they move into a property, or their current fixed rate deal ceases). Identifying all these situations and excluding them from calculating penalties would be administratively costly and thus increase switching costs. It is therefore unlikely this would be in consumer's interest in the long run.

We also believe Ofgem and consumer groups should do more to ensure tenants in rented accommodation know that their right to switch supplier cannot be removed by their landlord, unless the power and gas are included in the rent. We encounter this misconception on a regular basis.

Smart metering we believe will help engage more customers with the market, but until the smart market takes hold we believe it would be prudent to concentrate on deregulating the market to ease switching rather than introducing new regulations to perceived barriers in smart that may or may not exist. We believe Ofgem should be required to review switching under smart in a few years time to see if there are any unintended hurdles to switching in the smart market.

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

Our view is that Centrica's derogation should be extended to all suppliers and welcome Ofgem's proposals to do so. We also believe that extending the current two year inspection of electricity meters should be brought into alignment given they will effectively be part of the same smart metering system. We also believe the same should apply for generation meters used by customers to claim the Feed in Tariff.

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

Whilst we are not against the principle, we believe it has to be cost effective. Prioritising any particular group of customers will make the roll-out less efficient and increase costs. We are also concerned about the robustness of the largely untested “PAYG” technology and if prioritised it may be that any unforeseen problem may impact a wider set of customers.

An alternative, more pragmatic solution may be to set an earlier completion date for PPM. For example ensuring all dumb PPM’s have been switched to smart by the April 2019. This still prioritises smart PPM, but means an accelerated “mop up” rather than having to do PPM first, but would allow a majority of PPM meters to be changed as part of a suppliers normal, efficient rollout strategy. However, before implementing this we would want to see evidence that customers with Smart PPM, are more likely to switch compared to non smart PPM customers, otherwise the benefits will not materialise.

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

Whilst we can see the benefits of an independent price comparison service we do not believe Ofgem is the right body to do this. Ofgem is responsible for the confidence code and (as discussed later) could be regulating TPIs. This therefore creates a conflict of interest.

If such a site was created under some other organisation, then it must encourage customers to consider other rankings than just price, which is well covered by commercial sites. This should include customer service standards, source of energy and other services.

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

Remedy 7a – Introduction of a new requirement in the licenses of retail energy suppliers to provide price lists for microbusinesses on their own websites and to make this information available to PCWs.

Good Energy already provides tariff sheets for microbusinesses and would welcome other suppliers doing the same so that PCWs can assist microbusinesses to find the right tariff for them. Many of the barriers to engagement for microbusinesses are the same as those for domestic customers, and thus they need the same support to switch, including allowing innovation to create attractive products for different types of microbusinesses but explained in a clear and consistent manner.

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

We strongly believe that all TPIs including PCWs should be regulated so that they have rules to abide by. Our concern is not with really with those who demonstrate good practice, but we often come across cases where businesses are misled by TPIs either deliberately or through poor training. We fear that if unscrupulous TPIs are driven out of the microbusiness market by regulation, then they will just refocus their activities on larger businesses. This is why we advocate all TPIs should be regulated not just those for microbusinesses

Regulation should also be direct and not done via suppliers as was Ofgem’s last attempt to manage TPIs. This approach left suppliers caught in the middle without the powers to deliver the outcome sought. We therefore suggest that acting as an energy TPI in any market (domestic, microbusiness or larger businesses) should become a licensable activity with clear standards to be met, and Ofgem or the FCA having powers to fine any party engaging in such activity without a licence or failing the standards. The only obligation on suppliers would be to only deal with licensed TPIs.

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

We fully support this remedy. Where a microbusiness is approaching the end of a fixed term tariff they should default onto a SVT with no notice period. If the customer wishes to go onto a new fixed term deal then it should be a positive decision by the customer.

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

Whilst we support transparency of information, it has to be relevant and accessible. Ofgem's RMR intervention to put large amounts of information on to bills and annual statements has made them a complex set of information, some of it misleading such as tariff comparison rates (TCR) and makes finding the relevant information (such as how much you owe) difficult, especially if, like a large number of customers, they do not read their bill at all.

Suppliers, rather than regulators are best placed to understand how to get relevant information to customers. We believe all the information remedies under RMR should be removed, and Ofgem should rely on a principle based regulation requiring suppliers to communicate relevant information to the customer in an effective manner.

In many industries and within the Government, customers access information via the internet when they require the information, not sent to them by the organisation when it's not required. We would envisage the same arrangements in the energy market going forward with alternative arrangements for customers who do not have internet access.

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

We are concerned that the CMA seems to believe that all SVTs are default tariffs. Good Energy, and several other Independent suppliers, pro-actively offer SVTs as many customers prefer these to a tariff that locks them in. Indeed, Good Energy only offers a SVT. All customers therefore get the same tariff rates, new or existing. All our customers have made an active choice to sign onto our SVT. We have not inherited them, nor have they become SVT customers by default at the end of any fixed term "teaser" tariff. We therefore believe that the term "default tariff" should be clearly defined as a tariff that customers did not actively choose.

With regard to customers still on their incumbent supplier's default tariff we believe they fall in to three categories. Firstly, those that have difficulty switching or who perceive it to be difficult. Recent RMR requirements to explain principal terms and conditions on sales calls have made calls overly complex and lengthy and are unnecessary given customers have a cooling off period to consider these later when sent with their confirmation letter. We believe measures are required to make the process as simple as possible and, equally important, we need to demonstrate the simplicity. As mentioned above we believe removing RMR restrictions on switching incentives would help engage customers.

The second group of customers are those living in rented accommodation. Whilst Landlords cannot dictate a tenant's choice of supplier, switching tends to be discouraged. Equally, in high transit accommodation, many tenants are unwilling to commit to fixed term tariffs and stay on default tariffs unaware that there are also better SVTs available, than those offered by the Big 6. We believe Ofgem and the Government should do more to publicise tenants' right to switch, perhaps in conjunction with local council and housing associations.

The final group of customers are those for whom energy costs represent only a small proportion of their income and they are not incentivised by the potential financial saving. Greater product innovation would be more likely to engage these customers, but the heavy focus on price by Ofgem and PCWs means they are often not aware of other options. Additionally, Ofgem should monitor their own communications to prevent giving the impression that there are only six suppliers in the market. For example by publishing complaints data for large suppliers only.

Currently customers are reminded of their right to switch on every bill. This was introduced as part of RMR, but has not resulted in more switches. We believe written prompts on other documentation are therefore ineffective, and customers on default tariffs have ignored all previous initiatives to engage them. That said, Independent suppliers are a more competitive force than they were pre the introduction of RMR and we believe that if RMR restrictions were removed to allow innovation more of these customers could be convinced to switch.

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

We believe that a “safeguarded regulated tariff” would run against the grain of promoting competition and efforts to engage customers on default tariffs. Such a tariff has the propensity to become a “comfort blanket” tariff that customers assume is protecting them from being overcharged and would be likely to prolong apathy and disengagement.

However, it may be prudent for Ofgem to have specific backstop powers to regulate the tariffs of any supplier if it believes the differential between the supplier’s most expensive tariff and its cheapest tariff on offer is wider than a set percentage (without proper justification). The mere existence of such a power is likely to prevent suppliers from over charging customers on default tariffs without creating the impression in customer’s minds that being on a default tariff protected them and they therefore have no need to engage with the market.

If a safeguard regulated tariff is introduced, then it should only apply to customers who have defaulted onto a tariff they did not actively choose. It should not apply across the board to all SVTs as many customers actively choose an SVT as they prefer not to be locked in for a fixed term (especially if they believe market prices may fall). This remedy also risks harming independent suppliers disproportionately for the reasons set out above and as such would distort competition.

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

We support this remedy and wish to see a timely implementation of Project Nexus. However, we would be concerned if actions to speed up the implementation placed more costs on suppliers, especially if those costs were not reflective of market share.

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

We fully support this remedy and believe it will improve the settlement of gas by suppliers. We share the CMA’s concern that the current process is open to ‘gaming’ and needs to be addressed.

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.

We believe that half-hourly (HH) settlement data for domestic and SME customers will encourage innovation and allow suppliers to engage customers in their energy use. It would be particularly helpful to encourage innovation in demand side response tariffs, thus reducing the cost of meeting system peaks to the benefit of all customers.

The switch to HH settlements should be mandatory for all customers with smart meters, otherwise suppliers may seek to game the system in choosing which customers to settle half hourly. For example, by settling customers who use significant power at peak times by profile whilst settling those that do not by HH would underestimate that supplier's contribution to the system peak and mean that they would not pay their true share.

With regard to the distributional impact, it is inevitable that such a move would mean those that change their behaviour have the potential to make greater savings than those that do not. However, it may be that this works in favour of those who spend a greater proportion of their income on energy as they would be more incentivised to make the behavioural changes, than those who would not see the saving to be worth their while.

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

We would like to see all suppliers provide regulatory reports and for them to be published in a central place. Currently only the larger suppliers are required to provide this information and this is then translated into an average industry assessment often quoted in the media, where as in reality it is the finances of the six largest players. If all suppliers were asked to provide information it would show the difference that the six utility companies and Independent retail suppliers have different financial models and profit margins.

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

Current impact assessments tend to be too narrow and should take a greater holistic view not just of the direct benefits, but the wider benefits that are quantifiable. For example, the current impact assessment of subsidies for renewable generation fails to take into account the lower wholesale costs as zero marginal generation pushes higher priced fossil fuel generation off the merit order. It should also take into account tax advantages that other forms of generation (or their input fuel) benefit from so that the true holistic costs and benefits are assessed. We believe that this inconsistent approach to assessing cost and benefit distorts competition and significantly benefits the Big 6.

We also believe that the trilemma assessment does not currently consider the UK climate adaptation costs of failing to decarbonise, and this should be taken into account.

Finally, we believe all impact assessments should be accompanied by a plain English summary, thus allowing non-economists to understand some of the key assumptions and considerations and the basis of the decision.

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

Ofgem's current role is conflicted and it appears to have lost its focus with competing objectives. We fully support the view that Ofgem should promote competition, especially by facilitating innovation and ease of

market entry. We also believe that Ofgem is the best regulator to deal with mis-selling and misleading marketing rather than the ASA or FCA, and that consolidation of powers to a single regulator for energy would improve certainty, consistency and ultimately increase competition.

In a competitive market, Ofgem should regulate only where necessary to maintain a competitive environment and level playing field. Any consumer protection should only be where necessary to address gaps in standard consumer protection legislation.

Ofgem should also separate its “e-serve” division, as its ability to regulate licensees is conflicted when licensees’ poor performance can be traced back to issues with Ofgem e-serve. Ofgem could retain responsibility for outsourcing the work e-serve does, but it would be more effective in managing that if it was not also the body doing (or failing to do) the administration.

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

If Ofgem is going to reassert its role as an independent economic regulator for energy, then it will invariably disagree with the Government of the day from time to time. This is a good thing and Ofgem should be open about its disagreements and deal with them in a transparent manner unless there is a commercially sensitive reason for not doing so. This transparency should also apply where Ofgem and the Government are in agreement, so that market parties can see that agreement and reason for it.

One possible mechanism is for Ofgem and the Government to respond formally to each other’s consultations.

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

Some code administrators are better at the role than others. This includes how well they look after the interests of parties not able to resource all the modification and change proposal groups. If, by licencing code administrators, Ofgem could improve the standards by which codes are governed, and where appropriate empower code administrators to take a more pro-active role to ensure a level playing field and equal representation, then we would support this move.

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

We are not supportive of Ofgem project managing change as this would duplicate the work of the code administrators and allow Ofgem influence before the change process has been completed. We would be supportive of Ofgem setting timetables for change proposals to be progressed and implemented, provided Ofgem’s role as decision maker is also timetabled and it therefore leads by example.

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

We are supportive of this proposal provided the code adjudicator could hear appeals after Ofgem had made a decision on a change proposal, especially when Ofgem has exercised its powers to raise a SCR to push through changes.

I hope you find this response useful. As mentioned above, Good Energy would welcome the opportunity to discuss its response in more detail with the CMA in coming weeks and looks forward to doing so.

Kind regards,

Chris Welby

Policy & Regulatory Affairs Director