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5th August 2015

Comments on the CMA Energy Market Investigation: Provisional Findings and Possible Remedies

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Introduction

1. The Energy Policy Group (EPG) is pleased to make comment on the [Provisional Findings Report](#) (PF) and on the [Possible Remedies report](#) (PR). In the past, we have input a submission to the CMA's [Statement of Issues](#). We then gave [oral evidence](#), the summary of which is now up on the CMA's website. We then commented on the [Updated Issues](#) paper. We have also written various blogs (e.g. [here](#) and [here](#)).
2. The Terms of Reference to the CMA Investigation sets out the problem the CMA is addressing: that 'the gas and electricity markets authority has reasonable grounds for suspecting that a feature or a combination of features of the market or markets for the supply and acquisition of energy in GB prevents, restricts or distorts competition'. And the CMA is investigating 'whether one or more issues give rise to an adverse effect on competition in the markets for the supply or acquisition of electricity and gas in GB' (para 2).
3. The EPG continues to view the CMA Investigation as very useful. It has provided a focus for the industry spectrum to let its views be known in a transparent manner which is most welcome. However, both the EPG's [original submission](#) and the [Updated Issues](#) report argued that the CMA's Terms of Reference (ToR) are too narrow for the multi-dimensional concerns of shepherding an energy system towards a sustainable future whilst at the same timing ensuring security, minimising affordability issues, keeping up with technological change, and hopefully capturing some of its opportunities for GB society. Partly

because of this, the EPG comments on the [Updated Issues](#) report were not entirely positive: saying that the EPG had not agreed 'with most of what the CMA appears to have concluded so far'.

4. Again, mainly because of the CMA's ToR, there are still a number of issues which we do not agree with in the PF and PR – and most of these are where we consider that the CMA has taken a too narrow, economic, academic and non-practical approach to an issue. However, we are pleased that in the areas where the CMA does not have a questionable calculation to base its argument on, there are PRs which we support wholeheartedly, provided they are implemented in certain ways.
5. Overall, we agree with the CMA's unequivocal statement (page 30, para 128) that their PF has identified 'a combination of features of the markets for the domestic retail supply of gas and electricity in GB that give rise to an adverse effect on competition (AEC) through an overarching feature of weak customer response which in turn gives suppliers a position of unilateral market power concerning their inactive customer bases'. This gives a very clear basis from which to think about future energy policy.
6. Similarly, we are pleased that the CMA (Summary PF, page 2, para 4) highlights the very fundamental tension within GB energy policy: the efforts to maintain a competitive energy system whilst at the same time achieving other goals, such as security, affordability and environmental improvement. The Remedies it puts forward (for example a new relationship between Ofgem and DECC and more transparency (discussed further in the section below on Possible Remedies) are welcome and go some way to improve the situation but cannot fundamentally remove this inherent tension.
7. That is because regulatory rules and incentives are a social construct. If one wants a sustainable energy system then one needs to construct a structure with rules and incentives to reach that goal. The problem with the current energy system is that the rules and incentives of its markets and networks are constructed, in theory, for short term cost minimisation through liberalisation, with (increasingly large) bits added on to enable other goals. It is the EPG's view that this current system's tensions between the competitive / economic and environmental goals are increasingly unworkable. Another energy system structure needs to be developed to enable the transformation to a sustainable energy system as cost effectively and, possibly counter-intuitively, in a more competitive manner. We have set out a first draft of our thinking on this known variously as Public Value Energy Governance ([PVEG](#)) or Decentralised Energy Governance (DEG). This is an argument for a framework which would construct a system with a different balance of Government, regulatory and technical involvement, but once constructed would be a more competitive system.

General Issues

8. The CMA often refers to energy as a homogenous product (ie Summary PF, page 7, para 22; page 19, para 82) and that therefore the CMA would expect price to be the most important product characteristics for a customer choosing a supplier and/or tariff. In the sense, that 1 kWh of electricity provides 1 kWh of electricity is strictly true. But that 1 kWh of electricity can derive from coal or wind power; it could be bought from a large energy company or it could be bought from a local wind farm operator; it could derive from an on-site solar panel, making you the homeowner a prosumer (both a producer and a consumer) or it could derive from your local authority, which is attempting to simultaneously improve the energy efficiency of the area whilst improving its sustainability goals,

providing jobs and stimulating the local economy (by keeping the energy payments local) at the same time; you might directly own some RE energy (i.e. be an investor) via your biomass boiler or you may invest via crowd-sourcing or your local authority. You may buy 1kWh and live in a leaky, non-efficient house with old appliances (for multiple reasons, some of which is explained in the PF) or you could buy 1kWh and have undertaken a whole-house makeover – thereby living in a very energy efficient house, with very energy efficient appliances, so your 1kWh goes further.

9. The spectrum of energy use is wide and the way people have energy in their everyday lives is varied. So consumers may see it as homogenous, and others probably do not. The CMA should make this distinction. To consider energy use only as homogenous is a very narrow, unreal and unhelpful perspective of it.
10. There is also a throw-away statement (Summary PF, page 6, para 16) about capacity margins and they ‘are expected to tighten in 2015/6, reflecting in part the intermittency of renewable generation’. There is a great deal of confusion about how renewable energy impacts system operation (see our blog series on [No Resource is 100% reliable](#)). An efficient, ‘active’ operation of an energy system with high penetrations of renewable energy, demand side measures and information and communication technologies (ICT) should be very different from the ‘passive’ inefficient manner we operate our system now. As said above, it is our view that if an energy framework, including rules and incentives of market and network access, were constructed for a sustainable energy system, it would be more efficiently run (i.e. using less energy to do the same thing) and more competitive than the current system, across its constituent parts.

The Provisional Findings

What we think the CMA has got wrong

11. We consider that the CMA has got it wrong on vertical integration, self-dispatch, absence of locational prices for transmission losses and constraints, some aspects of imbalance price reforms, the capacity market and contracts for differences. We have already brought up our differences with the CMA in previous EPG submissions ([here](#), [here](#) and [here](#)).
12. At root, we argue that the energy system is an interconnected, whole system and that it is important that the CMA considers the impact of four or five issues together rather than each issue individually, as their ToR seems to allow them. By focusing on individual issues rather than the impact of the sum of the issues, they miss the greater and more important impact of those issues on competition. We appreciate that the CMA is constrained by its remit, but it should be looking at competition issues in the context of delivering the Government’s climate change and security goals in the long term. Not doing so has led the CMA to these rather narrow conclusions in these areas listed in the paragraph above.
13. With respect to locational pricing, the CMA clearly concludes that the absence of locational pricing for losses is a feature of the wholesale market rules that they provisionally conclude constitutes an AEC (Summary PF, page 12, para 45). As the EPG said, in our Updated Issues paper, pricing of the transmission network has been a problematic policy area for at least 10 years, and was extensively

discussed within Project TransmiT, with a decision recently agreed by [Ofgem](#). Within the context of Project Transmit, the Government asked [three](#) academic teams to consider the question of how best to reflect locational cost variation in wholesale prices. All three teams recommended some form of inclusion of losses and congestion costs in wholesale prices. Another academic team, the Exeter EPG, was then asked to produce a summary of these three pieces of work and to assess on its [own](#) account whether transmission charging arrangements should be used to promote low carbon generation, how these could be restructured and what might be the short and long run implications in terms of costs and security of supply.

14. The Exeter EPG concluded that the academic teams had not given sufficient attention to the possible impacts of locational pricing on investment in renewable generation. While the EPG supported in principle the delivery of locational signals, either via transmission charges or energy prices, due consideration needed to be given the particular constraints faced by intermittent renewable generators. The need to access renewable resource and stringent planning considerations requires intermittent generators such as wind to locate in specific areas which are often not well-served by the electricity grid and potentially subject to high locational prices. In addition, the EPG pointed out that the delivery of the UK's renewable targets would be made more expensive if high locational prices closed down otherwise economically viable on-shore wind options that then needed to be replaced by more expensive off-shore capacity. This suggested a holistic approach to transmission charging that aimed to reduce the overall costs of delivering the UK's renewable obligations, rather than focusing narrowly on transmission costs alone.
15. Ofgem's final policy was very similar to our arguments. That the CMA has gone back to the short-term, non-holistic, narrowly economic view is a great shame. We believe that it should reassess its position on locational pricing.
16. With respect to the Capacity Market (Summary PF, page 14, para 54), the CMA accepts it as it is, and that because of DECC's work on DSR, it does not intend to carry out further work in this area. We hope they will change their mind on this – particularly, as they say, DECC is continuing to work on design issues on the unequal treatment of DSR. At the very least, the CMA should review progress on this before their final report.
17. With respect to contracts for difference (CfD, Summary PF, page 15, para 57): the CMA thinks that the move to a competitive allocation process was *'a positive step towards ensuring an efficient allocation of support'*. The prices awarded under the CfD process were lower than under the RO, but cost is not the only relevant indicator here. In the context of wider renewables targets, and the expectation of more demanding targets in future, delivery of renewables capacity is also an important factor. Obviously seeking to minimise the costs of low carbon generation is sensible but it should not be the only goal - climate change and augmenting security through diversity of generation should also play a role. Focusing only on short term costs and efficiency is too limited an approach for assessing the delivery of low carbon capacity in the longer term.
18. The CMA (Summary PF, page 15, para 64) highlights the relative inefficiency of allocating contracts with administratively set strike prices and uses the Final Investment Decision enabling for Renewables (FIDeR) process to demonstrate that the prices could have been lower if the contracts had been awarded

through a competitive process. It is extraordinary that the CMA does not mention the Hinkley Point price setting process in this context given its concern that contracts should deliver value for money for consumers. The CMA should examine the administrative process by which strike prices were set for Hinkley Point, and whether these could be judged as delivering value for money for consumers.

19. The CMA (Summary PF, page 15, para 67) is also concerned about DECC's decision to split renewable technologies into two separate pots for the first allocation auction, arguing that this gives rise to an AEC because DECC has not justified how the technologies were allocated to one pot or the other, and has not explained how the budget was allocated between pots.
20. DECC has argued that the less developed technologies in pot 2 are expected to deliver dynamic efficiencies in terms of cost reductions over time. However, the CMA states that: *"... to justify setting aside budget for Pot 2 technologies DECC would need to demonstrate that support of these currently higher cost technologies is likely to have an incremental effect on their future costs. Supporting more costly Pot 2 technologies can be justified in terms of providing the lowest cost path to meeting decarbonisation targets in the long run only where this can be expected to result in cost reductions that would not have materialised absent the support, and where such reductions are likely to outweigh any additional costs incurred in the short run."* It is difficult to see how DECC would show this with any authority. The expected cost reductions would occur in the future, and the extent of them is dependent on any number of variables - supply chain issues, the extent of deployment, broader social and environmental factors etc. etc. - none of which can be predicted with any certainty. There is a huge amount of research on the innovation process in energy technologies (and indeed from mainstream economics) that shows that 'market failures' are pervasive and that early stage technologies require technology specific government support.
21. Instead of trying to predict an uncertain future, the CMA could more usefully use the lessons of history with renewables deployment. The RO was originally designed to be technologically neutral, and delivered the most cost effective renewables technologies - landfill gas, biomass in coal stations and onshore wind - at the expense of diversity and the ability of new technologies to exploit learning effects from deployment. The efforts undertaken to turn the RO into a half way decent support mechanism has been widely documented¹. That the CMA is making these same arguments 15 years later without seemingly any nod to the numerous successful renewable energy mechanisms around the world is not convincing, particularly since we raised this with referenced details in our [last submission](#).
22. The CMA says that independent generators are not disadvantaged by vertical integration (Summary PF, page 12, para 42). It is a little unclear from the way that this section is written because it seems to be directed at large generators rather than small ones. We have not been close to this in the immediate past, but certainly in the recent past smaller generators have had lower priced PPAs. We are assuming that the smaller generators have told you clearly that they have had no problems – and if that is the case then we are pleased to hear it.

¹ Woodman B, Mitchell C (2011). Learning from experience? the development of the Renewables Obligation in England and Wales 2002-2010. *Energy Policy*, 39(7), 3914-3921.

23. As said above in general comments, we think the CMA's view of energy as homogenous (Summary PF, page 19, para 82), extremely narrow and separated from the reality of day to day energy decisions of a significant subset of consumers. We also find the CMA's optimism in smart meters unexpected. Smart meters rely on customers 'connecting' with them and, given the lack of connection the CMA illuminates in the rest of its report, it is far from clear that smart meters will somehow change that around.

What we are pleased to see

24. The discussion of supplier behaviour, customer response and analysis of profitability is very welcome. What is truly astonishing is the (Summary PF, page 20, para 85;) suppliers' gross margin (ie combination of indirect costs and net profits) of around 17% of the retail cost of electricity and 19% of the cost of gas across the Six Large Energy Firms; and (Summary PF, page 39, paras 177+) that *'on a combined basis the supply businesses of the Six Large Energy Firms earned a return on capital of 28% on average across the 5 year period from 2009-2013'*. The CMA takes a cost of capital as 10% - although this seems very high.
25. The EPG finds the discussion about weak customer response (Summary PF, page 26, para 111+) rather non-empathetic but it does clearly show the large lack of connection between customer and their energy use; and, as said above, (page 31, para 133) the provisional view that the Six Large Energy Firms enjoy a position of unilateral market power is welcome.
26. The EPG also agrees that the simpler choices component of RMR is a feature giving rise to AEC (Summary PF, page 33, para 146). We think it is important, and good for competition and for many other reasons, that local projects can provide a local tariff – currently it is possible given via derogations from Ofgem but it should be possible in a straight forward way. We have always found the Ofgem Confidence Code to be convoluted and unhelpful (page 34, para 151+); we agree that the outmoded means of settlement is a feature which gives rise to AEC (page 36, para 160+); we agree, for the reasons that you outline, that small supplier exemptions should continue (page 37, para 166+); we are pleased that the CMA has said so clearly that the average prices paid by domestic customers are above those one would expect in a well-functioning competitive market (page 42, para 189+).
27. With respect to the governance of the regulatory framework (Summary PF, page 42, para 191+), we are very pleased to see that the CMA has raised issues around the framework for financial reporting; effective communication on the impacts of policies and policy trade-offs (page 43, para 196); and Ofgem's Duties and objectives and independence (page 43, para 198). With respect to this, we are worried that the CMA is focusing too much on Ofgem's Duties to current consumers rather than both current and future.
28. We also very much like the idea about new means of communication between Ofgem and DECC (page 44, para 204). We agree with your provisional finding (Summary PL, page 44, para 205) that an overarching feature of a lack of robustness and transparency in regulatory decision-making gives rise to an AEC. Finally, we agree that a combination of features of the wholesale and retail gas and electricity markets in GB are related to industry code governance and which give rise to an AEC (page 45, para 206+).

29. This submission discusses these points alongside the possible remedies for them in the section below.

Possible Remedies

Absence of locational adjustments for transmission losses (PR, page 5)

30. Our concern, as discussed above, is that locational pricing will impact on renewables deployment. It seems to us that a solution was finally agreed by [Ofgem](#) in mid-2014. The key issue now for markets, network pricing and system operators is to move to an energy system regulatory structure which both suits the changing technological characteristics of the new energy system, and increases competition. This may or may not include transmission pricing alterations. However, it seems to us that this solo tinkering with transmission pricing is premature and unhelpful, particularly given the recent European Union [Energy Market Design Consultation](#). We reject this remedy for the reasons given above.

Administration of Contracts for Difference mechanism (page 7)

31. The CfD mechanism is significantly flawed, and was only developed to give the GB Government more chance of getting it through State Aid in order to subsidise the proposed new nuclear power plant at Hinkley Point C. In a world where there is enormous experience of how to support renewable energy, the CfD is ridiculously complex. That the CMA is worrying about pots of money for different technologies in the CfD, and how best for DECC to do that in the most competitive manner is of entirely secondary importance.

32. What is of primary importance is that the Government, because they will not deal with the fundamental tension between trying to be a competitive energy system and one that supports decarbonisation, has implemented an energy policy where pretty much everything in it gets some support. The CMA seems to be going along with this – only asking that what is supported is given out in a competitive manner. The CMA should be asking what are the goals of Government and how best should they be met. We argue, as we said in our Original Submission to the CMA and as we say above, that there needs to be a fundamental restructuring of the GB regulatory system whereby an energy system which suits both sustainable energy and competition should be constructed. This is not hard – it is probably somewhat similar to [the Danish Energy System](#) and it is what [New York State](#) is trying to do at the moment.

Weak Customer Response from domestic and microbusiness customers (page 10)

33. The EPG is very pleased that the CMA is not advocating a return to full price regulation (page 11, para 34). We support Remedy 3 – removing from domestic retail energy suppliers licences the ‘simpler choices’ component of the RMR rules (page 15). We think that it is not the number of tariffs which are the problem but the comparison sites. In general, if a company wants to provide a tariff and can persuade Ofgem that it is a reliable entity for a license, then they should be allowed to offer what tariff they wish. For example, (page 17, para 51, d, i), a single unit rate per kWh would be beneficial for those individuals and households who have upgraded their homes and as a result use very little energy². This

² Catherine Mitchell’s gas bill for example is almost entirely made up of the standing charge because she uses almost no gas.

sort of tariff is the norm in many US States (eg California). Moreover, it is important that local tariffs are available. For example, a wind farm operator should be able to supply the output from that wind farm to the local area.

34. With respect to remedy 4a, in general EPG thinks that the CMA is too optimistic about the impacts of smart meters. However we strongly agree with the PF that ‘that the absence of a plan for moving to half-hourly settlement for domestic customers is a feature that gives rise to an AEC in the domestic retail electricity market’. Likewise we support Remedy 13 to require the agreement of ‘a binding plan for the introduction of a cost effective option to use half-hourly consumption data in the settlement of domestic electricity meters’. Agreement of a timely plan, and the instigation of the modification process to achieve HH settlement, is crucial to support innovative and engaging tariff and service offerings from existing and new entrant suppliers. EPG are not supportive of Price Comparison Websites (PCW), as discussed below, and so we do not support any of the sub-remedies put forward in this remedy which concerns them. Again, the CMA focus on them seems odd. We think penalties for delayed switching is a good thing, but whether this should be for failing to meet next day (from 2019) seems ambitious (page 20, para 59, d). We think the penalty to companies should be so large that they really make sure they don’t pay it (for example, £100 per customer) but we don’t think this should all go the customer, although some should £10-20. The left over amount should be hypothecated. For example, for a revolving fund with 0% interest for energy efficiency measures.

Ofgem to provide an independent price comparison service (Remedy 6, page 22)

35. EPG strongly supports an independent PCW – although we think that a trusted consumer organisation would be better to undertake it – although it would be linked to Ofgem’s website. This is a way to increase trust in the energy system.
36. EPG considers that it is more important to put in place an easily accessible PCW run by a trusted consumer organisation that society can trust rather than worrying about private, and often not very trustworthy, PCW sites (ie page 24, para 71, c). Ofgem should require certain information from all tariffs so that they are easily comparable (ie para 71, d), they should be able to make switches (para 71, f); the cost of doing it should go on bills (para 71, g); every bill should have the website in large print on it and the PCW itself should be able to have links to Ofgem (para 71, h).
37. Ofgem’s PCW may develop into a source of information.

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 (Remedy 9, page29)

38. EPG strongly supports increasing the connection between customers and their interactions with energy. However, this is a very complex area and some measures may make the situation worse rather than better. We are very aware that we are not best placed to make comments on this. However, we know for example that Citizens Advice, CSE and Good Energy have both done good, and new, work on what information a bill should contain and how it should appear (ie para 84, a) and on how to help with switching. For all these Remedy 9 questions, we simply ask the CMA to listen to those who have done work in this area.

39. With respect to customers reaching the end of their contract period (page 29, para 84, d), and the prompts they may receive to engage with the market (page 31, para 89, Remedy 10) we do support a default tariff, provided it has certain details and therefore these points are discussed further under Remedy 11.

A transitional 'safeguard regulated tariff' (Remedy 11, page 32, para 91+)

40. We broadly agree with a default tariff. We agree that customers could be rolled on to this if various prompts to get them to choose a tariff have been unsuccessful (ie Remedy 10), and that this is preferable to a standard variable tariff (SVT) provided they are set up in certain ways. There are various points to a default tariff we would highlight. The CMA describes this Remedy as a transitional safeguard price cap (page 32, para 92), and it seems to us that this is a rather unfortunate name – hence our use of the term default tariff. The CMA points out that the current SVT is used as a default tariff (page 37, para 87).

41. EPG does not agree with: *'the standard approach to price controls in network industries is for the regulator to aim to set prices at what it assesses to be a competitive level, based on a suitable measure of efficiently incurred costs. We consider, however, that to set default tariffs in this way could have severe repercussions for competition'* (page 33, para 92)

42. And the EPG also does not agree with: *'Consequently, a transitional safeguard price cap would need to include some 'headroom' in addition to an assessment of cost to allow for active and effective competition while still providing sufficient protection for customers'* (page 33, para 93)

43. It seems to us – as discussed in our oral evidence - that a default tariff can be of benefit to customers if they are regulated so that the suppliers have very little profit – quite the opposite of this headroom the CMA talks about – and so that they do something which is beneficial to the broader energy system which would not be provided otherwise. In this situation, we argue that the default tariff should be set up as a rising block tariff. A default tariff based on cheap price with no environmental / energy efficiency requirements strikes us as bad as a default tariff with headroom – the latter being absolutely no better than the situation now and the former, as the CMA, says undermining price, but not service, competition. We argue that a default tariff which does something beneficial avoids the problem of undermining competition and avoids the problem of giving a high return to a low risk enterprise.

44. Of the 17 US States which have privatised and liberalised energy systems, all but one have default service. Not all these States have competitive retail at the domestic level. The default service in the US, is a regulated cost plus system, and is generally thought to work well.

45. Our requirement for acceptance of a default tariff, as said above, is that it is set up as a rising step tariff so that the first block of electricity is cheap; the next block is more expensive ; and the third block is very expensive. This has the benefit of connecting consumers to their energy use, and can be extended, if necessary, for vulnerable households whereby, for example, the first 1000 kWhs is free. Rising block tariffs have so far not occurred in GB, yet they are a very good way to focus customers on their energy use. This would dampen the CMA concerns of a default tariff undermining competition. It seems to us

that the CMA concerns in this regard are partly due to their view that energy is homogenous. As we said above, we do not consider energy to be homogenous at all so the default tariff in effect becomes the service, not the price, to beat.

46. Moreover, we do think the default tariff should be regulated. A default service without regulation effectively becomes another current tariff.
47. Which suppliers should be involved needs to be thought carefully about, and other global default tariff schemes need to be assessed. The EPG expects certain businesses or local authorities to like this low risk business. Possibly all default tariff customers should have the opportunity to transfer from their suppliers to an independent / local / regional supplier, specifically set up for default tariff customers.
48. It is not clear how many millions of customers would be affected by this default service but it is a very large number. In general, EPG strongly supports a competitive retail market for domestic customers and so one does not want to take the long term SVT customers away from this market forever. However, if those customers are being 'ripped off' then something needs to be done and this seems to us to be a reasonable solution, especially as we would only support it with the rising block tariffs which stimulate consumer connection to their energy use and energy efficiency of use.
49. Denmark is discussing removing their default tariff for electricity, although not for heat. They have competitive retail at the domestic level. There is 'trust' in the default service. On the other hand, Denmark has taken the view that customers are knowledgeable enough to choose their tariffs. This may be example of what the CMA says is a 'transitional' safeguard regulated tariff but we, the EPG, imagine this is a long way off in GB.
50. In relation to the Remedy questions asked (page 33, para 95) – (a) yes, the safeguard tariff should be cost-plus (if by that is mean that the various costs – ie wholesale price, network costs, environmental and social costs are understood and then a small percentage is allowed for profit (ie 1-2%) for the lowest block of electricity, slightly more for the next block and so on. The default tariff is a low risk, low return enterprise; (b) setting the prices for the different blocks would be Ofgem's responsibility, and they would do it annually; (c) customer service could not be reduced; (d) yes, all customers, assuming that efforts have been made to find out their wishes; (e) the EPG does not agree with headroom or the concept that competition would be undermined provided the default tariff was required to do more than be a 'cheap' tariff ; (f) this should be Ofgem's decision; (g) we do not support evergreen, rollover contracts and similarly in this case, customers should actively continue it; possibly the default service tariff itself could be reviewed every 4 or 5 years? (h) all suppliers (including local authorities) should be able to be involved and to access default tariff customers; (j) the EPG cannot answer this but no particular efforts should be made to support suppliers. As the CMA has shown, these suppliers has done very well out of the current situation.
51. The unintended consequence may be that customers will like this tariff and as a result may increase their trust levels in the energy industry. This is to be welcomed.
52. Clearly, there are lots of details to sort out before this is implemented. But assuming those details are sensible, then we broadly accept this as a useful remedy.

Lack of Robustness and transparency in regulatory decision-making (page 37, para 104+)

53. The EPG strongly supports Remedy 14 (page 38, para 105) but is aware we do not have the expertise in this area to make detailed suggestions. We assume there are people who do know, and we imagine there are many within the CMA. As we said in our oral evidence, it should be perfectly possible not just for Ofgem to keep track of how much profit the energy companies are making – in all areas of their businesses – but also interested stakeholders, such as consumer groups. EPG, in general, will support measures which enable this. EPG suggested in its institutional and regulatory reform document that GB should have an independent market monitor³, as some countries and US States have.

More effective assessment of trade-offs between policy objectives and communication of policies on prices and bills (Remedy 15, page 40, para 110).

54. The CMA has done everyone a great service by opening up this issue and it was the subject of a recent blog about the [CMA PF](#).

55. The CMA seems to have three issues in this area: first is the idea that Ofgem has done a number of things over the last few years that have failed to promote effective competition, including not introducing locational transmission losses charging, prohibiting regional price discrimination and imposing limits on tariffs in the retail market review. The CMA makes an association between these actions and changes to the objectives and duties of Ofgem, especially the ‘downrating’ of its ‘competition duty’. The CMA argues that overall these changes ‘may constrain Ofgem’s ability to promote competition’.

56. A second concern is about overlaps between Ofgem and DECC. The report notes that while DECC is in principle responsible for setting policy: ‘Ofgem inevitably takes decisions which develop further these policy objectives and go beyond mere implementation.’ The issue is then a lack of coordination between the two bodies leading to ‘suboptimal decision-making’.

57. A third concern is that DECC has been leaning on Ofgem to act in particular ways (for example on tariff simplification) by using the threat of legislation if Ofgem did not act, and that this is undermining the perceived independence of the regulator.

58. Remedy 15 asks a number of questions about this, including whether there is a case to justify a new, independent body tasked with scrutinising the impact assessments of policy making bodies (page 40, para 112 f); Remedy 16 is a revision of Ofgem’s statutory objectives and duties in order to increase its ability to promote effective competition (page 41, para 113); Remedy 17 is introduction of a formal mechanisms through which disagreements between DECC and Ofgem can be addressed transparently (page 41, para 114).

59. As said elsewhere, in our submissions and in our blogs about the CMA process, energy is an intensely political issue. The essential key is to try and make policy decision-making as transparent as possible, including confronting the politics of the issue. To this effect, in the big picture sense, we think the

³ A default tariff based on cheap price with no environmental / energy efficiency requirements strikes us as bad as a default tariff with headroom – the latter being absolutely no better than the situation now.

institutional and regulatory framework of the current system – with an ‘independent’ regulator - is no longer fit for purpose given its challenges, and we have set out why in detail, and possible options [elsewhere](#). In this, we argue for an economic regulator – which has no other issues it has to resolve. This body does not have a hierarchy over a technical body responsible for security and transformation. Both these two bodies (Ofgem and the technical body) work to a body which has ultimate control and this body with ultimate control is the body responsible for transparent discussion of trade-offs and a complete airing of the politics of the policy. This job is done in Denmark by the Danish Energy Agency, which sits in the Danish Ministry and reports directly to the Minister. We, in GB, need to think about the regulatory needs of our energy system given its challenges, and one part of this may be an Energy Office, an Office of Carbon Responsibility, an Energy Agency (and so on). However, the creation of one such body is insufficient. The regulatory framework and the roles of the institutions involved need to be rethought and restructured to recreate a new framework. The EPG is certain that the tension within the Regulator to both encourage competition whilst also encouraging a transformation to a sustainable energy system is reducing effective policy-making. This we would say however is ultimately the responsibility of Government to sort out via legislation or other measures.

60. One helpful way forward would be for the Government to resurrect the discussion surrounding its Strategy and Policy Statement, which was closed down before the election. It is not clear how this will be taken forward in this Parliament, if at all, but the process of setting out key relationships and responsibilities between DECC and Ofgem would provide a useful framework for deciding whether the current regulatory structure is fit for purpose.
61. EPG does therefore support Remedy 17, although it does not see it as getting to the bottom of the problem; and it supports Remedy 16 to the extent that it is part of this bigger picture regulatory framework change. We also support Remedy 15, but as said above, it’s the framework which needs sorting out not just the addition or reduction on one institution.

Industry-led system of code governance (page 42, para 199+)

62. This is another very important area, and the topic of a recent [blog](#). Industry codes provide the detailed rule book for how markets and networks operate commercially and technically. They are a crucial but often overlooked element in the system of energy governance. As identified in [IGov research on network governance](#), in the [EPG’s original submission](#) and [oral evidence](#) to the CMA, codes are highly problematic because there is often a wide gap between the goals of high-level policy and what is possible according to the codes. For example, while promoting sustainable development is part of Ofgem’s remit, this goal is absent from objectives for almost all codes.
63. Interestingly, in the hearings held with the CMA, both [DECC](#) and [Ofgem](#) acknowledge that they have concerns about codes governance (Ofgem has also [recently consulted](#) on whether the current arrangements are working). In their evidence Ofgem said that they think the central problem with code governance is that it may be preventing innovation and adoption of new business models, and that is difficult for new entrants to get views heard and accepted through a modification. They also argued that current arrangements ‘reinforce tensions between incumbents and new entrants rather than alleviating them’. Like CMA, Ofgem also noted the problems they have faced in trying to introduce major changes

to codes, despite the creation of the Significant Code Review process (citing the [electricity balancing SCR](#) as an example).

64. The CMA puts forward a number of Remedies: Remedy 18a (page 43, para 122) suggesting that code administration and / or implementation of a code change would be a licensable activity – thereby enabling Ofgem the power to efficiently monitor performance, give directions and so on; Remedy 18 b (page 44, para 126) to grant Ofgem more powers to project manage and / or control timetable of process of code change; Remedy 18c puts forward the idea of appointing an independent code adjudicator to determine which code changes should be adopted in the case of dispute.
65. These are all major change Remedies, and we are very pleased to see them. In our straw option for a new institutional and regulatory basis of the energy system, [Public Value Energy Regulation](#) or Decentralised Energy Governance, we also created a Networks and Code Body which worked directly to the ‘guiding mind’ technical body. We envisaged a Code book which was about 40 pages long (as occurs in [Denmark](#)) rather than the current 800 or so pages in GB), and we gave the technical body the ability to change them. In general, therefore, we totally support change. The important points for whatever system is chosen in its place is that the ‘old’ system actors cannot stop innovation because it does not suit it; and secondly, as discussed above, this is one institutional change – which is needed – but which should fit with the wider change.

Other Remedies

66. With respect to Remedy 4b (page 20), yes the exemption for Centrica’s 2 year inspection should be removed.
67. With respect to Remedy 5, we do not feel qualified to comment on this.
68. We support Remedy 7a and 7b (page 25) but do not feel qualified to comment on this.
69. We support Remedy 8 (page 28).
70. We support Remedy 12a and 12b (page 35 and 36)

Remedies the CMA is not minded to consider further (page 45, para 131).

71. The EPG agrees with the CMA for all of them except the introduction of price non-discrimination provisions (Remedy e, page 50) to the extent that this might stop suppliers offering a local tariff.