

Energy market investigation

Second supplemental notice of possible remedies

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Introduction

1. On 26 June 2014, the Gas and Electricity Markets Authority in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the 2002 Act) (as provided for by section 36A of the Gas Act 1986 and section 43 of the Electricity Act 1989), made an ordinary reference to the Chair of the Competition and Markets Authority (CMA) for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for an investigation into the Supply and Acquisition of Energy in Great Britain.
2. The CMA is required to determine whether any feature or combination of features of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK.¹ If the CMA decides that there is such a prevention, restriction or distortion of competition, there will be an 'adverse effect on competition' (AEC).²
3. In its provisional findings published on 7 July 2015, the CMA identified features that, in combination, give rise to a number of AECs and detrimental effects on customers. These features are summarised in Section 12 of the provisional findings.
4. On 7 July 2015, the CMA also published a Notice of Possible Remedies (Remedies Notice) which set out and invited comments on possible actions which the CMA might take in order to remedy, mitigate or prevent the AECs or any resulting detrimental effects on customers.
5. On 26 October 2015, the CMA published a Supplemental Notice of Possible Remedies (the Supplemental Remedies Notice) which set out further possible remedies that had been suggested by Scottish Power and Centrica in their responses to the Remedies Notice. The Supplemental Remedies Notice invited comments on the further possible remedies.
6. Following the publication of its provisional findings, the CMA has further investigated the characteristics of the prepayment segment (PPS) of the GB retail energy markets. In particular, the CMA has considered whether there are features (other than those identified in its provisional findings) of the GB markets for retail supply of gas and electricity to domestic prepayment meter customers (PPM customers) that give rise to a separate AEC.

¹ See section 134(1) of the 2002 Act.

² As defined in section 134(2) of the 2002 Act.

7. Following its further investigation of these segments of the GB retail energy markets, the CMA has provisionally found an AEC arising from a combination of features of the GB markets for domestic retail supply of gas and electricity to PPM customers (the PPS AEC). These features are set out fully in the Addendum to Provisional Findings published on 16 December 2015.
8. Where the CMA finds that there is an AEC, it has a duty to decide whether it should take action itself and/or whether it should recommend others to take action to remedy, mitigate or prevent the AEC or any resulting detrimental effects on customers.³ If the CMA decides that such action is appropriate, it must also decide what action should be taken and what is to be remedied, mitigated or prevented. In deciding these questions the CMA has a duty to achieve as comprehensive a solution as is reasonable and practicable to the AEC and any resulting detrimental effects on customers.
9. This supplemental notice of possible remedies (the Second Supplemental Notice) sets out and invites comments on possible actions that the CMA, or others, might take in order to remedy, mitigate, or prevent the PPS AEC or any resulting detrimental effects on customers. Prior to deciding what, if any, action should be taken and by whom, the CMA will take into account all comments received in response to this Second Supplemental Notice and will consult further through its provisional decision on remedies. The parties to this investigation and any other interested persons are requested to provide any views in writing, including any suggestions for additional or alternative remedies that they wish the CMA to consider by **5pm on 6 January 2016**.

Criteria for consideration of remedies

10. When deciding whether any remedial action should be taken and, if so, what that action should be, the CMA will consider how comprehensively the possible remedy options – whether individually or as a package – address the AEC and/or its resulting detrimental effects on customers, and whether they are reasonable and practicable.⁴ The CMA will assess the extent to which different remedy options are likely to be effective in achieving their aims, including when they are likely to have effect.⁵ The CMA will generally look for remedies that prevent an AEC by extinguishing its causes, or that can otherwise be sustained for as long as the AEC is expected to endure. The CMA will also tend to favour remedies that can be expected to show results within a relatively short time. Where we consider that the relevant competitive dynamics of a market are likely to change materially over the next few years,

³ Section 134(4) of the 2002 Act.

⁴ *Guidelines for market investigations: Their role, procedures, assessment and remedies (CC3)*, paragraph 330.

⁵ *CC3*, paragraphs 327 & 330.

we will consider including sunset provisions to limit the duration of certain remedies.

11. The CMA will be guided by the principle of proportionality in ensuring that it acts reasonably in making decisions about remedies. The CMA will therefore assess the extent to which different remedy options are proportionate, and in particular it will be guided by whether a remedy option:
 - (a) is effective in achieving its legitimate aim;
 - (b) is no more onerous than needed to achieve its aim;
 - (c) is the least onerous if there is a choice between several effective measures; and
 - (d) does not produce disadvantages which are disproportionate to the aim.⁶
12. The CMA may also have regard to the effects of any remedial action on any relevant customer benefits arising from a feature or features of the market giving rise to the AEC.
13. In the event that the CMA reaches a final decision that there is an AEC, the circumstances in which it will decide not to take any remedial action are likely to be rare but might include situations in which no practicable remedy is available; where the cost of each practicable remedy option is disproportionate to the extent that the remedy option resolves the AEC; or where relevant customer benefits accruing from the market features are large in relation to the AEC and would be lost as a consequence of any appropriate remedy.⁷

Possible remedies on which views are sought

14. In this Second Supplemental Notice we describe the remedy options that we have considered so far and which we believe could be effective in addressing the PPS AEC, or its detrimental effects on customers. We describe each of these remedy options in turn, explaining the feature(s) they are meant to address and how they are intended to work.
15. We note that the remedies we identified in the Remedies Notice in respect of addressing the AEC in the domestic retail energy markets provisionally found to be arising from an overarching feature of weak customer response (the Domestic AEC) may also be relevant to some extent to PPM customers. While we have identified features specific to the PPS that we believe give rise

⁶ CC3, paragraphs 335–337.

⁷ CC3, paragraphs 355–369.

to the PPS AEC, it is possible that competition in the PPS may be increased as a result of increased customer engagement resulting from any remedies that we may introduce to address the Domestic AEC or its detrimental effects. Nonetheless, we are considering whether additional remedies may be necessary to address the PPS AEC or its detrimental effects.

16. We invite views on the effectiveness and proportionality of the possible remedies that we have set out in this Second Supplemental Notice, and on the most effective means of specifying and implementing them. For each of the remedies set out in this Second Supplemental Notice, we invite submissions on:
- (a) whether the remedy may give rise to unintended consequences and, if so, what these might be and how they might be prevented or mitigated;**
 - (b) any relevant customer benefits to which we should have regard as being affected by the proposed remedy;**
 - (c) any other relevant costs and benefits that we should take into account when considering the proportionality of each remedy;**
 - (d) whether there are any alternative remedies that would be as effective as the proposed remedy in addressing the AEC and that would be less costly and/or intrusive;**
 - (e) whether the CMA should seek to implement the remedy itself via an order (eg to make a licence modification), or whether it should make a recommendation that another body, such as Ofgem or DECC, implement the remedy; and**
 - (f) the duration of the remedy and whether a ‘sunset’ clause should be included as part of the remedy design.**
17. In addition to views on the effectiveness and proportionality of each of the remedies set out in this Second Supplemental Notice, we invite submissions on how the remedies may function in combination with one another and with those remedies set out in the Remedies Notice and the Supplemental Remedies Notice. For example, would certain remedies only be effective in combination with other remedies? Alternatively, would the effectiveness of certain remedies be undermined by the imposition of other remedies set out in this notice?

Additional AEC relating to the prepayment segment of the domestic retail market

18. As set out in our Addendum to Provisional Findings, the inquiry group has provisionally found that a combination of features of the markets for domestic retail supply of gas and electricity in Great Britain, relating specifically to the PPS, give rise to an AEC. These features, in combination, reduce retail suppliers' incentives (and, for some, their ability) to compete to acquire PPM customers (in particular, customers with an outstanding debt or a poor credit history) and to innovate by offering tariff structures that meet customers' demand. As a result, the tariffs available in the PPS are not competitively priced compared with the DD segment. These features are as follows:
- (a) Technical constraints that limit the ability of suppliers and, in particular, new entrants to innovate by offering tariff structures that meet demand from PPM customers who do not have a smart meter.
 - (b) Softened incentives for all suppliers, and in particular new entrants, to compete to acquire PPM customers due to:
 - (i) actual and perceived higher costs to engage with, and acquire, PPM customers compared with other customers; and
 - (ii) a low prospect of successfully completing the switch of indebted customers, who represent about 15% of PPM customers.
19. We have provisionally found that the tariffs on offer in the PPS are not priced at a level consistent with the competitively priced acquisition tariffs available to DD customers (if we accept the incremental cost to serve of the PPS in £80). We have also provisionally found that if competitively priced tariffs were offered in the PPS (ie equivalent to the lowest priced DD acquisition tariff plus cost to serve differential), PPM customers would be able to make substantial gains from switching – of the order of £150–£250.⁸

Remedies that we are considering

20. In this section, we set out the remedies that we consider may be effective and proportionate in remedying the PPS AEC and/or the detriment arising from it. We have categorised the possible remedies into two categories:

⁸ See CMA (16 December 2015), [Addendum to provisional findings report](#), paragraph 12.

- (a) **Enabling measures** which seek to address the AECs identified at source – this includes market-opening measures and informational measures.
 - (b) **Measures to control outcomes.** These seek to mitigate the detriment to customers arising from the features. We tend to consider remedies of this sort where we do not believe that we can remedy the features directly and/or where other remedies would take too long to have effect. It may be that we consider such measures are appropriate on a transitional basis while other remedies take effect.
21. Within each category of remedies, we have set out a number of options that we are considering. We invite parties to comment both on the individual remedies proposed and on the effectiveness and proportionality of the overall potential package, and together with the remedies contemplated in the Remedies Notice and the Supplemental Remedies Notice.

Enabling measures

Remedy 19 – facilitating sharing of data relating to prepayment meter customers

- *How the remedy would work*
22. This remedy would operate in a similar way to that described in paragraph 21(f)(iii) of the Supplemental Remedies Notice concerning all SVT customers or a subset of SVT customers (eg those who have been on the default tariff for several years in a row, eg three or five years). However, remedy 20 would aim to remedy the PPS AEC and therefore suppliers would be required to disclose to Ofgem details of any prepayment customers. This would involve suppliers contacting all customers with non-smart prepayment meters advising them of the proposed disclosure and providing an opportunity for them to opt out. The details of the customers who did not opt out would then be passed to Ofgem. Ofgem would then put these details on a secure cloud database where they could be accessed by other suppliers. This could encourage existing suppliers and/or new entrants to compete more intensively for PPM customers. The whole process would occur on a regular basis, possibly annually.
23. The details that suppliers would be required to share would be:
- (a) customer name;
 - (b) billing address;

- (c) consumption address;
 - (d) telephone number;
 - (e) annual energy consumption; and
 - (f) meter point administration number (MPAN).⁹
24. This mechanism (through the opt-out scheme) would allow suppliers to contact the non-opted-out PPM customers¹⁰ of their rivals and provide them with a personalised tariff offer. We note that a similar mechanism exists in France where GDF was required to share with its competitors certain details of its customers who remained on the regulated tariff.
25. We are aware of the sensitivity surrounding customer data. We have considered the compatibility of this remedy with data protection legislation, and our current understanding is that an opt-out scheme would allow suppliers to contact other suppliers' PPM customers non-electronically (eg by letter). We understand that suppliers would need specific opt-in consent from other suppliers' PPM customers to be able to contact these customers through electronic means (eg emails, SMS). This remedy would likely also need to be accompanied by appropriate agreements in place between Ofgem and suppliers including provisions concerning the disclosure and use of customer data.
26. Given that smart meters are expected to change the way that customers and suppliers interact (in particular concerning PPM customers on non-smart meters), we believe that if this remedy were implemented then it would be appropriate that it is reviewed after five years or upon substantial completion of the smart meter roll-out.
27. As set out in paragraph 21(f)(iii) of the Supplemental Remedies Notice, we are considering a similar remedy for all SVT customers or a subset of SVT customers (eg those who have been on the default tariff for several years in a row, eg three or five years).
- *Issues for comment 19*
28. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:

⁹ The MPAN is a unique identifier for a particular supply point.

¹⁰ Throughout this remedy when we refer to PPM customers it should be understood that the remedy would only apply to those prepayment meter customers with a non-smart meter.

- (a) Would this remedy be effective and proportionate in increasing competition for non-smart prepayment meter customers?**
- (b) Are there additional legal considerations that are relevant to this remedy (eg under the Data Protection Act 1998 or the Privacy and Electronic Communications (EC Directive) Regulations 2003)?**
- (c) Is Ofgem the right party to have oversight of this process?**
- (d) What limitations would need to be imposed to ensure that the data was disclosed and used appropriately?**
- (e) When should the continued need for this remedy be reviewed?**
- (f) What might be a suitable frequency with which to share customer data?**
- (g) Should this remedy apply to prepayment meter customers with smart meters?**

Remedy 20 – removing the barriers that prepayment meter customers without a debt face when attempting to switch to a credit meter

- 29. As we have identified in the Addendum to Provisional Findings, PPM customers face actual or perceived impediments to switching (over and above those identified in the domestic retail energy markets as a whole), though some of these impediments are only relevant where a PPM customer is looking to switch to a non-prepayment meter. These impediments limit the opportunity for customers to engage in the markets and potentially also limit the benefits available as a result of engaging.
- 30. We have identified particular impediments that we believe PPM customers may face:
 - (a) the potential need to pay a security deposit when switching away from a prepayment meter;
 - (b) the cost of meter installation when switching away from a prepayment meter; and
 - (c) a lack of awareness in respect of the customer's right to switch meter type and how this relates to the amount of any outstanding debt.
- 31. We have identified possible remedies that could potentially address each of these impediments.

Remedy 20a – prohibit the charging of a security deposit in circumstances when a customer is not in debt and has not incurred any fines, charges or interest for late payment in the last six months

- *How the remedy would work*

32. Currently, Standard Licence Condition (SLC) 27.3 of the gas and electricity supply licences sets out the circumstances in which a supplier may charge a security deposit. Ofgem noted in its June 2015 review¹¹ that while SLC 27.3 prohibits the charging of a security deposit when it is ‘unreasonable’, there is a lack of precision about what constitutes ‘unreasonable’ behaviour. Ofgem noted that the 2007 supply licence guidance¹² suggests that it may be unreasonable to charge a security deposit where a customer has a record of prompt payment. Ofgem noted too that it is difficult for PPM customers to demonstrate such a payment record due to the fact that they must pay before consumption.
33. This remedy attempts to address the lack of clarity about when it is unreasonable to charge a security deposit by setting out specific, achievable criteria for a customer to meet which would then mean that they are not obliged to pay such a deposit. These criteria could then be included in an updated version of SLC 27.3.
34. For the purposes of this Second Supplemental Notice we have identified the following possible criteria:
 - (a) the customer is not in debt; and
 - (b) the customer has not incurred any fines, charges or interest for late payment in the last six months.¹³

- *Issues for comment 20a*

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

¹¹ See Ofgem (23 June 2015), [Prepayment review: understanding supplier charging practices and barriers to switching](#) p23.

¹² See Ofgem (1 June 2007), Supply Licence Review – Final Proposals: [Appendix 10 – Supplementary document for electricity supply licence standard conditions](#) and [Appendix 11 – Supplementary document for gas supply licence standard conditions](#).

¹³ While it is unlikely that a PPM customer would have incurred such fines, charges or interest it is possible that the customer incurred these charges prior to being on a prepayment meter. It is also possible for PPM customers to be granted emergency credit in certain circumstances, which could create conditions in which a PPM customer subsequently fails to pay promptly for energy already consumed.

- (a) **Would this remedy be effective and proportionate in removing the barrier to switching that security deposits can pose?**
- (b) **Are these the right criteria to apply in determining circumstances in which suppliers can charge a security deposit?**
- (c) **What are the potential unintended consequences of being explicit about when customers can be charged a security deposit?**
- (d) **Is there a preferable alternative way of mitigating detriment arising from the impediments to switching posed by the potential need to pay a security deposit?**
- (e) **Should the CMA implement this remedy itself, or should the CMA make a recommendation to Ofgem to do so?**

Remedy 20b – Suppliers are prohibited from charging customers upfront for the cost of a new meter when switching away from prepayment

- *How the remedy would work*

36. Where a supplier requires a customer to pay for the cost of a new (non-prepayment) meter up front this can impose an impediment to customers switching away from prepayment meters. This remedy would prohibit suppliers from imposing such charges up front. In line with SLC 27.2A suppliers would be able to recover the costs of the meter from the customer provided this is spread over a period of time. Suppliers would still be able to waive the charges entirely if they wished to.
37. We note that Ofgem’s June 2015 review of prepayment meter practices discovered that in 2014 95% of the 335,602 meter removals were completed at no cost to the customer though we note that this figure may be unrepresentative as customers who faced an upfront cost may be less likely to complete a meter replacement.¹⁴ Ofgem found that in cases where suppliers did charge upfront for removal of prepayment meters the charge included the cost of the new meter and the amount of the charge varied from £46 to £160 per customer.

¹⁴ See Ofgem (23 June 2015), [Prepayment review: understanding supplier charging practices and barriers to switching](#), p34.

- *Issues for comment 20b*

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

- (a) **What length of time is reasonable and appropriate to allow the recovery of the cost of the meter and installation?**
- (b) **Is this a proportionate remedy given the number of cases in which suppliers charge for removal of a prepayment meter?**
- (c) **Is there an equally or more effective alternative way to reduce the costs of prepayment meter removal and replacement?**
- (d) **Should the CMA implement this remedy itself, or should the CMA make a recommendation to Ofgem to do so?**

Remedy 20c – Require suppliers to provide annual notifications to prepayment meter customers setting out their right to switch and highlighting any potential restrictions or charges that may be payable

- *How the remedy would work*

39. Some customers have a prepayment meter as a result of previous events or circumstances which may no longer be relevant. For example, a new occupier of a property that previously had a prepayment meter installed or a customer who had a period of poor payment history that has now come to an end. Given that a switch away from a prepayment meter will necessarily involve a change of meter and may involve paying charges (which potentially differ by supplier), customers on prepayment meters may not have all the information they need in order to confidently initiate a switch.

40. This possible remedy would require suppliers to inform all PPM customers of their right to request a non-prepayment meter. Where a customer's circumstances are such that the supplier would ordinarily refuse to permit a switch away from prepayment then the supplier would need to inform the customer of this fact while still setting out the customer's rights of appeal.

41. We note the connection between this remedy and remedy 10 which considers 'prompts' to engage more generally. We invite views on whether there is a place for a remedy specifying a particular sort of prompt or whether any informational prompt for PPM customers should be considered within the wider framework of remedy 10.

- *Issues for comment 20c*

42. We invite views on the effectiveness and proportionality of this remedy and invite responses to the following questions:
- (a) **Would this be an effective means of facilitating switches away from prepayment meters?**
 - (b) **What would be the most effective means of communicating this information to customers?**
 - (c) **What is a suitable frequency with which to contact customers? Would this messaging be more appropriately included alongside other messages or be triggered by particular events (such as outstanding debt being paid off)?**
 - (d) **Should a prompting remedy such as this be introduced directly by the CMA or should this be an area that Ofgem considers running randomised controlled trials to assess its effectiveness?**

Remedy 21 – reform the protocol for assignment of debt on prepayment meters

43. As set out in the Addendum to Provisional Findings, our provisional view is that the current Debt Assignment Protocol (DAP) makes switching with debt more difficult than it would be in a well-functioning market. As a result, only a very small proportion of indebted PPM customers attempt to switch supplier, and successfully complete such switch. In our view the presence of indebted customers probably leads to a higher chance of switches that fail to complete, and we therefore consider that this may slightly increase sales and marketing costs faced by all suppliers and new entrants. The aim of this remedy is therefore to improve the DAP process with a view to facilitating switching for indebted PPM customers.

- *How the remedy would work*

44. We have noted in the Addendum to Provisional Findings that Ofgem has already taken some steps to address these impediments to switching for

indebted PPM customers.¹⁵ It has also identified¹⁶ certain areas for improvement that require further actions by Ofgem and the industry:

- (a) The 'objection letter' sent by an incumbent supplier should not confuse customers as to their right to switch, making clear that the switch will continue; further 'objection letters' should only be sent to customers for whom it is established are not eligible to switch.
- (b) The 'complex debt' aspect of the DAP should be revisited in order to diminish the instances in which the switch is disallowed.
- (c) Issues relating to multiple registrations should be addressed in order to avoid multiple objection letters being sent to customers with such metering arrangements, causing unnecessary confusion for them and adding cost.

45. In 2014 Ofgem asked the industry to revisit its practices and procedures relating to the objection letter and complex debt in order to have a new DAP by April 2015. We understand that the industry has not approved the changes suggested by Ofgem at this stage, and that Ofgem is currently carrying out further work in this area with the intention to put in place a new DAP in 2016. The aim of our remedy is therefore to support Ofgem's work with a view to ensuring that actions to address the above-mentioned issues are implemented promptly.

46. Our proposed remedy would be to recommend Ofgem to amend the relevant licence conditions and industry code provisions, respectively, in order to address the above-mentioned further actions identified by Ofgem and facilitate switching for indebted PPM customers.

- *Issues for comment 21*

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

- (a) **Would a remedy recommending Ofgem to address the above-mentioned issues be effective in ensuring that adequate changes to the DAP are implemented promptly? Or should the CMA instead use its order-making power to support Ofgem's ongoing work?**

¹⁵ Ofgem (12 May 2015), [Decision to make modifications to the gas and electricity supply licences to reform the switching process for indebted prepayment meter customers – the Debt Assignment Protocol](#).

¹⁶ Ofgem (22 September 2014), [Reforming the switching process for indebted prepayment meter customers – the Debt Assignment Protocol](#).

- (b) **What is the most efficient way for Ofgem and the industry to improve the DAP process in relation to the above-mentioned areas identified by Ofgem in order to increase the switching rates of indebted PPM customers?**
- (c) **How would this remedy interact with the other remedies to address the Domestic AEC and/or detriment?**
- (d) **Are there other impediments to switching for indebted PPM customers – other than those identified by Ofgem – that need to be addressed? If so, what are these and how should Ofgem or the industry address them?**

- *Measures to control outcomes*

48. In line with our guidance¹⁷ we also consider remedies that seek to control outcomes in order to control the detrimental effects arising from an AEC. Such remedies can be complex to implement and monitor, given informational asymmetries between the parties and the authorities and the associated risk of circumvention. There is also a risk that such controls create market distortions, particularly if they are kept in place over a long period. More generally measures to control outcomes are vulnerable to the main risks associated with behavioural remedies¹⁸ and this can have a negative impact on the effectiveness and cost of the remedy. Consequently we will generally not use measures to control outcomes unless other, more effective, remedies are not feasible or appropriate.¹⁹

Remedy 22 – A transitional ‘safeguard price cap’ for domestic prepayment customers

49. The remedies set out above seek to promote competition within the PPS including facilitating customers switching away from prepayment meters, where customers have a preference for this. This remedy provides a means to protect domestic PPM customers who could not switch away from a prepayment meter, or who would not benefit from increased competition within the PPS resulting from our other remedies (specifically concerning the PPS or more generally the domestic retail energy markets), or both. However, we observe that there are always risks with controlling outcomes in markets, and in exploring these options we will need to be sufficiently confident that such a remedy would not unnecessarily cut across the beneficial effects that

¹⁷ CC3, paragraph 378.

¹⁸ CC3, Annex B, paragraph 40.

¹⁹ CC3, Annex B, paragraphs 88 & 89.

competition has the potential to bring to customers. This will depend on the form of the safeguard price cap being contemplated.

- *How the remedy would work*

50. Under this remedy the maximum price that could be charged to PPM customers would be subject to a cap, possibly set in terms of a maximum annual bill for a specified level of consumption. This cap would apply to any evergreen tariffs available to domestic prepayment customers²⁰ although suppliers would be free to set these tariffs as they saw fit, subject to being below the cap.
51. We believe that the level of the price cap would need to allow for 'headroom' for two reasons:
 - (a) Being a transitional safeguard cap which aims to co-exist with remedies aimed at promoting competition, there would be a need for some 'headroom' to provide incentive for customers to switch and opportunity for suppliers to offer profitable tariffs below the level of the cap.
 - (b) Specifying the maximum allowed level of prices in a segment of the market introduces the risk that in the event of a rise in input prices the price cap may not allow efficient costs to be recovered. The headroom would also provide a means of mitigating the risk that the cap does not allow for recovery of efficient costs.
52. Consequently the price cap would be set at a level somewhere in excess of the prices of competitively priced tariffs in the domestic retail energy markets. As noted with remedy 11 set out in the Remedies Notice, we note that setting the level of the price cap is of great importance, as a cap set too high risks being ineffective and/or acting as a focal point for prices. Conversely, a cap set too low risks creating a situation in which there is no room for tariffs that are both profitable and which offer customers gains from switching.
53. Given that gas and electricity tariff prices change constantly, any price cap would need to adjust regularly to ensure that it continues to be at a suitable level. One way to achieve this would be for the price cap to be set with reference to the prices of other tariffs in the domestic retail energy markets. These other tariffs need not necessarily be prepayment meter tariffs though

²⁰ Where suppliers offer the same evergreen tariff to both prepayment and non-prepayment customers it would only be the prices offered to prepayment customers that would be subject to the cap.

clearly the prices would need to be adjusted to take account of different costs to serve.

54. A potential benefit of a price cap that references other prices in the domestic retail energy markets is that it avoids the need for the lengthy cost assessment process that a cost-based price cap would require. Consequently we believe it would be feasible to implement a price cap in a reasonably short period of time in order to provide an effective transitional safeguard while other remedies take effect. The argument for a price cap is therefore strongest in the near term whilst other remedies take effect. This, together with the transitional nature of any safeguard price cap remedy, suggests that the timeliness of setting a price cap set with reference to other prices may be a more appropriate means of setting a price cap than the cost-based approach adopted in many regulated sectors.
55. Given that the barriers to engagement that each PPM customer faces are to some extent affected by their individual circumstances, there may be an argument for only applying this remedy to those customers facing the most severe and lasting barriers, eg to non-smart, PPM customers.
56. We note the potential interaction with remedy 11, whereby it is possible – depending on the scope of remedy 11 (in the event we decide to proceed with it) – that some PPM customers would be within the scope of both remedies. Such possibly overlapping remedies could potentially produce undesirable outcomes in which customers and suppliers do not have sufficient clarity as to how their prices will be capped. Consequently any eventual decision to proceed with this remedy, and in particular its scope, would have regard to any eventual decision to proceed with remedy 11 and its scope.
 - *Issues for comment 22*
57. We invite views on the effectiveness and proportionality of this remedy and invite parties to comment on the following issues:
 - (a) **If the transitional safeguard price cap for PPM customers were set relative to other prices in the domestic retail energy markets, how should we identify an appropriate level of prices and how can we ensure the level of the cap remains appropriate for the duration of the period it is in effect?**
 - (b) **Could the imposition of a transitional safeguard price cap for PPM customers result in energy suppliers reducing the quality of service offered to customers on these tariffs? Is this risk reduced by**

prepayment customers' ability to choose alternative, unregulated tariffs or changing to a smart prepayment meter?

- (c) How should the headroom be calculated to provide the right level of customer protection while not unnecessarily reducing healthy competition?**
- (d) What regulatory information would be required to set the transitional safeguard price cap?**
- (e) How long should the transitional safeguard price cap be kept in place? Is it appropriate to include a specific sunset provision, or should there be a commitment to review the need for and level of the safeguard price cap after a certain period of time?**
- (f) Should the termination date of a transitional safeguard price cap remedy be linked to the roll-out of smart meters? If so then should this be done explicitly, in aggregate or on a customer-by-customer basis?**
- (g) How frequently – if at all – would the level of the cap need to be reassessed?**
- (h) Which prepayment customers should this remedy apply to?**
- (i) Which energy suppliers should be subject to the transitional safeguard price cap, and why? Should it be restricted to the Six Large Energy Firms, or should all retail energy suppliers be covered?**
- (j) How should the transition from the current arrangements be managed? Should there be a period over which the transitional safeguard price cap is phased in? If so, how long should this period be and how should the transition work?**
- (k) Would energy suppliers have the ability to circumvent the remedy, for example, by encouraging domestic prepayment customers to switch on to less favourable, unregulated tariffs, and how could such risks be mitigated?**
- (l) Should the CMA set the level of the transitional safeguard price caps itself, or should the CMA make a recommendation to Ofgem to do so?**

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

Remedies we are minded not to consider further

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

Remedy g – Suppliers would be obliged to install a smart meter if so requested by a PPM customer with a non-smart meter

59. We consider that the full roll-out of smart meters may have the potential to address, at least in part, the PPS AEC. We observe that customers with prepayment meters stand to benefit from smart meters to an even greater extent than customers with credit meters due to the greater ease of switching which smart meters are expected to facilitate. This remedy would allow domestic PPM customers with a non-smart meter to request that their prepayment meter be replaced by a smart meter. Suppliers would then have a corresponding obligation to accommodate such requests. Our intention with this remedy would be that over time the greater number of PPM customers with smart meters would reduce the barriers faced by new entrants to the PPS and existing suppliers looking to serve PPM customers and thus promote competition from suppliers within the PPS.

60. The cost of replacing the meter would be dealt with in the same way as for other smart meter installations. Specifically the supplier would cover the upfront cost of the replacement and would subsequently seek to recover the costs of replacement through all of their other tariffs.

61. We are not minded to consider this remedy further on the grounds that we do not expect it to be highly effective. In order to be effective this remedy would need to result in a substantial number of PPM customers with a non-smart meter obtaining a smart meter. However, individual customers would only benefit from this remedy indirectly once the number of smart meter PPM customers was large enough to foster stronger competition. Thus the incentives on the customers to obtain a smart meter appear sufficiently weak that we do not expect this remedy to be effective in the near term. Moreover, we have gathered information concerning the efficiency of a targeted

approach to the smart meter roll-out. This evidence suggests that a remedy of this sort could be detrimental to the efficiency of the overall roll-out.

Relevant customer benefits

62. In deciding the question of remedies, the CMA may in particular have regard to the effect of any action on any relevant customer benefits (RCBs) of the feature or features of the market concerned.²¹
63. RCBs are limited to benefits to relevant customers in the form of:
- (a) lower prices, higher quality or greater choice of goods and services in any market in the UK (whether or not the market to which the feature or features concerned relate); or
 - (b) greater innovation in relation to such goods and services.
64. The 2002 Act²² provides that a benefit is only an RCB if the CMA believes that:
- (a) the benefit has accrued as a result (whether wholly or partly) of the features concerned or may be expected to accrue within a reasonable period of time as a result (whether wholly or partly) of that feature or those features; and
 - (b) the benefit was or is unlikely to accrue without the feature or features concerned.
65. In considering potential RCBs, the CMA will therefore need to ascertain that the market feature or features with which it has been concerned results, or is likely to result, in lower prices, higher quality, wider choice or greater innovation, and that such benefits are unlikely to arise in the absence of the market feature or features concerned. RCBs may include benefits to customers in the market in which the CMA has found an AEC and to customers in other markets within the UK.
66. If the CMA is satisfied that there are RCBs deriving from a market feature that has resulted in an AEC, it will consider whether to modify the remedy that it might otherwise have imposed or recommended. When deciding whether to modify a remedy, the CMA will consider a number of factors including the size and nature of the expected benefit and how long the benefit is to be

²¹ CC3, paragraphs 355–369.

²² Section 134(7).

sustained. The CMA will also consider the different impacts of the features on different customers.

67. It is possible that the benefits are of such significance compared with the effects of the market feature(s) on competition that the CMA will decide that no remedy is called for. This might occur if no remedies can be identified that are able to preserve the RCBs while remedying or mitigating the AEC and/or the customer detriment.
68. Alternatively, the CMA, as a result of identifying RCBs, may choose a different remedy, for example a behavioural rather than a structural remedy. In this case, the CMA will have to weigh the disadvantage of a less comprehensive solution to the competition problem against the preservation of the benefits that result from the feature concerned.²³

Next steps

69. The parties to this investigation and any other interested persons are requested to provide any views in writing, including any suggestions for additional or alternative remedies that they wish the CMA to consider, by **5pm on 6 January 2016** either by email to energymarket@cma.gsi.gov.uk or in writing to:

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

²³ CC3, paragraphs 360–369.