

## **ENERGY MARKET INVESTIGATION**

### **Notice of the Competition and Markets Authority's intention to operate a confidentiality ring following publication of the Provisional Decision on Remedies**

As part of the energy market investigation (the 'Investigation'), the Competition and Markets Authority (the 'CMA') has received information and/or data from a number of parties which the CMA has used and taken into account in producing its provisional decision on remedies published on 10 March 2016 (the 'PDR')<sup>1</sup>.

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

- (a) the data underlying the analyses conducted to compare the bills paid by domestic customers with restricted meters with those they would have paid had they been on the cheapest single-rate tariffs, which is included in section 3 of the PDR and Appendix 3.1 entitled 'Restricted meters';
- (b) the data underlying the analyses conducted to calculate the potential savings for dual and single fuel domestic energy customers if they were to switch to a different tariff within the same or another supplier, which is included in section 3 of the PDR and Appendix 3.2 entitled 'Analysis of the potential gains from switching';
- (c) the data underlying the analysis conducted to compare energy bills across suppliers and to compute detriment figures which are included in section 3 of the PDR and Appendix 3.3 entitled 'Benchmark analysis of domestic energy bills';
- (d) the data underlying the analyses conducted to determine the retail return on capital employed ('ROCE') of the Six Large Energy Firms included in section 3 of the PDR and Appendix 3.4 entitled 'Analysis of Retail Supply Profitability – ROCE and economic profit', and an unredacted version of Appendix 3.4;

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<sup>1</sup> The main body of the PDR report is expected to be published on 17 March 2016.

- (e) the data underlying the analysis of the operational costs of the Six Large Energy Firms' retail businesses, which is included in section 3 of the PDR and Appendix 3.5 entitled 'Assessment of Indirect Costs';
- (f) the data underlying the analyses conducted to determine the differential cost to serve of domestic customers who pay by direct debit, standard credit or pre-payment which is included in the Appendix 3.6 of the PDR entitled 'Analysis of costs by payment methods'; and
- (g) the data underlying the analyses conducted to determine (i) the indicative level of a price cap; (ii) the indicative impacts of a price cap on suppliers; and (iii) the analysis conducted to determine the indicative impacts of a price cap on customers which is included in section 7 of the PDR,

together the 'Disclosed Material'.

The CMA considers that the Disclosed Material includes 'specified information' within the meaning of section 238 of the Enterprise Act 2002 (the 'Act') to which the general restriction on disclosure in section 237 of the Act applies. The CMA has decided to disclose the Disclosed Material by means of a confidentiality ring (the 'Post-PDR Confidentiality Ring') pursuant to section 241 of the Act.

Access to the Post-PDR Confidentiality Ring is provided for the sole purpose of allowing a limited number of approved external legal and/or economic advisers of the relevant parties to review and understand the CMA's analyses and/or statements included in the PDR, to prepare submissions and make representations to the CMA in connection with the Investigation, and thus facilitating the exercise by the CMA of any of its statutory functions under section 241 of the Act.

Specific details of the Post-PDR Confidentiality Ring are set out below.

## **The Post-PDR Confidentiality Ring**

The Post-PDR Confidentiality Ring will operate **from 9:30am on 17 March 2016 until 5pm on 7 April 2016**.

In order to safeguard the confidentiality of the Disclosed Material, and in line with the CMA's Confidentiality Ring procedures,<sup>2</sup> access to the Post-PDR Confidentiality Ring will be granted to a limited number of approved external legal and/or economic advisers of certain parties as noted above. These external advisers and their

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<sup>2</sup> See the CMA's guidance documents 'Chairman's Guidance on Disclosure of Information in Merger Inquiries, Market Investigations and Reviews of Undertakings and Orders accepted or made under the Enterprise Act 2002 and Fair Trading Act 1973', CC7; and 'Transparency and disclosure: the CMA's Policy and Approach', CMA6.

firms/employers will be required to sign undertakings before they will be granted access to the Post-PDR Confidentiality Ring.

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

The CMA is prepared to approve up to a maximum of **12** external legal or economic advisers per party to access the Post-PDR Confidentiality Ring. The CMA may reconsider the maximum number of advisers allowed to access the Post-PDR Confidentiality Ring based on the number of expressions of interest received.

The CMA will make the Disclosed Material available to the advisers who have provided satisfactory undertakings to the CMA through an external hard-drive. The CMA will make available one hard-drive per relevant party, which the advisers will be permitted to collect from the CMA's offices between 9:30am and 5pm on any CMA working day<sup>3</sup> during the Post-PDR Confidentiality Ring. A six digit pin to access the Disclosed Material will be sent by email to one adviser per relevant party shortly after the hard-drive has been collected from the CMA's offices. The software necessary to process the Disclosed Material to replicate the CMA's analyses includes Stata 14 (IC/SE/MP) and Excel 2007 (or later version).

At 9:30am on 17 March 2016, members of CMA staff will brief the Authorised Advisers on the disclosure process and will answer any questions.

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

**This notice also invites parties expressing an interest to access the Post-PDR Confidentiality Ring to submit comments** with regard to the CMA's proposed approach to disclosing the Disclosed Material, including the attached draft undertakings. Comments in this regard should be supported with an appropriate explanation so that the CMA is in a position to properly consider the merits of the comments received.

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<sup>3</sup> A 'CMA working day' is any day of the week, Monday to Friday, on which the CMA's offices are open (and excludes public or bank holidays).

Any expressions of interest together with any comments interested parties have on the attached documents must be submitted to the Investigation team at [denis.kelly@cma.gsi.gov.uk](mailto:denis.kelly@cma.gsi.gov.uk) **as soon as possible and in any event no later than 1pm on 14 March 2016**. The CMA will consider the comments and each expression of interest received within the above deadline, and the reasons given for access to be granted, before deciding, at the CMA's discretion, whether to grant access to the interested party to the Post-PDR Confidentiality Ring and whether any amendment is to be made to the attached documents.

**ENERGY MARKET INVESTIGATION****UNDERTAKINGS GIVEN BY [Name of Firm] TO THE COMPETITION AND  
MARKETS AUTHORITY REGARDING ACCESS TO THE CONFIDENTIALITY  
RING FOLLOWING PUBLICATION OF THE PROVISIONAL DECISION OF  
REMEDIES****WHEREAS**

- I. 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 'Act'), made a reference to the chair of the Competition and Markets Authority ('CMA') for the constitution of a group under Schedule 4 of the Enterprise and Regulatory Reform Act 2013 for an investigation into the Supply and Acquisition of Energy in Great Britain (the 'Investigation')<sup>1</sup>.
- II. On 10 March 2016, the CMA published its provisional decision on remedies concerning the Investigation (the 'PDR'). The main body of the PDR report is expected to be published on 17 March 2017. The PDR is based, amongst other things, on economic and financial analyses of certain data received by the CMA during the Investigation from a number of parties, including Centrica, EDF Energy, E.On, RWE npower, Scottish Power and SSE (the 'Six Large Energy Firms') and other energy suppliers, and take into account the parties' representations received either in writing and/or at oral hearings.
- III. The CMA has decided to disclose the following data to certain parties (each a 'Relevant Party') by means of a confidentiality ring commencing on 17 March 2016 (the 'Post-PDR Confidentiality Ring'):
  - (a) the data underlying the analyses conducted to compare the bills paid by domestic customers with restricted meters with those they would have paid had they been on the cheapest single-rate tariffs, which is included in section 3 of the PDR and Appendix 3.1 entitled 'Restricted meters', and an unredacted version of Appendix 3.1;
  - (b) the data underlying the analyses conducted to calculate the potential savings for dual and single fuel domestic energy customers if they were

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<sup>1</sup> The terms of reference dated 26 June 2014 can be accessed at <https://www.ofgem.gov.uk/ofgem-publications/88435/stateofthemarket-decisiondocumentinofgemtemplate.pdf>.

to switch to a different tariff within the same or another supplier, which is included in section 3 of the PDR and Appendix 3.2 entitled 'Analysis of the potential gains from switching', and an unredacted version of Appendix 3.2;

- (c) the data underlying the analysis conducted to compare energy bills across suppliers and to compute detriment figures which are included in section 3 of the PDR and Appendix 3.3 entitled 'Benchmark analysis of domestic energy bills', and an unredacted version of Appendix 3.3;
- (d) the data underlying the analyses conducted to determine the retail return on capital employed ('ROCE') of the Six Large Energy Firms included in section 3 of the PDR and Appendix 3.4 entitled 'Analysis of Retail Supply Profitability – ROCE and economic profit', and an unredacted version of Appendix 3.4;
- (e) the data underlying the analysis of the operational costs of the Six Large Energy Firms' retail businesses which is included in section 3 of the PDR and Appendix 3.5 entitled 'Assessment of Indirect Costs', and an unredacted version of Appendix 3.5;
- (f) the data underlying the analyses conducted to determine the differential cost to serve of domestic customers who pay by direct debit, standard credit or pre-payment which is included in the Appendix 3.6 of the PDR entitled 'Analysis of costs by payment methods', and an unredacted version of Appendix 3.6; and
- (g) the data underlying the analyses conducted to determine (i) the indicative level of a price cap; (ii) the indicative impacts of a price cap on suppliers; and (iii) the analysis conducted to determine the indicative impacts of a price cap on customers which is included in section 7 of the PDR,

together the 'Disclosed Material'.

- IV. The CMA considers that the Disclosed Material includes 'specified information' within the meaning of section 238 of the Act to which the general restriction on disclosure in section 237 of the Act applies. The CMA may disclose specified information to any other person in circumstances permitted by the Act.

- V. The CMA has decided to disclose the Disclosed Material by means of the Post-PDR Confidentiality Ring pursuant to section 241 of the Act. Access to the Post-PDR Confidentiality Ring is provided for the sole purpose of allowing the external legal and/or economic advisers of a Relevant Party, on behalf of the Relevant Party, to review and understand the CMA's analyses and/or statements included in the PDR, to prepare submissions and make representations to the CMA in connection with the Investigation, and (if relevant) to prepare an appeal against any decision of the CMA in connection with the Investigation (the 'Permitted Purpose').
- VI. Access to the Post-PDR Confidentiality Ring is restricted and will only be granted to an adviser:
- (a) who has been approved in writing by the CMA;
  - (b) who has given written undertakings acceptable to the CMA (the 'Individual Undertakings'); and
  - (c) in respect of whom written undertakings acceptable to the CMA have been provided by such adviser's relevant firm/employer (the 'Firm Undertakings');
- in accordance with the arrangements in recital VIII (each such adviser being an 'Authorised Adviser').
- VII. The number of Authorised Advisers is limited to 12 for each Relevant Party.
- VIII. The arrangements for obtaining CMA approval of an adviser, and for giving undertakings in respect of an adviser are:
- (a) notice of not less than 1 CMA working day<sup>2</sup> must be given to the CMA of the date on which the adviser first wishes to be granted access to the Post-PDR Confidentiality Ring (the 'Access Date');
  - (b) by 4pm on the CMA working day before the Access Date the Individual Undertakings signed by the adviser and, if relevant, the Firm Undertakings signed on behalf of the adviser's firm/employer, must be provided to the CMA;
  - (c) before the adviser attempts to access the Post-PDR Confidentiality Ring confirmation in writing must be obtained from the CMA that it has

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<sup>2</sup> A 'CMA working day' is any day of the week, Monday to Friday, on which the CMA's offices are open (and excludes public or bank holidays).

approved the adviser and has accepted the signed Individual Undertakings and, if relevant, the signed Firm Undertakings.

- IX. The CMA will make the Disclosed Material available to the Authorised Advisers from 9.30am on 17 March 2016 until 5pm on 7 April 2016 through an external hard-drive (the 'Hard-drive'). The CMA will make available one Hard-drive per Relevant Party, which the Authorised Advisers will be permitted to collect from the CMA's offices between 9.30am and 5pm on any CMA Working Day during the Post-PDR Confidentiality Ring.
- X. Each Authorised Adviser will be permitted to download the Disclosed Material from the Hard-drive into a secure folder on computers with the specifications set out below at the Authorised Advisers' premises, and accessible to the Authorised Advisers only (each a 'Secure Computer'). The Authorised Advisers of a Relevant Party will, between them, be permitted to download the Disclosed Material up to a maximum of 12 times (each permitted download resulting in a 'Permitted Copy'). The Secure Computers must each have the following specifications:
- (a) It must be password-protected;
  - (b) The storage mediums (except for the USB ports) must have been disabled; and
  - (c) They may be networked to each other.
- XI. Disclosure of the Disclosed Material, or any part thereof, by the Authorised Advisers other than in accordance with the Individual Undertakings is not permitted without the express, and prior, written consent of the CMA. Breach of the Individual Undertakings by any Authorised Adviser may result in:
- (a) the CMA:
    - i. terminating the Authorised Adviser's access to the Post-PDR Confidentiality Ring and refusing the Authorised Adviser access to any subsequent disclosure room or confidentiality ring run by the CMA, whether relating to the Investigation or any other investigation;
    - ii. referring the breach to the Authorised Adviser's regulatory body, if applicable, which may decide to take disciplinary action in relation to the breach.
  - (b) a breach by the Authorised Adviser of his or her obligations under Part 9 of the Act (as regards the disclosure and use of the Disclosed



Material) which constitutes a criminal offence under section 245 of the Act.

- XII. [Name of Firm] has been instructed by [Name of Party], which is a Relevant Party, for the purpose of providing [legal/economic] advice to [Name of Party] in relation to the Investigation. [Name of Adviser] is [employed by [Name of Firm] as a [legal/economic adviser]] [a partner in [Name of Firm]].

## **NOW THEREFORE**

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

- A. It will give only the Authorised Advisers of [Name of Firm] access to the Disclosed Material and only in accordance with the terms of the Individual Undertakings given by the Authorised Advisers of [Name of Firm];
- B. It will notify the CMA immediately if it becomes aware of, or suspects that, there has been any breach of:
  - (a) these undertakings;
  - (b) the Individual Undertakings given by an Authorised Adviser of [Name of Party]; or
  - (c) the other Firm Undertakings given in respect of any Authorised Adviser of [Name of Party]; and
- C. It will notify the CMA immediately if any Authorised Adviser ceases to be at [Name of Firm] during the period ending [five] CMA working days after the expiry of the period for appealing against the CMA's final report in the Investigation;

Further, [Name of Firm] undertakes to the CMA to use all reasonable endeavours to ensure that the Authorised Advisers at [Name of Firm] comply with the Individual Undertakings they have given. [Name of Firm] acknowledges that it is fully aware of the Individual Undertakings that its Authorised Advisers have given.

## **PROVIDED THAT**

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

- i. belongs or relates solely to [Name of Party] or to [Name of Party]'s business and which does not include any confidential information belonging to, relating to, or deriving solely or partially from, any other party of the Investigation;
- ii. at the time of disclosure is in the public domain or that subsequently comes into the public domain, except through breach of the Individual Undertakings or Firm Undertakings given in relation to this disclosure; and
- iii. is required to be disclosed by law or regulation, so long as [Name of Firm] consults with the CMA (unless such consultation is prohibited by law or regulation) prior to disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure;

**AND IN AGREEMENT THAT**

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

[Name of Party] has given full and informed consent to the terms of these undertakings including the restrictions placed upon [Name of Firm] on the further disclosure of information by these undertakings.

[Name of Firm]

[signature]

[Date]

**ENERGY MARKET INVESTIGATION****UNDERTAKINGS GIVEN BY [Name of Adviser] TO THE COMPETITION AND  
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RING FOLLOWING PUBLICATION OF THE PROVISIONAL DECISION ON  
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- (f) the data underlying the analyses conducted to determine the differential cost to serve of domestic customers who pay by direct debit, standard credit or pre-payment which is included in the Appendix 3.6 of the PDR entitled 'Analysis of costs by payment methods', and an unredacted version of Appendix 3.6; and
- (g) the data underlying the analyses conducted to determine (i) the indicative level of a price cap; (ii) the indicative impacts of a price cap on suppliers; and (iii) the analysis conducted to determine the indicative impacts of a price cap on customers which is included in section 7 of the PDR,

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- VI. Access to the Post-PDR Confidentiality Ring is restricted and will only be granted to an adviser:
- (a) who has been approved in writing by the CMA;
  - (b) who has given written undertakings acceptable to the CMA (the 'Individual Undertakings'); and
  - (c) in respect of whom written undertakings acceptable to the CMA have been provided by such adviser's relevant firm/employer (the 'Firm Undertakings');
- in accordance with the arrangements in recital VIII (each such adviser being an 'Authorised Adviser').
- VII. The number of Authorised Advisers is limited to 12 for each Relevant Party.
- VIII. The arrangements for obtaining CMA approval of an adviser, and for giving undertakings in respect of an adviser are:
- (a) notice of not less than 1 CMA working day<sup>2</sup> must be given to the CMA of the date on which the adviser first wishes to be granted access to the Post-PDR Confidentiality Ring (the 'Access Date');
  - (b) by 4pm on the CMA working day before the Access Date the Individual Undertakings signed by the adviser and, if relevant, the Firm Undertakings signed on behalf of the adviser's firm/employer, must be provided to the CMA;
  - (c) before the adviser attempts to access the Post-PDR Confidentiality Ring confirmation in writing must be obtained from the CMA that it has

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- IX. The CMA will make the Disclosed Material available to the Authorised Advisers from 9.30am on 17 March 2016 until 5pm on 7 April 2016 through an external hard-drive (the 'Hard-drive'). The CMA will make available one Hard-drive per Relevant Party, which the Authorised Advisers will be permitted to collect from the CMA's offices between 9.30am and 5pm on any CMA Working Day during the Post-PDR Confidentiality Ring.
- X. Each Authorised Adviser will be permitted to download the Disclosed Material from the Hard-drive into a secure folder on computers with the specifications set out below at the Authorised Advisers' premises, and accessible to the Authorised Advisers only (each a 'Secure Computer'). The Authorised Advisers of a Relevant Party will, between them, be permitted to download the Disclosed Material up to a maximum of 12 times (each permitted download resulting in a 'Permitted Copy'). The Secure Computers must each have the following specifications:
- (a) It must be password-protected;
  - (b) The storage mediums (except for the USB ports) must have been disabled; and
  - (c) They may be networked to each other.
- XI. Disclosure of the Disclosed Material, or any part thereof, by the Authorised Advisers other than in accordance with the Individual Undertakings is not permitted without the express, and prior, written consent of the CMA. Breach of the Individual Undertakings by any Authorised Adviser may result in:
- (a) the CMA:
    - i. terminating the Authorised Adviser's access to the Post-PDR Confidentiality Ring and refusing the Authorised Adviser access to any subsequent disclosure room or confidentiality ring run by the CMA, whether relating to the Investigation or any other investigation;
    - ii. referring the breach to the Authorised Adviser's regulatory body, if applicable, which may decide to take disciplinary action in relation to the breach.

- (b) a breach by the Authorised Adviser of his or her obligations under Part 9 of the Act (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 245 of the Act.

XII. [Name of Firm] has been instructed by [Name of Party], which is a Relevant Party, for the purpose of providing [legal/economic] advice to [Name of Party] in relation to the Investigation. [Name of Adviser] is [employed by [Name of Firm] as a [legal/economic adviser]] [a partner in [Name of Firm]].

## **NOW THEREFORE**

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

- A. To only use the Hard-drive for the purpose of downloading the Permitted Copies, and to only access the Disclosed Material using a Secure Computer of [Name of Firm];
- B. To use the Disclosed Material for, and only for, the Permitted Purpose;
- C. To hold the Disclosed Material in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make the Disclosed Material available in any manner to any other person (including any other legal adviser, economic adviser, officer or employee of [Name of Firm] and [Name of Party]) except:
  - (a) another Authorised Adviser of [Name of Party]; or
  - (b) a member of CMA staff or a CMA panel member working on the Investigation.
- D. Not to make any electronic or non-electronic copy in any format of any of the Disclosed Material (including, copying the Disclosed Material to another location either internal or external to the Authorised Adviser's premises), save as provided in paragraph E below.
- E. While I may copy (either in electronic form on a Secure Computer or non-electronic form) the Disclosed Material only for the purposes of preparing, by myself or together with one or more of the other Authorised Advisers, one or more submissions to the CMA in respect of the Disclosed Material within the

scope of the Permitted Purpose (each a 'Confidential Submission'), in doing so, I will ensure that, save as provided in paragraph G below, any Confidential Submission is not used or made available in any way to disclose any part of the Disclosed Material to any other person at [Name of Party] or to any other person (including any other legal adviser, economic adviser, officer or employee of [Name of Firm] and [Name of Party]) except:

(a) another Authorised Adviser of [Name of Party]; or

(b) a member of CMA staff or a CMA panel member working on the Investigation.

F. To ensure that any Confidential Submission I prepare containing or referring to the Disclosed Material is submitted to the CMA separately from any other submission on behalf of [Name of Party] and highlights any Disclosed Material.

G. While I may prepare a general summary of any Confidential Submission (each a 'Non-Confidential Summary') which can be disclosed to [Name of Party], I will ensure:

(a) The Non-Confidential Summary is not used or made available in any way to disclose any part of the Disclosed Material;

(b) The Non-Confidential Summary is only shared with [Name of Party] after the CMA has confirmed to an Authorised Adviser of [Name of Party] that the Non-Confidential Summary does not include any of the Disclosed Material and meets the requirements in paragraphs G(a) and H below; and

(c) The Non-Confidential Summary must be no longer than is reasonably necessary for the Permitted Purpose.

H. For the avoidance of doubt, I will ensure that the Non-Confidential Summary does not enable or assist [Name of Party] to gain any understanding of its position or potential future position in any market, relative to any other market operator (other than relative to a market wide benchmark) and, in particular, must not reveal any data that identifies the number of customers by supplier (by, for instance, tariff type, fuel type, payment method, and meter type), measures of price calculated using customer number data, results of quantitative analysis using customer number data, costs, data on the absolute or relative financial performance of other operators, data on the commercial arrangements of parties, including trading arrangements for the sourcing of



wholesale energy, and financial information concerning any party other than [Name of Party].

- I. To keep secure at all times the Disclosed Material, the Permitted Copies, and any Confidential Submission, report or other document prepared (in or on the Secure Computers) by, or provided to, me which contains or refers to the Disclosed Material (the 'Relevant Material and Documents'). Relevant Material and Documents in electronic form must be kept only in or on the Secure Computers.
- J. To save the Confidential Submission (and relevant working files/analyses) in the relevant Hard-drive folders, and return the Hard-drive to the CMA's offices by 5pm on 7 April 2016.
- K. By 5 pm on 11 April 2016:
  - (a) To delete the Permitted Copy(ies) from the Secure Computer(s) so that the Disclosed Material is not readily available to any person (measures must be taken to ensure no copies remain in either the recycle bin or on a backup system);
  - (b) In so far as not covered by (a) above, and subject to L below, to destroy or return the Relevant Material and Documents or, where the Relevant Material and Documents are in electronic form, to delete them from the Secure Computers so that they are not available to any person (measures must be taken to ensure no copies remain in either the recycle bin or on a backup system); and
  - (c) To notify the CMA of the manner of, and date of, the destruction and/or deletion of the Relevant Material and Documents.
- L. To ensure that no more than one copy of any Confidential Submission is retained in or on one Secure Computer and to return, save as provided in paragraph M below, the copy of any Confidential Submission at the conclusion of the period within an appeal may be brought concerning the Investigation.
- M. If it is required to comply with [Name of Firm]'s professional indemnity insurance policy or any applicable law or regulation, the Authorised Advisers of [Name of Firm] may retain one copy of the Confidential Submission(s), provided that:

- (a) the copy is stored securely in accordance with the undertaking in paragraph I;
- (b) the CMA is notified of the retention at the conclusion of the period within which an appeal may be brought concerning the Investigation; and
- (c) the CMA is consulted as far as practicable prior to any disclosure of the copy under the terms of [Name of Firm]'s professional indemnity insurance policy.

N. To notify the CMA immediately if I become aware of or suspect that any of [Name of Party]'s Authorised Advisers have failed to comply with the Individual Undertakings, or any of the firms that such Authorised Advisers represent have failed to comply with the Firm Undertakings.

#### **PROVIDED THAT**

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

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

#### **AND IN AGREEMENT THAT**

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

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

[Name of Adviser] of [Name of Firm]

[signature]

[Date]