

11 April 2016

CMA Energy Market Investigation

Response to the Provisional Decision on Remedies

This submission sets out our response to the Competition and Market Authority's (CMA) Provisional Decision on Remedies (PDR), published on 17 March 2016 (with appendices published 18 March 2016).

We welcome the opportunity to comment on the extensive and wide-ranging package of measures proposed by the CMA to address the Adverse Effects on Competition (AECs) provisionally found to exist in the GB energy market in the Provisional Findings Report published on 10 July 2015 (PFR) updated in some cases in the PDR. We set out our comments on the provisional findings, together with the Supplemental Notice on Remedies and the second Supplemental Notice of Possible Remedies and the Addendum to Provisional Findings on the Revised AEC Relating to the Prepayment Segment in previous responses, which we refer to in this submission where relevant.¹

Please note that in the time available we are not able to comment comprehensively and on all proposed remedies and reserve the right to do so at a later stage.

Our **key** comments on the PDR are summarised below:

- We agree with the CMA's Domestic Weak Customer Response AEC concerning unengaged customers and their exploitation by suppliers with unilateral market power: the 70% of Big Six customers on the Standard Variable Tariff (SVT) have been and continue to be materially badly served by their own energy suppliers.
- Recent examples of this can easily be found, including around the misuse of collective switches,² the price alert from another Big Six supplier really only available to online account customers,³ and one Big Six supplier with a larger differential between its SVT and cheapest fixed tariff in its non-incumbent regions, from all of which we infer that these customers are highly commercially valuable and accordingly, are protected by the supplier from cheaper tariff messaging, and any prompt for engagement, at almost all costs.⁴
- It is therefore **essential** that the outcome of this long-running market investigation is a package of remedies that effectively address this AEC. In the continuing "tale of two markets", we are very concerned that much of that package is focused on those parts

¹ https://assets.digital.cabinet-office.gov.uk/media/55e6bc84e5274a55ff00001c/First_Utility_resp_to_PFs.pdf;
https://assets.digital.cabinet-office.gov.uk/media/5652fb3840f0b674d6000047/First_Utility_resp_to_supp_remedies_notice.pdf;
https://assets.digital.cabinet-office.gov.uk/media/56a64a7b40f0b613ee000005/First_Utility_2nd_supp_remedies_resp.pdf

² Please see paragraphs 4.7 and 4.8 of this submission.

³ EON Price Alert, where fixed tariff customers that have an online account can get an alert, whereas offline customers and all variable rate customers cannot.

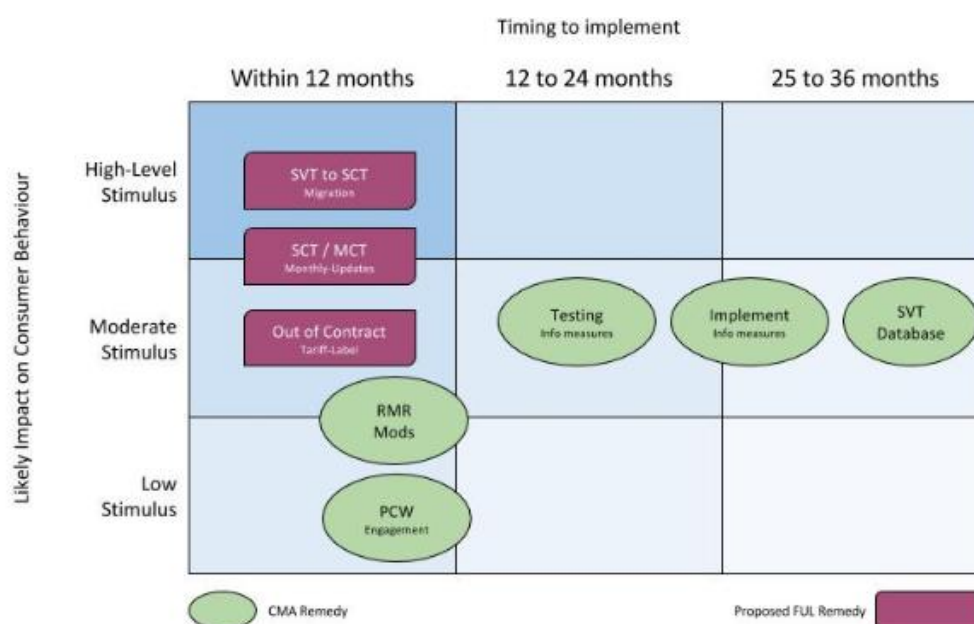
⁴ Please see Appendix 1. We included in our previous responses various such examples, and discussed these issues at our hearing.

of the market that are active and better served by developing competition, namely those customers who have already switched provider, and not adequately or as effectively as they could be on those customers whose lack of engagement is actively fostered by the Big Six – their SVT customers. The direct remedies focussed on these customers risk being rather too little and too late to be effective.

- Coupled with the proposed almost immediate effective removal of the four-tariff rule and other “simpler” Retail Market Review (**RMR**) measures, we are concerned that there will be a massive proliferation of tariffs and offers, making it difficult for even active customers to navigate and adversely affecting that level of engagement, whilst not putting in place measures *at the same time* to effect or support engagement of the 70% Big Six SVT customers. A greater number of more complex tariffs as a result of elimination of the “simpler” RMR measures will do nothing to engage the disengaged.
- Whilst we commend the CMA for considering a radical solution such as a database of SVT customers, such are our concerns that we are proposing, as an alternative to the database (scheduled for late 2018), a requirement effectively to replace SVT contracts with a contract for the cheapest tariff available,⁵ at specified times, to be focused on those suppliers with long-standing SVT customers (a three year or more SVT customer as proposed by the CMA as part of the Ofgem-managed database remedy) and to come into effect as soon as practicable, but well in advance of 2018.
- It follows from this that we are also very concerned with the timeline for the Ofgem-led trials, and the aim of bringing on any such remedies *after* the changes around RMR have taken effect. Whilst we agree that changes to information provision should be made on the basis of evidence, we see no reason why this cannot be progressed in short order, e.g. the change of the SVT to “out-of-contract” tariff. Another effective remedy that could in principle be brought into effect in short order is the increase in frequency of the supplier cheapest tariff (**SCT**) customer prompts, to once a month.
- Alongside alternative measures such as market cheapest tariff (**MCT**) tariff messaging, this will support more engagement between supplier and customer, as well as including a prompt for that customer to look outside its existing relationship (and we consider later in this submission how this essential measure and other similar measures could be brought forward).
- We therefore propose an alternative timeline for the CMA’s package of remedies, and our proposed alternative remedies, which would see a phased implementation of the recommended changes to the “simpler” aspects of RMR, focusing on enabling suppliers to offer product bundles, discounts, including cashback, and partner tariffs first, and potentially specific “types” of tariff such as social and environmental tariffs, and aligning the removal of the four-tariff rule with the introduction of the specific

⁵ Where such tariff has an exit fee, this could be added to the total calculation for the purpose of comparison, but would not be applied to customers moving away from this tariff.

information remedies to be tested within the Ofgem-led programme which is targeted at disengaged SVT customers. The latter in particular will incentivise efficient and timely engagement with the evidence-gathering necessary effectively and proportionately to address these disengaged customers (which these remedies are largely aimed at doing). These alternative remedies (which we consider in more detail in section 4) are likely to provide a higher level of stimulus for customer engagement and thus be materially more effective. We set out the likely and importantly, shorter term, impact of these remedies in the table below, which includes the engagement remedies proposed by the CMA by way of comparison.



- We are also concerned with the scale of industry change being managed and proposed in a short timescale as this may effectively crowd out the ability of independent and smaller suppliers to innovate around products, services and prices: large-scale change is challenging for all participants, but falls disproportionately on those players who are growing their businesses and managing the scale changes needed to do so alongside material industry change programmes. This cumulative effect should be considered within the design, evidence-gathering and planning work that the CMA is recommending to Ofgem and DECC.
- We think that the CMA has placed too much weight on the benign conditions of the wholesale energy market thereby losing the opportunity to look critically at the low levels of liquidity in that market and the very real constraints on growing independent suppliers in obtaining the products they need to continue to manage their wholesale positions on behalf of their customers.

The subsequent sections of this submission set out our detailed views on the proposed remedies and on the updated provisional findings, where relevant. We set out thereafter our



views on two areas where we consider the CMA should have come to different provisional conclusions and urge the CMA to reconsider these areas, namely wholesale market liquidity and industry data quality.

As we no longer serve SME customers, we have not considered the proposed remedies regarding microbusinesses in this response. In the time available, we have also not commented on the CfDs AEC or the Locational Pricing AEC.

DOMESTIC RETAIL: CREATING A FRAMEWORK FOR EFFECTIVE COMPETITION

1. ELECTRICITY SETTLEMENT AEC

- 1.1 We agree with the CMA's Electricity Settlement AEC and in broad terms, we consider that the remedies package proposed by the CMA for this AEC is likely effectively to address the AEC as identified, subject to specific areas of further consideration as described below.⁶
- 1.2 One area for further consideration is the cumulative impact on industry participants of domestic half-hourly settlement reform programme, taking account of the scale and scope of other industry programmes ongoing or in the process of being launched. This is likely to be, on any assessment, a significant programme, and the transitional issues and implementation concerns and the impact on this programme of others and on others of this programme must be modelled and understood.
- 1.3 We are also concerned about a potential unintended consequence of the programme to change to domestic half hourly (**HH**) settlement which relates to the impact of the "group correction factor" (**GCF**) and the potential adverse distributional implications that might arise from specific elements of this remedy package (i.e. during any elective phase and taking account of any transitional or phasing arrangements for mandatory HH settlement). In any event, the issues that GCF address need to be considered.
- 1.4 Currently, the lost power for each network is smeared across the NHH supply points connected to that network. HH supply points do not attract this smearing, which position we understand reflects the perception that HH metering is more accurate. Whilst in some respects this is right, HH metered supply points are still susceptible to the loss or theft of electricity. As the non-HH (**NHH**) – or profiled - population reduces, including potentially through elective HH settlement and any phasing of mandatory HH settlement, the remaining NHH supply points, a diminishing volume, will attract a greater proportion of GCF charges.
- 1.5 As the mechanism stands today, the last remaining NHH supply point would attract all of the GCF for the entire distribution network it is connected to. This creates an adverse distributional impact on suppliers whose portfolio is more heavily weighted towards NHH than HH settled supply points. All supply points should therefore bear a fair and appropriate proportion of smearing attributable to losses and theft, applied in such a way as fairly incentivises all parties to address the issues leading to losses and theft, noting that not all parties can actually mitigate such losses. We note that this issue is similar to that highlighted by the CMA in relation to gas settlement. We

⁶ Section 11.5 PDR.

ask that this issue be recommended for consideration by Ofgem as part of the design phase.⁷

- 1.6 We would also like to see included with the scope of the process recommended to Ofgem prior to effecting with DECC a joint plan, that these stages include consideration of and building in of appropriate transition arrangements. Amongst other things, resources for accreditation for HH settlement for those suppliers who are not currently accredited, and any new entrants when fully implemented, must be sufficient to prevent any undue delays in accreditation for those parties.

2. GAS SETTLEMENT AEC

- 2.1 We agree with the CMA's provisional finding that the current system of gas settlement is a feature of the GB domestic and SME retail gas markets that gives rise to an AEC through the inefficient allocation of costs to parties and the scope it creates for gaming, which reduces the efficiency and, therefore, the competitiveness of retail gas supply.
- 2.2 We believe that the causes of this AEC include, but are not limited to, the following: (i) the current update frequency of Annual Quantities (**AQs**) dampens price signals to shippers and suppliers and distorts incentives to innovate; (ii) because there is no obligation on suppliers/ shippers to submit reads to the settlements system for validation and settlement, this risks gaming in reads submission, and (iii) the mechanism that allocates unidentified gas is inefficient and some industry parties have little incentive to reduce the unidentified gas root causes within their portfolio.
- 2.3 We agree with the CMA that whilst Project Nexus will address most of the current issues in the gas settlements system, it leaves some issues unaddressed. We have some concern that the new Project Nexus AQ mechanism is still monthly and accordingly, it will not provide full reconciliation similar to that within the electricity settlements system.
- 2.4 We also agree with the CMA's concerns around the progress of and impact on participants of delays around Project Nexus. This Project has encountered a number of setbacks, even within the extended delivery period to 1 October 2016, including the deferral of systemised retrospective adjustments (**RA**) until October 2017 at the earliest. Such de-scoping presents gas shippers with challenges in the form of workarounds (some of which are yet to be defined) and the need to adapt their business processes to manage these. Not least, the costs incurred by suppliers (and ultimately borne by customers) are incremental to those already expended on developing the systemised RA alternative (that will now not be used until a yet-to-be-determined date in the future). Notwithstanding this de-scoping, significant risks remain, including process and data migration and data quality issues, which in our view should ideally be addressed in part to justify the costs incurred by participants in

⁷ "Design phase" is here used as a summary of the elements of the recommendation to Ofgem listed at section 11.5(b) PDR.

implementing a new system and more importantly, to avoid adverse impacts on customers.

- 2.5 Whilst we agree in principle with the CMA's view that gas shippers should be sanctioned if they have not set up their systems to be ready for market trials,⁸ the potential sources of delay are not solely gas shippers. We believe gas transporters should also be sanctioned by Ofgem should their agent be late in setting up the new system for market trials or for not having their own internal systems ready. We would expect that in all cases, sanctions are only applied following a thorough investigation.
- 2.6 In principle, we welcome the measures proposed by the CMA to require suppliers and shippers to submit all reads for dumb meters and monthly reads for smart meters to Xoserve. We see this proposed remedy as a significant step towards addressing read submission issues and improving settlement accuracy and in our view, it will contribute to reducing the volume of unidentified gas that must be (re)-allocated. However, this proposed remedy alone would not necessarily improve settlement accuracy without a robust read validation/exception management process being implemented similar to that used for electricity settlement. Without a validation mechanism, reads that are incorrect by a significant margin could be accepted into the system and generate very large charges for the associated shipper. This would introduce significant volatility and uncertainty for gas shippers and suppliers.
- 2.7 In our view therefore, this proposed remedy requires an additional step to be fully effective, namely a robust read validation/exception management capability must be in place before the obligation to submit all gas reads into settlement becomes effective. Until such a capability is available, shippers should be required to submit only reads determined by them as valid into settlement. We recommend that this is implemented in a release as soon as practicable after Project Nexus implementation.
- 2.8 We would also urge the CMA to clarify the scope of the submission obligation, which should (i) not apply when communications are not working or in other circumstances outside the control of shippers, (ii) define what is meant by "dumb meter" and "Smart Meter" for these purposes (e.g. does the latter include Advanced Meters and SMETS1), and (iii) deal with any existing restrictions around reads, e.g. restrictions in the current system to limit the frequency of submitting reads to 60 days. We would not want to see the Project Nexus implementation date of 1 October 2016 to be compromised by requiring Xoserve to implement this in the current legacy system.
- 2.9 We welcome the CMA's proposed remedy around the gas Performance Assurance Framework (**PAF**) to be established within a year of its final report. PAF reports will provide important insights into individual party performance compared to an industry benchmark, which will provide crucial information for governing bodies to identify areas for improvement. However, in our view, a key element of a robust performance

⁸ Section 5.118 PDR.

assurance framework is missing from the arrangements as they are being established. The PAF as originally conceived included governance arrangements to form a Performance Assurance Committee (**PAC**).⁹ A key role of the PAC was originally to set out how incentive payments for failure to meet predefined performance standard(s) would be calculated, taking into account a grace period for new entrants.

- 2.10 However, more recently, this aspect of the PAC role has been removed, which in our view has significantly weakened the benefits that the PAF could have brought. This aspect of the PAF was a step towards improving industry data and participants' compliance with industry agreed processes: the failure to provide for financial penalties to ensure the incentives are strong enough to cause suppliers and shippers to take remedial action risks making the PAF materially less effective than it could be.

3. PREPAYMENT AEC

Setting prices to prepayment customers on the basis of grouping regional cost variations which are applied to other payment methods within the same core tariff

- 3.1 We do not think that this proposed remedy, which aims to open up more codes within tariff pages to enable other tariffs for prepayment customers to be offered, will be effective. This is because in practice, regional pricing is required to launch competitive tariffs and grouped regional pricing would result in price rises for some prepayment customers. It follows that this proposed remedy will not have the desired impact of encouraging more tariff choices for prepayment customers.
- 3.2 Taking this into account, the question of de-prioritisation of potential enforcement action may not come up as suppliers are unlikely to group regional cost variations given the resulting detrimental impact on some customers.

Ofgem to allocate gas tariff pages

- 3.3 We agree that the lack of gas tariff pages may have inhibited smaller suppliers from entering the PPM sector. Enabling Ofgem to manage gas tariff pages therefore represents both a proportionate and relatively effective way to addressing this AEC. Establishing an efficient allocation process should contribute towards more suppliers offering a prepay tariff. However, other factors remain relevant to tariff-setting and in particular, moving to a model similar to that in the credit market, with companies having multiple fixed low price tariffs that they change on a regular basis. These factors include (i) PPMIP costs of launching a new tariff, and the process issues around so doing, and (ii) the inability to re-use tariff codes (a supplier effectively overwrites customers' tariffs if they do this).

⁹ UNC 0506 and see in particular the recent Terms of Reference for the PAC.

- 3.4 These complexities, amongst others, mean that effective competition is only likely when prepay tariffs are launched in exactly the same way as credit tariffs, that is, when the use of the PPMIPs become redundant.
- 3.5 In terms of the process itself, we think that a number of issues need to be determined, including (i) what would be the criteria for being allocated an extra page, (ii) how would Ofgem decide which supplier had to give up one of their pages to another supplier, and (iii) if there is high demand, how would allocation be handled. One possible unintended consequence of this proposed remedy may be that suppliers launch prepay tariffs that are not competitively priced in order to use their allocation of tariff pages. This may be an aspect of the proposed new allocation system that Ofgem should keep under review as part of its monitoring activity.

Changes to the Debt Assignment Protocol (DAP) by the end of 2016

- 3.6 We agree that Ofgem taking a leadership role in the implementation of the DAP Protocol should help expedite the addressing of data issues and industry data cleansing. However, caution must be exercised given the sensitivities around the sharing of customer data.¹⁰ Once fully running, this will represent an important milestone in facilitating indebted prepayment customers to switch suppliers.

Acceptance of undertakings from the Six Large Energy Firms or obligations around the following three components

Cap on tariff pages per supplier

- 3.7 We agree that this is an effective means to ensure a fairer allocation process for tariff pages pending completion of the smart meter roll-out expected by the end of 2020, and that it will contribute to the entry into the PPM sector of smaller suppliers, including by having more than one tariff at a time, should they wish to. As noted above however, we don't think that this will of itself lead to more effective competition in this segment of the market given the costs involved with using the PPMIPs.

Providing relevant information for Ofgem to monitor the allocation of the gas tariff codes

- 3.8 We agree that this would be an important element of the overall package for ensuring a fairer allocation of tariff pages as proposed by the CMA. Suppliers themselves or their meter operators could provide this information.

¹⁰ Changes may be necessary for the MRA MAP13 and SPAA Schedule 9 to give effect to this.

Ofgem to mandate the transfer of one or more gas tariff pages to another supplier

3.9 We agree that this proposed element of the remedies package would help support the allocation by Ofgem of gas tariff pages.

Remedies the CMA is not minded to pursue

3.10 We support the CMA's decision not pursue both Remedy 20a on prohibiting the charging of a security deposit and Remedy 20b on prohibiting the upfront charging for meter replacements.¹¹

4. THE RMR AEC AND/OR ASSOCIATED DETRIMENT, AS WELL AS PART OF THE PREPAYMENT AEC AND THE DOMESTIC WEAK CUSTOMER RESPONSE AEC AND/OR ASSOCIATED DETRIMENT

- The Big Six continually focus on what they can do to keep their valuable SVT customers disengaged, including effectively how they can hide their best prices from them. They have an economic incentive to do so as these customers are paying significantly over the odds, as addressed in the CMA's provisional findings.
- Ofgem attempted to rectify this through its RMR remedies, including by implementing SCT, on bills, on fixed tariff expiry notices and on annual statements. In our view, this was a clear step in the right direction as it gave customers more information on what they could save by switching to the best tariff from their current provider. However, because frequency of this communication was *not* addressed, this intervention was not nearly as effective as it needed, and still needs to be, to engage the disengaged. As a result, the Big Six have leveraged this to maintain the status quo and ensure the impact of SCT is as small as possible on their SVT customers.
- The majority of Big Six providers bill quarterly or semi-annually, and as such they can provide this information as little as two or three times a year. As a result of this low frequency, we see the Big Six adjusting their pricing strategies to be cheaply priced in bursts. We believe this can only be to avoid presenting these aggressive low priced tariffs to their existing customers via SCT. If they are managing the system in this way with detailed rules, we are concerned about how they will do so following removal of key elements of RMR.
- This has led to a “tale of two markets”, which risks continuing both as a feature of the CMA's proposed *timing* across the package of remedies and the *substance* of certain of those proposals, in particular around the removal of the “simpler” aspects of RMR, the Ofgem-controlled SVT customer database and the Ofgem-led information remedies programme. The *timing* for these various elements of the proposed package of measures risks fundamentally defeating the likelihood that individual remedies and

¹¹ First Utility response to the Second Supplemental Notice, paragraphs 2.25 – 2.27 and paragraphs 2.35 to 2.37.

the package as a whole is able to support customer engagement from within the 70% of customers on the Big Six's SVTs.

- The *substance* of the CMA's proposed package of measures is seemingly geared towards the more active segment of the market, for example those customers using Price Comparison Websites (**PCWs**). Whilst not a perfect correlation, proposed remedies encouraging inter-PCW competition with a view to encouraging switching risks disengaging even those customers who are active from being so and will not in itself address disengaged customers at all. This possible outcome highlights a key concern. The active segment of the market is **not** itself an AEC or suffering from such an effect.
- These concerns have informed our approach to the CMA's proposed remedies, and to the proposals we are putting forward for alternative remedies, which proposals are summarised in the table below. All these direct remedies would be in place no later than 12 months from the date of the CMA's final report.¹²

Proposal	Target	Stimulus	Time	Description
SCT/MCT Monthly Updates	Customer	Moderate to High	Up to 12 months	Enforce a more frequent notification to customers on "standard" or "out-of-contract" tariffs that they are paying a higher price for their energy, and including a call to action. Note this does not need to be included on the bill.
Rename SVT "out of contract"	Customer	Moderate	As above.	Change the name of SVT to prompt customers to question status - "out of contract" is likely to do this, although this should be trialed, in particular to ensure that such a name does not worry customers or cause unnecessary anxiety. What other information customers would want at this prompt also to be considered/trialed.
Replacing SVT with SCT for long-standing customers	Customer	High	As above.	Replace customers on the SVT with the then supplier's cheapest tariff available, without an exit fee, for customers on the SVT for longer than a specified period (e.g. three years) at a specified time (e.g. so all suppliers can review how many are on their out-of-contract tariff

¹² Timeframe based on need for effective, timely and proportionate remedy and assumes the implementation period for a CMA order (with ten months as the maximum but up to six months as the aspiration) or no longer than 12 months following recommendation to Ofgem from the CMA.

Removing the “simpler” elements of RMR (namely the ban on complex tariffs (SLC 22A.3 (a) and (b)); the four tariff rule (SLC 22B.2 (a) and (b)); the ban on certain discounts (SLCs 22B.3-6 and 22B.24-28); the ban on certain bundled products (SLCs 22B.9-16 and 22B.24-28); the ban on certain reward points (SLCs 22B.17-23 and 22B.24-28); the prohibition against tariffs exclusive to new/existing customers (SLC 22B.30 and 22B.31); and make any necessary minor consequential amendments)

Removing the Conditions

- 4.1 The CMA has provisionally found that the ‘simpler choices’ component of the RMR rules gives rise to an AEC through reducing retail suppliers’ ability to innovate in designing tariff structures to meet customer demand, in particular, over the long term, and by softening competition between PCWs. However, looking at DECC’s quarterly domestic energy switching statistics, RMR has not dampened switching levels since they are at same level as prior to RMR if not recently starting on an upward trend. The fall in switching from 2008 was arguably initiated from the cessation of doorstep selling, and only since Ofgem’s RMR reforms have switching levels started to rebound.
- 4.2 RMR reforms which required greater simplicity in tariff construct amongst other constituent parts, have enabled consumers to be better able to compare tariffs. Yet the proposed almost immediate effective removal of the four-tariff rule and other ‘simpler’ RMR measures we fear will lead to a massive proliferation of tariffs and offers, making it difficult for even active customers to navigate and adversely affecting that level of engagement. The impact would be intensified given that the CMA is not putting in place measures at the same to effect or support engagement of the 70% of customers on the SVT.
- 4.3 We are also concerned that the lifting of the prohibition against tariffs exclusive to only new or existing customers is not fair for customers as the “tale of two markets” currently stands and we do not therefore agree that this would effectively address the AEC. Whilst it may encourage innovation in one respect, we consider that this would not be in customers’ interests but in suppliers’.
- 4.4 We do not think that de-prioritising enforcement action for all elements pending the formal removal of the Conditions is workable in this context. RMR is itself a package of detailed and inter-related measures. Noting that the coming into effect of the removal of the Conditions will also rightly need to be accompanied by “any necessary minor consequential amendments” - and we agree that it is likely a fair number of consequential changes may be needed - this makes the risk of suppliers interpreting the impact of removal and working up their own consequential adjustments problematic: substantial guidance would be needed in order to address the risks inherent in this prospect. Changes to the approach to SCT and other information remedies will be needed, and it is likely too that changes to presentational provisions should be made to accommodate the underlying substantive changes.

PCWS & disengaged customers

- 4.5 The proposed remedies do not reflect the reality that PCWs are already responsible for around 60% of customer acquisitions and that PCWs' commercial driver is to switch customers rather than focusing on reaching out to disengaged customers who are more difficult and more expensive to market to. Furthermore, increasing competition between PCWs is not only unnecessary, but would focus on encouraging transactions of benefit to the PCWs and their businesses: this is likely to see increasing numbers of switches (rather than just customer numbers) and may give the impression of improving competition, but disengaged consumers would be left behind.
- 4.6 Given that our view is the focus of the CMA's remedies package for this AEC must be those disengaged SVT customers who are not benefitting from the increasing choice seen in the more active market segment, we do not think that the proposed remedies around PCW-driven engagement should take effect prior to those proposed remedies for customers as a whole through the Ofgem-led programme.¹³ Indeed, it is this wider set of engagement remedies on which focus should fall first.
- 4.7 The impact of allowing PCWs to have exclusive tariffs is also concerning: for those switchers who subsequently find they could have got a cheaper tariff elsewhere, it is likely that this will reduce their trust in the market and risks disengaging them from it. Should this proposed remedy go ahead, as a minimum, any exclusive tariff must at least be incorporated into SCT messaging. The February 2016 MoneySavingsExpert (**MSE**) collective switch ("**Big Switch 4**") highlighted for us a number of issues in the retail market. British Gas won the MSE Big Switch 4, with what we inferred to be a loss-leading tariff of £735. This was a substantial supposedly "closed" collective switch, which was actually made available to some eleven million people signed up to MSE updates.
- 4.8 This basis however allowed MSE to say that this tariff was made available to British Gas customers, that is, those signed up for updates rather than any messaging to its customers by British Gas itself. This plays to the continued segmentation of customers by the Big Six into potentially active and inactive, the revenue from the latter enabling the keener setting of acquisition tariffs for the former. We provided previous examples to the CMA at our last hearing around tariff changes and white labels.¹⁴

Cashback

- 4.9 It appears from the CMA's proposals that cashback – being a cash discount currently prohibited to suppliers and their intermediaries pursuant to the relevant SLC and

¹³ Section 4.88 PDR

¹⁴ Please see p. 53-54, First Utility hearing transcript, Friday 2 October 2015.

Ofgem guidance – will be permitted.¹⁵ As can be seen in the analysis we undertook at that time with data provided by Affilinet, from when cashback was initially removed to when it was reintroduced some three weeks later, this acquisition channel generated a further 5,500 leads at its peak for First Utility until its final removal from 13th March 2015.¹⁶ This shows that the ability of both cashback websites and suppliers to directly offer cashback has been a key engagement tool for customers.

4.10 It follows that we agree that this is a helpful outcome and is likely to foster engagement. We consider in a subsequent section the potential timing of this change.

Impacts of lifting the four-tariff rule

4.11 We are concerned that enabling more tariffs will not, in and of itself, result in more engagement by the disengaged. Indeed, without careful framing and preparation, we think that this could have the opposite effect of entrenching the current lack of engagement – one of the key AECs – amongst the inactive and putting off the active. As we discuss further in this submission, we are convinced that the engagement by the disengaged will start with changing the name of the “SVT” tariff to “out of contract tariff”; then by implementing MCT (and SCT) communications (which will drive disengaged consumers to ask questions of their energy provider or consider switching) once a month (as opposed to around once or twice a year by some suppliers today).

4.12 This will prepare the ground for and support a greater level of potential engagement in the inactive segment of the market, enabling experience of switching in a less complex market as a means of gaining experience. Only after these things are done does it make sense to then add additional tariff options and constructs, because the information remedies themselves will cause disengaged consumers (or at least some of them) to look further, when they then can consider new tariff options.

4.13 We believe that lifting the RMR Condition would further disengage consumers by making comparisons more difficult since tariff complexity would increase. We believe the CMA should bear in mind the recent European Commission Communication on Delivering a New Deal for Energy Consumers which notes ‘the lack of appropriate information on costs and consumption, or limited transparency in offers, makes it difficult for consumers (or reliable intermediaries and energy service companies, such as aggregators, acting on their behalf) to assess the market situation and opportunities.

A mitigating approach

4.14 We do not think that the outline timing is workable where the CMA itself says, “we would expect to see substantial reductions in detriment beginning in 2019/20, broadly

¹⁵ Section 5.385 PDR.

¹⁶ Please see table at paragraph 2.49, First Utility response to the PRF.

coinciding with the full roll-out of smart meters.”¹⁷ In order to make any information remedies effective, these must be aligned with the coming into effect of the RMR “simpler choices” remedies and come in earlier.

- 4.15 To help mitigate the risk of these remedies further entrenching customer disengagement within the continuing “tale of two markets”, reinforcing the CMA’s provisional finding that there is an AEC associated with lack of consumer engagement, we suggest that measures are put in place at the same time, or indeed beforehand, to effect or support customer engagement. As we cover earlier in our response concerning the Prepayment AEC and the Domestic Weak Customer Response AEC, we believe that as soon as practicable, changing the name of the default tariff to ‘out-of-contract’ (which we cannot see requires substantial and large-scale testing over several years as appears to be envisaged) and the application of MCT (and SCT) messaging each month, would help address the lack of CMA remedies for disengaged customers.
- 4.16 It is essential that customers on SVT receive regular and useful prompts to encourage engagement. As the outcome of a survey recently commissioned by USwitch highlighted, much more can and should be done to encourage engagement.¹⁸ This can effectively and proportionately build on existing SCT communications (in terms of method), a straightforward MCT message (please see the relevant section in this submission) and other prompts on a monthly basis, such messaging to be brought into effect in parallel with any changes around the four-tariff rule. These communications would not need to be included in the bill and can be provided by whatever means the supplier has settled on with its customers, e.g. a short marketing-type communication via email or a text.
- 4.17 We do not agree with Centrica’s further submission, published on 23 November 2015, that an increased number of tariffs means that SCT messaging is redundant or too complex: indeed, it renders it an order of magnitude more important in order to support prompts for customers to look beyond their current tariff, and supplier, surely a key aspect of any effective remedy intended to address a lack of engagement. As this builds on existing information prompts, we do not foresee anything other than minimal system changes being needed to deal with this, in particular if included in non-bill communications.
- 4.18 Only after these things are done does it make sense to then add additional tariff options and constructs, because the information remedies themselves will encourage disengaged consumers to look further, when they can consider new tariff options.

¹⁷ Section 4.90 PDR

¹⁸ <http://www.uswitch.com/media-centre/2016/04/6-in-10-consumers-still-dont-understand-energy-bills-despite-rules-to-make-them-clearer/>

4.19 In summary, our proposed alternative timeline for the CMA's package of remedies would see a phased implementation of the proposed changes to the 'simpler' aspects of RMR, focusing on enabling suppliers to offer product bundles, discounts and partner tariffs first, and aligning the removal of the four-tariff rule with the introduction of the specific information remedies around the MCT messaging (like SCT to be provided per month) and with the SVT name changed to 'out-of-contract' tariff.

A new standard of conduct into SLC 25C for suppliers to have regard in the design of tariffs to the ease with which customers can compare value-for-money with other tariffs they offer

4.20 An objective from the "simpler, clearer, fairer" rules under of RMR was to "help consumers to understand that alternative tariffs exist, what their options are, and what they can expect from energy suppliers". These measures were intended to address tariff proliferation and help customers make comparisons between tariffs, or other energy choices, more easily, so as to arrive at a well-informed decision".¹⁹ Given the range of Conditions that the CMA is proposing to lift, as noted above, we believe this could risk disengaging consumers by making comparisons more difficult since tariff complexity, the range of bundles and potential discounts would increase if measures to aid comparison and sufficient information to prompt engagement are not also made available.

4.21 The personal projection (**PP**) was intended to be an integral part of the customer's decision-making process. It should enable them to make an informed decision about switching supplier or moving to a new tariff. As a result, PPs have the potential to drive customer engagement if customers feel empowered, are able to rely on it and derive benefit from it by supporting customers in choosing the best deal.

4.22 Where, however, the PP does not operate to deliver the accurate forecast expected by consumers, it has been shown to have a damaging effect on customer experience, doing little to promote confidence in either the Industry as a whole or, more particularly, in the Supplier implementing the rules. In the more active segment of the market, the risk is that customers start to view the PP as a marketing tool where suppliers and PCWs are purposely overstating savings to gain a benefit.

4.23 The current methodology for estimating PPs has substantial flaws, centred around the inclusion of the SVT for the period after the end of a customers' fixed term tariff in the 12 month PP calculation. This can overstate the savings customers can make on seeking a new tariff (which would not be an SVT and given that as such, it would likely be less expensive) or supplier, which can and does lead to confusion and resentment, adding to the general mistrust in which the sector is held.

¹⁹ Paragraph 3.3 The Retail Market Review – Final domestic proposals 27 March 2013.

- 4.24 The flaws are so often reported on by the media and various consumer associations that it already has the potential to dissuade consumers from engaging in the market and potentially switching, particularly those in vulnerable situations who are already less likely to switch. As an illustration, on 12 March 2016, a report prepared by TheEnergyShop.com (a switching site) concluded that a significant proportion of switchers never realise the savings they have been quoted. Savings were typically inflated by between £100 and £200. In one case, the saving quoted was more than the customer was already paying at the time.
- 4.25 Given these existing issues with PPs, as the Conditions are lifted, it is imperative to implement a new methodology at that same time, or risk each supplier and PCW making their own assumptions and causing further confusion amongst customers. The same applies for the Tariff Information Label as well as the Tariff Comparison Rate (which itself will not be able to support complex tariffs).
- 4.26 Rules around how tariffs should be presented and compared (also around new tariff types such as tiered tariffs and subsequently Time-of-Use tariffs) need to be fair and consistent and for all parties to be bound. This is particularly important in regards to Standards of Conduct, to “Treat Customers Fairly”, and to provide information that is complete, accurate and not misleading. Whilst an industry-led process could be taken to set these, to expedite the process we suggest that these rules must be set by Ofgem and included as a licence condition.

De-prioritising potential enforcement action pending the removal of the Conditions against any supplier that operates in breach of the Conditions

- 4.27 As noted above, we have concerns around the proposal to de-prioritise enforcement of the Conditions for breach by a supplier given the likely need for consequential amendments amongst other things: we do not object in principle to the de-prioritisation of specific elements of the regulatory framework where appropriate. In any case where this is pursued, it is critical that customers can be effectively protected from any adverse consequences around a possible lack of clarity in the approach to enforcement. This in part relates to our very real concerns around the adverse effects of bringing forward the removal of the four-tariff rule without ensuring that at the same time, there are appropriate information remedies, to be included in prompts of a mandated frequency, at the same time. We have seen various behaviours from certain of the Big Six (i.e. around white labels, collective switches and segmentation by region of differentials between SVT and cheaper tariff) that are clearly gaming the existing – and very detailed - rules with the effect that existing and non-engaged SVT customers are not being prompted to consider their tariff either at all, or more than once or twice a year.
- 4.28 We therefore have significant concerns around de-prioritisation of enforcement of certain of the Conditions prior to formal changes within the supply licence.

- 4.29 In all cases, of course, suppliers must continue to work under the Standards of Conduct. This should help to avoid potential adverse effects of removing the Conditions by acting as a natural test to subsequent supplier actions through consideration of what is clear and fair for customers.

Removing the Whole of the Market Requirement in the Confidence Code and introducing a requirement for PCWs accredited under the Confidence Code to be transparent over the market coverage they provide to energy customers

- 4.30 We agree with the proposed removal of the “whole market view” requirement from the Confidence Code: the unintended consequence of this measure was the skewing of entries towards those who were not contributing to the costs of this important channel. However given the CMA’s drive towards greater transparency – with which we agree - PCWs should make clear the basis for comparison and fulfilment via their sites. We also note the European Commission’s drive for greater transparency for customers to assess different tariff options. PCWs will need to be clearer in what they are comparing and to be fully transparent on this point. PCWs could, for example, provide a link to the Citizens Advice comparison tool and/or to the *Be an Energy Shopper* website.
- 4.31 However in the interests of building trust in the market, we do not agree with allowing PCWs to have fully exclusive tariffs: this may cause those switchers who subsequently find they could have got a cheaper tariff elsewhere to disengage from PCWs or the market altogether.

The Ofgem-led programme to identify, test and implement information measures to promote engagement in the domestic retail energy markets

- 4.32 We welcome the recommendation of an ‘Ofgem-led programme’ to consider changes that may promote customer engagement. Whilst we are pleased to see that First Utility’s and other stakeholder views have been noted here around MCT messaging and that of changing the name of the default tariff to ‘out-of-contract’, we are very concerned that waiting for two years to have a randomised control trial will lead to consumers missing out on the substantial benefits available. When considering that implementation costs are limited, this would render this important potential remedy largely ineffective.
- 4.33 Furthermore if directed exclusively at SVT customers, an MCT messaging remedy implemented as soon as practicable would help address the lack of CMA remedies for the 70% of consumers on the SVT: the remedies around RMR and PCWs are weighted towards increasing competition in the already competitive market for engaged consumers. Taking this into account and noting the creation of an SVT customer database, if MCT messaging is delayed, then the addressable market will end up that much smaller since most SVT customers will have been moved onto



alternative SVT-like tariffs without any of the real gains from switching being felt by them.

- 4.34 Whilst switching statistics are not an end to themselves, the key point must be to encourage suppliers to be more competitive, particularly on the SVT tariff, and to save consumers money. Without the MCT information remedy, we are concerned that there is no driver for suppliers to do this. As a result the current level of consumer disengagement would remain, with only a small active pool of consumers engaging in the market and switching to obtain the best deals. This caps the potential size of the market independent suppliers can engage in, which effectively reinforces the CMA's provisional finding that there is an AEC associated with lack of consumer engagement.
- 4.35 MCT messaging is therefore a key tool for encouraging customer engagement and should be directed at all customers on the SVT. To work in practice we believe this should be included on frequent communications to the customer each month: currently SCT communications may only be once or twice a year, yet we believe some form of monthly communications (in our case, we bill and provide SCT monthly) is key for all customers and suppliers. As an illustration as to how this can be presented, we have included a mock-up of an indicative First Utility bill we have included in Appendix 2 to this submission.
- 4.36 The savings figure can be ascertained by simply entering the postcode, tariff and usage into a switching site, and then taking an average of the top 3 available tariffs to get this saving figure. This should be a fairly straightforward process to automate given the existing processes for SCT are in place, and suppliers already obtain a list of competitor tariffs to enable potential customers to make a quotation. For example every day we receive a data file from Energy Helpline with all market tariffs available. As noted, we suggest that calculations be made as at the time the communication (bill or otherwise) is generated, with the SCT proviso that market tariffs can be withdrawn at any time.

Acceptance of undertakings from gas and electricity suppliers to participate in the Ofgem-led programme, or, obligations on participants

- 4.37 We are prepared in principle to give an undertaking to participate in this programme (although at this stage, this is based on our alternative timeline and how this interacts with other proposed remedies) and we would hope that all other suppliers will be likewise incentivised to give undertakings around participation given the benefits of such a programme for customer engagement. Where an insufficient number of suppliers undertake to participate, we agree with mandating participation, again taking account of the alternative timeline and links to other remedies that we consider essential to ensure that the proposed package of remedies is timely, effective and proportionate.

4.38 However in deciding whether trials should take place, a simple qualitative assessment on whether one is in fact required would be sensible. For example we question whether a trial should be required for mandating a simple tariff name change from 'standard-variable' to 'out-of-contract' given the immediate benefits to consumers and the costs of delaying implementation.

4.39 Where trials are to start, their design and size must be appropriate, robust and proportionate. For the potential testing of MCT and the SVT name change to 'Out of Contract', there are two ways this could work with pros and cons for each:

- A survey to ask bill payers whether the addition of such a label would change their perception and indication of whether they would take action; and
- A trial with a subset of customers across a range of demographics, length of time on the tariff etc.

4.40 The first approach is preferable where the benefits to customers of greater transparency and understanding are obvious and where there are limited implementation costs for suppliers and no dis-benefits for consumers.

Order on Gemserv to give PCWs access upon request to the ECOES database on reasonable terms and subject to satisfaction of reasonable access conditions: order on Xoserve to give PCWs access upon request to the SCOGES database on reasonable terms and subject to satisfaction of reasonable access conditions.

4.41 We are supportive of PCWs gaining access to the ECOES and SCOGES databases as a means to reducing errors in the switching process. We would however need assurance from each PCW accessing the databases that tight security controls are being followed and monitored for compliance. This should be covered in the terms and conditions in the sign-up process to each database and stipulate whether each PCW has ongoing access, or only for a set period of time.

4.42 Whilst we estimate that the welcome proposal would lead to a greater reduction in Erroneous Transfers (**ETs**) than the 10% as suggested by Scottish Power, the main cause of ETs remains the accuracy of industry data, e.g. customers may be shown as having a pre-payment meter though it has been removed, and sometimes there are inaccuracies in customer addresses. To address these data quality issues, we consider that a requirement along the lines set out below would be effective and proportionate to address this harm.

4.43 Network operators hold responsibility for managing the databases but at the moment the occurrence of ETs is not visible to them. Going forward, when an ET is raised, suppliers should notify the relevant network operator who is then required to investigate and lead on implementing corrections and placing a counter on the

database against the relevant accounts. If suppliers receive a subsequent customer application for those accounts, then prior to proceeding a red flag is raised requiring the supplier to investigate whether this could be another ET. Looking retrospectively, an obligation could also be placed on suppliers to send all ETs over a defined period to distribution network operators and gas distribution networks for address details to be audited. This is a cost effective and proportionate solution that would ensure data issues are resolved once identified.

Midata programme and access by PCWs to data through phase 2

- 4.44 We already participate in the midata programme. Albeit that the programme is voluntary, we have been disappointed with the take-up of midata given the opportunities for customer engagement that it could bring. The programme helps make it easier for customers to use PCWs and to compare the different offers available by making key data available.
- 4.45 We therefore fully support the CMA's proposal that it be made mandatory for all gas and electricity suppliers.²⁰ This should be done in such a way as to ensure that all suppliers fully participate: some Big Six suppliers currently only open up the data to those with an online account, which is only a small proportion of their overall customer base. Such barriers need to be addressed in order to ensure that the benefits of the programme are not unduly restricted and address the engaged and unengaged segments of the market. We also agree that midata should be expanded to include the data fields as proposed by the CMA as this will enable more customers to benefit from the midata programme.²¹
- 4.46 We agree that it is essential customers are given the opportunity to say how often they are contacted by the PCWs and particularly in respect to updated tariff comparison information, bearing in mind any fixed term deals customers may have already signed up to. The commercial incentive on PCWs is to increase transactional through-put and take up via their own websites rather than reaching out to the disengaged, given these proposed changes, we agree that a review of the confidence code in order to address any consumer protection issues is important.
- 4.47 Taking this into account, we do have some concerns regarding PCWs accessing midata, and think this would be challenging in terms of IT requirements given that secure continuous authority would be needed. Currently, customers must explicitly grant access on every report, thus they retain control. Our reading of the CMA proposed remedy leads us to think that some keys or cookies would be made available to third parties with special privileges to allow access to midata over an extended period - the consumer would not be able to control the frequency at which their data

²⁰ Sections 6.192 and 6.211 PDR.

²¹ Section 6.211 PDR.



was accessed, whereas at the moment it is only allowed for a short period to improve security.

Ofgem-controlled secure cloud-based database of SVT customers and requirements on suppliers

- 4.48 We welcome the CMA's willingness to propose radical potential solutions to the concerning continuation of the segmentation of the market into active and non-active customers.
- 4.49 In our previous response, we set out our concerns around data protection and privacy, highlighting that there was insufficient detail to ascertain whether or not the proposed 'cloud' solution is in fact secure. The CMA will of course be aware of the data protection, privacy and security issues, and the particular challenges that cloud solutions can raise concerning enforcement and compliance. Of equal importance is managing the risk of further disengaging customers leading to other important issues such as under what conditions should suppliers have access and any controls around communications or monitoring of it. Access to and use of the database must be managed fairly for both suppliers and customers, balancing the need to protect customers from too much intrusive marketing and enabling suppliers to innovate around solutions to engaging those customers.
- 4.50 Given the proposed 2018 time frame for this remedy, there would be every incentive for gaming by the Big Six (who will have the vast majority of customers impacted). This would be to the further disadvantage of these already adversely affected customers, in particular if the four-tariff rule is effectively dispensed with early in the implementation period, and would see only a minimal number of customers left on an "SVT tariff" when up and running. If this movement were based on effective competition and informed customers actively switching, this would be a good outcome indeed but too many opportunities exist for SVT-like tariffs to be offered in a post-four tariff world, removing customers from the pool to be included, without any of the real gains from switching being felt by them.
- 4.51 We consider however that there is a more effective, quicker and proportionate means by which SVT customers can benefit from choice and lower prices, which could be brought into effect earlier, thus ensuring the timely adoption of a remedy to the continued fostering by the Big Six of SVT customer non-engagement. Whilst it is hard to foresee the types of tariff and tariff construct that will emerge from the lifting of the four-tariff rule, the need for an "out-of-contract" tariff for customers not taking an active decision at the end of a fixed term contract remains. However, this proposed remedy and its timing, risks being rendered ineffective and disproportionate by the incentives on suppliers with substantial numbers of customers on their SVT for over three years in the interim period – and potentially not to the benefit of those customers.

4.52 An alternative remedy that addresses this point would be to require suppliers to update their “out-of-contract” tariff by swapping it for their cheapest current tariff available, with that comparison determined at a defined point or points. This replacement default tariff would not itself include exit fees. For those fixed tariffs that do not include an exit fee – which appear to be variable tariffs by another name²² – this comparison seems to us straightforward. However, tariffs with exit fees should be included in the comparison, which can easily be done by nominally adding that exit fee to the default tariff for comparison and tariff construct purposes. The functionality for tariff provision would be the same as currently applies for post-FTE default tariffs, with an additional comparison step. This effective and proportionate measure would prevent continued adverse effects on SVT customers and incentivise suppliers fully to engage those customers. It is also sufficiently flexible to work with the grain of the (in our view either parallel or subsequent) RMR Condition changes.

Requirements to make all their single-rate electricity tariffs available to all (existing and new) domestic electricity customers on restricted meters (including Economy 7 meters), and related remedies

4.53 We agree that this proposed remedy would enable more customers to benefit from a greater tariff choice as well as levelling the playing field for suppliers. Whilst we already offer our single-rate tariffs to all our domestic customers on any type of restricted meter and without requiring any meter exchange, there are a number of suppliers that do not.

4.54 We also support the proposed remedies around single-rate meters. We already work closely with Citizens Advice, who help consumers as a trusted source of information. Extending this to cover advice to customers on restricted meters is a logical development.

An order on gas and electricity suppliers (and amendments to suppliers’ standard licence conditions) requiring suppliers to ensure that the annual bills paid by prepayment customers (assuming a pre-determined consumption level) do not exceed a specified benchmark reference level, for a period until the end of 2020.

4.55 We have already noted our concerns on the potential adverse implications for suppliers of a reference price cap.²³ Further to this, whilst the remedies for the prepayment AEC around lack of gas tariff pages should lift some restrictions smaller suppliers have had to enter the market and the ability to have more than one tariff at a time, the introduction of a price cap on PPMs could act as a barrier to cost recovery given the upfront costs new entrants can face when moving into this market segment.

²² This is highlighted very recently by EON’s Feel Good tariff, which has no exit fees and is intended to track its standard variable tariff: <https://www.npower.com/home/electricity-and-gas/products/fixd-long/#freeze>

²³ Paragraphs 3.96 et seq, First Utility response to the PFR and paragraph 2.55 et seq, First Utility response to the Second Supplemental Notice of Possible Remedies and Addendum on PPM.

4.56 As a result, designing the safeguard cap to aid transparency and respond to market developments becomes much more critical. To this end, we make the following suggestions:

- Should the CMA decide upon a PPM safeguard cap, Ofgem should hold a consultation for market participants to share their views on a six month or one year review period. As the CMA highlights, there are advantages and disadvantages to both, and given the short time frame for responding to this consultation, we would welcome more time to consider this.
- On implementation of a safeguard cap remedy, suppliers will need to know the time frame for making changes to their PPM tariffs and updating of the electricity PPMIP and for gas following publication of changes to the price index and to Ofgem typical consumption values. Outside of twice yearly windows for changing PPM tariffs, it is important to note that costs are incurred each time when launching a new tariff.
- We note that Ofgem uses the RPI index and suggest that this is more appropriate than the CPI index the CMA has proposed. Using the same index and methodology as Ofgem does for projections will also aid comparability and transparency, and would help towards meeting an April 2017 time frame which is already tight. Clarification on how IGT costs will be indexed would also be useful as this is missing in the CMA proposals. This may be because it's been grouped together with other costs, in which case a breakdown of constituent parts in each group would be very useful to help with internal modelling.

GOVERNANCE OF THE REGULATORY FRAMEWORK

- We welcome the CMA's detailed and extensive review of the current regime, its balanced consideration of participants' views, and its willingness to reconsider earlier proposals. The CMA describes the proposed package of governance remedies as a "reset" of the current regulatory framework".²⁴ We agree. This proposed "recalibration" of the various roles of Ofgem, DECC and industry participants amounts to "a new regulatory framework", with a substantially increased role for Ofgem.²⁵
- It is hard to disagree with the overarching principles the CMA uses to group the governance remedies, namely:
 - “(a) well-defined powers, roles and objectives aligned with the best interests of customers; and

²⁴ Please see paragraphs 10.3 and 10.18, PDR.

²⁵ Please see paragraph 10.4, PDR.

(b) robust analysis underpinning decision-making and improving transparency.”²⁶

- These principles themselves, and the proposed governance remedies, need to be applied with the understanding that the CMA is proposing a substantial amount of change around governance overall and potentially around specific programmes. This raises a risk that participants, in seeking to understand and engage with and implement these changes, have no or insufficient resources left over for their own growth and development, crowding out innovation in product and service improvement and the seeking of efficiency gains in their own systems and processes. It is investment of this kind that leads to suppliers differentiating their products and this contributes towards a more competitive market. The CMA must be careful not to stifle this kind of investment.
- Resources are also relevant for Ofgem and DECC, notwithstanding that elements of the package of governance remedies are considered likely only to incur minimal additional cost. To be effective, Ofgem (and DECC) need sufficient resources, including technical and commercial skills, and in terms of programme management, and for them to have sufficient contingency to meet their recalibrated roles, noting the experience of programme management to date in energy and in other sectors around the longevity of key delivery programmes.

5. GOVERNANCE AEC

Deleting paragraph 1C from both sections 4AA of the Gas Act 1986 (GA86) and 3A of the Electricity Act 1989 (EA89)

- 5.1 The CMA is proposing to recommend that DECC initiate a legislative programme to “delete paragraph 1C from sections 4AA of the GA86 and 3A of the EA89.”²⁷
- 5.2 In our previous submission, we agreed that there was a risk that the current statutory duties and objectives have had the effect of tipping Ofgem too far from being able to place the enabling of effective competition “where appropriate” as centrally as it could be, which in principle justified a review of their statutory duties.²⁸ This potential lack of clarity around the role of effective competition was concerning, notwithstanding that we do not consider certain of the aspects of RMR – one of the policy outcomes raised by the CMA as constituting an AEC – as being as detrimental to competition as the CMA has provisionally found.²⁹
- 5.3 Taking this into account, we are cautiously supportive of this proposed remedy. In particular, we agree with the CMA that the proposed change does not require Ofgem always to rely upon competition given that “in certain circumstances the best way of

²⁶ Section 10.2 PDR.

²⁷ Section 10.67 PDR and the marked-up version of the relevant statutory duties at Appendix 10.1 PDR.

²⁸ First Utility response to the PFR, paragraph 2.64 and paragraphs 3.150 and 3.153.

²⁹ First Utility response to the PFR, paragraph 2.62

protecting consumers' interests may be achieved by a means other than through competition."³⁰

- 5.4 The PDR does not specify in terms that the proposed deletion of paragraph 1C should only be applicable to Ofgem in the exercise of its functions although the CMA's consideration centres around the actual or potential constraints on Ofgem of the amended statutory duties and objectives and not on any such actual or potential constraints on the Secretary of State. The CMA's consideration of effectiveness and proportionality also focuses on Ofgem. Given the CMA's focus on better coordination between Ofgem and DECC, it would seem appropriate that, to the extent appropriate, the same duties and objectives should apply to each in their exercise of their respective functions. We ask the CMA to clarify in its final report its views on the application to DECC of this deletion in the overall context of its reset of the regulatory framework.
- 5.5 The CMA view this proposed remedy as not being time sensitive (at least to the extent of requiring a specific legislative process). We do think that given the CMA is proposing a "reset" of the current regulatory framework" that the elements of this reset need to be in place as soon as possible so that they form the basis for ongoing regulatory and policy action.³¹ Further, for those various elements of the overall package where the CMA is recommending more urgent action, we would ask the CMA to consider the impact of that action (or inaction) taking account of the wider reset of the regulatory framework to follow, in order to ensure (as far as possible and appropriate) consistency of approach. We appreciate however that this is easier to countenance where existing powers are in place than where a specific pre-condition must be considered before undertaking a statutory function and accordingly, this may not be open to the CMA.³²

Setting up a clear and established process for Ofgem to comment publicly, by publishing opinions, on all draft legislation and policy proposals which are relevant to Ofgem's statutory objectives and which are likely to have a material impact on the GB energy markets.

- 5.6 We agree with this aspect of the Governance AEC, that a greater level of coordination between DECC and Ofgem could, in a number of cases, have led to speedier and less complex outcomes for industry, and for customers.³³ Whilst we did not however think that a formal dispute mechanism was appropriate, we agreed that "greater actual coordination, and transparency around how this manifests" could address the underlying aspects of this AEC.³⁴

³⁰ Section 10.68 PDR.

³¹ Sections 10.3 and 10.18 PDR.

³² We note that at section 10.121, the CMA considers that the legislative change to underpin Opinions on policy and legislative changes as not time sensitive, although calls on Ofgem at section 10.113

³³ First Utility response to the PFR, paragraph 2.64

³⁴ First Utility response to the PFR, paragraphs 3.155 and 3.156.

- 5.7 We agree with the CMA's updated proposed remedies that socialising potential areas of difference in policy and legislative development of Ofgem and DECC by way of "transparency as to their interactions" will improve the outcomes of policy development and decisions.³⁵ If the CMA's view is that Ofgem *must* publish Opinions, where it considers that the policy or legislation impacts on their statutory duties or functions, and if it is to secure the resources to manage this process, this is more appropriately addressed in legislation.
- 5.8 Further, we agree that this proposed remedy (i) should not preclude confidential exchanges of view or the provision of advice by Ofgem to DECC, and (ii) that Ofgem can and should use its existing powers to put forward its formal views pending adoption of any legislative change. In particular, we think it would be useful to see Ofgem's views on any legislative proposals implementing the CMA's proposed remedies, which would precede the coming into effect of a statutory requirement to publish a formal Opinion. Any materiality requirement should be applied around the scope of and approach to the Opinion, not the giving and publication of any such Opinion.
- 5.9 The CMA is right to have considered alternatives to their prior proposal to consider creating the ability for Ofgem to seek a direction from DECC on use of their regulatory powers, which remedy we did not think is appropriate for the reasons set out in our previous response.

Supplementing the Strategy and Policy Statement (SPS) to improve coordination between DECC and Ofgem

- 5.10 We agree that the lack of coordination found by the CMA between DECC and Ofgem for certain policies and programmes could effectively and proportionately be addressed by improvements to the SPS and the further requirement to publish detailed joint statements for implementation of specific policies (as described in more detail at section 10.146 PDR).³⁶
- 5.11 The recommended preparation and publication of a joint action plan for specific policies represents a very helpful addition to the higher level SPS. Such plans should include a full mapping of impacted regulatory policies and rules, including (as the CMA itself notes) industry codes, together with a gap analysis of issues or matters that need to be considered further. It follows that the action plan itself should be subject to change control at appropriate periods. We also think it is important that any action plan(s) take account of the impact of the specific policy on other ongoing policy implementation work streams, and consider critically the *cumulative* impact on resources and risks of additional policy implementation work. As the CMA notes, such plans would be made within the context of a more detailed SPS and Ofgem's strategic direction for codes, which provides for an overarching prioritisation framework.

³⁵ Section 10.102 PDR, with no specific change in legislation anticipated in order to give effect to these recommendations per section 10.155.

³⁶ Section 10.152 PDR.

- 5.12 Any timeline included in an action plan must be critically tested. Regulatory and policy change frequently contends with optimism bias in the setting of delivery deadlines, in particular where a number of measures need to be changed, with consequences for industry participants' systems. The fixing of any timeline impacts on risk and cost, as well as planning, and must therefore take account of the impacts, not only on existing or proposed regulatory changes but on the systems and process change required from industry participants. This is not to suggest that such plans are an alternative to an impact assessment or wider aggregate assessment as further contemplated by the CMA,³⁷ just that the many factors impacting on and impacted by the timeline should be considered.
- 5.13 Action plans should also build in appropriate contingency throughout the policy where appropriate. This should provide for change at policy level and also for e.g. adverse outcomes during any testing or trial phase.

Transparent analysis of policy and regulation - state of the market assessment

- 5.14 In principle, we agree with the CMA's recommendation that Ofgem should prepare and publish a state of the market assessment each year, derived from the members of a new unit within Ofgem along the lines of an Office of the Chief Economist.³⁸ We note the CMA's analysis for the existing avenues for *ex ante* and *ex post* assessment of policy impacts, including the reference to the lack of a holistic analysis of the "overall impact of the regulatory framework on the GB energy markets," with which assessment we agree.³⁹ The CMA is right to highlight that assessment and evaluation is a vital part of any regulatory framework and process.
- 5.15 We are not in a position to comment in any detail on whether the CMA's assessment of likely cost to Ofgem, as an aspect of the proportionality of this proposed remedy, is right, but it does feel like this undertaking will incur more than minimal additional costs to those incurred by Ofgem in preparing and publishing its annual retail market review, given the proposed scope and extent, on a holistic basis, of the assessment. It is possible that Ofgem may require, for example, procurement of specific inputs and research outputs in order to prepare a credible and robust assessment.
- 5.16 In addition to evaluating the impact of the policy on the market, it is also important to assess critically the elements of any programme or implementation process that worked, and those that didn't, in order to feed into continuous improvement of the mechanisms subsequently employed to implement policy. More frequently, these mechanisms involve substantial implementation programmes covering amongst other things, technical, commercial and process challenges. The lessons learnt are not necessarily appropriate for formal inclusion in the legislative or regulatory framework, or in the state of the market assessment: many relate to the day-to-day interactions between participants and the optimal means for managing the different types of

³⁷ Section 10.178 PDR.

³⁸ Section 10.199 and 10.200 PDR.

³⁹ Section 10.181 PDR.

outcome being sought. However, in the interests of transparency, such lessons should be discussed with participants, whose views are also relevant to this exercise, and published. This is all the more important given that customers ultimately cover the costs of policy implementation.

Financial reporting

5.17 We have not focused on these proposed remedies in the time available, although we reserve the right to do so at a later stage.

6. CODES AEC

Ofgem to produce a strategic direction for code

- 6.1 We agree that Ofgem should assume a new function of providing an annual “strategic direction” for codes alongside the annual report in response to the SPS.⁴⁰
- 6.2 The CMA highlights that the lack of a strategic steer for codes from Ofgem has a number of adverse effects, including the difficulty for Ofgem efficiently to allocate their resources to priority modifications sufficiently early in that process and that Ofgem currently only has the SCR process to signal areas for code policy priority, which process is itself resource intensive (and not as frequently used as perhaps anticipated given lack of expert resource).⁴¹ Even within an SCR, Ofgem cannot mandate a timeframe.⁴²
- 6.3 Any strategic prioritisation process must be sufficiently flexible to deal with modifications that are not flagged initially as being of strategic import but that become so during the process: the “call in” power should not be used as a means to retrofit categorising the modification in question as strategic – being an exceptional remedy for a process that is failing.
- 6.4 These provisional findings, based on updated analysis, highlight that the industry codes are not well suited to large-scale, cross-code, changes, which require significant resource from all participants, including but not limited to Ofgem itself. We welcome the CMA’s understanding of the resource constraints on smaller industry participants, as well as on Ofgem and consumer bodies. Scarce resources should indeed be allocated efficiently, including those of Ofgem and smaller industry participants,⁴³ in particular given the extent of the large-scale changes needed in the short to medium term and the greater-than-ever constraint on participants in this context as a result.
- 6.5 We are however a little concerned about the reiteration of the impact of a lack of fixed timeframe: time and again, large-scale public and indeed private projects founder as a result of undue pressure put upon planning, assurance, testing and trialling and

⁴⁰ Section 10.397 PDR

⁴¹ Paragraph 57(a), Appendix 10.4 PDR.

⁴² Paragraph 57(c), Appendix 10.4 PDR.

⁴³ Paragraph 36, Appendix 10.4 PDR.

delivery within an overly optimistic timescale, which is changed late in the day itself in light of inadequate re-planning, risking a repeat of this situation thereafter. A careful balance must be struck between a timescale that ensures the benefits are realised by customers as soon as practicable and an *achievable* timescale which includes appropriate contingency and risk management disciplines.

- 6.6 The Smart Programme is a case in point on timeframes: the initial timeframe has been extended, and draft legislative provisions have been published providing for a further extension for the exercise of relevant powers (and less clearly, post-programme adjustments in the overall framework).⁴⁴ It is not easy clearly to attribute these previous and likely future shifts in timing to any one cause or participant type, but the very variety in potential causes highlights at the very least the challenges of these large-scale cross-industry programmes.
- 6.7 According to the Institute of Directors (**IoD**), commenting on DECC's latest figures, "the whole project is a bit of a mess." The IoD note the interesting challenge of policy and delivery collision in ironic vein: "The Government must now admit that it's not going to plan and pause the rollout while they consider their options. Other, cheaper alternatives exist to enable accurate and automated metering, including simple bits of kit consumers can clip on to their existing meters. Carrying on full-steam ahead with the current programme, ignoring falling energy prices, in order to avoid embarrassment is simply not justifiable."⁴⁵

Ofgem to produce set of strategic workplans for codes

- 6.8 We agree that Ofgem could assume a further function, with the relevant code bodies, to publish documents setting out the changes needed to meet the strategic direction for each code.⁴⁶ In principle, we think that there is considerable value in preparing a consolidated cross-code strategic work plan.⁴⁷ It is too early to say in terms whether Ofgem is sufficiently well placed to elicit code body plans and approve these or whether Ofgem is in a position to work up robust plans and elicit comments.
- 6.9 It is likely that for certain code bodies, in particular those code administrators appointed via contract, there may be funding implications in meeting this function, although this model for code administration may be superseded by a licensing model (on which we comment below). It would also be appropriate for those entities appointing the code body in question to comment on the strategic work plans, including those who deal with budget-related questions. This will ensure that the costs of change or related functions is taken into account in these plans, or where possible,

⁴⁴ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/energy-and-climate-change-committee/news-parliament-2015/pre-legislative-energy-launch-15-16/> and in particular section 1, draft legislation on energy changing the sunset date from November 2018 to 2023, where the former date was already extended.

⁴⁵ <http://www.iod.com/influencing/press-office/press-releases/government-must-halt-flawed-smart-meter-programme>

⁴⁶ Section 10.401 PDR.

⁴⁷ Section 10.402 PDR.

that timing is aligned to the budget process(es) so as to best ensure cost stability and certainty for code parties, and more importantly their customers.

“Consultative board” for cross-cutting code issues

- 6.10 We agree with the CMA’s recommendation to Ofgem to set up a “standing forum” or “board” as a flexible means of enabling discussion with industry on cross-cutting issues, in light of Ofgem’s strategic direction and the “system-level functioning of the code regime.”⁴⁸ This latter element would also allow for “lessons learned” discussions as programmes come to delivery or are developed and changes being disseminated. There should be a strong expectation that all affected industry participants will seek actively to engage with and contribute to this forum.
- 6.11 We agree that this forum should not form a “Design Authority” or have formal functions as such, save that the expectation must be that discussions held at the forum will lead to action or further consideration in the appropriate way, whether through follow up at code administration level, further consideration by Ofgem of affected policies, guidance on relevant matters or a review of a strategic work plan.

Periodic wholesale reviews of the code regime

- 6.12 We are not entirely in agreement with periodic reviews of the code regime, although we recognise the need on an ongoing basis to ensure that the code governance regime and the codes themselves are fit for purpose as the industry as a whole develops. Periodic review may build in ongoing uncertainty and potential risk, making it hard for industry parties to focus resources. To address this point, we suggest that any review process is bounded by specific change triggers, which could include, (i) likely technical refresh or replacement of underlying IT or other systems, whether in whole or in part, (ii) consideration of the impact on the code regime of the large-scale programme changes being progressed in the short to medium term, and (iii) discussing and following a code consolidation timeframe and outline process.

Code administrators to initiate change and prioritise code changes

- 6.13 We are concerned about the conception of “code administrator” that underpins this potential recommendation to Ofgem (which assumes that code administration is licensed by Ofgem). Whether or not the bodies concerned develop project management or other relevant skills, we struggle to see how it can realistically perform the role envisaged, namely the initiation or prioritisation of modifications effectively on their own account albeit pursuant, in their view, to Ofgem’s strategic direction.
- 6.14 Our concerns crystallise when considering the nature of the possible decision(s) being made on the one hand (whether to prioritise or initiate a particular modification) and its project or process management on the other. The former feels more like a decision taken by a public body whose decisions should be amenable to review, where the

⁴⁸ Paragraph 10.404 PDR.

decision itself should surely be subject to consultation and consideration of relevant factors: the latter feels like a commercial activity better suited to being covered by contract or equivalent means, scaled to the task at hand.

- 6.15 There are also some potential conflicts that come up in considering the various roles that could be played by code administrators (based on the table at section 10.424 PDR). One element concerns the potential perverse incentives for a code administrator if able to kick off a change and project manage that change. Leaving aside any accountability for either or both activities and to whom it may be accountable, it would (in principle) be remunerated for these activities, which could lead to perverse incentives to act or to progress project management regardless of very real issues around implementation (or not to act to avoid any potential adverse impacts if in its commercial view this presents a risk to it due to lack of resource or expertise or otherwise).
- 6.16 We could envisage (subject to further consideration around funding and management of resources including any costs incurred) Ofgem directing a code administrator to initiate change or pursue a priority (which power to direct can be included in any licence). In this conception, Ofgem's prioritisation or requirement to initiate can be subject to appropriate consultation, whether in general terms at direction or strategic plan level or otherwise. This is not to say that code administrators cannot contribute to discussions on priority, just that we have concerns should they be able to take a decision as to priority themselves.
- 6.17 We consider that any such approach must address what happens to non-priority modifications: these are likely to be necessary but not urgent. If within industry self-governance, industry can progress these but if however, they are considered and determined as material, but not as a priority, such potential modifications could languish whilst priority changes are progressed. A well-functioning system should be able to allocate its resources both to priority changes and necessary but non-priority changes. It should also ensure that the volume of change is not so great that it effectively crowds out industry participants' own development and change management in the interests of innovation and efficiency.

Ofgem to initiate and prioritise code changes

- 6.18 As noted in the previous section, we do not at this stage agree that the recommendation to enable code administrators to initiate and prioritise change is appropriate. The concerns underlying this position do not apply to the proposed remedy for Ofgem to be able to do so for "strategically important" modifications.⁴⁹ We consider that the approach suggested by the CMA is likely to be effective to address the gaps highlighted.
- 6.19 However, we are concerned as to proportionality of the consequential aspects of this recommendation. We would observe here that provision can fairly easily be made for

⁴⁹ Section 10.422 and 10.424 PDR.

procuring specific project management support for such changes pursuant to an end-to-end project management plan. Framework contracts can provide for call-off arrangements, which frameworks can be granted – subject to the appropriate process – to existing bodies or new providers (which may be beneficial when seeking fresh and innovative thinking). As we noted in our response to the PFR, this could be part of putting in place the building blocks for large-scale projects or strategic important modifications (or a change or set of changes which constitutes both), without existing bodies having to be adapted or grown to meet these challenges. Otherwise, there is a real risk that this aspect of the governance system is redesigned to manage ongoing large-scale change, which may not be needed once the various large scale programmes are resolved or may not be suited to future large-scale change programmes.⁵⁰

Creation of a back stop or “call in” power

6.20 We agree that Ofgem should be able to “call in” those strategically important modifications in exceptional circumstances.⁵¹ It is likely that this power of itself will act as an incentive on participants to manage such modifications more robustly as such a “call in” could have reputational, cost and process issues amongst other effects. We also agree that as the CMA intends that any consequential costs are to be reclaimed from industry participants, “robust procedural and judicial safeguards” are needed.⁵²

6.21 We are concerned that this power is seen as an alternative to the SCR process: does this mean that it would, once included in legislation, replace the SCR? If so, we do not agree that this is appropriate. The SCR is not a “back stop” power but a means of addressing material policy concerns that have potential remedies within the industry codes. Ofgem is also currently working with industry on the Switching SCR, which sees Ofgem having a much more active role, including as Design Authority, ultimate programme manager (albeit assisted by various boards) and commissioner of the specific technical and process inputs needed. This model could address certain of the gaps highlighted by the CMA (and we note that the draft legislation on energy also provides for specific modification powers for codes and licences pursuant to faster switching, although we have some concerns around the scope of the powers and the substantive and procedural protections applicable to the exercise of those powers⁵³).

Licensing code administration

6.22 In our previous response, we did not consider that making code administration and/or implementation of code changes a licensable function would be an effective or proportionate remedy for those aspects of the wholesale markets that relate to industry

⁵⁰ First Utility response to the PRF, paragraph 3.169

⁵¹ Section 10.425 PDR

⁵² Section 10.426 PDR.

⁵³ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/energy-and-climate-change-committee/prelegislative-scrutiny-of-the-governments-draft-legislation-on-energy/written/28810.pdf>

governance, namely limiting innovation or preventing the industry from keeping pace with technological developments.⁵⁴ We remain of this view.

- 6.23 We agree with the CMA that a well-functioning codes governance regime should be able to deliver cross-code changes and those changes needed to give full effect to any policy, regulation or modification in an efficient and timely manner.⁵⁵ We also agree that there is indeed a gap in function around project or programme management of material or cross-code changes but do have concerns around the concept of accountability for project or programme management in and of itself. This is not to say sanctions or other measures of accountability or incentives are not needed, just that based on the proposals as outlined, we are not in a position to say whether the proposed remedy to license code administration could be an effective and proportionate remedy for the adverse effects ably highlighted by the CMA.
- 6.24 As the CMA rightly describes in Appendix 10.4 PDR, there are a number of participants involved in industry codes (and we would also add the various aggregators, data controllers, outsourced partners and others who together with licensed entities deliver the services required). As a result, code administrators themselves cannot effect delivery: indeed, project or programme management as a function may be said not to do so, but to manage the means of so doing.
- 6.25 Drawing on one current example, what body or person could and indeed should be accountable for the failure by a small number of participants to engage with Project Nexus: is this a contractual matter between Ofgem and its project management and assurance appointee, a licensing matter for Ofgem and any licensee not so engaging (e.g. potentially through considering any breach of a code requirement, compliance with which is required through licence condition), a possible matter for a performance assurance board or framework, a bilateral or multilateral matter as between code parties or otherwise.
- 6.26 We would argue that direct powers to sanction code parties for their specific failures is more workable than creating a licensable activity the performance of which can itself be enforced, or at least accounted for. We agree that it is a cause for concern that Ofgem seems unwilling to hold certain parties accountable for implementation failures (in relevant circumstances).⁵⁶ However, this may be due to the manner in which certain modifications are drawn up or the difficulty in assessing causation for the purpose of provisions akin to liquidated damages. Incentives along these lines may be appropriate, as well as more specific overarching licence conditions covering specific large-scale programmes (e.g. along the lines of the BETTA implementation licence condition requirements, which would in principle have enabled more direct enforcement than a general condition requiring compliance.) In general, we consider that accountability is better achieved through contractual and not licence means, which still provides scope for resetting code administration.

⁵⁴ First Utility response to the PFR, paragraph 3.159.

⁵⁵ Paragraph 34, Appendix 10.4 PDR.

⁵⁶ Paragraph 57€, Appendix 10.4 PDR.

- 6.27 We are also concerned with the inference that “code administrators are not consistently subject to competitive constraints for their services”⁵⁷ and the weight, or otherwise, given to this inference in determining this proposed supporting remedy. It is not clear to us that there is a market for code administration services *per se* and while the constraints and incentives on such bodies are relevant, we do not think that the creation of a contestable market of itself is an appropriate outcome. It follows that we disagree with the CMA’s conception of Ofgem’s discretion to “open up the market for code administration”.⁵⁸
- 6.28 This proposed remedy (i) would require a substantial re-writing of the code administration framework, which cannot be undertaken in sufficient time to support the various large-scale industry changes that are required in the short to medium term, (ii) scales code administration for large-scale change (with the resource and cost implications thereof) which may not be justified over the medium to longer term, (iii) should, if pursued, be firmly aligned to any programme of code rationalisation or codification, so that it occurs once that has occurred or in parallel with any such programme(s), and (iv) considers placing on code administration – at its heart – obligations that they cannot fulfil, namely delivery of actual and effective change.
- 6.29 In any event, it is essential that suppliers and other industry participants have as much cost certainty as possible, with input costs as stable and predictable as possible. This becomes more challenging in a regime where (i) code administrators are accountable to Ofgem, (ii) are able to act, to a greater or lesser extent, independently of code parties, e.g. pursuant to Ofgem’s strategic direction, and (iii) where code administrators are participating in a contestable market for code administration, with commercial drivers around appointment, retention and longer term market positioning, which may not always drive efficiencies and control of costs.

7. LIQUIDITY

- 7.1 As we commented in our PFR response,⁵⁹ we agreed with the CMA’s earlier concerns around liquidity, that if it is poor, it would adversely affect competition between those firms able to rely upon the “natural hedge” of their own generation, and those that are not able to do so. This applies both ahead of the time of delivery and closer to the time of delivery, which adverse effects play out through a lack of availability of products and increased risks, including around managing imbalance. In our view, the test should be whether non-vertically integrated players can look to the market to “sell and buy the electricity as they require”.⁶⁰
- 7.2 We remain disappointed that the CMA has not provisionally found this to be troubling, although we recognise that the historic timeframe for which data was gathered and analysed, coupled with the relatively benign wholesale market conditions in that time

⁵⁷ Paragraph 25, Appendix 10.4 PDR.

⁵⁸ Section 10.435 PDR.

⁵⁹ First Utility response to the PFR, paragraph 2.17 et seq.

⁶⁰ Ibid., paragraph 2.20.

period, has likely hindered a more critical review of the lack of liquidity for non-vertically integrated players. We believe that this manifests into higher risk, higher costs and competitive disadvantages for independent downstream suppliers relative to vertically integrated counterparties in periods of higher wholesale market volatility and that this significant risk to competition still exists today. We reiterate our concerns in this regard and refer the CMA to our previous submissions around liquidity.

8 DATA QUALITY

8.1 Whilst we welcome the remedies proposed by the CMA to help customers engage with the industry and switch supplier, we are disappointed that the adverse impact on switching (and the understandable consequence of subsequent disengagement when switching issues occur) associated with industry data quality have been left unaddressed.

8.2 Data quality issues reduce customer confidence in the switching process, and in the non-incumbent suppliers who make up a significant portion of switches, because customers who experience problems resulting from them are likely to be less willing to switch, or even to consider switching. Further, new entrants risk being tarnished with supposed poor customer service, when the root cause of many industry data and switching issues lie with the incumbent (previous) supplier or one of its agents. The abovementioned issues all further detract from the CMA's objectives to improve customer engagement.

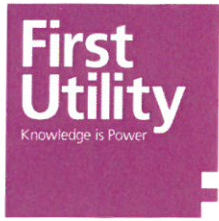
8.3 Of particular concern to First Utility are two issues associated with inaccurate or missing electricity industry data:

- Smaller failures in individual cases can impose a burden in aggregate; and
- More serious failures can lead to individual cases becoming a drain on supplier resources (and a nightmare for the customers concerned) in themselves. When those who should be addressing the issues in a particular case are seriously unresponsive, industry parties can find themselves as helpless as ordinary customers, running the full gamut of "helplines" where calls go unanswered for hours at a time, or are simply transferred from one member of staff to another, with nobody seeming to be able to help and no progress being made.

8.4 We urge the CMA to look again at the industry issues associated with data quality, in particular those issues associated with electricity meter technical details, which if left unresolved leave both suppliers and customers experiencing unnecessary cost and frustration. In our view, anything that inhibits customer switching unfairly advantages incumbent suppliers.

8.5 We also welcome the CMA remedy to require Ofgem to take appropriate steps to ensure a Gas PAF is established. As noted in the relevant section of this submission,

we would welcome the CMA considering again the PAC remit within the PAF and the incentive arrangements that could effectively and proportionately work to improve industry data quality and compliance with gas change of supply and meter exchange processes. We see similar issues with electricity data and electricity change of supply processes: the CMA could usefully consider whether ongoing data quality issues in the electricity sector should be addressed in like manner, in particular in the context of the Switching SCR. Smart meters and the Smart programme will not fix such underlying issues and failure to address these in the current regime risks tracking data quality issues into the Smarter one.



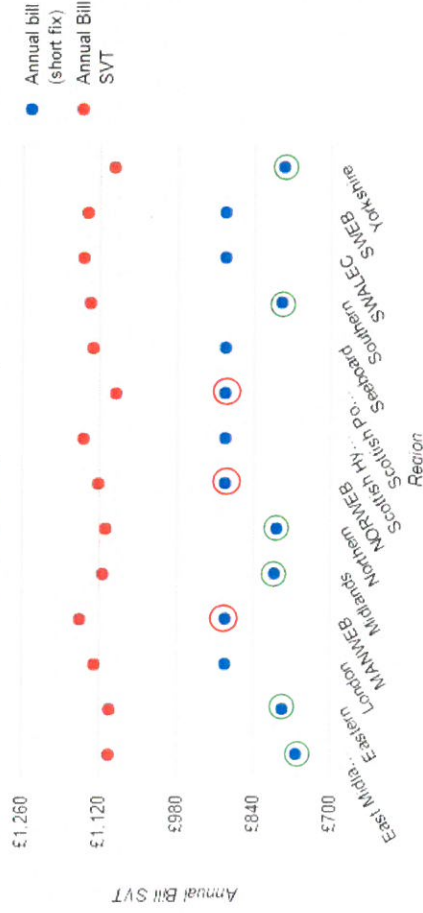
CMA Energy Market Investigation

Response to the Provisional Decision on Remedies

APPENDIX 1

Scottish power pricing strategy

Annual Bill SVT vs Annual bill (short fix)



RegionName	Annual bill (short fix)	Annual Bill SVT	Difference between Fixed and SVT	Difference in fixed price (from highest)
East Midlands	£762	£1,103	£341	£130
Eastern	£787	£1,102	£316	£105
London	£892	£1,129	£237	£0
MANWEB	£892	£1,155	£263	£0
Midlands	£802	£1,114	£312	£90
Northern	£798	£1,106	£311	£94
NORWEB	£892	£1,122	£230	£0
Scottish Hydro	£892	£1,149	£256	£0
Scottish Power	£892	£1,091	£199	£0
Seaboard	£892	£1,132	£239	£0
Southern	£789	£1,137	£348	£103
SWALEC	£892	£1,149	£257	£0
SWEB	£892	£1,142	£250	£0
Yorkshire	£785	£1,094	£308	£107

In incumbent regions (red highlighted) the gap between the cheapest and the Standard variable is noticeably smaller than in 'acquisition' regions (green).

The variation in price of a single tariff varies widely between regions where SP is incumbent and where it is seeking to competitive. This behaviour suggests that it is trying to minimise the savings it must show under SCT rules to its SVT customers (more prevalent in incumbent regions), yet still remain competitive in regions where it has fewer SVT customers (acquisition regions).



CMA Energy Market Investigation

Response to the Provisional Decision on Remedies

APPENDIX 2



Emergencies

Loss of supply?

Call 0800 328 1111

Smell gas?

Call 0800 111 999



Other enquiries

Call our customer service on 01926 320 700

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Your Electricity and Gas Statement

Previous balance	£156.48
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Payments received	£81.00
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Balance	£75.48
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Total charges this bill	£63.63 CR
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Electricity	£36.46
-------------	---------------



Gas	£39.91
-----	---------------

Other charges and credits	£140.00 CR
---------------------------	-------------------

ACCOUNT BALANCE	£11.85
------------------------	---------------

You pay by fixed Direct Debit so don't worry, you don't need to do anything. This balance will be carried forward to your next statement. Your monthly payment of £72 will be collected as usual by Direct Debit on or soon after 12 March 2016.

For more information on fixed Direct Debit, please visit www.first-utility.com/how-fixed-direct-debit-works

Could you pay less?

Your Personal Projection is £742 per year. This is your estimated energy spend for your current tariff assuming you use the same amount of energy as you did last year. It includes any discounts and charges like VAT.

Our cheapest tariff for you

First Fixed April 2017 v7 Direct Debit ebill - over the next 12 months you could save £26.33*

Tariffs may be withdrawn at any time. Switching tariffs may involve moving to different terms and conditions. Visit our website for details. Remember - it might be worth thinking about switching your tariff or supplier. For more information on your tariff and switching, see overleaf.

*You will be charged £30 per fuel if you cancel more than 49 days before your current tariff ends.

Could you pay less with another supplier?

Remember it might be worth thinking about changing your supplier. You're losing an average of £195 per year by not switching to one of the top 3 tariffs available from other suppliers. For more information go to www.goenergys shopping.co.uk

Savings available as of 31 March 2016 based on predicted usage after exit fees of £60 applied.

To access your energy account details quickly, simply scan this code using your smartphone or tablet. To find out more about QR codes visit www.first-utility.com/help/Bills_and_Payments



-  Emergencies
 Loss of supply? Call 0800 365 900
 Smell gas? Call 0800 111 999
-  Other enquiries
 Call our customer service on 01926 320 700

L

Your Electricity and Gas Bill

Previous balance	£207.55
Payments received	£207.55
Outstanding balance	£0.00

Your payment of £168.32 will be collected by Direct Debit on or after 22 March 2016.

Total charges this bill	£168.32
--------------------------------	----------------

 Electricity	£64.62
 Gas	£103.70

TOTAL NOW DUE	£168.32
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Could you pay less?

Your Personal Projection is £1432 per year. This is your estimated energy spend for your current tariff assuming you use the same amount of energy as you did last year. It includes any discounts and charges like VAT. Please note you are on a variable price tariff and prices may go up or down.

Our cheapest variable tariff
 Congratulations! You are already on our cheapest variable tariff. We will let you know if this changes.

Our cheapest tariff overall
 First Fixed April 2017 v7 Direct Debit ebill - over the next 12 months you could save £354.25

Tariffs may be withdrawn at any time. Switching tariffs may involve moving to different terms and conditions. Visit our website for details. Remember - it might be worth thinking about switching your tariff or supplier. For more information on your tariff and switching, see overleaf.

Could you pay less with another supplier?

Remember it might be worth thinking about changing your supplier. You're currently on an out of contract tariff losing an average of £368 per year by not switching to one of the top 3 tariffs available from other suppliers. For more information go to www.goenergys shopping.co.uk

Savings available as of 31 March 2016 based on your predicted usage.

To access your energy account details quickly, simply scan this code using your smartphone or tablet. To find out more about QR codes visit www.first-utility.com/help/Bills_and_Payments

