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## **SmartestEnergy Response to Provisional Decision on Remedies**

Dear Sirs,

SmartestEnergy welcomes the opportunity to respond to the CMA's Provisional Decision on Remedies.

SmartestEnergy is an aggregator of embedded generation and a supplier in the non-domestic electricity retail market serving large corporate and group organisations.

Please note that our response is not confidential.

### **Overview**

As an electricity supplier to the non-domestic sector, our response to the CMA's provisional decision on remedies focuses principally on these areas.

We agree with the proposals aiming to ensure customers are given all the necessary facts by TPIs when trying to find the best deal. This is an example of ensuring fair competition. However, we agree with recent comments that interventions such as the customer database are 'burdensome and ineffective remedies', which assume that 'the real problem is the diagnosis that customer behavioural issues are to blame for the state of competition in the market and the remedy is to use regulatory intervention to use customer behaviour'<sup>1</sup>.

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<sup>1</sup> (Littlechild et al. 2016: 2) [https://assets.digital.cabinet-office.gov.uk/media/56b9d96ced915d10bd000008/Mr\\_Stephen\\_Littlechild\\_et\\_al\\_submission\\_February\\_2016.pdf](https://assets.digital.cabinet-office.gov.uk/media/56b9d96ced915d10bd000008/Mr_Stephen_Littlechild_et_al_submission_February_2016.pdf)



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We are concerned about the recommendation to make participation in Midata mandatory for all suppliers. This needs to apply only to those on tariffs; as customers with bespoke contracts are already engaged in the market.

Similarly, whilst the definition of a micro-business has been provided in relation to one specific proposal, we believe the best way to define which micro-businesses are applicable to the remedy is to categorise them by the way they contract with suppliers. Those on bespoke contracts are already engaged in the market, meaning that only those smaller micro-businesses on tariffs should be targeted with the proposed remedy.

## Specific Proposals

### Zonal Transmission Losses

***The proposed remedy is to require that variable transmission losses are priced on the basis of location, and to assign 100% of losses to generators, rather than 45% as under current charging arrangements.***

Economically it makes sense for losses to be applied according to location and in theory the incentive should be placed on both generation and demand. We can see however, that there is an argument that demand (especially domestic) cannot respond to the price signal. We can also see that placing 100% of charges on generation would mean that if demand does not have to pay for the losses, the generation would increase its prices. All things being equal, the cost to the average end consumer would be the same, save for some change to the merit order. However, we would also note that as written this proposal would probably only apply the losses to transmission connected generation, and embedded generation would lose its direct embedded benefit (which is treated as negative demand and would therefore be set to zero). The CMA therefore needs to consider the consequential loss of revenue to embedded generation and whether or not this would be wholly reflected in the wholesale price. We feel that all aspects of charging should continue to reflect the benefits brought by local generation siting itself near demand. All things considered therefore, including the fact that the additional costs of the losses would be included in the generation, it may make more sense to achieve the assumed policy objective of maintaining the 45%/55% split, but maintaining a non-locational charge on demand.

### CfD Allocation

***The proposed remedy is that DECC undertake and consult on an impact assessment before awarding CfDs outside the auction mechanism.***





SmartestEnergy welcomes the improved CfD allocation process and increase in transparency over the awarding of FIDeR contracts. Centralised decision making can lead to 'picking winners'. There should be more transparency in the lead times of actual delivery of new projects, so that these costs can be priced in by suppliers. It is inappropriate that large utilities who are investing in generation should have a competitive advantage on the supply side.

***The proposed remedy is that DECC undertake and consult on an impact assessment before allocating technologies between 'pots' and the CfD budget to the different pots.***

Again SmartestEnergy welcomes the improved transparency over allocation and budgets. We agree this move would bring more vision over conditions in the market, thereby increasing investor confidence. This could be further improved through technology neutral auctions. By definition, having two separate pots is not economically justifiable, because the arbitrary nature of the allocation of funds creates a false dichotomy.

We understand the government wishes to fully capture the costs imposed on the system by renewables. We hope the costs of new nuclear plant are equally captured for instance, as due to the sheer size of nuclear units National Grid will incur additional reserve costs in the event of a nuclear outage.

### **MicroBusinesses**

***The proposed remedy is for DECC to consult on amending the provisions of the Smart Energy Code; That Ofgem conduct a full cost-benefit analysis of the move to mandatory half-hourly settlement and consider options for reducing the costs of elective half-hourly settlement; And that DECC and Ofgem publish and consult jointly on a plan setting out timescales and responsibilities relating to the introduction of half-hourly settlement.***

As proposer of p272, we are happy to see the beginnings of a move to half-hourly settlement throughout the market. We agree that a proper cost-benefit analysis needs to be undertaken before all meters are changed to mandatory half-hourly settlement. Ofgem needs to conduct any CBA across differing scenarios including centralised data collection and competitive services and data collection. It should also be borne in mind that customers appreciate the value added services that independent data collectors bring. We are not convinced that a centralised solution would be sufficiently innovative to give the customer what they want.



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Ofgem and DECC should be suitably prepared to take into account any developments from ENTSO-E's cost benefit analysis on changing the Imbalance Settlement Period to 15 minutes.

***The proposed remedy is to Increase price transparency;***

***The price transparency remedy would require suppliers to disclose the prices of all their available acquisition and retention contracts to a large proportion of their microbusiness customers. It would also require suppliers to disclose their out-of-contract (OOC) and deemed contract prices on their websites.***

We agree with this proposal. As a supplier in the retail market SmartestEnergy already publishes its deemed contract prices on the website as per its licence conditions. Regulations to notify customers of the deemed rates are already in place.

The CMA should provide clarity over whether or not suppliers like SmartestEnergy, which do not offer tariffs, needs to comply with the proposed requirement to offer an online quotation tool or be available to view on a price comparison website.

***The proposed remedy is to End auto-rollover contracts with certain restrictions. The auto-rollover remedy would address certain barriers to switching that microbusiness customers on auto-rollover contracts face by: (a) increasing the time window during which microbusiness customers would be able to give their termination notice to suppliers; and (b) prohibiting suppliers from including certain restrictions (prohibiting both termination fees and the use of no-exit clauses).***

We cannot disagree with this proposal.

The proposal regarding simplification and trialling of new and/or different information on bills should not apply to businesses offering bespoke deals rather than tariffs.



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***The proposed remedy is to establish a programme to provide microbusiness customers with information to prompt them to engage; to disclose the details of their most disengaged microbusiness customers to rival suppliers.***

We have serious reservations about this proposal. As a non-big six supplier our customers are already, by definition, engaged with the market. As a result, we should not be obliged to incur costs associated with the setting up of the proposed database.

It occurs to us a better domestic market structural change should be to follow the model of the house and car insurance industry whereby customers enter into annual deals and receive a prompt from their provider to enter into another annual deal or take the opportunity to shop around. In the non-domestic market (including microbusinesses on bespoke deals) there is already competition, meaning there is scope to allow longer than 1 year fixed term deals. This is the kind of solution the CMA should be encouraging.

In the wider market, we believe that the proposed initiative could lead to unsolicited marketing and create a risk of further disengagement with the energy market. There are also concerns over consumers' data protection and privacy. The fact there will be an ability to opt-out of the database suggests that the CMA is aware of the limitations of this proposal. Those customers who have not engaged for 3 years are unlikely to be keen to be mandatorily signed up for an unwanted barrage of marketing, and even if given the choice to opt-in, would probably take the chance to switch of their own accord instead.

***Provide prompts to microbusiness customers on default contracts by enabling rival suppliers to contact them.***

In addition to the comments made above, this is an unnecessary step. Incumbent suppliers should provide notice of contract expiry, however micro-businesses will neither wish to be bombarded with proposals from other companies, nor feel that they need to be told what to do. When the time comes for them to renew or switch, they should be deemed to be capable of making their own decisions. Switching due to an arbitrarily imposed marketing campaign does not show real engagement with the market. We would like to reiterate that customers with SmartestEnergy have already chosen to switch, and so by definition are engaged with the market. Ofgem would be better off conducting their own marketing campaign across TV, radio and print media to encourage engagement in the market.

We appreciate efforts by the CMA to narrow down the definition of a micro-business. However, the best way to define them is by how different micro-businesses contract. A distinction needs to be made between small micro-businesses on tariffs and larger micro-businesses which are contracting bespoke deals otherwise these arrangements will develop



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unnecessarily high system developing costs for small suppliers who are not in the smaller micro-business part of the market.

### **Regulatory Framework**

#### ***Ofgem's duties and objectives;***

***The proposed remedy is a recommendation to DECC to amend primary legislation in order to clarify Ofgem's statutory objectives and duties and thereby remove any constraint (actual or perceived) on Ofgem's ability to pursue its principal objective***

We welcome greater interaction between DECC and Ofgem, however the roles of each body need to be clearly understood. DECC should propose policy, while Ofgem should regulate and be able to pushback on proposals which have neither the support of industry nor a legislative basis. That said we do not support Ofgem being able to dictate the change agenda.

With proposals to give Ofgem ever increasing powers, the regulator should be clear on its primary objective. Thought should be given to this before legislation is amended. Furthermore, Ofgem should be clear that increased levels of switching is not the ultimate sign of a competitive market, nor does imposing lots of heavy fines amount to good regulation of the market.

#### ***Relationship between DECC and Ofgem;***

***First, the CMA propose to recommend legislation to establish a clear process requiring Ofgem to publish opinions on all draft legislation and policy proposals that are relevant to its statutory objectives and that are likely to have a material impact on the GB energy markets. Second, the CMA propose to recommend to DECC and Ofgem that they publish detailed joint statements setting out action plans for the implementation of proposed DECC policy objectives that are likely to necessitate Ofgem interventions, with clear responsibilities and timetables.***

If DECC is only implementing proposals where it has a clear mandate to do so, there should not be conflict between DECC and Ofgem under the current arrangements. Greater interaction regarding policy implementation is to be welcomed however.

#### ***Transparent analysis of the impacts of policy and regulation;***

***CMA propose to recommend to Ofgem that it publish annually a state of the market report. The CMA also propose to recommend the creation of a team within Ofgem to take this work forward.***



We do not disagree with this proposal, but question what merits such a report would have. This may be an opportunity for Ofgem to indicate the direction of travel of any market changes they are contemplating as this should lead to a more stable regulatory environment. However, Ofgem will need to be fairly precise in what they suggest.

**Governance of industry codes:**

***The proposed remedy will see Ofgem taking a more proactive role in code development, by setting a Strategic Direction and engaging actively in the code modification process through its influence over licensed code bodies. Further, the CMA recommend that Ofgem take powers to initiate code modifications where these are necessary to deliver the Strategic Direction and be given powers to take substantive control of any ongoing strategically important modification proposals, as appropriate. The CMA propose to recommend to DECC that it seek to pass legislation: giving Ofgem the ability directly to modify industry codes in certain exceptional circumstances; and making the provision of code administration and delivery services activities that are licensed by Ofgem.***

Regarding the CMA's proposals on the governance of industry codes, we would make the following points:

- We would welcome further explanation on what constitutes 'exceptional circumstances' in which Ofgem could use its proposed executive backstop power. It is not appropriate for Ofgem to be proposing change if they are the final arbiters of change. If change is not forthcoming from industry, as has been suggested, then the solution is that the rights to raise change should be extended to other stakeholders such as customer representatives and service providers (e.g. meter operators and data collectors). It is more appropriate for customer representatives to put forth proposals aimed at improving the market for customers, than it is the regulator.
- If this proposal is to be implemented another body should be created, independent of Ofgem, which can have an impartial say on modifications raised by the regulator. Furthermore, arrangements would need to be made so as to ensure that it is not prohibitively expensive to invoke judicial safeguards.
- We do not support the proposal that any costs incurred by Ofgem in using this executive backstop power should be passed on to the relevant licensees. Industry itself is not a punishable entity; any charges passed on by Ofgem will be borne, in the end, by consumers.





- We do not believe that making code changes a licensable activity will in itself have much of an effect, unless the intention is to give code administrators a responsibility to drive change. However, we believe this is inappropriate as the change programme would ultimately be driven by Ofgem. Obviously more directional change should come from government, but lower level change proposals should continue to come from stakeholders.
- Ofgem being allowed to reduce the 56 day notice period of a licence modification being published and coming into effect is inappropriate where a system change has to be made as it does not offer licensees enough time to implement changes.

### Project Nexus

***Proposed remedies in relation to gas settlement comprise: a recommendation to Ofgem to ensure implementation of Project Nexus by 1 October 2016; an order on gas suppliers to submit all meter readings for non-daily metered supply points in Great Britain to Xoserve as soon as they become available and at least once a year, except for smart meters where meter readings must be submitted monthly; and a recommendation to Ofgem to take responsibility for the development and delivery of a performance assurance framework concerning unidentified gas as soon as reasonably practicable.***

Whilst it is important that Nexus is implemented as soon as reasonably practicable, imposing an arbitrary deadline helps nothing. It is much better to allow flexibility in the go-live date and to get the system changes right rather than quickly available.

Should you require further clarification on this matter, please do not hesitate to contact me.

Yours sincerely,

Simon White

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