

20. Decision on AECs and remedies

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Decision on AECs

20.1 As described in paragraph 1.1, on 26 June 2014 the Gas and Electricity Markets Authority made a reference to the CMA for an investigation into the energy market in Great Britain. Section 134(1) of the 2002 Act requires us to decide whether ‘any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom’. If that proves to be the case, under the 2002 Act, this constitutes an AEC.¹

20.2 In this section, we summarise the AECs we have identified, and the features of the energy markets in Great Britain giving rise to each of these AECs.

¹ Section 134(2) of the 2002 Act.

Locational Pricing AEC

- 20.3 In Section 5, we have found that the absence of locational pricing for transmission losses is a feature of the wholesale electricity market in Great Britain that gives rise to an AEC (the 'Locational Pricing AEC'), as it is likely to distort competition between generators and is likely to have both short- and long-run effects on generation and demand:
- (a) In the short run, costs will be higher than would otherwise be the case, because cross-subsidisation will lead to some plants generating when it would be less costly for them not to generate, and other plants, which it would be more efficient to use, not generating. Similarly, cross-subsidies will result in consumption failing to reflect fully the costs of providing the electricity.
 - (b) In the long run, the absence of locational pricing may lead to inefficient investment in generation, including inefficient decisions over the extension or closure of plant. There could also be inefficiency in the location of demand, particularly high-consumption industrial demand.

CfDs AEC

- 20.4 In Section 5, we have also found that the mechanisms for allocating CfDs are a feature of the wholesale electricity market in Great Britain giving rise to an AEC (the 'CfDs AEC') due to the absence of an obligation for DECC to:
- (a) carry out, and disclose the outcome of, a clear and thorough impact assessment supporting a proposal to use its powers to allocate CfDs outside a competitive process; and
 - (b) regularly monitor the division of technologies between different pots, which form the basis of CfD auctions, and provide a clear justification when deciding on the allocation of budgets between the pots for each auction.

Domestic Weak Customer Response AEC

- 20.5 In Section 9, we have found that a combination of features of the markets for domestic retail supply of gas and electricity in Great Britain give rise to an AEC through an overarching feature of weak customer response² which, in turn, gives suppliers a position of unilateral market power concerning their

² We refer to weak customer response as an overarching feature as synonymous with it being a source for an AEC (CC3, paragraph 170).

inactive customer base which they are able to exploit through their pricing policies or otherwise (the 'Domestic Weak Customer Response AEC'). These features act in combination to deter customers from engaging in the domestic retail gas and electricity markets, to impede their ability to do so effectively and successfully, and to discourage them from considering and/or selecting a new supplier that offers a lower price for effectively the same product. We note that these features differ in intensity across different meter types.

20.6 More particularly, in relation to domestic customers on all meter types these features are as follows:

- (a) Customers have limited awareness of, and interest in, their ability to switch energy supplier, which arises in particular from the following fundamental characteristics of the domestic retail gas and electricity supply markets:
 - (i) the homogeneous nature of gas and electricity which means an absence of quality differentiation of gas and electricity and which may fundamentally affect the potential for customer engagement in the markets; and
 - (ii) the role of traditional meters and bills, which give rise to a disparity between actual and estimated consumption. This can be confusing and unhelpful to customers in understanding the relationship between the energy they consume and the amount they ultimately pay.

These fundamental characteristics may particularly affect certain categories of customer (eg those who are elderly, live in social and rented housing or have relatively low levels of income or education) who we observe are less likely to have considered engaging than others. In addition, the fact that the regulations governing energy supply ensure that domestic customers generally receive continuous supply of gas and electricity implies that there is no natural trigger point for engagement, which may depress levels of engagement relative to other sectors.

- (b) Customers face actual and perceived barriers to accessing and assessing information arising, in particular from the following aspects of the domestic retail gas and electricity markets:
 - (i) the complex information provided in bills and the structure of tariffs which combine to inhibit the value-for-money assessments of available options, particularly on the part of customers that lack the capability to search and consider options fully (in particular, those

with low levels of education or income, the elderly and/or those without access to the internet); and

(ii) a lack of confidence in, and access to, PCWs by certain categories of customers, including the less well-educated and the less well-off. We note that alternative forms of TPIs, such as collective switching schemes, may become increasingly important for such customers.

(c) Customers face actual and perceived barriers to switching, such as where they experience erroneous transfers which have the potential to cause material detriment to those who suffer from them. Erroneous transfers may thereby impact customers' ability to switch as well as their perception of switching.

20.7 We have found that prepayment customers and standard credit customers overall are less engaged than direct debit customers, particularly in terms of whether they have ever considered switching or are likely to consider switching in the next three years, and, for prepayment customers, their awareness of their ability to switch.

20.8 In addition, we have found that there are additional aspects of the prepayment and restricted meter segments that contribute to the features that customers face actual and perceived barriers to accessing and assessing information, and that customers face actual and perceived barriers to switching supplier, for prepayment customers and customers on restricted meters.

20.9 We have found that prepayment customers face:

(a) higher actual and perceived barriers to accessing and assessing information about switching arising, in particular, from relatively low access to the internet and confidence in using PCWs; and

(b) higher actual and perceived barriers to switching arising, in particular, from:

(i) the need to change meter to switch to a wider range of tariffs (and the obstacles associated with this requirement such as perceptions of the complexity of the meter replacement process); and

(ii) restrictions arising from the Debt Assignment Protocol hindering indebted prepayment customers' ability to switch supplier.

20.10 We have found that customers on restricted meters face:

- (a) higher actual and perceived barriers to accessing and assessing information arising, in particular, from a general lack of price transparency concerning the tariffs that are available to them, which results from restricted meter tariffs not being supported by PCWs or suppliers' online search tools; and
- (b) higher actual and perceived barriers to switching arising from:
 - (i) the requirement imposed by suppliers on certain restricted meter customers to replace their meters with a single-rate or Economy 7 meter, which may be at a cost to the customer, to be able to switch to a wider range of tariffs;
 - (ii) the fact that a restricted meter replacement might involve some rewiring in the home; and
 - (iii) the fact that a restricted meter replacement (particularly to a single-rate meter) may entail a loss of functionality to the customer, and possibly higher tariffs in the future, with no option of reverting back to their old meter.

20.11 The above overarching feature of weak customer response, in turn, gives suppliers a position of unilateral market power concerning their inactive customer base. In relation to unilateral market power, our finding is that suppliers in such a position have the ability to exploit such a position, for example, through price discrimination by pricing their SVTs materially above a level that can be justified by cost differences from their non-standard tariffs and/or pricing above a level that is justified by the costs incurred with operating an efficient domestic retail supply business.

The Prepayment AEC

20.12 In Section 9, we have found that a combination of features of the prepayment meter segments give rise to an AEC through reducing suppliers ability and/or incentives to compete to acquire prepayment customers, and to innovate by offering tariff structures that meet customers' demand (the 'Prepayment AEC'). These features are:

- (a) technical constraints that limit the ability of all suppliers, and in particular new entrants, to compete to acquire prepayment customers, and to innovate by offering tariff structures that meet demand from prepayment customers who do not have a smart meter. These technical constraints are exacerbated by certain aspects of the simpler choices component of the RMR rules; and

- (b) softened incentives on all suppliers, and in particular new entrants, to compete to acquire prepayment customers due to:
 - (i) actual and perceived higher costs to engage with, and acquire, prepayment customers compared with other customers; and
 - (ii) a low prospect of successfully completing the switch of indebted customers, who represent about 7 to 10% of prepayment customers.

The RMR AEC

20.13 For the reasons given in Section 9, in relation to the regulatory framework governing the markets for domestic and/or SME retail gas and electricity supply, we have found that certain aspects of the ‘simpler choices’ component of the RMR rules (including the ban of complex tariffs, the maximum limit on the number of tariffs that suppliers will be able to offer at any point in time, and the simplification of cash discounts) are a feature of the markets for the domestic retail supply of electricity and gas in Great Britain that gives rise to an AEC through reducing retail suppliers’ ability to compete and innovate in designing tariffs and discounts to meet customer demand, and by softening competition between suppliers and PCWs (the ‘RMR AEC’).

The Gas Settlement AEC

20.14 For the reasons given in Sections 9 and 16, the current system of gas settlement is a feature of the markets for domestic and SME retail gas supply in Great Britain 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 domestic and microbusiness retail gas supply (the ‘Gas Settlement AEC’).

The Electricity Settlement AEC

20.15 For the reasons given in Sections 9 and 16, the absence of a firm plan for moving to half-hourly settlement for domestic and the majority of microbusiness electricity customers and of a cost-effective option of elective half-hourly settlement is a feature of the markets for domestic and SME retail electricity supply in Great Britain that gives rise to an AEC through the distortion of suppliers’ incentives to encourage their customers to change their consumption profile, which overall reduces the efficiency and, therefore, the competitiveness of domestic and microbusiness retail electricity supply (the ‘Electricity Settlement AEC’).

The Microbusiness Weak Customer Response AEC

20.16 For the reasons given in Section 16, we have found that a combination of features of the markets for retail supply of gas and electricity to SMEs in Great Britain give rise to an AEC through an overarching feature of weak customer response from microbusinesses³ which, in turn, give suppliers a position of unilateral market power concerning their inactive microbusiness customer base which they are able to exploit through their pricing policies or otherwise (the 'Microbusiness Weak Customer Response AEC'). These features act in combination to deter microbusiness customers from engaging in the SME retail gas and electricity markets, to impede their ability to do so effectively and successfully, and to discourage them from considering and/or selecting a new supplier that offers a lower price for effectively the same product.

20.17 More particularly, these features are as follows:

- (a) Customers have limited awareness of and interest in their ability to switch energy supplier, which arises from the following fundamental characteristics of the markets for retail energy supply to SMEs:
 - (i) the homogeneous nature of gas and electricity, which means an absence of quality differentiation of gas and electricity and which may fundamentally affect the potential for customer engagement in the markets; and
 - (ii) the role of traditional meters and bills, which give rise to a disparity between actual and estimated consumption. This can be confusing and unhelpful to customers in understanding the relationship between the energy they consume and the amount they ultimately pay.
- (b) Customers face actual and perceived barriers to accessing and assessing information arising, in particular, from the following aspects of the markets for retail energy supply to SMEs:
 - (i) a general lack of price transparency concerning the tariffs that are available to microbusinesses, which results from many microbusiness tariffs not being published; a substantial proportion of microbusiness tariffs being individually negotiated between customer and supplier; and the nascent state of PCWs for non-

³ We refer to weak customer response as an overarching feature as synonymous with it being a source for an AEC ([CC3](#), paragraph 170).

domestic customers (although transparency may be improving with the introduction of online quotes and PCWs); and

(ii) the role of TPIs, in relation to which:

- a number of complaints have been made by non-domestic customers to various official bodies concerning alleged TPI malpractice, which may have reduced the level of trust in all TPIs and discouraged engagement more generally (although this situation may improve if Ofgem implements a code of practice for non-domestic TPIs that is currently in draft form); and
- we have noted a lack of transparency as well as the existence of incentives not to give non-domestic customers the best possible deal. We are concerned that customers are not aware of this and therefore do not take steps to mitigate it (for example, by consulting more than one TPI or seeking other benchmark prices). This is exacerbated by the lack of easily available benchmark prices, and the fact that many tariffs are not published.

(c) Some microbusiness customers are on auto-rollover contracts (where customers are signed up for an initial period at a fixed rate, with an automatic rollover for a subsequent fixed period at a rate they have not negotiated with no exit clause), and are given a narrow window in which to switch supplier or tariff, which may limit their ability to engage with the markets. This practice has recently been discontinued by the largest suppliers, but not by some of the smaller ones (which still account for a significant share of supply of gas to microbusinesses).

The Governance AEC

20.18 In Section 18 we have found a combination of features of the wholesale and retail gas and electricity markets in Great Britain that give rise to an AEC through an overarching feature of a lack of robustness and transparency in regulatory decision-making which, in turn, increases the risk of poor policy decisions which have an adverse impact on competition (the 'Governance AEC'). More particularly, these features are as follows:

(a) Ofgem's statutory objectives and duties which, in certain circumstances, may constrain its ability to promote effective competition;

- (b) the absence of a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making and implementation can be addressed transparently;
- (c) the lack of effective communication on the forecast and actual impact of government and regulatory policies over energy prices and bills; and
- (d) the lack of a regulatory requirement for clear and relevant financial reporting concerning generation and retail profitability.

The Codes AEC

20.19 In Section 18, we have found a combination of features of the wholesale and retail gas and electricity markets in Great Britain that are related to industry code governance and which give rise to an AEC through limiting innovation and causing the energy markets to fail to keep pace with regulatory developments and other policy objectives (the 'Codes AEC'). In particular, we are concerned that this AEC has the impact of limiting pro-competitive change. The underlying features are as follows:

- (a) parties' conflicting interests and/or limited incentives to promote and deliver policy changes; and
- (b) Ofgem's insufficient ability to influence the development and implementation phases of a code modification process.

20.20 We have therefore found, pursuant to section 134(1) of the 2002 Act, that there are features of the relevant markets, which alone or in combination prevent, restrict or distort competition in the supply of electricity and gas in the United Kingdom, and accordingly that there are various AECs within the meaning of section 134(2) of the 2002 Act. These features are those that we have identified in Sections 5, 9, 16 and 18 of this final report.

Decision on remedies

20.21 In this section we summarise our remedies to address the AECs identified above, and the resulting detriment.

Remedies concerning the Locational Pricing AEC

20.22 The remedies package to address the Locational Pricing AEC, and the resulting detriment is as follows:

- (a) An order on National Grid (the Locational Pricing Order) (and amendments to National Grid's licence conditions) that will require National Grid to:
 - (i) ensure that, at all times, imbalance charges (and specifically the estimated volumes of imbalance) are calculated such as to be locationally sensitive to transmission losses;
 - (ii) ensure that the imbalance charges are calculated, as of 1 April 2018, on the basis of the principles set out in the order;
 - (iii) assume responsibility for the calculation of the transmission loss factors if the BSCCo and/or any other agent appointed for that purpose fails to perform its duties within this context; and
 - (iv) raise a code modification proposal to modify the BSC in line with P229.
- (b) A recommendation to Ofgem to support National Grid by taking necessary steps that might facilitate the effective and timely implementation of the Locational Pricing Order.
- (c) A recommendation to Ofgem and to the industry to assess alternative solutions to the remedy as implemented based on full marginal pricing and, if and when appropriate, consider whether to develop and implement a further code modification based on the most effective solution.

Remedies concerning the CfDs AEC

20.23 The remedies package to address the CfDs AEC, and the resulting detriment is as follows:

- (a) A recommendation to DECC to undertake, and disclose the outcome of, a clear and thorough impact assessment before awarding any CfD outside the CfD auction mechanism.
- (b) A recommendation to DECC to undertake and consult on a clear and thorough assessment of the appropriate allocation of technologies and CfD budgets between pots.

Remedies concerning the Domestic Weak Customer Response AEC and the Prepayment AEC

20.24 The remedies to address part of the Domestic Weak Customer Response AEC and part of the Prepayment AEC, and the resulting detriment are as follows:

- (a) A recommendation to Ofgem to establish an ongoing programme (the 'Ofgem-led programme') to identify, test (through randomised controlled trials, where appropriate) and implement (for example, through appropriate changes to gas and electricity suppliers' standard licence conditions) measures to provide domestic customers with different or additional information with the aim of promoting engagement in the domestic retail energy markets, including a recommendation to develop and test proposals (including through randomised controlled trials, where appropriate) concerning the following priority list of measures:
 - (i) changes to the information in domestic bills and how this is presented;
 - (ii) changes to information provided to customers on cheaper tariffs available across the markets;
 - (iii) changes to the specific messaging that domestic customers receive in bills once they move, or are moved, on to an SVT and/or other default tariffs; and
 - (iv) changes to the name of the default tariffs.
- (b) A recommendation to Ofgem to modify gas and electricity suppliers' standard licence conditions to introduce (following a consultation) an obligation on suppliers to participate in the Ofgem-led programme.
- (c) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions) requiring the disclosure to Ofgem of (i) certain details⁴ (the Domestic Customer Data) of their domestic customers who have been on one of their standard variable tariffs (or any other default tariff) for three or more years (the Disengaged Domestic Customers), and (ii) updated Domestic Customer Data on a

⁴ This will be the customer's full name, billing address, consumption address, current supplier, meter type (eg unrestricted, Economy 7 etc), name of their current tariff, annual energy consumption, MPAN/MPRN and, as regards a customer on a restricted meter, certain additional consumption data by specified time periods and details of the customer's standing charges and volume rates. For the avoidance of doubt, the Domestic Customer Data will exclude details relating to any Disengaged Domestic Customer that opted out following receipt of an Opt-out Letter.

regular basis for the purposes of a creating, operating and maintaining a secure cloud database containing the Domestic Customer Data, and allowing rival suppliers to access and use the data for the purpose of postal marketing. The order will also require suppliers, prior to disclosing the Domestic Customer Data to Ofgem, to send a prescribed letter to each Disengaged Domestic Customer, explaining the proposed use of the customer's details, and including an opt-out mechanism for the domestic customer, at any time, to object to and prevent the proposed disclosure and use of their details.

- (d) A recommendation to Ofgem to (i) create, operate and maintain a secure cloud database for the purposes of holding the Domestic Customer Data and to adopt a publically recognised standard for data security in the arrangement for gathering, assembling, and storing the Domestic Customer Data and in providing access to it; (ii) hold the Domestic Customer Data; (iii) test the operation of the database (prior to its roll-out); (iv) put in place safeguards to mitigate any prejudice to the rights and interests of the data subjects; (v) provide access to the Domestic Customer Data to any rival supplier subject to such safeguards; (vi) test aspects of the marketing letters to prompt the Disengaged Domestic Customers who have not opted-out; and (vii) monitor the impact of the database with a view to maximising its effectiveness.
- (e) An order on the code administrator or governing body with authority to grant access to the ECOES database to give PCWs (and other TPIs providing similar services) access upon request to the ECOES database on reasonable terms and subject to satisfaction of reasonable access conditions.
- (f) An order on gas transporters to give PCWs (and other TPIs providing similar services) access upon request to the SCOGES database on reasonable terms and subject to satisfaction of reasonable access conditions, and to make any necessary amendments to the Uniform Network Code.
- (g) A recommendation to DECC to make the following changes to the current specifications of Midata phase two:
 - (i) That participation in Midata should be mandatory for all gas and electricity suppliers.
 - (ii) That the scope of Midata should be expanded to include the following data fields: meter type, Warm Home Discount Indicator,

consumption data and time-of-use for those customers on Economy 7 meters or other time of use tariffs.

- (iii) That TPIs should be given the ability to seek customer consent on the frequency with which they can access the customer's data through Midata; should be required to present at least two options to a customer when seeking consent to access Midata (including one option for access on an annual or ongoing basis, and another option for access on a specified frequency); and should be given the ability to send updated tariff comparison information based on any subsequent access granted to a customer's Midata.

- (h) An order on gas and electricity suppliers with more than 50,000 domestic customers (and amendments to suppliers' standard licence conditions) (i) requiring such suppliers to make all their single-rate electricity tariffs available to all (existing and new) domestic electricity customers on restricted meters,⁵ and (ii) prohibiting such suppliers from making their single-rate electricity tariffs available to domestic electricity customers on restricted meters conditional upon the replacement of their existing meter.

- (i) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions) requiring suppliers to (i) remind their domestic electricity customers on restricted meters, in their regular communications with them, that they have the option to switch supplier or to switch to a single-rate tariff without having to change their meter or incur replacement costs, (ii) provide their domestic electricity customers on restricted meters contact details for Citizens Advice in their regular communications with them, (iii) provide their domestic electricity customers on restricted meters certain information⁶ upon request, and (iv) provide, on a timely basis, Citizens Advice with the information it may reasonably require concerning customers on restricted meters in the format specified by Citizens Advice.

- (j) A recommendation to Citizens Advice to become a recognised provider of information and support to domestic electricity customers on restricted meters.

- (k) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions) requiring suppliers to ensure that the annual

⁵ Excluding Economy 7 meters.

⁶ I.e, total consumption, consumption by register, meter type, tariff type and MPAN number.

bills paid by prepayment customers do not exceed a specified cap, for a period until the end of 2020.

Remedies concerning the Prepayment AEC

20.25 The remedies to address part of the Prepayment AEC, and the resulting detriment are as follows:

- (a) A recommendation to Ofgem to:
 - (i) modify suppliers' standard licence conditions to introduce an exception to SLC 22B.7(b) so as to allow a supplier to set prices to customers on dumb prepayment meters without applying regional cost variations which are applied to other payment methods within the same core tariff;
 - (ii) deprioritise potential enforcement action pending the modification of SLC 22B.7(b) against any supplier that sets prices to prepayment customers without applying regional cost variations which are applied to other payment methods within the same core tariff;
 - (iii) take responsibility for the efficient allocation of gas tariff pages; and
 - (iv) take appropriate steps to ensure that changes to the Debt Assignment Protocol are implemented by the end of 2016, and in particular in areas relating to objection letters, complex debt and issues relating to multiple registrations; including setting out clear objectives and a timetable with appropriate milestones, supervising progress against such objectives and milestones, and to take all steps, if and when necessary, to ensure delivery of these changes.
- (b) The acceptance of undertakings from the Six Large Energy Firms (or, absent such undertakings, a recommendation that Ofgem introduces a new licence condition in suppliers' standard licence conditions) including the following three components:
 - (i) a cap on the number of gas tariff pages that any supplier can hold (at 12);
 - (ii) an obligation for suppliers to provide relevant information for Ofgem to monitor the allocation of the gas tariff codes; and
 - (iii) a condition that allows Ofgem to mandate the transfer of one or more gas tariff pages to another supplier.

Remedies principally concerning the RMR AEC

20.26 The remedies to address the RMR AEC and the resulting detriment, as well as part of the Prepayment AEC and the Domestic Weak Customer Response AEC, and the resulting detriment are as follows:

(a) A recommendation to Ofgem to:

(i) modify gas and electricity suppliers' standard licence conditions to:

- remove the following conditions (the 'Conditions'):
 - the ban on complex tariff structures (SLC 22A.3 (a) and (b));
 - the four-tariff rule (SLC 22B.2 (a) and (b));
 - the restrictions on the offer of discounts (SLCs 22B.3-6 and 22B.24-28);
 - the restrictions on the offer of bundled products (SLCs 22B.9-16 and 22B.24-28);
 - the restrictions on the offer of reward points (SLCs 22B.17-23 and 22B.24-28); and
 - the requirement to make all tariffs available to new/existing customers (SLC 22B.30 and 22B.31);
- make any consequential standard licence condition amendments in light of the restrictions we are recommending being removed; and
- introduce an additional standard of conduct into SLC 25C that will require 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; and

(ii) remove the Whole of the Market Requirement in the Confidence Code and introduce a requirement for PCWs accredited under the Confidence Code to be transparent over the market coverage they provide to energy customers.

Remedies concerning the Gas Settlement AEC

20.27 The remedies package to address the Gas Settlement AEC, and the resulting detriment is as follows:

- (a) A recommendation to Ofgem to:
- (i) ensure implementation of Project Nexus by 1 February 2017 (or as soon as possible after that date, once Ofgem is satisfied that IT systems are ready for an effective implementation of Project Nexus and do not pose risks to final customers) by monitoring closely the progress made by through its role as a chair of the three governance groups;
 - (ii) if appropriate, in order to ensure the effective implementation of Project Nexus, amend the implementation process for Project Nexus (eg by requiring relevant parties to carry out further testing), and set a new suitable implementation date for Project Nexus; and
 - (iii) take further measures where appropriate to achieve this objective (for instance if a party fails to meet agreed milestones or causes a further deferral of the implementation date).
- (b) With respect to all non-daily metered supply points in Great Britain with a dumb meter, an order on gas suppliers (and amendments to gas suppliers' standard licence conditions) to submit valid meter readings (as defined in the Uniform Network Code) to Xoserve as soon as they become available, and at least once per year.
- (c) With respect to all non-daily metered supply points with a smart or advanced meter, an order on gas suppliers (and amendments to the suppliers' standard licence conditions) to submit valid meter readings (as defined in the Uniform Network Code) to Xoserve at least once per month (unless for reasons of malfunction or related issues it was not possible to take such a meter reading).
- (d) A recommendation to Ofgem to take appropriate steps to ensure that a performance assurance framework is established within a year of the CMA's final report.

Remedies concerning the Electricity Settlement AEC

20.28 The remedies package to address the Electricity Settlement AEC, and the resulting detriment is as follows:

- (a) A recommendation to Ofgem to:
- (i) conduct a full cost-benefit analysis of the move to mandatory half-hourly settlement, including analysis of costs, benefits and distributional implications as well as mitigating measures;

- (ii) start the process of gathering evidence for the analysis as soon as practicable;
 - (iii) consider the cost-effectiveness of alternative design options for half-hourly settlement such as a centralised entity responsible for data collection and aggregation;
 - (iv) consider options for reducing the costs of elective half-hourly settlement, including (i) whether any of these options are likely to delay or accelerate the adoption of mandatory half-hourly settlement; and (ii) any challenges that may arise or benefits that may accrue from the existence of two settlement systems, including in particular the possibility of gaming/cherry picking behaviour; and
 - (v) consult, as part of the implementation of half-hourly settlement, on a proposed modification to the provisions of SLC 47 that prohibit suppliers from collecting consumption data with greater granularity than daily unless a customer has given explicit consent to do so.
- (b) A recommendation to DECC to consider whether it is appropriate to remove any other potential barrier for suppliers to collecting consumption data with greater granularity than daily for the purpose of implementing mandatory half-hourly settlement in the context of the review of the Data Access and Privacy frameworks.
- (c) A recommendation to both DECC and Ofgem that they publish and consult jointly on a plan setting out:
- (i) the aim of the reform for half-hourly settlement;
 - (ii) a list of proposed regulatory interventions (including code changes), and the relevant entity in charge of designing and/or approving such interventions, that are necessary in order to implement the half-hourly settlement reform;
 - (iii) an estimated timetable for the completion of each necessary intervention; and
 - (iv) where appropriate, a list of relevant considerations that will be taken into account in designing each regulatory intervention.

Remedies concerning the Microbusiness Weak Customer Response AEC

20.29 The remedies package to address the Microbusiness Weak Customer Response AEC, and the resulting detriment is as follows:

- (a) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions):
- (i) requiring suppliers to disclose the prices of all available acquisition and retention contracts to non-domestic customers falling within a defined category either through an online quotation tool made available on their websites, or through one or more third party online platforms (and including a web link on their own website to direct non-domestic customers to such third party online platform(s));
 - (ii) requiring suppliers to disclose the prices of all their out of contract and deemed contracts on their websites;
 - (iii) prohibiting the inclusion of conditions in their existing and future auto-rollover contracts with microbusiness customers that:
 - prohibit the microbusiness customer from giving a termination notice up to the last day of the initial fixed-term period;
 - prohibit the microbusiness customer from giving a termination notice up to the last day of the fixed-term roll-over period; and
 - impose a termination fee and/or no-exit clause for the roll-over period;
 - (iv) prohibiting the transfer of microbusiness customers that have given a termination notice during the rollover period of an auto-rollover contract to a higher priced contract during the notice period; and
 - (v) prohibiting the inclusion of a condition in their existing and future out-of-contract, and evergreen contracts with microbusiness customers that include termination fees.
- (b) A recommendation to Ofgem to make any necessary consequential amendments to suppliers' standard licence conditions.
- (c) A recommendation to Ofgem to establish an ongoing programme to identify, test (through randomised controlled trials, where appropriate) and implement measures to provide microbusiness customers with different or additional information to promote them to engage in the SME retail energy markets.
- (d) An order on gas and electricity suppliers (and amendments to suppliers' standard licence conditions) requiring the disclosure to Ofgem of: (i)

certain details⁷ of their microbusiness customers that have been on a default contract for three or more years (the ‘Microbusiness Customer Data’); and (ii) updated Microbusiness Customer Data on a regular basis for the purposes of creating, operating and maintaining a secure cloud database containing the Microbusiness Customer Data for the purpose of postal marketing. The order will also require suppliers, prior to disclosing the Microbusiness Customer Data to Ofgem, to send a prescribed letter to each Disengaged Microbusiness Customer, explaining the proposed use of the customer’s details, and including an opt-out mechanism for the microbusiness customer, at any time, to object to and prevent the proposed disclosure and use of their details.

- (e) A recommendation to Ofgem to (i) create, operate and maintain a secure cloud database for the purposes of holding the Microbusiness Customer Data; (ii) hold the Microbusiness Customer Data; (iii) test the operation of the database (prior to its roll-out); (iv) put in place safeguards to mitigate any prejudice to the rights and interests of the data subjects; (v) provide access to the Microbusiness Customer Data by any rival supplier subject to such safeguards; (vi) test aspects of the marketing letters to prompt the Disengaged Domestic Customers who have not opted-out; and (vii) monitor the impact of the database with a view to maximising its effectiveness.

Remedies concerning the Governance AEC

20.30 The remedies package to address the Governance AEC and/or the associated detriment is as follows:

- (a) A recommendation to DECC to initiate a legislative programme with a view to:
 - (i) deleting paragraph 1C from both sections 4AA of the Gas Act 1986 and 3A of the Electricity Act 1989; and
 - (ii) set 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.

⁷ This will be the microbusiness customer’s business name, billing address, consumption address, current supplier, name of their current contract, annual energy consumption, and MPAN/MPRN.

- (b) A recommendation to DECC and Ofgem to publish detailed joint statements concerning proposed DECC policy objectives that are likely to necessitate parallel, or consequential, Ofgem interventions, setting out (i) an action plan for the regulatory interventions needed and responsibility for these, (ii) an estimated timetable, and (iii) where appropriate, a list of relevant considerations in designing the policy.
- (c) A recommendation to Ofgem to:
- (i) publish annually a state of the market report (the 'State of the Market Report') which will provide analysis regarding issues such as (i) the evolution of energy prices and bills over time, (ii) the profitability of key players in the markets (eg the Six Large Energy Firms), (iii) the social costs and benefits of policies, (iv) the impact of initiatives relating to decarbonisation and security of supply, (v) the trilemma trade-offs, and (vi) the trends for the forthcoming year;
 - (ii) create a new unit (eg an office of the chief economist) within Ofgem, which will build expertise across the different areas of the energy markets with a view to publish annually a state of the market report;
 - (iii) modify the licence conditions of the Six Large Energy Firms' generation and supply licences by introducing requirements to:
 - report their generation and retail supply activities on market rather than divisional lines;
 - report a balance sheet as well as profit and loss account separately for their generation and retail supply activities;
 - disaggregate their wholesale energy costs for retail supply between a standardised purchase opportunity cost and residual elements; and
 - report prior year figures prepared on the same basis; and
 - (iv) take appropriate steps, in its ongoing work to develop a price monitoring regime, in order to ensure that such regime measures wholesale energy purchases on a relevant basis, such as the opportunity cost.

Remedies concerning the Codes AEC

20.31 The remedies package to address the Codes AEC and/or the associated detriment is as follows:

- (a) A recommendation to Ofgem to:
- (i) publish a cross-cutting strategic direction for code development (the 'Strategic Direction');
 - (ii) oversee the annual development of code-specific work plans for the purpose of ensuring the delivery of the Strategic Direction;
 - (iii) establish and administer a consultative board in order to bring stakeholders together for the purpose of discussing and addressing cross-cutting issues;
 - (iv) initiate and prioritise modification proposals that, in its view, are necessary for the delivery of the Strategic Direction;
 - (v) in exceptional circumstances, intervene to take substantive and procedural control of an ongoing strategically important modification proposal, as appropriate; and
 - (vi) modify the licence conditions of code administrators to introduce the ability for the administrator to initiate and prioritise modification proposals that, in its view, are necessary for the delivery of the Strategic Direction or to improve the efficiency of governance arrangements.
- (b) A recommendation to DECC to initiate a legislative programme with a view to:
- (i) giving Ofgem the power to modify industry codes in certain exceptional circumstances; and
 - (ii) making the provision of code administration (and delivery) services activities that are licensed by Ofgem and specifying that such licence conditions will include appropriate targets to incentivise code administrators to take on an expanded role to be able to deliver pursuant to the Strategic Direction.