

ENERGY MARKET INVESTIGATION

The Energy Market Investigation (Microbusinesses) Order 2016

Notice of intention to make an Order under section 165 of, and Schedule 10 to, the Enterprise Act 2002 and public consultation on the proposed Order

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act) (as provided for by section 36A of the Gas Act 1986 (GA86) and section 43 of the Electricity Act 1989 (EA89)), made an ordinary reference to the Chair of the Competition and Markets Authority (CMA) for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for an investigation into the supply and acquisition of energy in Great Britain.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act and concluded (a) in accordance with section 134(1) of the Act that there are features of the markets for the supply and acquisition of energy in Great Britain which, either alone or in combination, prevent, restrict or distort competition; and (b) in accordance with section 134(2) of the Act, that there are adverse effects on competition (AECs). The CMA published its findings in a report under section 136 of the Act entitled *Energy market investigation: Final report* published on 24 June 2016 (the Report).
3. One of the AECs identified by the CMA was the Microbusiness Weak Customer Response AEC. The features identified by the CMA as giving rise to the Microbusiness Weak Customer Response AEC were the following:
 - (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 markets for the supply of energy to SMEs: (i) the homogeneous nature of gas and electricity; and (ii) the role of traditional meters and bills.

¹ [Energy market investigation terms of reference.](#)

- (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; a substantial proportion of microbusiness tariffs being individually negotiated between customer and supplier; and from the nascent state of price comparison websites (PCWs) for non-domestic customers; and (ii) the role of third party intermediaries (TPIs), in relation to which:
- (i) 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; and
 - (ii) we have noted a lack of transparency as well as the existence of incentives not to give non-domestic customers the best possible deal. This is exacerbated by the lack of easily available benchmark prices, and the fact that many tariffs are not published.
- (c) Some microbusiness consumers are on auto-rollover contracts, and are given a narrow window in which to switch supplier or tariff, which may limit their ability to engage with the markets.
4. The CMA considered, in accordance with section 134(4) of the Act, (a) whether action should be taken by it for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; and (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
5. In the Report, the CMA decided on a package of remedies to remedy, mitigate or prevent the AECs and/or associated detriment that it found.
6. The CMA decided to implement (through an Order) a requirement on suppliers (a) to disclose certain information on their website or PCWs about the prices they charge or offer microbusiness customers to supply them with electricity or gas (or both); and (b) not to include terms in their auto-rollover contracts with microbusiness customers that restrict when such customers can give notice to terminate the contract and from charging such customers a termination fee in certain circumstances.
7. By virtue of section 138(3) of the Act, the remedies implemented by the CMA must be consistent with the findings in the Report unless there has been a

'material change of circumstances' since preparation of the Report or the CMA otherwise has a 'special reason' for deciding differently.

8. In accordance with section 165 and paragraph 2(1)(a) of Schedule 10 of the Act, the CMA hereby gives notice of its intention to make an Order on the terms attached to this Notice (the Draft Order) and invites representations on the Draft Order from any interested person or persons.
9. The Draft Order includes associated modifications to standard licence conditions mentioned in section 6(1) of the Electricity Act 1989 and in section 7A of the Gas Act 1986.
10. A draft Explanatory Note accompanying the Draft Order provides an explanation of how the Draft Order and the associated licence conditions are expected to operate.
11. This Notice and the Draft Order, including the associated modifications to relevant licence conditions, together with the draft Explanatory Note, have been published on the CMA website.
12. The CMA invites written representations on the proposed Order from any interested person or persons. The CMA will have regard to any representations made in response to this Notice. The CMA may also make modifications to the proposed Order as a result of any representations. If the CMA considers that any representation necessitates a material change to the proposed Order, the CMA will give notice of the proposed modifications.
13. Representations should reach the CMA by 5pm on 18 November 2016. Representations should be made in writing and should be addressed to:

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Competition and Markets Authority
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Southampton Row
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or by email to: david.fowlis@cma.gsi.gov.uk and
energymarket@cma.gsi.gov.uk

(signed) ROGER WITCOMB
Group Chair
18 October 2016