

ENERGY MARKET INVESTIGATION

The Energy Market Investigation (Restricted Meters) 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 (AEC). 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 Domestic Weak Customer Response AEC. The features identified by the CMA as giving rise to the Domestic 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 domestic retail gas and electricity supply markets: (i) the homogeneous nature of gas and electricity; and (ii) the role of traditional meters and bills.

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

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. The CMA has received submissions that some suppliers may face technical constraints linked to the prepayment infrastructure that would prevent them from complying with the obligation to make all Relevant Tariffs available to Domestic Customers with a prepayment restricted meter. While other remedies will soften these technical constraints, this will not be sufficient for suppliers to be able to make all Relevant Tariffs available to Domestic Customers with a prepayment restricted meter.
9. The CMA has weighed this evidence against the fact that prepayment meter customers will be subject to The Energy Market Investigation (Prepayment Charge Restriction) Order 2016, which will address a significant proportion of the detriment suffered by such customers as a result of the AECs and/or associated detriment found to be particularly affecting customers.
10. In light of these observations, the CMA considers that, considering the evidence in the round, there is a special reason to depart from the decision in the Report and has excluded prepayment meter customers from the obligation on suppliers to make Relevant Tariffs available to customers.
11. 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).
12. The Draft Order includes associated modifications to electricity standard licence conditions.
13. 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.
14. 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.
15. 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.

16. Representations should reach the CMA by 5pm on 18 November 2016
Representations should be made in writing and should be addressed to:

Project Manager
Energy market investigation
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

or by email to: david.fowlis@cma.gsi.gov.uk and
energymarket@cma.gsi.gov.uk

(signed) ROGER WITCOMB
Group Chair
18 October 2016