

## ENERGY MARKET INVESTIGATION

### The Energy Market Investigation (Prepayment Charge Restriction) Order 2016

### Notice of making an Order under section 161 of the Enterprise Act 2002 issued under section 165 of, and Schedule 10 to, the Enterprise Act 2002

#### 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.<sup>1</sup>
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. Two of the AECs identified by the CMA were the Domestic Weak Customer Response AEC and the Prepayment AEC.
4. 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

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<sup>1</sup> [Energy market investigation terms of reference.](#)

supply markets: (i) the homogeneous nature of gas and electricity; and (ii) the role of traditional meters and bills.

(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; and (ii) a lack of confidence in, and access to, price comparison websites (PCWs) by certain categories of customers, including the less well-educated and the less well-off.

(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.

5. In addition, the CMA found that there are additional aspects of the prepayment meter segments that contribute to the features of the Domestic Weak Customer Response AEC. In particular, the CMA 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.

6. The features identified by the CMA as giving rise to the Prepayment AEC were the following:

(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; 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.

7. 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.
8. 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. The CMA decided to implement (through an Order) a prepayment charge restriction for the tariffs made available (either directly or indirectly) or applied to domestic customers on prepayment meters by energy suppliers.
9. 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.
10. On 11 October 2016, in accordance with section 165 of, and paragraph 2(1)(a) of Schedule 10 to, the Act, the CMA gave notice (the Notice) of its intention to make an Order on the terms attached to the Notice (the Draft Order). The Notice, the Draft Order, and a draft explanatory note, were published on the CMA website for consultation (the Consultation).
11. The CMA now gives notice of the making of the attached Order. The Order is made in accordance with sections 138 and 138A of the Act and in exercise of the powers conferred by section 161 of and Schedule 8 to the Act. The Order is made for the purpose of remedying, mitigating or preventing the Domestic Weak Customer Response AEC and Prepayment AEC identified in the Report and for the purpose of remedying, mitigating or preventing detrimental effects on customers in so far as they have resulted from or may be expected to result from these AECs. The Order will come into force on 8 December 2016.
12. The Explanatory Note accompanying the Order provides an explanation of how the Order and the associated licence conditions are expected to operate.
13. This Notice, the Order, including the associated modifications to relevant licence conditions, and the representations received in response to the Consultation have been published on the CMA website.

*(signed)* ROGER WITCOMB

*Group Chair*

7 December 2016