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Dear David

**CMA EMI Remedies Consultation on the Energy Market Investigation (Database)
Order 2016**

Thank you for the opportunity to respond to the above consultation.

We are aware of the forthcoming small scale trial about the database remedy and believe this will provide useful intelligence that could be used to inform the design of the final scheme. Therefore, there could be benefits to ensure the timescales of this consultation for licence changes and the trial outcomes are in line.

We continue to be concerned about the ongoing data protection issues that have already been identified and would like reassurance from the ICO that the provision of relevant data and its associated processing and storage will meet the requirements of all data protection legislation. As the proposal is to pass data on to rival suppliers for marketing purposes this is a very sensitive issue.

Our representations are outlined below.

Inconsistency between explanatory notes and drafting

We have some concerns that the guidance provided in the explanatory note is inconsistent with the wording in the Order. Although we recognise that the

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explanatory note is not binding it may cause confusion and lead to inconsistency in the interpretation of the licence requirements between suppliers.

The key areas of inconsistency are set out below.

Definition of Default Tariff

The explanatory notes (para 23 and clarified in para 24(a)) state that default tariffs for Domestic customers are "all non-fixed tariffs applied to evergreen and deemed contracts". However, the drafting excludes evergreen tariffs where part of the tariff which currently applies to a Domestic Customer is for a fixed term period. This is a key inconsistency as the definition of default tariff is fundamental to the remedy.

We believe that the draft wording of the licence condition is the correct definition.

First Contact Communication

The wording in the Order (4.4) requires approval of a First Contact Communication by the CMA and GEMA, however, the explanatory notes (para 79) are clear that there is no flexibility for suppliers to draft the first contact communication. We believe it is appropriate for suppliers to be able to write the first contact communication as they have a wealth of experience in effective communication with their customers. The requirement to have the communication approved by CMA and GEMA would provide reassurance that it delivered the required message.

The requirement to have the First Contact Communication branded by the relevant supplier further supports a supplier written letter. There is a risk that any prescribed wording may be inconsistent with the supplier's normal brand communication style. This may result in the customer viewing the letter as potentially fake, and thus ignoring the contents.

If it is not felt that supplier written letters would be adequate it is important that suppliers have the opportunity to review and comment on the proposed wording.

Not allowing information about database on supplier's website

We have a concern about the strict guidance (para 73) that we would be prevented from putting any information about the database on our website. We do not believe this is beneficial for customers as this is the first place customers are likely to look. We would not be averse to including specified text but do not agree that a customer should have to be redirected to different sites to obtain useful and factual information.

Furthermore, information about the database will be particularly important for customers who have been on it for a significant period of time, as the opt out information would have been received in the first contact communication letter, which may have been received a long time ago.

Detailed comments on drafting

	Current wording	Suggested wording	Reason
Annual Consumption Breakdown	For which data is available	For which data is recorded	Make definition consistent with Consumption Window definition
Domestic customer Data	(iv) the Standing Charges and Unit Rates that applied	(iv) the Standing Charges and Unit Rates that applies	Current wording requires multiple sets of prices to be provided if there has been a price change during the year. Do not believe this is the intention.
Relevant Customer Data	who has not Opted-out and who has not been supplied by	who has not Opted-out and who has been supplied by	Historic prices are not required to enable other Suppliers to provide quotes

Yours sincerely

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