

ENERGY MARKET INVESTIGATION

The Energy Market Investigation (Gas Settlement) 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.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. In the Report, the CMA found, amongst other things, that 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).
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

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

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. The CMA decided on a package of remedies to be implemented in order to remedy, mitigate or prevent the Gas Settlement AEC, set out in paragraph 20.27 of the Report.
6. 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.
7. On 18 October 2016, in accordance with section 165 and paragraph 2(1)(a) of Schedule 10 to the Act, the CMA gave notice (the Notice of Intention) of its intention to make an Order on the terms attached to the Notice of Intention (the Draft Order). The Notice of Intention, the Draft Order, and a draft explanatory note, were published on the CMA website for consultation (the Consultation).
8. The CMA now gives notice of the making of the attached Order (the Notice). The Order is made in accordance with sections 138 and 138A 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 Gas settlement 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 the Gas settlement AEC. The Order will come into force on 15 December 2016 except Article 3.3 which shall come into force on 1 April 2018 (or any other later date pursuant to a direction issued by the CMA no later than 1 September 2017).
9. Ofgem is expected to publish in the next few days a document setting out steps it intends to take so as to support the implementation of the Order.
10. The Explanatory Note accompanying the Order provides an explanation of how the Order and the associated licence conditions are expected to operate.
11. The Notice and the Order, including the associated modifications to relevant licence conditions, together with the Explanatory Note and the representations received in response to the Consultation, have been published on the CMA website.

(signed) Roger Witcomb
Group Chair
14 December 2016