

ENERGY MARKET INVESTIGATION

The Energy Market Investigation (Microbusinesses) Order 2016

Notice of making an Order 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* 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, which results from many microbusiness tariffs not being published; 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:
 1. 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
 2. the CMA 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. On 18 October 2016, in accordance with section 165 and paragraph 2(1)(a) of Schedule 10 of the Act, the CMA gave notice of its intention (the Notice of 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).
9. 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 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 Microbusiness Weak Customer Response 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 this AEC. The Order will come into force on 15 December 2016 except for Articles 3, 4 and 5, which will come into force on 26 June 2017.
10. The Explanatory Note accompanying the Order provides an explanation of how the Order and the associated licence conditions are expected to operate.
11. This Notice and 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

14 December 2016