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2nd May 2017

Submission via email: MarketInvestigations-Review@cma.gsi.gov.uk

Consultation on Guidance to CMA's Approach to Market Investigations

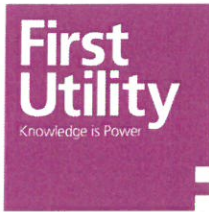
Dear Market Investigations Review Team,

Thank you for the opportunity to respond to the consultation on updated guidance on the CMA's approach to market investigations.

We welcome the objectives of streamlining the market investigation (**MI**) processes and procedures to better enable the meeting of the new shorter statutory timetable of 18 months, alongside optimising the process and compliance work undertaken by parties in the investigation, to improve efficiency and lessen the overall burden on those involved.

First Utility chose to make a significant commitment to and investment in the recent energy market investigation (**EMI**), which we maintained over the course of the entire investigation. We also recognised that we would likely be required to participate to a significant degree through information requests and otherwise. We did not anticipate, but did welcome, the case study approach covering various of the newer energy market entrants. With these required engagements, certain costs could not be avoided. We were aware that even taking account of the scale of information and engagement that was required of us, we nevertheless did not receive the same scale of information requests and examination as compared with larger suppliers, which reflected the focus of the investigation.

Nevertheless, we believe that the sheer scale of information being sought represents the most extensive requests the business has received to date. Notwithstanding, we maintained our active engagement with the investigation, including in terms of formal and



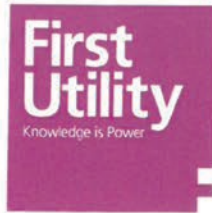
informal submissions. This choice reflected our view that the investigation raised significant and important issues for the energy market that merited this level of commitment and investment but it was challenging to maintain. Flexibility is in our view essential in order to support participants of all sizes in MIs. The CMA's case officers were as flexible as they could be in helping us to manage parallel information requests, reflecting an understanding of the challenges of the scale of information being sought for smaller players.

We do not see that the CMA has an alternative to the amount of information it has to gather, and taking this into account, we therefore support efforts to reduce the number of set-piece consultations, and increase the opportunities given to parties at an earlier stage to input into the CMA's analysis and decision-making, including on potential remedies. The CMA could also consider setting specific expectations as to the type and scale of information being sought early in the process and working with participants on options for meeting the CMA's requirements in a proportionate and fair way.

The CMA's proposals will we think help to achieve better cost efficiencies whilst maintaining (indeed if not improving upon) the rigour of analysis and robustness of outcomes. This is particularly important for assessing possible remedy options, which if brought to coincide with the assessment of potential problems, would not only allow greater time to consider such remedies, but enable it also to be done in a more holistic way rather than in isolation as a separate, much later stage in the process.

In terms of forms of engagement, more flexible (and earlier) interactions, for example with the use of multi-party hearings and roundtables could be very helpful in enabling a greater exchange of information and views, alongside reducing the burden to obligated parties where possible. The CMA's current work with regards the Digital Comparison Tools (**DCT**) Market Study (**MS**) has made use of such tools, and has proved effective in doing so. Taking into account recent experiences with the DCT MS, First Utility also supports strengthening the synergies between MSs and MIs, and to include the consideration of remedies and undertaking preparatory work for an MI during the latter stages of MSs.

We recognise that the scale of the energy investigation made an extended investigation period necessary. The ongoing requirement for updates did however pose significant issues for us and no doubt for other participants: the teams who worked on earlier requests could not easily be reconstituted for subsequent requests and we did not anticipate the number of update requests we actually received. The extended period



cannot become the default outcome and changes are needed to help the CMA, and MI participants, focus earlier and better manage their time and resources. In summary therefore, we support the CMA's proposals to streamline the MI process and strengthen the synergies between MSs and MIs.

If you have any questions or would like to discuss any of our experiences during the EMI or most recent DCT MS, please do get in touch.

Yours sincerely

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