

## **Centrica Storage Limited and Centrica plc – Invitation to comment on a request to vary the Rough undertakings**

1. The Competition and Markets Authority ('CMA') invites comments and the submission of relevant evidence on a request it has received from Centrica Storage Limited ('CSL') and Centrica plc ('Centrica') to review the undertakings given to the then Secretary of State for Trade and Industry under section 88 of the Fair Trading Act 1973 ('FTA'), as varied by the Competition Commission ('CC') pursuant to paragraph 16 of Schedule 24 to the Enterprise Act 2002 ('EA02') and in relation to the completed acquisition by Centrica of Dynegy Storage Limited and Dynegy Onshore Processing UK Limited ('the undertakings').
2. In particular we are seeking views on:
  - whether the limit on the maximum operating pressure in Rough represents a change in circumstances in this market, such that the CMA should consider a review of these undertakings;
  - whether we should prioritise this case for review; and
  - whether this review should be carried out now.
3. Although at this stage we are consulting on whether we should carry out a review, respondents are also welcome to provide initial comments on CSL's suggested variations to the undertakings.

### **Background**

4. The CMA is currently considering whether to launch a review under paragraph 16 of Schedule 24 to the EA02 of the above undertakings which were made to remedy the competition and other public interest concerns arising from the merger.<sup>1</sup>

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<sup>1</sup> While the Rough undertakings were given under the FTA, the obligation on Centrica and CSL to comply with the Rough undertakings, and enforcing compliance with it by the CMA, now arises under s94 of EA02, the relevant undertaking having been transferred to the CMA's legacy bodies by SI (this is the effect of s15(1) of Schedule 24 EA02 as regards the Rough undertaking specified in Schedule 1 to SI 2004/2181).

5. In December 2003, the Secretary of State accepted undertakings from Centrica and CSL under section 88<sup>2</sup> of the FTA ('the original undertakings'), to take the action necessary to remedy or prevent the adverse effects specified in the CC's report.
6. In November 2005, Centrica requested a variation of the original undertakings in order to enable a minor group restructuring of the Centrica Group. After considering advice on the proposed variation prepared by the Office of Fair Trading, ('OFT'), the CC indicated it would be willing to accept such a variation. The variation was accepted by the CC, and the new, amended, undertakings ('the amended undertakings') came into force on 3 April 2006.
7. In April 2010, Centrica submitted a request to the OFT for a review of the amended undertakings as it believed they were no longer required. After considering the advice of the OFT<sup>3</sup> and reviewing the amended undertakings, the CC published a report proposing variations to the amended undertakings on 20 April 2011.<sup>4</sup> Centrica and CSL gave revised undertakings which came into effect from 5 March 2012.
8. Currently, the main provisions of the undertakings are that CSL will be maintained legally, financially and physically separate from all other businesses of Centrica and that CSL must:
  - Offer all Rough capacity for sale on a non-discriminatory basis.
  - Unless otherwise agreed with Ofgem, retain the Storage Service Contract for all sales of Rough Capacity.
  - Unless otherwise agreed with Ofgem, sell Minimum Rough Capacity (MRC) in Standard Bundled Units (SBUs) comprising combined rights to fixed units of space, injection and withdrawal.
  - Sell the following 'obliged capacity' before the start of the Storage Year (May):
    - 455 m SBUs of MRC; and
    - At least 1.5 TWh of 'additional space' (AS).

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<sup>2</sup> See section 88 of [the FTA](#).

<sup>3</sup> See [Centrica review of undertakings](#) on the CMA's webpages.

<sup>4</sup> CC (2011), Review of Undertakings given by Centrica following its acquisition of the Rough Gas Storage Facility.

- Not sell more to Centrica per year than a maximum 'specified capacity' of:
    - 25% of MRC; and
    - 1.5 TWh of AS.
  - Offer at least 20% of MRC (equivalent to 91 m SBUs) on annual contracts.
  - Auction all unsold obliged capacity one month before start of the next Storage Year.
  - Offer for sale capacity that becomes available during the Storage Year.
  - Facilitate the efficient operation and development of a secondary market in Rough Capacity.
  - Disclose information on storage operations to all market participants simultaneously.
  - Ensure that no commercially sensitive information arising from the operation of Rough is passed directly or indirectly to any business of either Centrica or any other member of the Centrica Group.
  - Provide sales and operational information to Ofgem and the CMA for compliance monitoring purposes.
9. These undertakings can be viewed on the [CMA's webpages](#).
10. CSL and Centrica, by reason of a change of circumstances, are now seeking a variation to the undertakings.
11. In March 2015, following technical reports, CSL announced a decision to limit the maximum operating pressure in Rough. CSL is conducting further tests, but it considers that there is a risk it will be physically unable to meet the capacity sales requirements as set out in the undertakings for the 2016/17 Storage Year.<sup>5</sup>

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<sup>5</sup> CSL has therefore separately requested an indication of the CMA's approach to prioritisation of enforcement action if CSL were to undertake the compliance steps it has identified for 2016/17. See: letter dated 18 September 2015: 'Indication of the CMA's prioritisation principles in relation to the Undertakings'. The CMA has published a response to this request, indicating that, provided the assumed facts set out in CSL's letter of 18 September 2015 were to continue to apply and the proposed actions set out in the letter were undertaken by CSL, CMA officials anticipate they would not recommend prioritising the taking of enforcement action. See: letter dated 22 September, 'Request for an indication of enforcement prioritisation'.

12. CSL further submitted that, as an ageing asset, the Rough storage facility's performance could be expected to become less predictable, increasing the potential for CSL to be physically unable to meet the undertaking's capacity sales requirements in future years. In its letter to the CMA of 18 September, CSL provided further explanation of the changes to Rough's capacity. By reason of a change of circumstances, CSL is seeking a variation of the undertakings and it has also provided proposed changes to their wording.<sup>6</sup>
13. If a review were to proceed, the CMA would be required to assess whether there had been a change of circumstances since the acceptance of the original undertakings on 18 December 2003 and the variations to the undertakings since that date.
14. As set out in *Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders*<sup>7</sup> the CMA is now seeking views on whether it should carry out a review in the light of the issues raised by CSL and the CMA's [prioritisation principles](#). In particular we are seeking views on:
  - whether the limit on the maximum operating pressure in Rough represents a change in circumstances in this market, such that the CMA should consider a review of these undertakings;
  - whether we should prioritise this case for review; and
  - whether this review should be carried out now.
15. Although at this stage we are consulting on whether we should carry out a review, respondents are also welcome to provide initial comments on CSL's suggested variations to the undertakings.
16. Representations with any relevant evidence should be made, preferably by email only (with any attachments in PDF), by **5pm on 12 October** to:

[rough.undertakings@cma.gsi.gov.uk](mailto:rough.undertakings@cma.gsi.gov.uk)

Or:

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<sup>6</sup> Letter dated 18 September 2015: 'Application to the CMA for a variation to the Undertakings'.

<sup>7</sup> See: *Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders*.

Adrian Leigh  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London WC1B 4AD

Phone: 020 3738 6095

Email: [adrian.leigh@cma.gsi.gov.uk](mailto:adrian.leigh@cma.gsi.gov.uk)

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