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2 May 2017

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Updated guidance on the CMA's approach to market investigations

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, storage, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy is generally supportive of the proposals to change the manner in which the CMA will undertake market investigations (MIs) in the future. In particular, we welcome moves to streamline the MI process and improve the manner in which the CMA engages with parties, while at the same time ensuring that it can continue to reach robust, transparent and fair decisions within the statutory time limits.

In terms of the two specific changes being proposed, we offer the following observations:

(a) Streamlining the market investigation process

We believe there are benefits in undertaking consideration of potential remedies at an earlier stage in an MI and at the same time as potential problems are being assessed. This change should provide parties with a much greater opportunity to engage and aid the development of potential remedies, and thereby helping to ensure the CMA reaches the right decision on proportionate remedies having fully consulted and considered parties views.

However, it is important that in considering possible remedies early on in an investigation that no prejudgment is made on any adverse effect on competition finding. We note that the CMA has acknowledged this increased risk within the consultation and we welcome any additional clarity that could be provided by the CMA within its guidance document as a means of addressing such a perceived risk.

We agree that undertaking numerous formal consultations can be both time consuming and resource intensive for both the CMA and parties. We are therefore supportive of moves to reduce the number of formal consultations, provided parties continue to have appropriate opportunities to assess and challenge findings and be fully consulted on provisional decisions. We are therefore supportive that this change is accompanied by proposals to move to earlier and more interactive engagement with parties, including through the use of less formal individual hearings, multi-party hearings and a greater use of roundtables. We agree that such engagement should provide parties with a more

effective opportunity to scrutinise and discuss evidence, analysis and potential remedies prior to the CMA forming its provisional views.

(b) Strengthening synergies between market studies and market investigations and clarifying Board/Group interactions

We support in principle the desire to maximise synergies and realise efficiencies following the creation of a single competition authority. However, any changes should not be seen as putting at risk the independence of decision making between the bodies undertaking market studies (MSs) and MIs.

Where it is the CMA itself that is undertaking an MS, we agree that there is merit in ensuring that there is a smooth and efficient handover to the MI and that any unnecessary duplication is avoided. The ability of the Board to issue an advisory steer on scope may aid an effective transition to an MI, but it must not in any way constrain an investigation to specific issues and continue to provide for the ability of the investigation to consider broader issues where appropriate.

Given the proposed changes are targeting potential efficiencies where it is the CMA itself undertaking both an MS and an MI, we do not believe they should equally apply where the MS is undertaken by another body, such as a sector regulator. In such instances where the CMA is unlikely to have been involved in shaping the study it should not, in conducting an MI, be constrained by the MS findings and continue to have the freedom to undertake a robust and independent evaluation of the market and all potential issue. This will fully maintain the CMA's impartiality and ensure that any remedies are developed in conjunction with a fully reasoned adverse effect on competition finding by the CMA.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact Steven Eyre or myself.

I confirm that this letter may be published on CMA's website.

Yours sincerely,

Paul Delamare
Head of Customers Policy and Regulation