ANTICIPATED MERGER BETWEEN SSE RETAIL AND NPOWER

Summary of provisional findings

Notified: 30 August 2018

1. On 8 May 2018 the Competition and Markets Authority (CMA) referred the anticipated merger between the domestic retail energy business of SSE plc (SSE) (SSE Retail) and Npower Group Limited[1] (Npower) (the Merger) for an in-depth phase 2 investigation. The CMA is required to address the following questions:

   (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

   (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom (UK) for goods or services.

2. Competition is the process of rivalry over time between businesses seeking to win customers' business by offering them a better deal. An SLC occurs when rivalry is substantially less intense after a merger than would otherwise have been the case, resulting in a worse outcome for customers (through, for example, higher prices, reduced quality or reduced choice).[2]

The merging companies

3. The main overlap between SSE and Npower (together the Parties) is in the retail supply of electricity and gas (together, energy) to domestic customers in

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[1] The terms of reference named Npower Group plc. However, this business was re-registered as Npower Group Limited with effect from 22 May 2018, we therefore for the purposes of our provisional findings report refer to Npower Group Limited as one of the Parties.
[2] Quick guide to UK merger assessment (CMA18), paragraph 3.1.

Great Britain (GB). The Merger brings together the third and sixth largest players in GB domestic energy supply.[3]

4. SSE is a listed company with generation, network transmission and distribution and retail activities in the UK and Ireland. Prior to the Merger, SSE will separate out its activities in the retail supply of electricity and gas to domestic customers in GB, as well as its telecoms and energy-related services to form SSE Retail.

5. Npower is a UK company, fully owned by innogy SE (innogy), which is active in the retail supply of domestic and non-domestic gas and electricity and energy-related services in GB. innogy is a European energy group active in renewable energy generation, electricity and gas distribution, and the retail supply of energy. innogy is listed on the Frankfurt Stock Exchange, and is majority owned (76.8%) by RWE AG (RWE). Npower has an exclusive wholesale 'supply and services agreement (the Wholesale Agreement) with Telecom Plus for the supply of gas and electricity to Utility Warehouse, a mid-tier energy supplier.

The Transaction

6. On 8 November 2017, innogy and SSE entered into an agreement to transfer Npower and SSE Retail into a new company (the Contribution Agreement) referred to as MergeCo (the Transaction). The Parties told us that MergeCo would be a standalone retail business with its own dedicated board of directors and specialist management team.

7. The Parties said that immediately following the Transaction (expected to be the last quarter of 2018 or the first quarter of 2019), MergeCo will be admitted to the premium listing segment of the Official List and to trading on the main market of the London Stock Exchange (LSE). We refer to the Transaction and the listing of MergeCo as the Merger.

8. Under the Parties' Agreement, innogy will receive a 34.4% equity stake in MergeCo, which innogy will be required to hold for at least six months; and SSE's stake of 65.6% will be distributed to its shareholders immediately following the Transaction.

[3] Measured by number of customer accounts excluding pre-payment accounts.

Relevant merger situation

9. We are required to decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. Section 23 of the Enterprise Act 2002 (the Act) provides that a relevant merger situation is created if:

   (a) two or more enterprises cease to be distinct; and

   (b) one or both of the 'turnover test' or 'share of supply test' is (are) satisfied.[4]

10. The Contribution Agreement is that SSE Retail and Npower will be brought under common control, and the new entity, MergeCo, will be listed on the LSE. The CMA is accordingly satisfied that on completion of the Merger the enterprises of SSE Retail and Npower will cease to be distinct.

11. Based on evidence from the Parties we are also satisfied that the turnover test is met.

12. Accordingly, we are satisfied that a relevant merger situation has been created.

The market context

13. There were 72 energy retailers supplying domestic customers in GB (as of March 2018). These consisted of the Six Large Energy Firms (SLEFs) and 66 small and mid-tier suppliers (SAMS), mainly active in the supply of both electricity and gas.[5] The SLEFs (or 'large energy firms') comprise SSE and Npower, along with British Gas (now part of Centrica plc), E.ON UK plc (E.ON), EDF Energy plc (EDF), and Scottish Power Ltd (ScottishPower). The SLEFs were former monopoly providers of gas (British Gas) or regional electricity companies.

14. In recent years, there has been significant entry and expansion by new suppliers in the domestic energy retail supply markets. In 2017 the SLEFs' combined market share was just under 80% of domestic customers in GB (for both electricity and gas), having declined from a combined market share of around 95% in 2013.

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[4] Section 23 of the Act provides that the value of the turnover in the UK of the enterprise being taken over must exceed £70 million ('turnover test') or, in relation to the supply of goods or services, as a result of two or more enterprises ceasing to be distinct, at least one quarter of all such goods or services which are supplied or acquired in the UK or a substantial part of the UK are supplied by or to one and the same person ('share of supply test').
[5] Number of active domestic suppliers by fuel type (GB), Ofgem (March 2018).

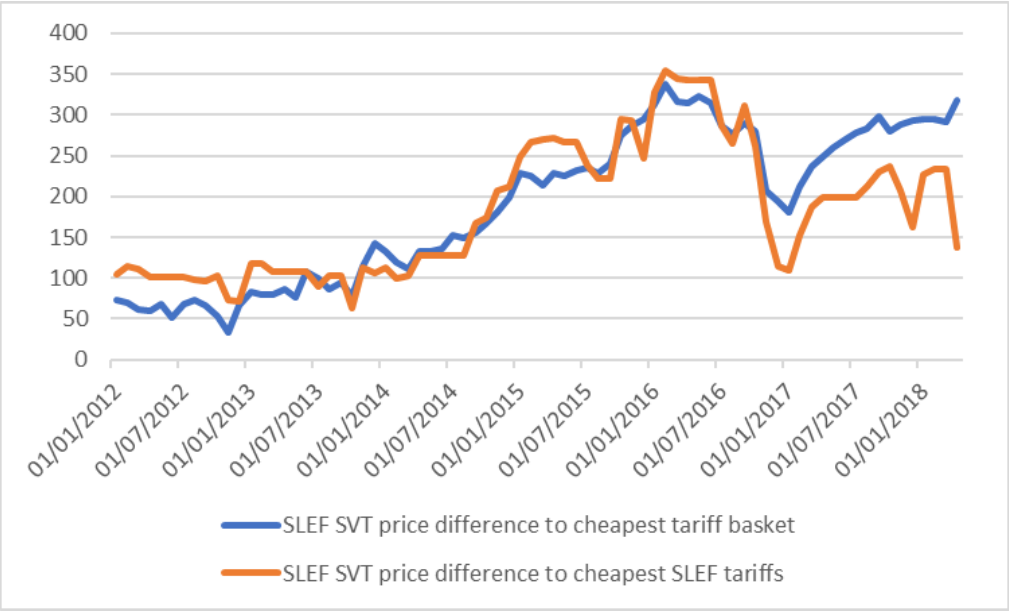
15. Suppliers typically offer a range of tariffs, for single and dual-fuel customers, including tariffs for those customers with prepayment meters or restricted meters (which charge different rates for energy at different times of day, such as Economy 7 tariffs). In general, tariffs can be divided into two types.

(a) Acquisition tariffs – these are tariffs offered to new customers or existing customers choosing a new tariff. They are usually fixed-term contracts (FTCs) which are sold at a fixed price for a fixed period, eg one, two or three years. They may have 'exit fees' where a customer chooses to leave the tariff before the fixed time period has expired.

(b) Default tariffs – these apply where a customer has not chosen a specific tariff. For example, on expiry of an FTC a customer will generally be rolled onto a default tariff if they do not make an active choice of alternative tariff. Default tariffs are usually standard variable tariffs (SVTs); these continue indefinitely, vary in price over time and do not have 'exit fees'.

16. Acquisition tariff prices tend to be substantially cheaper than default tariff prices. Figure 1 shows the difference in annual costs for a typical household on the average SVT of the SLEFs compared to the cheapest tariffs offered by any of the SLEFs (orange line), or compared to the cheapest tariffs offered by any supplier (blue line). The annual cost savings from switching away from an SVT to one of the lowest priced acquisition tariffs increased from 2012 to early 2016, fell back in 2016, and have increased again from early 2017. In recent months, the best acquisition tariffs offered by the SAMS have been considerably cheaper than those offered by the SLEFs.

Figure 1: Comparison of SLEF's SVT price differences to cheapest tariffs



Source: Retail price comparison by company and tariff type: Domestic (GB), Ofgem (July 2018).

17. The CMA conducted an in-depth review of the energy market in GB between 2014 and 2016 (the Energy Market Investigation (EMI)).[6] The EMI found, among other concerns, an overarching market feature of weak customer response.[7] It estimated that customers had been paying around £1.4 billion on average per year too much as a result of the problems it found, over the period 2012-2015.[8] This was largely because around 70% of domestic customers were on more expensive default SVTs despite competitively priced acquisition tariffs being on offer.[9] This 'weak customer response' was the result of customers' limited awareness of and interest in their ability to switch energy supplier, actual and perceived barriers to accessing information and the existence of actual and perceived barriers to switching.[10]

18. Following the EMI, the CMA put in place a package of remedies. Among its remedies to improve domestic customer engagement, the CMA recommended:[11]

    (a) the creation of an Ofgem-controlled database of 'disengaged customers' on default tariffs, which could allow rival suppliers to prompt these customers to engage in the retail energy markets (the 'Database remedy'); and

    (b) the establishment by Ofgem of a programme to provide customers (directly or through their own suppliers) with information to prompt them to engage (the 'Prompt to engage remedy').

19. Ofgem is in the process of implementing these two remedies. In addition, Ofgem intends to initiate a Switching Programme (expected to be launched in April 2020[12]) to provide for faster and more reliable switching, including switching by the end of the next working day after a request.

Improvements in customer engagement

20. Rates of customer engagement have increased since the EMI and continue to do so. The number of customers on SVTs has declined from 70% of domestic

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[6] See EMI final report (24 June 2016).
[7] EMI final report (24 June 2016), paragraph 9.283.
[8] This was equivalent to around £50 per household per year. Residential households spend an average of around £1,123 per household on gas and electricity each year (State of the energy market 2017 report, Ofgem (31 October 2017), page 6).
[9] EMI final report (24 June 2016), paragraph 102.
[10] We refer to the situation where customers do not consider or believe they cannot act on exploring the market to seek alternative suppliers and tariffs as disengagement. Such customers are likely to find themselves on default tariffs and will not have switched recently or at all.
[11] EMI final report (24 June 2016), paragraph 13.7.
[12] Transitional phase plan, Ofgem.

customers at the time of the EMI[13] to 57% by October 2017 (excluding prepayment customers).[14]

21. There has also been a gradual increase in customer switching rates since late 2014. For example, Ofgem's 2017 'State of the energy market' report found that in June 2017, 16% of customers had switched supplier in the previous 12 months, an increase from 11% in 2015 and the highest level of customer switching since August 2011.[15]

22. The proportion of customers switching to the SAMS has also increased over time. In 2015, just over [✂]% of gas and electricity customers leaving the Parties switched to one of the SAMS; by 2017, this had increased to over 50%. The number of SAMS has continued to increase, and their market share from around 5% in 2013 to around 20% in 2017. In addition, a significant proportion of customers switch internally (ie remain with the same supplier, but on a different tariff).

Measures to protect customers

23. While engagement is increasing and consequently many more customers are benefitting from lower priced acquisition tariffs, many customers are still not engaging with the market and as a result are paying higher prices. Measures have therefore been put in place, or are proposed, to protect such customers.

24. In addition to its recommendations outlined in paragraph 18, the CMA also put in place a price cap on prepayment meter tariffs (PPM Price Cap) in April 2017, which is due to expire at the end of 2020. On 2 February 2018, Ofgem extended the PPM Price Cap to a further one million vulnerable customers receiving the Warm Home Discount (WHD).[16] The CMA has committed to review the price cap with reference to the extent of smart meter roll-out in early 2019 and could potentially recommend to Ofgem that the duration of the prepayment price cap be extended.

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[13] Over two-thirds of domestic customers were on SVTs (Ofgem Retail Energy Markets in 2015).
[14] At October 2017, split between those SVT accounts held for more than three years (34%) and those held for less than three years (23%).(Number of non-price protected domestic customer accounts by supplier: Standard variable, fixed and other tariffs (GB), Ofgem (January 2018).
[15] State of the energy market 2017 report, Ofgem (31 October 2017).
[16] Extend the PPM safeguard tariff for Warm Home Discount consumers. Under the WHD, large energy suppliers are required to provide bill rebates, worth £140 in 2017/18, to low-income and vulnerable households (Warm Home Discount).

Our findings

Market definition

25. Our provisional conclusion is that the appropriate markets for the purposes of this investigation are:

    (a) the supply of electricity to domestic consumers in GB; and

    (b) the supply of gas to domestic consumers in GB.

26. In practice, the conditions of competition are similar for gas and electricity and in our competitive analysis it has not been necessary to distinguish between them.

Counterfactual

27. We assess the possible effects of the Merger on competition compared with the competitive situation that would have prevailed absent the Merger (ie the counterfactual situation). That is, the counterfactual acts as a benchmark against which to assess the competitive effects of the Merger.

28. The Domestic Gas and Electricity (Tariff Cap) Act 2018 (the Default Tariff Cap Act) received Royal Assent and entered into law on 19 July 2018.[17] It requires Ofgem to impose a price cap on all 'standard variable' tariffs and 'default rates' for the supply of energy under domestic supply contracts (the Default Tariff Cap).

29. Ofgem will review the level at which the Default Tariff Cap is set at least every six months. The cap will apply to 2020 and can then be extended annually for, at most, a further three years. Ofgem is required to carry out a review (with the first review to take place in 2020, and then for each year the Default Tariff Cap period is extended) into whether conditions are in place for effective competition for domestic supply contracts, before making a recommendation to the Secretary of State on whether the cap should be extended.

30. There is an expectation that the Default Tariff Cap will be set at a level that is lower than the prevailing SVT prices of each of the larger suppliers. Ofgem, in its May 2018 consultation document, stated that the objective of the Default Tariff Cap would be to protect current and future consumers on SVTs or other

[17] See Victory for consumers as cap on energy tariffs to become law, BEIS (19 July 2018).

default tariffs, and therefore, it expected that consumers on default tariffs paying the highest prices would make 'significant savings' under the cap.[18]

31. We are satisfied that it is likely the Default Tariff Cap will be in place by the end of this year. However, predicting whether the Default Tariff Cap will be extended beyond 2020 is very difficult. Ofgem has responsibility for conducting an annual review of the market and making its recommendations to the Secretary of State on whether the Default Tariff Cap should be extended. Currently, it is unknown how Ofgem will assess whether to recommend to the Secretary of State an extension of the Default Tariff Cap, or how the Secretary of State might make a decision in response to the recommendation. As such, we can only foresee with any degree of certainty that the cap will be in place for the initial two-year period. Therefore, our provisional view is that the relevant counterfactual should take into account a price cap on default tariffs until 2020.

32. In relation to the CMA's remedies under the EMI, while these measures are not yet operational, all of the orders and undertakings required to implement these remedies have now been put in place. Therefore, we considered that the EMI remedies associated with such orders and undertakings should be taken into account in our counterfactual and competitive assessment. Similarly, we have also taken into account the initiatives that have already been introduced by Ofgem to increase consumer engagement. However, the exact form and impact of the EMI remedies and Ofgem's initiatives are currently unknown, and therefore, it is our provisional conclusion that their level of effectiveness in increasing consumer engagement cannot yet be gauged with any certainty.

33. We provisionally found that the current conditions of competition, taking account of the Default Tariff Cap and EMI remedies where appropriate, represent the appropriate counterfactual

34. Finally, we considered whether any account should be taken of the proposed E.ON/RWE transaction.[19] Our provisional view is that we should not take into account the possible impact of this transaction in the counterfactual as both the likelihood that this transaction will complete and the outcomes of any antitrust and regulatory reviews are uncertain.

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[18] Default Tariff Cap: Policy Consultation Overview document, Ofgem (25 May 2018).
[19] See E.ON and RWE: two European energy companies focus their activities, E.ON and RWE (12 March 2018).

Competitive assessment

35. We assessed the effects of the Merger on competition in the supply of electricity and gas to domestic customers in GB.[20] Our competitive assessment distinguishes between acquisition tariffs and default tariffs. However, we note that there is a relationship between these two types of tariffs, particularly since many customers switch between default and acquisition tariffs (whether actively or otherwise), and the SLEFs will consider both when developing their competitive strategy and pricing. We also considered the implications of the Merger on Npower's wholesale supply agreement with Utility Warehouse (the Wholesale Agreement).

Effects of the merger on competition in acquisition tariffs

36. We found that the Parties are not particularly important constraints on each other in acquisition tariff competition. Specifically, there is relatively low level of customer switching between the Parties (less than 10% of each Party's customers who switch supplier, switch to the other Party). Additionally, there are a large number of alternative suppliers, including the SLEFs and the SAMS, that offer many acquisition tariffs which collectively will constrain the Parties following the Merger. This is illustrated by the fact that over half of the Parties' customers who switch supplier, switch to one of the SAMS and the SAMS tend to offer the lowest priced acquisition tariff prices. Although we found evidence that some customers had a preference for one of the SLEFs (or for a supplier with a recognised brand name more generally) we found no significant barriers to switching once customers are engaged.

37. Therefore, in light of the limited switching between the Parties, and the range of alternative suppliers and tariffs available to customers we do not consider it likely that the Parties could profitably increase the prices of their acquisition tariffs as a result of the Merger.

Effects of the merger on competition in default tariffs

38. We then looked at the effects of the Merger on competition in default tariffs. Nearly all of the Parties' default tariff customers are on SVTs and, therefore, our analysis focussed on possible effects on SVTs.

39. We noted that SVT customers are likely to be disengaged and when they become engaged, nearly all customers who switch will choose acquisition

[20] Our function is to assess whether or not an SLC arises as a result of this Merger between SSE Retail and Npower, it is not an investigation into the state of the market and we do not have powers to address any non-Merger specific issues.

tariffs. Therefore, there is no competitive rivalry between the Parties in relation to attracting customers to SVTs.

40. Consequently, we considered whether the Merger might reduce the competitive constraints faced by the Parties in setting SVT prices, depending on the extent of customer switching from one Party's SVT to the other Party's acquisition tariffs. As noted at paragraph 36, customer switching in general between the Parties is low and we found that this was also true for the Parties' SVT customers. Therefore, customer switching between the Parties is unlikely to create an incentive for the Parties to increase SVT prices following the Merger.

41. We also considered the factors which prompt changes to SVT prices, the constraints the SLEFs face when adjusting SVT prices and how these constraints could be affected by the Merger.[21] We found that the main driver for all of the SLEFs, in deciding on changes to their SVTs, is changes in their costs. This applies to both the timing and magnitude of such price changes. Because all the SLEFs face similar cost drivers, they are all likely to experience pressure to change prices at around the same time which leads to 'rounds' of price changes. We have also found that the SLEFs monitor the SVT price changes of the other SLEFs and take this into account when deciding their own SVT price changes.

42. We found that the main constraint on suppliers when adjusting SVT prices is that any SVT price change increases the likelihood that their customers will become engaged and switch, either to an alternative supplier's acquisition tariff (external switching), or to the supplier's own lower priced and lower margin acquisition tariffs (internal switching). SVT price changes prompt an increase in SVT customer switching above and beyond the underlying rate of SVT losses which the SLEFs experience throughout the year.

43. We found that this increase in customer switching arises because SVT customers receive a number of prompts to engage when SVT prices change. Some of these prompts originate from the supplier, for example the notification of a price increase or the receipt of a higher bill. They also include external prompts from the media (which includes the press and other market participants such as price comparison websites).[22] In this regard, we received

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[21] In our analysis we focussed on the SLEFs' SVTs because of the evidence that they have a considerably greater number of customers on default tariffs than other suppliers, the SLEFs' SVT price announcements are more prominent than those of the other suppliers and we received evidence that each of the SLEFs pays particular attention to the likely timing and magnitude of SVT price changes by the other large energy suppliers when setting their own SVT prices.

[22] Media prompts can arise through a variety of forms of communication such as newspapers, television programmes, on-line consumer websites or through price comparison websites advertising and contacting potential customers.

evidence that the SLEFs consider how their proposed SVT price change will be perceived in the wider market context. This leads the SLEFs to consider the positioning of their proposed SVT price change relative to those of the other large energy firms, despite the fact that customers do not generally switch directly between these tariffs.

44. We found that the SLEFs tend to anticipate that they are likely to suffer more SVT losses if they announce a price increase which is larger than the increases of the other large energy firms.

45. Accordingly, we received evidence of the Parties seeking to predict the likely timing and magnitude of price announcements of the other large energy firms and seeking to limit their price increase, so as not to be an outlier, and/or estimating higher customer losses if their price increase is out of line with those of the other large energy firms. We have also observed examples of the Parties adjusting their planned default tariff price changes in response to announcements by the other large energy firms. We refer to this behaviour as 'benchmarking'.

46. The SLEFs also expect to suffer increased SVT customer losses in response to a SVT price announcement if they are the first of the SLEFs to announce a change. The Parties, the other large energy firms and consumer groups told us that this is because the first supplier to announce is likely to receive significantly more media attention than would otherwise have been the case. Such media attention can not only have an immediate effect on customer switching but can also have wider adverse reputation effects.

47. Overall, we found that if one of the SLEFs announces a bigger price increase than the other large energy firms, or is the first SLEF to announce, it is likely to receive increased media interest and scrutiny. This media interest is likely to draw particular attention to that supplier, alerting its own customers more than those of other SLEFs, and this is likely to result in increased engagement and possible switching by its SVT customers.

48. Therefore, we considered whether a reduction in the number of large energy firms (from six to five) as a result of the Merger, and hence the number of relevant comparators they may benchmark against, would reduce any constraints on, first, the size, and second, the timing of any price changes of SVTs.

Benchmarking constraint on the size of SVT price changes

49. Our theory of harm is that the Merger, by reducing the number of large energy firms and therefore eliminating an important comparator, and/or by eliminating

a particular important comparator for the other large energy suppliers, might reduce the benchmarking constraint on the size of SVT price changes. We noted that a change in the benchmarking constraint could affect the pricing of any of the SLEFs, not just of the Parties.

50. Although we received evidence showing that suppliers do consider the positioning of their SVT price relative to the SVT prices of the other large energy firms, we found no indications that the SVT price changes of SSE are of any more importance to Npower than the price changes of any of the other large energy firms (or vice versa). There are no indications that either of the Parties is seen as a particular price leader, nor that any of the other large energy firms regard either of the Parties as particularly important when setting their own SVT prices.

51. Rather, each of the SLEFs seeks to position its SVT price appropriately relative to the range of SVT prices offered by the other SLEFs. Currently each of the SLEFs positions its SVT price with reference to the SVTs of the other five large suppliers; we expect that following the Merger each of the remaining large suppliers will continue to pay regard to the SVT prices of the other four large suppliers. We consider it unlikely that a reduction in the number of comparators faced by each of the large suppliers from five to four would have a significant impact on the constraints faced by each of the large suppliers in setting their SVT prices. Consequently, we do not expect that the Merger will significantly change the likelihood that a supplier will announce a price change which is out of line with the range announced by the other suppliers.

52. Additionally, when suppliers consider SVT price changes, they take into account a number of factors, of which the impact of cost changes and the effect of the price change itself on customer retention are the most important. These other factors will be unaffected by the Merger and will continue to determine the Parties' (and other suppliers') pricing following the Merger to the same extent as before.

53. In summary, our provisional view is that the Merger is unlikely to substantially lessen competition, in respect of the benchmarking effect on default price levels, for the following reasons:

    (a) we consider that the reduction in the number of large energy firms from six to five will not significantly change how they benchmark their price levels. In other words, the Merger will not significantly change the likelihood that a large supplier would announce a price change which is out of line with the range of price changes announced by the other large suppliers, as there will be sufficient comparators post-Merger;

(b) the Parties do not assign any particular significance to the other Party in benchmarking, and neither of the Parties appears to have a price leadership role (in timing or level) or to have prompted the other SLEFs to reconsider their proposed SVT price changes; and

(c) a number of other factors, such as cost changes and the effects of the price change itself on customer switching, play a more important role in the SLEFs' determination of the size of SVT price changes. These factors will not be affected by the Merger and will continue to determine the large energy firms' SVT prices following the Merger.

Effects of the Merger on the timing of the SLEFs' SVT price changes

54. As noted in paragraph 46, where one of the SLEFs is the first to increase its SVT price, there is likely to be an increase in its customer losses. This firm can seek to reduce its chances of being the first-mover by delaying its price change announcement in the hope that the delay will allow another supplier to announce first. However, such a delay is likely to be costly since potential increases in revenue are likely to be foregone.[23]

55. We have considered the possibility that the Merger may create incentives for each of the SLEFs to announce SVT price increases earlier. The Merger could do this because, by reducing the number of large energy firms, the Merger reduces the benefit to each firm of delaying their price announcement. This is because with fewer large energy firms setting a SVT, there is less chance that another large supplier will announce first. If the probability of gaining benefits by delaying a SVT price announcement is decreased, this may create an incentive for suppliers to announce SVT price changes earlier. If, post-Merger, the large suppliers brought forward price increases, even if only by a few days or weeks, this could have a substantial effect on customers given that the incentives would apply to the other large suppliers and given the number of customers involved.

56. The evidence suggests that the costs of delaying a price announcement are significant (in terms of lost profit) while the benefit of avoiding being the first of the SLEFs to announce a price change (if another SLEF announces a price change first in the period of delay) is relatively modest. This indicates that, while the Parties might prefer not to be the first of the SLEFs to announce, they currently have a relatively small incentive to delay price changes in order

[23] A supplier may decide that a delay will then require a higher price announcement, to offset the revenue otherwise foregone. But this large price rise will further increase the risk of customers switching. We received evidence from a number of suppliers discussing the costs associated with delaying price announcements.

to achieve this. This is especially so given the uncertainty as to whether a delay will allow the Parties to avoid being the first of the SLEFs to announce.

57. Our review of the Parties' internal documents shows that relatively little consideration is given to this trade-off when deciding on the timing of an SVT price change. Moreover, the effects of the Merger on this decision is likely to be small, since there will continue to be four (rather than five) other large suppliers who could be the first to announce a price change.

58. Therefore, we have provisionally concluded that the Merger will not lead the large suppliers to announce SVT price increases earlier because:

(a) the costs of delaying a price increase in order to see if another one of the SLEFs increases price first are high. Meanwhile, the benefits of avoiding the first-mover costs of an increased loss of SVT customers (and therefore, the potential benefits of delaying a price increase) are relatively small. This suggests that the possibility of delaying a price announcement in the hope of avoiding being the first supplier to announce plays only a limited role in a supplier's decision regarding the timing of a price announcement;

(b) consistent with this, our review of the Parties' internal documents indicates that the potential to delay price announcements in order to avoid being the first supplier to announce plays only a limited role in decisions regarding the timing of price announcements; and

(c) further, the effect of the Merger on any incentives to delay price announcements in order to avoid being the first of the large suppliers to announce is likely to be small since there will continue to be four other large suppliers who could announce following a delay.

Impact of the Merger on the Utility Warehouse Wholesale Agreement

59. We also considered whether the Merger could create an incentive on MergeCo to increase the wholesale price for Utility Warehouse, either to foreclose Utility Warehouse (totally or partially), or to increase MergeCo's profits from the Wholesale Agreement.

60. The wholesale price paid by Utility Warehouse to Npower is set by reference to the SVT prices of all the SLEFs. Pre-Merger, Npower can affect the wholesale price by varying its own SVT price. After the Merger, MergeCo will have greater influence because it will control the SVT price of two of the six inputs used to calculate the wholesale price.

61. Our provisional view is that we do not consider that MergeCo would have an incentive to totally or partially foreclose Utility Warehouse:

(a) regarding total foreclosure, the profit that MergeCo would lose from the wholesale agreement, in the event that it foreclosed Utility Warehouse, would be greater than the increased profit that MergeCo could expect to gain from Utility Warehouse customers switching to MergeCo; and

(b) regarding partial foreclosure, the Merger may slightly increase the profitability of partially foreclosing Utility Warehouse. However, we have found that the additional revenue from such a strategy would be small. In addition, in order to engage in a partial foreclosure strategy, MergeCo would have to significantly raise its own SVT prices, which would lead to additional customer losses and consequently significantly reduce profitability. Therefore, in our view it would not be profitable for MergeCo to partially foreclose Utility Warehouse and as such MergeCo would not have an incentive to do so.

62. We also considered whether the Merger would create incentives for MergeCo to increase Utility Warehouse's wholesale price in order to increase its profit from the Wholesale Agreement. However, we found that this was unlikely to be the case. While MergeCo would have to implement a smaller SVT price increase than Npower to achieve a given increase in Utility Warehouse's wholesale price, it would have to implement this SVT price increase across a significantly larger customer base. As a result, MergeCo's foregone profits may be similar to those of Npower's prior to the Merger. Consequently, it is our provisional view that this effect is not likely to provide a greater incentive (than already applies) for MergeCo to increase SVT prices with the specific intention of increasing Utility Warehouse's wholesale price.

63. Consequently, our provisional conclusion is that the Merger is not likely to lead to the foreclosure of Utility Warehouse, nor any substantial incentive for MergeCo to increase the wholesale price it charges Utility Warehouse. Additionally, we note that the Default Tariff Cap is likely to restrict any such possibility while it is in place.

Other considerations

64. We have also considered the possible effects of the Merger on:

(a) service quality;

(b) price leadership in regard to default tariffs, specifically by British Gas and MergeCo; and

(c) the Parties' ability to use profits from default tariff customers to offer low acquisition tariff prices which could then detrimentally affect the growth of the SAMS and their incentives to innovate.

However, we did not find evidence that the Merger would diminish competition for these reasons, and so our provisional view is that the Merger is not likely to give rise to an SLC as a result of these.

65. Additionally, we have considered the relevance of a number of potential mitigating factors which have been put to us by the Parties, namely the Default Tariff Cap (which can be expected to constrain the pricing of default tariffs while it is in place), the possibility of entry and expansion, and possible efficiencies from the Merger. As we have provisionally concluded that the Merger is not likely to give rise to an SLC, we did not need to reach a view on the impact of these potential factors.

Provisional conclusion

66. We have provisionally concluded that the proposed Merger may not be expected to result in a substantial lessening of competition in the supply of electricity to domestic customers in GB and the supply of gas to domestic customers in GB.