

Decision to launch a review of the Energy Market Investigation (Prepayment Charges Restriction) Order 2016

Introduction and statutory duties

1. The Competition and Markets Authority (CMA) has decided to launch a review of the [Energy Market Investigation \(Prepayment Charge Restriction\) Order 2016 \(the Order\)](#). The Order was one component of a package of remedies put in place to address adverse effects on competition affecting prepayment energy customers identified during the CMA's energy market investigation.
2. The Order imposes a restriction on the unit rate and standing charge for those tariffs made available to domestic customers on prepayment meters by retail energy suppliers (both electricity and gas) until the end of 2020.
3. The CMA has a statutory duty, under Section 162 of the Enterprise Act 2002, to keep under review enforcement orders. From time to time, the CMA must consider whether, by reason of any change of circumstances, an order is no longer appropriate and needs to be varied or revoked.
4. The CMA has set out in its published guidance, *Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders (CMA11)*,¹ that in launching a review, the CMA will consider its published prioritisation principles and whether there is a realistic prospect of finding a change of circumstances (CMA11, paragraph 3.10).
5. The final report in the energy market investigation published on 24 June 2016 (the Final Report) provided for the Order to be subject to a mid-term review, commencing in January 2019, concerning the progress made in the roll-out of smart meters in Great Britain.² The CMA's decision to launch a review follows its consultation on the proposed review and its scope, and consideration of the responses to that consultation.

¹ See the [CMA's guidance on remedy reviews, CMA11](#).

Background

6. On 26 June 2014, Ofgem made a reference to the CMA for an investigation into the supply and acquisition of energy in Great Britain. The CMA investigated the matters referred to it and concluded that there were features of the markets for the supply and acquisition of energy in Great Britain which, either alone or in combination, prevented, restricted or distorted competition; and that there were adverse effects on competition (AECs). Two of the AECs identified by the CMA in the Final Report were the Domestic Weak Customer Response AEC and the Prepayment AEC (as defined in the Final Report).
7. In its Final Report, the CMA decided on a package of measures to remedy, mitigate or prevent these AECs and/or associated detriment that it found. The CMA decided to implement a prepayment charge restriction for the tariffs made available (either directly or indirectly) or applied to domestic customers on prepayment meters by energy suppliers. Accordingly, on 7 December 2016 the CMA adopted the Order.
8. The Order requires retail electricity and gas suppliers to ensure that the aggregate amounts of all charges for gas and electricity to retail prepayment customers do not exceed the relevant maximum charges for each charge restriction period. The Order also imposes a monitoring and compliance regime. Schedules 1 and 2 to the Order set out the details of the determination of relevant maximum charges and benchmark maximum charges for charge restriction periods for gas and electricity.
9. On 6 November 2018, the Gas and Energy Markets Authority (GEMA) adopted a charge restriction applying to certain energy tariffs.³

Consultation on the proposed review and its scope

10. On 21 December 2018, the CMA consulted on a proposed review to assess whether, by reason of any change of circumstances affecting the roll-out of smart meters, or the policy costs and DCC costs incurred by energy suppliers, the Order is no longer appropriate and needs to be varied or revoked.⁴

³ See Ofgem website for details. The Domestic Gas and Electricity (Tariff Cap) Act 2018, introduced by Parliament on 19th July 2018, requires that any customers already benefiting from the prepayment meter price cap or a vulnerable price cap, are exempt from the default tariff cap. Those prepayment consumers on default tariffs with SMETS 2 smart meters are not protected by the prepayment tariff cap and are therefore in scope of the default tariff cap.

⁴ The CMA's calculations underlying the initial benchmark figures are set out in Annex 1 to the Gas Supply Licence Condition 28A and in Annex 1 to the Electricity Supply Licence Condition 28A concerning the 'policy cost allowance' and the DCC costs element of the 'indirect cost allowance'.

11. The CMA received responses from 14 parties to its invitation to comment, including energy suppliers, a trade association, a representative of consumer interests and the sector regulator Ofgem. Respondents were supportive of the CMA prioritising the Order for review at this time, and provided a number of different reasons for this.
12. In relation to the rollout of smart meters, some respondents highlighted evidence of this being slower than anticipated when the Order was adopted.
13. Many respondents highlighted the introduction of GEMA's charge restriction as a potential change in circumstances, noting the difference in methodology and underlying data between the CMA's prepayment charge restriction and GEMA's charge restriction. A small number of respondents highlighted the risk that the coexistence of the CMA's prepayment charge restriction and GEMA's charge restriction could be generating unintended consequences, including reducing consumer incentives to obtain a smart meter and therefore slowing down the smart-meter roll out.
14. Further, a majority of respondents, including energy suppliers and Ofgem, were in favour of the CMA carrying out a review that considered the broader consistency and effects arising from the presence of the CMA's prepayment charge restriction and GEMA's charge restriction, rather than restricting this assessment to the two areas of difference identified in the invitation to comment.

Change of circumstances

15. In considering whether to launch a review, the CMA has assessed whether or not there is a realistic prospect of finding a change of circumstances, such that the Order may no longer be required, or may need to be varied. We set out below the main changes relevant to this review.
16. In relation to the speed of rollout of smart meters, on 23 November 2018, the National Audit Office published its report into the rolling out of smart meters, in which it highlighted that, '*the number of smart meters installed by 2020 will fall materially short of the [Business, Energy and Industrial Strategy] Department's original ambitions*'.⁵ This is relevant to the CMA's assessment as the CMA's prepayment charge restriction was designed to end at a time when the rollout of SMETS 2 smart meters was expected to have been

⁵ Paragraph 14 of the Summary of '[Rolling out smart meters](#)', NAO, 23 November 2018, HC 1680.

completed.⁶ It now appears that this process is taking longer than anticipated by BEIS.

17. The CMA also notes that the introduction of GEMA's charge restriction may create a risk of unintended consequences for competition, consumers and the rollout of smart meters, arising from the fact that the relative level of these two charge restrictions will vary over time. This is because, compared to the CMA's prepayment charge restriction, GEMA's charge restriction relies on a different and updated methodology and set of data in relation to a number of costs components, including (but not limited to) in relation to DCC and policy costs.

Prioritisation assessment

18. In order to make the best use of its resources, the CMA needs to ensure that it makes appropriate decisions about which projects and programmes of work are undertaken across all areas of responsibility. In taking this decision to launch a review of the Order, the CMA took into consideration its published [prioritisation principles](#), as follows, and concluded that these factors justify prioritising a review.
19. Concerning the impact of this review, the CMA notes that the prepayment charge restriction was intended to reduce prepayment customers' bills by around £300 million per year. Imposing a restriction on pricing can have a significant impact on both suppliers and consumers.
20. The CMA considers that the review represents a strategic priority as energy markets remain an important area for consumers and hence the CMA. More specifically, the CMA notes that prepayment meters are often used by vulnerable consumers, and it is appropriate for the CMA to continue to focus on this area and ensure these customers continue to be protected in an effective and proportionate way and without creating unintended consequences for consumers or competition.

⁶ The Final Report provided for the Order to be subject to a mid-term review, commencing in January 2019. This review was intended to examine the progress made in the rollout of smart meters (including SMETS 2 smart meters). Information on the progress in rolling out smart meters was envisaged to allow the CMA to determine whether the prepayment charge restriction would need to be revoked early (where smart meter rollout was likely to complete earlier than expected), or whether to recommend Ofgem to review the situation and decide whether to take further measures to protect prepayment customers for a longer period of time (where smart meter rollout was taking longer than envisaged when the Order was created).

21. In relation to risk, the CMA has obtained the views of interested parties, and having taken into account the comments received decided to broaden the scope of its review to address these comments.
22. Regarding the resources involved in the review, the CMA considers that conducting a review would involve a relatively modest amount of resources.

Decision to review the Order

23. On the basis of the information available to the CMA, its consideration of responses to the invitation to comment and of the CMA's prioritisation principles, the CMA has decided to conduct a review of the Order.
24. The CMA will determine whether the Order remains appropriate and if not, whether it needs to be varied or revoked, by reason of any change of circumstances relating to:
 - the speed and scale of smart meter roll-out and the expected number of smart meters expected to be installed by the end of 2020;
 - the introduction by GEMA of a charge restriction for customers on default tariffs, taking into consideration the risk of unintended consequences on competition, consumers and the smart meter rollout arising from the coexistence in the retail energy markets of two charge restrictions with different methodologies and underlying data.

Next steps

25. The review will be undertaken by a group of CMA panel members, appointed by the CMA panel chair. The group of panel members will be advised by a case team of CMA staff. The CMA will also, as appropriate, seek the advice of Ofgem, the sector regulator of gas and electricity markets in the UK.
26. Further information on the process for conducting a review of an existing remedy is outlined in CMA11 and further information on the conduct of this review will be published on the case page, which will be kept updated.
27. The CMA is keen to hear views and evidence from all interested parties to help it carry out this review and reach a conclusion on whether there has been a relevant change in circumstances in this sector, such that the Order should be varied, or revoked.
28. The CMA will publish a statement of issues and a full timetable for the review in due course, however in advance of this, representations to the review may be made as follows:

remedies.reviews@cma.gov.uk

Or:

Energy Prepayment Review
Competition and Markets Authority
Victoria House (6th Floor South East)
37 Southampton Row
London WC1B 4AD