

## **Review of the Energy Market Investigation (Prepayment Charge Restriction) Order 2016**

### **Statement of issues**

**19 February 2019**

#### **Introduction**

1. The CMA launched its review of the Energy Market Investigation (Prepayment Charge Restriction) Order 2016 (the Order) on 31 January 2019. The Order was put in place following the CMA's market investigation into energy which completed in 2016.
2. The CMA has a statutory duty to keep under review Orders from its investigations. 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. The CMA's decision to conduct a review of the Order was made pursuant to the guidance in CMA11.<sup>1</sup>
3. During this review, the CMA will consider whether there has been a change of circumstances, such that the Order is no longer appropriate in dealing with the competition problem or adverse effects which it was designed to remedy. If the CMA finds such a change of circumstance in this review, it will consider whether the Order needs to be varied or revoked.
4. This statement of issues sets out the main issues that we expect to consider as part of the review and in reaching our decision. This does not preclude the consideration of any other issues that may be identified during the course of the review.
5. We are publishing this issues statement to assist interested parties in submitting evidence to focus on the issues that we consider to be most relevant to our review and we also invite interested parties to notify us if there are any additional relevant issues they consider we should examine.

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<sup>1</sup> CMA11, Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and Orders can be found on the CMA's website.

## Background

### *Concerns and action specific to prepayment meter customers*

6. In its [final report](#) into the energy market investigation, the CMA decided on a package of measures to remedy, mitigate or prevent the adverse effects on competition (AECs) and associated detriment that it found.
7. Two of the AECs identified by the CMA were the Domestic Weak Customer Response AEC and the Prepayment AEC.
8. The features identified by the CMA as giving rise to the Domestic Weak Customer Response AEC were the following:
  - (a) Customers have limited awareness of, and interest in, their ability to switch energy supplier, which arises in particular from the following fundamental characteristics of the domestic retail gas and electricity supply markets: (i) the homogeneous nature of gas and electricity; and (ii) the role of traditional meters and bills.
  - (b) Customers face actual and perceived barriers to accessing and assessing information arising, in particular, from the following aspects of the domestic retail gas and electricity markets: (i) the complex information provided in bills and the structure of tariffs; and (ii) a lack of confidence in, and access to, price comparison websites (PCWs) by certain categories of customers, including the less well-educated and the less well-off.
  - (c) Customers face actual and perceived barriers to switching, such as where they experience erroneous transfers which have the potential to cause material detriment to those who suffer from them.
9. In addition, the CMA found that there are additional aspects of the prepayment meter segments that contribute to the features of the Domestic Weak Customer Response AEC. In particular, the CMA found that prepayment customers face:
  - (a) higher actual and perceived barriers to accessing and assessing information about switching arising, in particular, from relatively low access to the internet and confidence in using PCWs; and
  - (b) higher actual and perceived barriers to switching arising, in particular, from: (i) the need to change meter to switch to a wider range of tariffs (and the obstacles associated with this requirement such as perceptions of the complexity of the meter replacement process); and (ii) restrictions

arising from the Debt Assignment Protocol hindering indebted prepayment customers' ability to switch supplier.

10. The features identified by the CMA as giving rise to the Prepayment AEC were the following:
  - (a) technical constraints that limit the ability of all suppliers, and in particular new entrants, to compete to acquire prepayment customers, and to innovate by offering tariff structures that meet demand from prepayment customers who do not have a smart meter; and
  - (b) softened incentives on all suppliers, and in particular new entrants, to compete to acquire prepayment customers due to: (i) actual and perceived higher costs to engage with, and acquire, prepayment customers compared with other customers; and (ii) a low prospect of successfully completing the switch of indebted customers, who represent about 7 to 10% of prepayment customers.
11. The CMA decided on a package of remedies to remedy, mitigate or prevent the AECs and/or associated detriment that it found that included 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.
12. 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 calculated in accordance with the Order 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.
13. The explanatory note to the Order explains that:

*'the Prepayment Charge Restriction (ie the price cap) will apply from 1 April 2017 until 31 December 2020. Pursuant to the Report, the Prepayment Charge Restriction will be subject to a mid-term review commencing in January 2019 of the progress that has been made concerning the roll-out of smart meters (including SMETS 2 smart meters). In the event that such roll-out were materially ahead of (or behind) schedule, the CMA will consider whether to revoke the Order early (or recommend that GEMA consider introducing further measure to*

*protect prepayment customers until the roll-out is substantially completed) in light of such a change of circumstances.’<sup>2</sup>*

### **Reasons for launch of the review**

14. As explained above, the CMA proposed, at the time the Order was created, to carry out a mid-term review, commencing in January 2019. This was intended to examine the extent to which the rollout of smart meters was ahead or behind the Government’s target.
15. On 19 July 2018, the Domestic Gas and Electricity (Tariff Cap) Act 2018 came into force. This legislation required the introduction of a [temporary tariff cap for customers on Standard Variable and default tariffs](#). Consequently, on 6 November 2018, the Gas and Electricity Markets Authority (GEMA) announced it would introduce a default tariff charge restriction from 1 January 2019.
16. In the light of developments including the pace of smart meter rollout and the introduction of the additional charge restriction, on 18 December 2018, the CMA consulted on a proposed review to assess whether the Order was no longer appropriate and needed to be varied or revoked.
17. 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’s review, which was launched on 31 January 2019, has a broader scope including the matters described below.

### **Issues to be considered in the review of the Order**

18. The following section sets out the evidence available to the CMA, and matters on which it would be grateful to receive evidence and views from interested parties during this review.

### **Potential changes of circumstance**

19. The CMA will determine whether the Order is no longer appropriate and needs to be varied or revoked, by reason of any change of circumstances relating to:

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<sup>2</sup> Paragraph 16 of Explanatory note: The Energy Market Investigation (Prepayment Charge Restriction) Order 2016.

- the speed and scale of smart meter roll-out and the estimated 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 differing methodologies and underlying data.

### *Rollout of smart meters*

20. Evidence from the National Audit Office shows that the rollout of smart meters is taking place at a slower rate than anticipated in 2016.<sup>3</sup>
21. During the course of this review, we will seek views and evidence from interested parties in relation to the following matters:
- the speed of rollout of smart meters to date, including both SMETS1 and SMETS2;<sup>4</sup>
  - the expectations for the speed of rollout of both SMETS1 and SMETS2 meters in the future, including the extent to which these will be rolled out by the end of 2020, (including plans for interoperability of SMETS1 meters), when the CMA's charge restriction expires;
  - where appropriate, the causes of slower rollout of smart meters and action that is and could be taken to increase this, and its likely impact; and
  - any other relevant evidence related to the rollout of smart meters that interested parties consider the CMA should take into account.

### *GEMA's charge restriction on default tariffs*

22. The CMA has concerns that the coexistence of the Order (which covers prepayment customers) with GEMA's charge restriction (which covers standard meter customers with standard variable and default tariffs) creates a risk of unintended consequences. During the course of this review, we will

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<sup>3</sup> See [NAO website](#) for details of its investigation and report.

<sup>4</sup> Smart meters can give users near real-time information on energy use. There are two types being installed. SMETS1 meters are smart meters operating on energy supplier's communication networks. SMETS2 meters allow easy switching and better remote reading compared to SMETS1 and function using a central communication network. More information can be found on [Ofgem's website](#).

seek views and evidence relating to the following matters related to the two charge restrictions:

- the impact of the CMA's ongoing charge restriction for prepayment meter customers;
- the impact of the introduction of GEMA's charge restriction on final consumers and on competition between retail providers of energy given the CMA's existing charge restriction for prepayment meter customers;
- the difference in methodology and underlying data used by GEMA in its charge restriction when compared to that used by the CMA;
- the scope for unintended consequences arising from there now being two charge restrictions in the energy market, including:
  - the impact of these two charge restrictions on smart meter rollout and customer incentives to request smart meters;
  - the incentives on suppliers and competition;
- any other relevant evidence related to the two charge restrictions that interested parties consider the CMA should take into account.

23. The CMA highlights that this review will not be examining the extent to which the features identified in the original investigation are continuing with the same intensity as at the time of that investigation.

### ***Potential outcomes of the review***

24. Should the CMA conclude that, by reason of any change of circumstances, the Order is no longer appropriate and needs to be varied or revoked, the CMA would need to consider the following matters, on which it will seek views and evidence from interested parties:
- how to ensure continued protection for prepayment meter customers until the rollout of smart meters has concluded; and specifically
  - whether it would be more appropriate to vary the CMA's Order or to revoke it and, linked to this matter, whether to recommend:
    - an extension of GEMA's charge restriction to cover prepayment meter customers, or

- that GEMA introduce a new charge restriction covering pre-payment meter customers.

## **Responses to this statement of issues**

25. Any interested party wishing to respond to this issues statement should do so in writing by no later than by 15 March 2019. Responses to the invitation to comment on the proposed review published on 18 December 2018 will be taken into account when reviewing submissions in response to this statement of issues.
26. In this statement, we have highlighted areas where we would particularly welcome submissions. To provide views and evidence to the review team, please email:

[Remedies.reviews@cma.gov.uk](mailto:Remedies.reviews@cma.gov.uk)

Or write to:

Energy Prepayment Review  
Competition and Markets Authority  
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37 Southampton Row  
London WC1B 4AD