

## **Directions to Daligas Ltd issued under the Energy Market Investigation (Microbusinesses) Order 2016**

1. On 26 June 2014, the Gas and Electricity Markets Authority in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act) (as provided for by section 36A of the Gas Act 1986 and section 43 of the Electricity Act 1989), made an ordinary reference to the Chair of the Competition and Markets Authority (CMA) for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for an investigation into the supply and acquisition of energy in Great Britain.
2. The CMA investigated the matters referred to it and concluded (a) in accordance with section 134(1) of the Act that there are features of the markets for the supply and acquisition of energy in Great Britain which, either alone or in combination, prevent, restrict or distort competition; and (b) in accordance with section 134(2) of the Act, that there are various adverse effects on competition (AECs). The CMA published its findings in a report under section 136 of the Act entitled [Energy market investigation: Final report](#) on 24 June 2016 (the Report).
3. One of the AECs identified by the CMA was the Microbusiness Weak Customer Response AEC. The features identified by the CMA as giving rise to the Microbusiness 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 markets for the supply of energy to SMEs: (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 markets for retail energy supply to SMEs:
    - i. a general lack of price transparency concerning the tariffs that are available to microbusinesses, which results from many microbusiness tariffs not being published; a substantial proportion of microbusiness tariffs being individually negotiated between customer and supplier; and from the nascent state of price comparison websites (PCWs) for non-domestic customers; and
    - ii. the role of third party intermediaries (TPIs), in relation to which:
      1. a number of complaints have been made by non-domestic customers to various official bodies concerning alleged TPI malpractice, which

may have reduced the level of trust in all TPIs and discouraged engagement more generally; and

2. the CMA noted a lack of transparency as well as the existence of incentives not to give non-domestic customers the best possible deal. This is exacerbated by the lack of easily available benchmark prices, and the fact that many tariffs are not published.
- c. Some microbusiness consumers are on auto-rollover contracts, and are given a narrow window in which to switch supplier or tariff, which may limit their ability to engage with the markets.
4. The CMA considered, in accordance with section 134(4) of the Act, (a) whether action should be taken by it for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; and (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
5. In the Report, the CMA decided on a package of remedies to remedy, mitigate or prevent the AECs and/or associated detriment that it found.
6. One of these remedies was the [Energy Market Investigation \(Microbusinesses\) Order 2016](#) (the Order). The Order requires all retail energy suppliers in Great Britain:
  - a. to disclose certain information on their website or third party online platforms about the prices they charge or offer microbusiness customers to supply them with electricity or gas (or both) (Part 2 of the Order)
  - b. not to include terms in their auto-rollover contracts with microbusiness customers that restrict when such customers can give notice to terminate the contract or from charging such customers a termination fee in certain circumstances (Part 3 of the Order) and
  - c. to submit, on an annual basis, a Microbusiness Remedy Compliance Statement to the CMA, with the first statement to be submitted to the CMA on 15 December 2017 (Part 4 of the Order).
7. The Order came into force on 15 December 2016 except for Articles 3, 4 and 5, which came into force on 26 June 2017.

#### **Daligas' failure to comply with the Order**

8. Daligas failed to submit the first Microbusiness Remedy Compliance Statement on 15 December 2017 as required under the terms of the Order (see paragraph

6c). The CMA contacted Daligas on numerous occasions<sup>1</sup> to bring to its attention the breach of the Order. However, Daligas did not provide the CMA with a satisfactory explanation for why it was not in a position to comply with the Order.

9. Daligas submitted a compliance statement to the CMA on 30 April 2018. However, on examination of Daligas' website it became apparent that it was not compliant with Article 3 of the Order, relating to its obligation to disclose Required Price Information (as defined in the Order) to Relevant Micro Business Customers (as defined in the Order).
10. Having taken into consideration the extent of Daligas' non-compliance with Article 3 of the Order (described at paragraph 9 above), and the potential detriment to microbusinesses customers arising from non-compliance, the CMA has decided to give directions to Daligas.
11. On 21 May the CMA provided Daligas with draft directions specifying and describing the steps to be taken by Daligas for the purposes of securing future compliance with the Order.
12. Daligas has failed to respond to the CMA's draft directions.

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<sup>1</sup> Including email dated 5 February 2018; email dated 19 February 2018; email dated 28 February 2018; telephone call and email dated 13 March 2018; email dated 16 March 2018; letter of 4 April 2018; email of 13 April 2018; telephone call and email of 25 April 2018.

## **Directions issued under the Energy Market Investigation (Microbusinesses) Order 2016**

The CMA gives these directions (the Directions) to Daligas Ltd, with company number 07908584 and registered address at 152-154 Coles Green Road, London, NW2 7HD (Daligas) under Article 10 of the Energy Market Investigation (Microbusinesses) Order 2016 (the Order).

### **1. Commencement and Duration**

- 1.1 The Directions come into force on 5 July 2018.
- 1.2 The Directions continue to remain in force until such time as they are varied or revoked by the CMA under the Order. The variation or revocation of these Directions does not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

### **2. Interpretation**

- 2.1 In the Directions terms have the same meaning as in the Order, unless stated otherwise.

### **3. Actions specified with respect to complying with Article 3 of the Order**

- 3.1 By 5 August 2018, Daligas shall disclose the Required Price Information in the Prescribed Format promptly to each Relevant Micro Business Customer on its Website or on one or more Third Party Online Platforms.
- 3.2 Where Daligas discloses the Required Price Information on its Website, Daligas must ensure that access to the Required Price Information is displayed clearly and prominently.
- 3.3 Where Daligas discloses the Required Price Information through a Third Party Online Platform, Daligas must ensure that a web-link to the Third Party Online Platform is displayed clearly and prominently on its Website.

### **4. Actions specified with respect to monitoring compliance**

- 4.1 Daligas shall provide to the CMA Additional Compliance Reports by the following dates:
  - a. 12 October 2018 (with respect to the period running from 5 July 2018 to 30 September 2018);
  - b. 12 January 2019 (with respect to the period running from 1 October 2018 to 31 December 2018); with Daligas submitting annual compliance statements by 15 December each succeeding year.
- 4.2 An Additional Compliance Report must contain a web-link to Daligas' webpage where the Relevant Price Information is displayed clearly and prominently, or

where the web-link to a Third Party Online Platform is displayed clearly and prominently. In addition, the Additional Compliance Reports must include a copy of Daligas' standard Microbusiness Customer Contract terms and conditions.

- 4.3 Daligas must ensure that each Additional Compliance Report is signed by Daligas' Chief Executive Officer, the Managing Director or any Director responsible for Micro Business Consumer Contracts at Daligas, in accordance with Article 9.4 of the Order.
- 4.4 For the purposes of paragraph 4.1 of the Directions, an Additional Compliance Report is a statement to be provided by Daligas to the CMA, in addition to the annual Microbusiness Remedy Compliance Statement referred to in Article 9 of the Order, in the form prescribed in Schedule 5 to the Order and containing the information set out in paragraph 4.2 of the Directions.