

ENERGY MARKET INVESTIGATION

The Energy Market Investigation (Gas Tariff Codes) Undertakings 2016

Notice of acceptance of Final Undertakings given under sections 159 and 165 of, and Schedule 10 to, the Enterprise Act 2002

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority (GEMA), 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 (GA86) and section 43 of the Electricity Act 1989 (EA89)), 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.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act 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 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 Prepayment AEC.
4. 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

¹ [Energy market investigation terms of reference.](#)

- (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.
5. 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.
 6. 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. Among other things, the CMA decided to seek undertakings from relevant gas suppliers (Centrica plc, EDF Energy plc, E.ON UK plc, RWE npower plc, Scottish and Southern Energy plc and Scottish Power Ltd) including the following three components: (a) a cap on the number of gas tariff pages that each relevant gas supplier can hold at no more than 12; (b) an obligation on the relevant gas suppliers to provide relevant information for GEMA to monitor the allocation of the gas tariff codes; and (c) an undertaking from the relevant gas suppliers to follow a direction from GEMA to transfer one or more gas tariff pages to another supplier.
 7. The CMA also recommended that, absent such undertakings, GEMA should introduce a new licence condition in suppliers' standard licence conditions, to implement this remedy.
 8. On 20 October 2016, in accordance with section 165 of, and paragraph 2(1)(a) of Schedule 10 to, the Act, the CMA gave notice of its intention (the Notice of Intention) to accept undertakings on the terms attached to the Notice of Intention (the Draft Undertakings). The Notice of Intention and the Draft Undertakings were published on the CMA website for consultation (the Consultation).
 9. The CMA has considered the representations received in response to the Notice of Intention and has decided to accept the undertakings in the form consulted upon without any material changes.
 10. Pursuant to sections 138 and 159 of the Act, the CMA now accepts the following undertakings (collectively, the Undertakings) given, on their behalf

and on behalf and any Affiliate Licensees (as defined in their Gas Supply Licence²), by

- (a) [British Gas Trading Limited \(for Centrica plc\)](#),
 - (b) [EDF Energy Customers plc \(for EDF Energy plc\)](#),
 - (c) [E.ON Energy Solutions Limited \(for E.ON UK plc\)](#),
 - (d) [Npower Group plc \(for RWE npower plc\)](#),
 - (e) [Southern Electric Gas Limited \(for Scottish and Southern Energy plc\)](#), and
 - (f) [Scottish Power Energy Retail Limited \(for Scottish Power Ltd.\)](#).
11. The Undertakings are accepted for the purpose of remedying, mitigating or preventing the Prepayment AEC identified in the Report and for the purpose of remedying, mitigating or preventing detrimental effects on customers in so far as they have resulted from or may be expected to result from this AEC. In accordance with section 159(3) of the Act, these Undertakings come into force when they are accepted by the CMA, except Articles 3 and 4 which shall come into force on 1 April 2017.
12. The Undertakings may be varied, superseded or released by the CMA under section 159(4) and (5) of the Act.
13. This Notice, the Undertakings and the representations received in response to the Consultation have been published on the CMA website.

(signed) ROGER WITCOMB
Group Chair
20 December 2016

² A gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.

ENERGY MARKET INVESTIGATION

UNDERTAKINGS GIVEN BY BRITISH GAS TRADING LIMITED

The Energy Market Investigation (Gas Tariff Codes) Undertakings 2016

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority (GEMA), 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 (GA86) and section 43 of the Electricity Act 1989 (EA89)), 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.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act 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 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 Prepayment AEC.
4. 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

¹ [Energy market investigation terms of reference.](#)

- (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.
5. 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.
6. In the Report, the CMA decided on a package of remedies to remedy, mitigate or prevent the Prepayment AEC and/or associated detriment that it found. Among other things, the CMA decided to seek undertakings from active relevant gas suppliers including the following three components: (a) a cap on the number of gas tariff pages that each relevant gas supplier can hold at no more than 12; (b) an obligation on the relevant gas suppliers to provide relevant information for GEMA to monitor the allocation of the gas tariff codes; and (c) an undertaking from the relevant gas suppliers to follow a direction from GEMA to transfer one or more gas tariff pages to another supplier.
7. The CMA also recommended that, absent such undertakings, GEMA should introduce a new licence condition in suppliers' standard licence conditions, to implement this remedy.

On behalf of British Gas Trading Limited, with the number 03078711 and with its registered office at Millstream, Maidenhead Road, Windsor, Berkshire, SL4 5GD (hereafter, British Gas) and any Affiliate Licensees, British Gas now gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to sections 138 and 159(1) and (3) of the Act. These Undertakings may be varied, superseded or released by the CMA in accordance with section 159(4) or (5) of the Act.

Part 1

General and Interpretation

1. Commencement

- 1.1 In accordance with section 159(3) of the Act, these Undertakings shall come into force when they are accepted by the CMA, except Articles 3 and 4 which shall come into force on 1 April 2017.

2. Interpretation

- 2.1 The following provisions shall apply in the interpretation of these Undertakings.
- 2.2 These Undertakings give effect to the conclusions of the CMA stated in paragraph 20.25(b) of the Report and shall be construed consistently with, and to give effect to, those conclusions.
- 2.3 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in the Undertakings.
- 2.4 The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.6 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include references to bodies of persons, whether corporate or incorporate.
- 2.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.8 References to Articles are references to Articles of these Undertakings.
- 2.9 The Interpretation Act 1978 applies to these Undertakings except where words and expressions are expressly defined.
- 2.10 In these Undertakings:

Act	means the Enterprise Act 2002.
Affiliate Licensee	has the meaning given to it in the Gas Supply Licence.
CMA	means the Competition and Markets Authority.
Development Fee	means any payment made to the Prepayment Meter Infrastructure Provider by a Retail Gas Supplier upon gaining access to a Tariff Page which, under contractual agreements with the Prepayment Meter Infrastructure Provider in force at the time of these Undertakings, the Retail Gas Supplier is entitled to recover when relinquishing a Tariff Page.
Domestic Customer	has the meaning given to it in the Gas Supply Licence.
Gas Supply Licence	means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
GEMA	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
New Entrant	means a Retail Gas Supplier who does not hold any Tariff Pages and has notified the Prepayment Meter Infrastructure Provider that it needs to acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.
Prepayment Gas Meter	means any gas meter operating in a mode which requires a customer to pay charges in advance.
Prepayment Meter Infrastructure	has the meaning given to it in the SPAA.
Prepayment Meter Infrastructure Provider	has the meaning given to it in the SPAA.
Prepayment Gas Tariff	means a Tariff in respect of any domestic supply contract or deemed contract with a Domestic Customer that is supplied gas via a Prepayment Gas Meter, and which includes a requirement to pay charges through a Prepayment Gas Meter, regardless of whether such contract continues to be capable of being entered into by Domestic Customers.

Retail Gas Supplier	means any person authorised to supply by virtue of a Gas Supply Licence.
SPAA	means the Supply Point Administration Agreement, as defined in the Gas Supply Licence.
SPAA Ltd	means SPAA LIMITED, a company incorporated in England and Wales (registered number 04365599) whose registered office is at Grafton House, 2-3 Golden Square, London W1F 9HR.
Tariff	has the meaning given to it in the Gas Supply Licence.
Tariff Code	has the meaning given to it in the SPAA.
Tariff Page	means 11 Tariff Codes grouped together for the purpose of allocation to a single Retail Gas Supplier.
Unallocated Tariff Page	means a Tariff Page that has not been allocated by the Prepayment Meter Infrastructure Provider to any Retail Gas Supplier.
Unused Tariff Code	means a Tariff Code that has not been used over the previous 30 days by a Retail Gas Supplier for the purpose of any Prepayment Gas Tariff.
Unused Tariff Page	means a Tariff Page that is allocated to a Retail Gas Supplier but which has not been used over the previous 30 days by the Retail Gas Supplier for the purpose of any Prepayment Gas Tariff, including in the circumstances set out in Article 5.

2.11 In these Undertakings any reference to:

- (a) '**day**' means calendar days;
- (b) a '**person**' includes any individual, firm, partnership, body corporate or association;
- (c) '**written**' or '**in writing**' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
- (d) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.

Part 2

Undertakings to relinquish Tariff Pages

3. Restriction on the number of Tariff Pages held at any one time

3.1 Subject to Article 3.2, British Gas undertakes to ensure that no more than 12 Tariff Pages are allocated to it at any one time.

3.2 British Gas will however be permitted to use up to 14 Tariff Pages, provided that the Prepayment Meter Infrastructure Provider has confirmed in writing that the total number of Unallocated Tariff Pages is equal to ten or more.

3.3 British Gas undertakes to relinquish any Tariff Page that it holds in excess of 14 Tariff Pages no later than 30 April 2017.

3.4 Subject to Articles 5 and 7, British Gas undertakes to relinquish any Tariff Page that it holds in excess of 12 Tariff Pages pursuant to Article 6:

(a) no later than 30 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if British Gas holds Unused Tariff Pages; or

(b) no later than 150 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if British Gas does not hold Unused Tariff Pages.

3.5 For the purpose of ensuring compliance with Article 3.4, British Gas shall request the Prepayment Meter Infrastructure Provider to notify it as soon as the total number of Unallocated Tariff Pages becomes fewer than ten.

4. Obligation to comply with directions to relinquish Tariff Pages

4.1 British Gas undertakes to comply with any direction to relinquish a Tariff Page that is given by GEMA in the following circumstances:

(a) when the total number of Unallocated Tariff Pages is fewer than five and British Gas holds one or more Unused Tariff Pages; or

(b) when there are no Unallocated Tariff Pages and a New Entrant has informed the Prepayment Meter Infrastructure Provider that it needs to acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.

4.2 Subject to Articles 5 and 7, British Gas undertakes to relinquish a Tariff Page, pursuant to Article 6:

(a) no later than 30 days after receiving a direction from GEMA in the circumstances set out in Article 4.1(a);

(b) no later than 150 days after receiving a direction from GEMA in the circumstances set out in 4.1(b).

5. Allocation of Tariff Codes across Tariff Pages

5.1 For the purposes of Articles 3.4 and 4.1 British Gas will be deemed to hold one Unused Tariff Page for each combination of 11 Unused Tariff Codes it holds across different Tariff Pages.

5.2 Subject to Articles 5.3 and 7, British Gas shall give appropriate instructions to the Prepayment Meter Infrastructure Provider so as to ensure that any Tariff Page to be relinquished pursuant to these Undertakings contains only Unused Tariff Codes.

5.3 If an obligation to relinquish one or more Tariff Page arises on 1 April 2017 and British Gas is unable to comply by releasing 11 Unused Tariff Codes on the same Tariff Page, it may do so by relinquishing pursuant to Article 6.1, no later than 30 April 2017, 11 Unused Tariff Codes in lieu of each Tariff Page.

6. Process for relinquishing Tariff Pages

6.1 For the purpose of relinquishing a Tariff Page pursuant to these Undertakings, British Gas shall notify the Prepayment Meter Infrastructure Provider as soon as practicable of its intention to relinquish a Tariff Page within a timeframe that is compliant with Articles 3, 4 and 5, as applicable.

6.2 If British Gas relinquishes a Tariff Page in the circumstances set out in Articles 5.1 and 5.2, the relevant time period for compliance set out in Article 4.2(a) (and in Article 3.4(a) if British Gas has held more than 12 Tariff Pages continuously from 1 April 2017 until receipt of a notification pursuant to Article 3.4(a)) will be extended by a further 90 days, and a further 15 days if British Gas requested a direction under Article 7.

6.3 British Gas is entitled to a refund of the Development Fee associated with any Tariff Page it relinquishes pursuant to these Undertakings.

7. Direction for alternative compliance

- 7.1 If an obligation to relinquish a Tariff Page arises in the circumstances set out in Article 5.1 after 1 April 2017, British Gas may apply to GEMA to request a direction concerning the compliance with these Undertakings.
- 7.2 If GEMA considers, after consultation with the CMA and having had regard to the principle of proportionality, that the relinquishing of a Tariff Page may cause material consumer detriment for certain customers of British Gas, it shall give a direction requiring British Gas to comply with Articles 3 or 4 by releasing 11 Unused Tariff Codes in lieu of a Tariff Page.
- 7.3 If GEMA has issued a direction to British Gas pursuant to Article 7.2, British Gas undertakes to comply with such direction within 30 days from the date the direction was issued.
- 7.4 In the circumstances where British Gas relinquishes 11 Unused Tariff Codes in lieu of a Tariff Page pursuant to Articles 5.3 and 7, British Gas undertakes not to modify any of the values associated with the Tariff Pages which relate to any such Tariff Codes without the consent of the Retail Gas Supplier(s) who hold such Tariff Codes.

Part 3

Monitoring, compliance, termination and miscellaneous

8. Monitoring and compliance

- 8.1 British Gas undertakes to provide, or request SPAA Ltd to provide, as soon as practicable any information and documents that the CMA or GEMA may from time to time reasonably require for the purposes of monitoring the allocation of Tariff Pages and compliance with the Undertakings.
- 8.2 British Gas undertakes to comply with such reasonable written directions as the CMA or GEMA may from time to time give to take such steps within their reasonable competence as may be required for the purpose of carrying out or securing compliance with these Undertakings.

9. Termination

- 9.1 Subject to Articles 9.2 and 9.3, British Gas recognises and acknowledges that these Undertakings shall be in force until such time as they are varied, superseded or released under section 159(4) or (5) of the Act.

- 9.2 British Gas shall be released from the undertakings given in Article 4.1 if 50 or more new Tariff Pages become available on the Prepayment Meter Infrastructure following the entry into force of these Undertakings.
- 9.3 British Gas shall be released from the Undertakings given in Articles 3 to 7 if the CMA, after consultation with GEMA, confirms by way of a direction that an implemented modification proposal achieves the aim of the provisions set out in these Undertakings. In this event, British Gas undertakes not to apply for a derogation under Clause 14 of the SPAA in relation to the provisions implemented through this modification proposal without prior approval from GEMA.
- 9.4 British Gas shall be released from these Undertakings if the CMA, after consultation with GEMA, confirms by way of a direction that the requirement set out in Condition 33.1 of the Gas Supply Licence has been satisfied.
- 9.5 British Gas recognises and acknowledges that the variation, supersession or release of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, supersession or release.

10. Effect of invalidity

- 10.1 British Gas undertakes that, should any provision of these Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

11. Governing Law

- 11.1 British Gas recognises and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 11.2 In the event that a dispute arises concerning these Undertakings, British Gas undertakes to submit that dispute to the courts of England and Wales.

FOR AND ON BEHALF OF BRITISH GAS TRADING LIMITED

Date:19 December 2016

Date:19 December 2016

(signed)

(signed)

Justine Campbell

Sarwjit Sambhi

General Counsel UK&I

Managing Director, UK Home

ENERGY MARKET INVESTIGATION

UNDERTAKINGS GIVEN BY EDF ENERGY CUSTOMERS PLC

The Energy Market Investigation (Gas Tariff Codes) Undertakings 2016

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority (GEMA), 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 (GA86) and section 43 of the Electricity Act 1989 (EA89)), 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.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act 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 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 Prepayment AEC.
4. 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

¹ [Energy market investigation terms of reference.](#)

- (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.
5. 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.
6. In the Report, the CMA decided on a package of remedies to remedy, mitigate or prevent the Prepayment AEC and/or associated detriment that it found. Among other things, the CMA decided to seek undertakings from active relevant gas suppliers including the following three components: (a) a cap on the number of gas tariff pages that each relevant gas supplier can hold at no more than 12; (b) an obligation on the relevant gas suppliers to provide relevant information for GEMA to monitor the allocation of the gas tariff codes; and (c) an undertaking from the relevant gas suppliers to follow a direction from GEMA to transfer one or more gas tariff pages to another supplier.
7. The CMA also recommended that, absent such undertakings, GEMA should introduce a new licence condition in suppliers' standard licence conditions, to implement this remedy.

On behalf of EDF Energy Customers plc., with the number 02228297 and with its registered office at 40 Grosvenor Place, Victoria, London SW1X 7AW (hereafter, EDF Energy) and any Affiliate Licensees, EDF Energy now gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to sections 138 and 159(1) and (3) of the Act. These Undertakings may be varied, superseded or released by the CMA in accordance with section 159(4) or (5) of the Act.

Part 1

General and Interpretation

1. Commencement

- 1.1 In accordance with section 159(3) of the Act, these Undertakings shall come into force when they are accepted by the CMA, except Articles 3 and 4 which shall come into force on 1 April 2017.

2. Interpretation

- 2.1 The following provisions shall apply in the interpretation of these Undertakings.
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- 2.3 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in the Undertakings.
- 2.4 The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.6 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include references to bodies of persons, whether corporate or incorporate.
- 2.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.8 References to Articles are references to Articles of these Undertakings.
- 2.9 The Interpretation Act 1978 applies to these Undertakings except where words and expressions are expressly defined.
- 2.10 In these Undertakings:

Act	means the Enterprise Act 2002.
Affiliate Licensee	has the meaning given to it in the Gas Supply Licence.
CMA	means the Competition and Markets Authority.
Development Fee	means any payment made to the Prepayment Meter Infrastructure Provider by a Retail Gas Supplier upon gaining access to a Tariff Page which, under contractual agreements with the Prepayment Meter Infrastructure Provider in force at the time of these Undertakings, the Retail Gas Supplier is entitled to recover when relinquishing a Tariff Page.
Domestic Customer	has the meaning given to it in the Gas Supply Licence.
Gas Supply Licence	means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
GEMA	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
New Entrant	means a Retail Gas Supplier who does not hold any Tariff Pages and has notified the Prepayment Meter Infrastructure Provider that it needs to acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.
Prepayment Gas Meter	means any gas meter operating in a mode which requires a customer to pay charges in advance.
Prepayment Meter Infrastructure	has the meaning given to it in the SPAA.
Prepayment Meter Infrastructure Provider	has the meaning given to it in the SPAA.
Prepayment Gas Tariff	means a Tariff in respect of any domestic supply contract or deemed contract with a Domestic Customer that is supplied gas via a Prepayment Gas Meter, and which includes a requirement to pay charges through a Prepayment Gas Meter, regardless of whether such contract continues to be capable of being entered into by Domestic Customers.

Retail Gas Supplier	means any person authorised to supply by virtue of a Gas Supply Licence.
SPAA	means the Supply Point Administration Agreement, as defined in the Gas Supply Licence.
SPAA Ltd	means SPAA LIMITED, a company incorporated in England and Wales (registered number 04365599) whose registered office is at Grafton House, 2-3 Golden Square, London W1F 9HR.
Tariff	has the meaning given to it in the Gas Supply Licence.
Tariff Code	has the meaning given to it in the SPAA.
Tariff Page	means 11 Tariff Codes grouped together for the purpose of allocation to a single Retail Gas Supplier.
Unallocated Tariff Page	means a Tariff Page that has not been allocated by the Prepayment Meter Infrastructure Provider to any Retail Gas Supplier.
Unused Tariff Code	means a Tariff Code that has not been used over the previous 30 days by a Retail Gas Supplier for the purpose of any Prepayment Gas Tariff.
Unused Tariff Page	means a Tariff Page that is allocated to a Retail Gas Supplier but which has not been used over the previous 30 days by the Retail Gas Supplier for the purpose of any Prepayment Gas Tariff, including in the circumstances set out in Article 5.

2.11 In these Undertakings any reference to:

- (a) '**day**' means calendar days;
- (b) a '**person**' includes any individual, firm, partnership, body corporate or association;
- (c) '**written**' or '**in writing**' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
- (d) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.

Part 2

Undertakings to relinquish Tariff Pages

3. Restriction on the number of Tariff Pages held at any one time

- 3.1 Subject to Article 3.2, EDF Energy undertakes to ensure that no more than 12 Tariff Pages are allocated to it at any one time.
- 3.2 EDF Energy will however be permitted to use up to 14 Tariff Pages, provided that the Prepayment Meter Infrastructure Provider has confirmed in writing that the total number of Unallocated Tariff Pages is equal to ten or more.
- 3.3 EDF Energy undertakes to relinquish any Tariff Page that it holds in excess of 14 Tariff Pages no later than 30 April 2017.
- 3.4 Subject to Articles 5 and 7, EDF Energy undertakes to relinquish any Tariff Page that it holds in excess of 12 Tariff Pages pursuant to Article 6:
- (a) no later than 30 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if EDF Energy holds Unused Tariff Pages; or
 - (b) no later than 150 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if EDF Energy does not hold Unused Tariff Pages.
- 3.5 For the purpose of ensuring compliance with Article 3.4, EDF Energy shall request the Prepayment Meter Infrastructure Provider to notify it as soon as the total number of Unallocated Tariff Pages becomes fewer than ten.

4. Obligation to comply with directions to relinquish Tariff Pages

- 4.1 EDF Energy undertakes to comply with any direction to relinquish a Tariff Page that is given by GEMA in the following circumstances:
- (a) when the total number of Unallocated Tariff Pages is fewer than five and EDF Energy holds one or more Unused Tariff Pages; or
 - (b) when there are no Unallocated Tariff Pages and a New Entrant has informed the Prepayment Meter Infrastructure Provider that it needs to acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.

4.2 Subject to Articles 5 and 7, EDF Energy undertakes to relinquish a Tariff Page, pursuant to Article 6:

(a) no later than 30 days after receiving a direction from GEMA in the circumstances set out in Article 4.1(a);

(b) no later than 150 days after receiving a direction from GEMA in the circumstances set out in 4.1(b).

5. Allocation of Tariff Codes across Tariff Pages

5.1 For the purposes of Articles 3.4 and 4.1 EDF Energy will be deemed to hold one Unused Tariff Page for each combination of 11 Unused Tariff Codes it holds across different Tariff Pages.

5.2 Subject to Articles 5.3 and 7, EDF Energy shall give appropriate instructions to the Prepayment Meter Infrastructure Provider so as to ensure that any Tariff Page to be relinquished pursuant to these Undertakings contains only Unused Tariff Codes.

5.3 If an obligation to relinquish one or more Tariff Page arises on 1 April 2017 and EDF Energy is unable to comply by releasing 11 Unused Tariff Codes on the same Tariff Page, it may do so by relinquishing pursuant to Article 6.1, no later than 30 April 2017, 11 Unused Tariff Codes in lieu of each Tariff Page.

6. Process for relinquishing Tariff Pages

6.1 For the purpose of relinquishing a Tariff Page pursuant to these Undertakings, EDF Energy shall notify the Prepayment Meter Infrastructure Provider as soon as practicable of its intention to relinquish a Tariff Page within a timeframe that is compliant with Articles 3, 4 and 5, as applicable.

6.2 If EDF Energy relinquishes a Tariff Page in the circumstances set out in Articles 5.1 and 5.2, the relevant time period for compliance set out in Article 4.2(a) (and in Article 3.4(a) if EDF Energy has held more than 12 Tariff Pages continuously from 1 April 2017 until receipt of a notification pursuant to Article 3.4(a)) will be extended by a further 90 days, and a further 15 days if EDF Energy requested a direction under Article 7.

6.3 EDF Energy is entitled to a refund of the Development Fee associated with any Tariff Page it relinquishes pursuant to these Undertakings.

7. Direction for alternative compliance

- 7.1 If an obligation to relinquish a Tariff Page arises in the circumstances set out in Article 5.1 after 1 April 2017, EDF Energy may apply to GEMA to request a direction concerning the compliance with these Undertakings.
- 7.2 If GEMA considers, after consultation with the CMA and having had regard to the principle of proportionality, that the relinquishing of a Tariff Page may cause material consumer detriment for certain customers of EDF Energy, it shall give a direction requiring EDF Energy to comply with Articles 3 or 4 by releasing 11 Unused Tariff Codes in lieu of a Tariff Page.
- 7.3 If GEMA has issued a direction to EDF Energy pursuant to Article 7.2, EDF Energy undertakes to comply with such direction within 30 days from the date the direction was issued.
- 7.4 In the circumstances where EDF Energy relinquishes 11 Unused Tariff Codes in lieu of a Tariff Page pursuant to Articles 5.3 and 7, EDF Energy undertakes not to modify any of the values associated with the Tariff Pages which relate to any such Tariff Codes without the consent of the Retail Gas Supplier(s) who hold such Tariff Codes.

Part 3

Monitoring, compliance, termination and miscellaneous

8. Monitoring and compliance

- 8.1 EDF Energy undertakes to provide, or request SPAA Ltd to provide, as soon as practicable any information and documents that the CMA or GEMA may from time to time reasonably require for the purposes of monitoring the allocation of Tariff Pages and compliance with the Undertakings.
- 8.2 EDF Energy undertakes to comply with such reasonable written directions as the CMA or GEMA may from time to time give to take such steps within their reasonable competence as may be required for the purpose of carrying out or securing compliance with these Undertakings.

9. Termination

- 9.1 Subject to Articles 9.2 and 9.3, EDF Energy recognises and acknowledges that these Undertakings shall be in force until such time as they are varied, superseded or released under section 159(4) or (5) of the Act.

- 9.2 EDF Energy shall be released from the undertakings given in Article 4.1 if 50 or more new Tariff Pages become available on the Prepayment Meter Infrastructure following the entry into force of these Undertakings.
- 9.3 EDF Energy shall be released from the Undertakings given in Articles 3 to 7 if the CMA, after consultation with GEMA, confirms by way of a direction that an implemented modification proposal achieves the aim of the provisions set out in these Undertakings. In this event, EDF Energy undertakes not to apply for a derogation under Clause 14 of the SPAA in relation to the provisions implemented through this modification proposal without prior approval from GEMA.
- 9.4 EDF Energy shall be released from these Undertakings if the CMA, after consultation with GEMA, confirms by way of a direction that the requirement set out in Condition 33.1 of the Gas Supply Licence has been satisfied.
- 9.5 EDF Energy recognises and acknowledges that the variation, supersession or release of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, supersession or release.

10. Effect of invalidity

- 10.1 EDF Energy undertakes that, should any provision of these Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

11. Governing Law

- 11.1 EDF Energy recognises and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 11.2 In the event that a dispute arises concerning these Undertakings, EDF Energy undertakes to submit that dispute to the courts of England and Wales.

FOR AND ON BEHALF OF EDF ENERGY CUSTOMERS plc.

Date: 19 December 2016

(signed)

Jim Poole

Director of Customer Operations

ENERGY MARKET INVESTIGATION

UNDERTAKINGS GIVEN BY E.ON ENERGY SOLUTIONS LIMITED

The Energy Market Investigation (Gas Tariff Codes) Undertakings 2016

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority (GEMA), 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 (GA86) and section 43 of the Electricity Act 1989 (EA89)), 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.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act 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 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 Prepayment AEC.
4. 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

¹ [Energy market investigation terms of reference.](#)

- (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.
5. 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.
6. In the Report, the CMA decided on a package of remedies to remedy, mitigate or prevent the Prepayment AEC and/or associated detriment that it found. Among other things, the CMA decided to seek undertakings from active relevant gas suppliers including the following three components: (a) a cap on the number of gas tariff pages that each relevant gas supplier can hold at no more than 12; (b) an obligation on the relevant gas suppliers to provide relevant information for GEMA to monitor the allocation of the gas tariff codes; and (c) an undertaking from the relevant gas suppliers to follow a direction from GEMA to transfer one or more gas tariff pages to another supplier.
7. The CMA also recommended that, absent such undertakings, GEMA should introduce a new licence condition in suppliers' standard licence conditions, to implement this remedy.

On behalf of E.ON Energy Solutions Limited, with the number 03407430 and with its registered office at Westwood Way, Westwood Business Park, Coventry CV4 8LG (hereafter, E.ON Energy Solutions) and any Affiliate Licensees, E.ON Energy Solutions now gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to sections 138 and 159(1) and (3) of the Act. These Undertakings may be varied, superseded or released by the CMA in accordance with section 159(4) or (5) of the Act.

Part 1

General and Interpretation

1. Commencement

- 1.1 In accordance with section 159(3) of the Act, these Undertakings shall come into force when they are accepted by the CMA, except Articles 3 and 4 which shall come into force on 1 April 2017.

2. Interpretation

- 2.1 The following provisions shall apply in the interpretation of these Undertakings.
- 2.2 These Undertakings give effect to the conclusions of the CMA stated in paragraph 20.25(b) of the Report and shall be construed consistently with, and to give effect to, those conclusions.
- 2.3 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in the Undertakings.
- 2.4 The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.6 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include references to bodies of persons, whether corporate or incorporate.
- 2.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.8 References to Articles are references to Articles of these Undertakings.
- 2.9 The Interpretation Act 1978 applies to these Undertakings except where words and expressions are expressly defined.
- 2.10 In these Undertakings:

Act	means the Enterprise Act 2002.
Affiliate Licensee	has the meaning given to it in the Gas Supply Licence.
CMA	means the Competition and Markets Authority.
Development Fee	means any payment made to the Prepayment Meter Infrastructure Provider by a Retail Gas Supplier upon gaining access to a Tariff Page which, under contractual agreements with the Prepayment Meter Infrastructure Provider in force at the time of these Undertakings, the Retail Gas Supplier is entitled to recover when relinquishing a Tariff Page.
Domestic Customer	has the meaning given to it in the Gas Supply Licence.
Gas Supply Licence	means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
GEMA	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
New Entrant	means a Retail Gas Supplier who does not hold any Tariff Pages and has notified the Prepayment Meter Infrastructure Provider that it needs to acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.
Prepayment Gas Meter	means any gas meter operating in a mode which requires a customer to pay charges in advance.
Prepayment Meter Infrastructure	has the meaning given to it in the SPAA.
Prepayment Meter Infrastructure Provider	has the meaning given to it in the SPAA.
Prepayment Gas Tariff	means a Tariff in respect of any domestic supply contract or deemed contract with a Domestic Customer that is supplied gas via a Prepayment Gas Meter, and which includes a requirement to pay charges through a Prepayment Gas Meter, regardless of whether such contract continues to be capable of being entered into by Domestic Customers.

Retail Gas Supplier	means any person authorised to supply by virtue of a Gas Supply Licence.
SPAA	means the Supply Point Administration Agreement, as defined in the Gas Supply Licence.
SPAA Ltd	means SPAA LIMITED, a company incorporated in England and Wales (registered number 04365599) whose registered office is at Grafton House, 2-3 Golden Square, London W1F 9HR.
Tariff	has the meaning given to it in the Gas Supply Licence.
Tariff Code	has the meaning given to it in the SPAA.
Tariff Page	means 11 Tariff Codes grouped together for the purpose of allocation to a single Retail Gas Supplier.
Unallocated Tariff Page	means a Tariff Page that has not been allocated by the Prepayment Meter Infrastructure Provider to any Retail Gas Supplier.
Unused Tariff Code	means a Tariff Code that has not been used over the previous 30 days by a Retail Gas Supplier for the purpose of any Prepayment Gas Tariff.
Unused Tariff Page	means a Tariff Page that is allocated to a Retail Gas Supplier but which has not been used over the previous 30 days by the Retail Gas Supplier for the purpose of any Prepayment Gas Tariff, including in the circumstances set out in Article 5.

2.11 In these Undertakings any reference to:

- (a) '**day**' means calendar days;
- (b) a '**person**' includes any individual, firm, partnership, body corporate or association;
- (c) '**written**' or '**in writing**' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
- (d) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.

Part 2

Undertakings to relinquish Tariff Pages

3. Restriction on the number of Tariff Pages held at any one time

- 3.1 Subject to Article 3.2, E.ON Energy Solutions undertakes to ensure that no more than 12 Tariff Pages are allocated to it at any one time.
- 3.2 E.ON Energy Solutions will however be permitted to use up to 14 Tariff Pages, provided that the Prepayment Meter Infrastructure Provider has confirmed in writing that the total number of Unallocated Tariff Pages is equal to ten or more.
- 3.3 E.ON Energy Solutions undertakes to relinquish any Tariff Page that it holds in excess of 14 Tariff Pages no later than 30 April 2017.
- 3.4 Subject to Articles 5 and 7, E.ON Energy Solutions undertakes to relinquish any Tariff Page that it holds in excess of 12 Tariff Pages pursuant to Article 6:
- (a) no later than 30 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if E.ON Energy Solutions holds Unused Tariff Pages; or
 - (b) no later than 150 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if E.ON Energy Solutions does not hold Unused Tariff Pages.
- 3.5 For the purpose of ensuring compliance with Article 3.4, E.ON Energy Solutions shall request the Prepayment Meter Infrastructure Provider to notify it as soon as the total number of Unallocated Tariff Pages becomes fewer than ten.

4. Obligation to comply with directions to relinquish Tariff Pages

- 4.1 E.ON Energy Solutions undertakes to comply with any direction to relinquish a Tariff Page that is given by GEMA in the following circumstances:
- (a) when the total number of Unallocated Tariff Pages is fewer than five and E.ON Energy Solutions holds one or more Unused Tariff Pages; or
 - (b) when there are no Unallocated Tariff Pages and a New Entrant has informed the Prepayment Meter Infrastructure Provider that it needs to

acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.

4.2 Subject to Articles 5 and 7, E.ON Energy Solutions undertakes to relinquish a Tariff Page, pursuant to Article 6:

(a) no later than 30 days after receiving a direction from GEMA in the circumstances set out in Article 4.1(a);

(b) no later than 150 days after receiving a direction from GEMA in the circumstances set out in 4.1(b).

5. Allocation of Tariff Codes across Tariff Pages

5.1 For the purposes of Articles 3.4 and 4.1 E.ON Energy Solutions will be deemed to hold one Unused Tariff Page for each combination of 11 Unused Tariff Codes it holds across different Tariff Pages.

5.2 Subject to Article 7, E.ON Energy Solutions shall give appropriate instructions to the Prepayment Meter Infrastructure Provider so as to ensure that any Tariff Page to be relinquished pursuant to these Undertakings contains only Unused Tariff Codes.

6. Process for relinquishing Tariff Pages

6.1 For the purpose of relinquishing a Tariff Page pursuant to these Undertakings, E.ON Energy Solutions shall notify the Prepayment Meter Infrastructure Provider as soon as practicable of its intention to relinquish a Tariff Page within a timeframe that is compliant with Articles 3, 4 and 5, as applicable.

6.2 If E.ON Energy Solutions relinquishes a Tariff Page in the circumstances set out in Articles 5.1 and 5.2, the relevant time period for compliance set out in Article 4.2(a) will be extended by a further 90 days, and a further 15 days if E.ON Energy Solutions requested a direction under Article 7.

6.3 E.ON Energy Solutions is entitled to a refund of the Development Fee associated with any Tariff Page it relinquishes pursuant to these Undertakings.

7. Direction for alternative compliance

7.1 If an obligation to relinquish a Tariff Page arises in the circumstances set out in Article 5.1, E.ON Energy Solutions may apply to GEMA to request a direction concerning the compliance with these Undertakings.

- 7.2 If GEMA considers, after consultation with the CMA and having had regard to the principle of proportionality, that the relinquishing of a Tariff Page may cause material consumer detriment for certain customers of E.ON Energy Solutions, it shall give a direction requiring E.ON Energy Solutions to comply with Articles 3 or 4 by releasing 11 Unused Tariff Codes in lieu of a Tariff Page.
- 7.3 If GEMA has issued a direction to E.ON Energy Solutions pursuant to Article 7.2, E.ON Energy Solutions undertakes to comply with such direction within 30 days from the date the direction was issued.
- 7.4 In the circumstances where E.ON Energy Solutions relinquishes 11 Unused Tariff Codes in lieu of a Tariff Page pursuant to Article 7, E.ON Energy Solutions undertakes not to modify any of the values associated with the Tariff Pages which relate to any such Tariff Codes without the consent of the Retail Gas Supplier(s) who hold such Tariff Codes.

Part 3

Monitoring, compliance, termination and miscellaneous

8. Monitoring and compliance

- 8.1 E.ON Energy Solutions undertakes to provide, or request SPAA Ltd to provide, as soon as practicable any information and documents that the CMA or GEMA may from time to time reasonably require for the purposes of monitoring the allocation of Tariff Pages and compliance with the Undertakings.
- 8.2 E.ON Energy Solutions undertakes to comply with such reasonable written directions as the CMA or GEMA may from time to time give to take such steps within their reasonable competence as may be required for the purpose of carrying out or securing compliance with these Undertakings.

9. Termination

- 9.1 Subject to Articles 9.2 and 9.3, E.ON Energy Solutions recognises and acknowledges that these Undertakings shall be in force until such time as they are varied, superseded or released under section 159(4) or (5) of the Act.
- 9.2 E.ON Energy Solutions shall be released from the undertakings given in Article 4.1 if 50 or more new Tariff Pages become available on the Prepayment Meter Infrastructure following the entry into force of these Undertakings.

- 9.3 E.ON Energy Solutions shall be released from the Undertakings given in Articles 3 to 7 if the CMA, after consultation with GEMA, confirms by way of a direction that an implemented modification proposal achieves the aim of the provisions set out in these Undertakings. In this event E.ON Energy Solutions undertakes not to apply for a derogation under Clause 14 of the SPAA in relation to the provisions implemented through this modification proposal without prior approval from GEMA.
- 9.4 E.ON Energy Solutions shall be released from these Undertakings if the CMA, after consultation with GEMA, confirms by way of a direction that the requirement set out in Condition 33.1 of the Gas Supply Licence has been satisfied.
- 9.5 E.ON Energy Solutions recognises and acknowledges that the variation, supersession or release of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, supersession or release.

10. Effect of invalidity

- 10.1 E.ON Energy Solutions undertakes that, should any provision of these Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

11. Governing Law

- 11.1 E.ON Energy Solutions recognises and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 11.2 In the event that a dispute arises concerning these Undertakings, E.ON Energy Solutions undertakes to submit that dispute to the courts of England and Wales.

FOR AND ON BEHALF OF E.ON ENERGY SOLUTIONS LIMITED

Date: 16 December 2016

Date: 16 December 2016

(signed)

(signed)

Sara Vaughan

David Bird

Strategy and Regulation
Director

Residential Managing Director

ENERGY MARKET INVESTIGATION

UNDERTAKINGS GIVEN BY NPOWER GROUP PLC

The Energy Market Investigation (Gas Tariff Codes) Undertakings 2016

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority (GEMA), 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 (GA86) and section 43 of the Electricity Act 1989 (EA89)), 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.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act 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 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 Prepayment AEC.
4. 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

¹ [Energy market investigation terms of reference.](#)

- (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.
5. 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.
6. In the Report, the CMA decided on a package of remedies to remedy, mitigate or prevent the Prepayment AEC and/or associated detriment that it found. Among other things, the CMA decided to seek undertakings from active relevant gas suppliers including the following three components: (a) a cap on the number of gas tariff pages that each relevant gas supplier can hold at no more than 12; (b) an obligation on the relevant gas suppliers to provide relevant information for GEMA to monitor the allocation of the gas tariff codes; and (c) an undertaking from the relevant gas suppliers to follow a direction from GEMA to transfer one or more gas tariff pages to another supplier.
7. The CMA also recommended that, absent such undertakings, GEMA should introduce a new licence condition in suppliers' standard licence conditions, to implement this remedy.

Npower Group plc, with the number 08241182 and with its registered office at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB (hereafter, Npower Group), on behalf of

- Npower Gas Limited, with the number 2999919 and with its registered office at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB,
- Npower Northern Limited, with the number 3432100 and with its registered office at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB,
- Npower Yorkshire Limited, with the number 3937808 and with its registered office at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB,

- Npower Commercial Gas Limited, with the number 3768856 and with its registered office at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB,
- Npower Direct Limited, with the number 3782443 and with its registered office at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB, and
- any of their Affiliate Licensees,

now gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to sections 138 and 159(1) and (3) of the Act. These Undertakings may be varied, superseded or released by the CMA in accordance with section 159(4) or (5) of the Act.

Part 1

General and Interpretation

1. Commencement

- 1.1 In accordance with section 159(3) of the Act, these Undertakings shall come into force when they are accepted by the CMA, except Articles 3 and 4 which shall come into force on 1 April 2017.

2. Interpretation

- 2.1 The following provisions shall apply in the interpretation of these Undertakings.
- 2.2 These Undertakings give effect to the conclusions of the CMA stated in paragraph 20.25(b) of the Report and shall be construed consistently with, and to give effect to, those conclusions.
- 2.3 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in the Undertakings.
- 2.4 The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.5 The headings used in these Undertakings are for convenience and shall have no legal effect.

- 2.6 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include references to bodies of persons, whether corporate or incorporate.
- 2.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.8 References to Articles are references to Articles of these Undertakings.
- 2.9 The Interpretation Act 1978 applies to these Undertakings except where words and expressions are expressly defined.
- 2.10 In these Undertakings:

Act	means the Enterprise Act 2002.
Affiliate Licensee	has the meaning given to it in the Gas Supply Licence.
CMA	means the Competition and Markets Authority.
Development Fee	means any payment made to the Prepayment Meter Infrastructure Provider by a Retail Gas Supplier upon gaining access to a Tariff Page which, under contractual agreements with the Prepayment Meter Infrastructure Provider in force at the time of these Undertakings, the Retail Gas Supplier is entitled to recover when relinquishing a Tariff Page.
Domestic Customer	has the meaning given to it in the Gas Supply Licence.
Gas Supply Licence	means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
GEMA	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
New Entrant	means a Retail Gas Supplier who does not hold any Tariff Pages and has notified the Prepayment Meter Infrastructure Provider that it needs to acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.
Prepayment Gas Meter	means any gas meter operating in a mode which requires a customer to pay charges in advance.
Prepayment Meter Infrastructure	has the meaning given to it in the SPAA.
Prepayment Meter Infrastructure Provider	has the meaning given to it in the SPAA.
Prepayment Gas Tariff	means a Tariff in respect of any domestic supply contract or deemed contract with a Domestic Customer that is supplied gas via a Prepayment Gas Meter, and which includes a requirement to pay charges through a Prepayment Gas Meter, regardless of whether such contract continues to be capable of being entered into by Domestic Customers.

Retail Gas Supplier	means any person authorised to supply by virtue of a Gas Supply Licence.
SPAA	means the Supply Point Administration Agreement, as defined in the Gas Supply Licence.
SPAA Ltd	means SPAA LIMITED, a company incorporated in England and Wales (registered number 04365599) whose registered office is at Grafton House, 2-3 Golden Square, London W1F 9HR.
Tariff	has the meaning given to it in the Gas Supply Licence.
Tariff Code	has the meaning given to it in the SPAA.
Tariff Page	means 11 Tariff Codes grouped together for the purpose of allocation to a single Retail Gas Supplier.
Unallocated Tariff Page	means a Tariff Page that has not been allocated by the Prepayment Meter Infrastructure Provider to any Retail Gas Supplier.
Unused Tariff Code	means a Tariff Code that has not been used over the previous 30 days by a Retail Gas Supplier for the purpose of any Prepayment Gas Tariff.
Unused Tariff Page	means a Tariff Page that is allocated to a Retail Gas Supplier but which has not been used over the previous 30 days by the Retail Gas Supplier for the purpose of any Prepayment Gas Tariff, including in the circumstances set out in Article 5.

2.11 In these Undertakings any reference to:

- (a) '**day**' means calendar days;
- (b) a '**person**' includes any individual, firm, partnership, body corporate or association;
- (c) '**written**' or '**in writing**' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
- (d) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.

Part 2

Undertakings to relinquish Tariff Pages

3. Restriction on the number of Tariff Pages held at any one time

- 3.1 Subject to Article 3.2, Npower Group undertakes to ensure that no more than 12 Tariff Pages are allocated to it at any one time.
- 3.2 Npower Group will however be permitted to use up to 14 Tariff Pages, provided that the Prepayment Meter Infrastructure Provider has confirmed in writing that the total number of Unallocated Tariff Pages is equal to ten or more.
- 3.3 Npower Group undertakes to relinquish any Tariff Page that it holds in excess of 14 Tariff Pages no later than 30 April 2017.
- 3.4 Subject to Articles 5 and 7, Npower Group undertakes to relinquish any Tariff Page that it holds in excess of 12 Tariff Pages pursuant to Article 6:
- (a) no later than 30 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if Npower Group holds Unused Tariff Pages; or
 - (b) no later than 150 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if Npower Group does not hold Unused Tariff Pages.
- 3.5 For the purpose of ensuring compliance with Article 3.4, Npower Group shall request the Prepayment Meter Infrastructure Provider to notify it as soon as the total number of Unallocated Tariff Pages becomes fewer than ten.

4. Obligation to comply with directions to relinquish Tariff Pages

- 4.1 Npower Group undertakes to comply with any direction to relinquish a Tariff Page that is given by GEMA in the following circumstances:
- (a) when the total number of Unallocated Tariff Pages is fewer than five and Npower Group holds one or more Unused Tariff Pages; or
 - (b) when there are no Unallocated Tariff Pages and a New Entrant has informed the Prepayment Meter Infrastructure Provider that it needs to

acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.

4.2 Subject to Articles 5 and 7, Npower Group undertakes to relinquish a Tariff Page, pursuant to Article 6:

(a) no later than 30 days after receiving a direction from GEMA in the circumstances set out in Article 4.1(a);

(b) no later than 150 days after receiving a direction from GEMA in the circumstances set out in 4.1(b).

5. Allocation of Tariff Codes across Tariff Pages

5.1 For the purposes of Articles 3.4 and 4.1 Npower Group will be deemed to hold one Unused Tariff Page for each combination of 11 Unused Tariff Codes it holds across different Tariff Pages.

5.2 Subject to Article 7, Npower Group shall give appropriate instructions to the Prepayment Meter Infrastructure Provider so as to ensure that any Tariff Page to be relinquished pursuant to these Undertakings contains only Unused Tariff Codes.

6. Process for relinquishing Tariff Pages

6.1 For the purpose of relinquishing a Tariff Page pursuant to these Undertakings, Npower Group shall notify the Prepayment Meter Infrastructure Provider as soon as practicable of its intention to relinquish a Tariff Page within a timeframe that is compliant with Articles 3, 4 and 5, as applicable.

6.2 If Npower Group relinquishes a Tariff Page in the circumstances set out in Articles 5.1 and 5.2, the relevant time period for compliance set out in Article 4.2(a) will be extended by a further 90 days, and a further 15 days if Npower Group requested a direction under Article 7.

6.3 Npower Group is entitled to a refund of the Development Fee associated with any Tariff Page it relinquishes pursuant to these Undertakings.

7. Direction for alternative compliance

7.1 If an obligation to relinquish a Tariff Page arises in the circumstances set out in Article 5.1, Npower Group may apply to GEMA to request a direction concerning the compliance with these Undertakings.

- 7.2 If GEMA considers, after consultation with the CMA and having had regard to the principle of proportionality, that the relinquishing of a Tariff Page may cause material consumer detriment for certain customers of Npower Group, it shall give a direction requiring Npower Group to comply with Articles 3 or 4 by releasing 11 Unused Tariff Codes in lieu of a Tariff Page.
- 7.3 If GEMA has issued a direction to Npower Group pursuant to Article 7.2, Npower Group undertakes to comply with such direction within 30 days from the date the direction was issued.
- 7.4 In the circumstances where Npower Group relinquishes 11 Unused Tariff Codes in lieu of a Tariff Page pursuant to Article 7, Npower Group undertakes not to modify any of the values associated with the Tariff Pages which relate to any such Tariff Codes without the consent of the Retail Gas Supplier(s) who hold such Tariff Codes.

Part 3

Monitoring, compliance, termination and miscellaneous

8. Monitoring and compliance

- 8.1 Npower Group undertakes to provide, or request SPAA Ltd to provide, as soon as practicable any information and documents that the CMA or GEMA may from time to time reasonably require for the purposes of monitoring the allocation of Tariff Pages and compliance with the Undertakings.
- 8.2 Npower Group undertakes to comply with such reasonable written directions as the CMA or GEMA may from time to time give to take such steps within their reasonable competence as may be required for the purpose of carrying out or securing compliance with these Undertakings.

9. Termination

- 9.1 Subject to Articles 9.2 and 9.3, Npower Group recognises and acknowledges that these Undertakings shall be in force until such time as they are varied, superseded or released under section 159(4) or (5) of the Act.
- 9.2 Npower Group shall be released from the undertakings given in Article 4.1 if 50 or more new Tariff Pages become available on the Prepayment Meter Infrastructure following the entry into force of these Undertakings.
- 9.3 Npower Group shall be released from the Undertakings given in Articles 3 to 7 if the CMA, after consultation with GEMA, confirms by way of a direction that

an implemented modification proposal achieves the aim of the provisions set out in these Undertakings. In this event, Npower Group undertakes not to apply for a derogation under Clause 14 of the SPAA in relation to the provisions implemented through this modification proposal without prior approval from GEMA.

- 9.4 Npower Group shall be released from these Undertakings if the CMA, after consultation with GEMA, confirms by way of a direction that the requirement set out in Condition 33.1 of the Gas Supply Licence has been satisfied.
- 9.5 Npower Group recognises and acknowledges that the variation, supersession or release of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, supersession or release.

10. Effect of invalidity

- 10.1 Npower Group undertakes that, should any provision of these Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

11. Governing Law

- 11.1 Npower Group recognises and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 11.2 In the event that a dispute arises concerning these Undertakings, Npower Group undertakes to submit that dispute to the courts of England and Wales.

FOR AND ON BEHALF OF NPOWER GROUP PLC

Date: 20 December 2016

(signed)

Paul Coffey

CEO

ENERGY MARKET INVESTIGATION

UNDERTAKINGS GIVEN BY SOUTHERN ELECTRIC GAS LIMITED

The Energy Market Investigation (Gas Tariff Codes) Undertakings 2016

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority (GEMA), 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 (GA86) and section 43 of the Electricity Act 1989 (EA89)), 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.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act 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 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 Prepayment AEC.
4. 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

¹ [Energy market investigation terms of reference.](#)

- (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.
5. 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.
6. In the Report, the CMA decided on a package of remedies to remedy, mitigate or prevent the Prepayment AEC and/or associated detriment that it found. Among other things, the CMA decided to seek undertakings from active relevant gas suppliers including the following three components: (a) a cap on the number of gas tariff pages that each relevant gas supplier can hold at no more than 12; (b) an obligation on the relevant gas suppliers to provide relevant information for GEMA to monitor the allocation of the gas tariff codes; and (c) an undertaking from the relevant gas suppliers to follow a direction from GEMA to transfer one or more gas tariff pages to another supplier.
7. The CMA also recommended that, absent such undertakings, GEMA should introduce a new licence condition in suppliers' standard licence conditions, to implement this remedy.

On behalf of Southern Electric Gas Limited, with the number 2716495 and with its registered office at 55 Vastern Road, Reading RG1 8BU (hereafter, Southern Electric Gas) and any Affiliate Licensees, Southern Electric Gas now gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to sections 138 and 159(1) and (3) of the Act. These Undertakings may be varied, superseded or released by the CMA in accordance with section 159(4) or (5) of the Act.

Part 1

General and Interpretation

1. Commencement

- 1.1 In accordance with section 159(3) of the Act, these Undertakings shall come into force when they are accepted by the CMA, except Articles 3 and 4 which shall come into force on 1 April 2017.

2. Interpretation

- 2.1 The following provisions shall apply in the interpretation of these Undertakings.
- 2.2 These Undertakings give effect to the conclusions of the CMA stated in paragraph 20.25(b) of the Report and shall be construed consistently with, and to give effect to, those conclusions.
- 2.3 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in the Undertakings.
- 2.4 The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.6 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include references to bodies of persons, whether corporate or incorporate.
- 2.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.8 References to Articles are references to Articles of these Undertakings.
- 2.9 The Interpretation Act 1978 applies to these Undertakings except where words and expressions are expressly defined.
- 2.10 In these Undertakings:

Act	means the Enterprise Act 2002.
Affiliate Licensee	has the meaning given to it in the Gas Supply Licence.
CMA	means the Competition and Markets Authority.
Development Fee	means any payment made to the Prepayment Meter Infrastructure Provider by a Retail Gas Supplier upon gaining access to a Tariff Page which, under contractual agreements with the Prepayment Meter Infrastructure Provider in force at the time of these Undertakings, the Retail Gas Supplier is entitled to recover when relinquishing a Tariff Page.
Domestic Customer	has the meaning given to it in the Gas Supply Licence.
Gas Supply Licence	means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
GEMA	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
New Entrant	means a Retail Gas Supplier who does not hold any Tariff Pages and has notified the Prepayment Meter Infrastructure Provider that it needs to acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.
Prepayment Gas Meter	means any gas meter operating in a mode which requires a customer to pay charges in advance.
Prepayment Meter Infrastructure	has the meaning given to it in the SPAA.
Prepayment Meter Infrastructure Provider	has the meaning given to it in the SPAA.
Prepayment Gas Tariff	means a Tariff in respect of any domestic supply contract or deemed contract with a Domestic Customer that is supplied gas via a Prepayment Gas Meter, and which includes a requirement to pay charges through a Prepayment Gas Meter, regardless of whether such contract continues to be capable of being entered into by Domestic Customers.

Retail Gas Supplier	means any person authorised to supply by virtue of a Gas Supply Licence.
SPAA	means the Supply Point Administration Agreement, as defined in the Gas Supply Licence.
SPAA Ltd	means SPAA LIMITED, a company incorporated in England and Wales (registered number 04365599) whose registered office is at Grafton House, 2-3 Golden Square, London W1F 9HR.
Tariff	has the meaning given to it in the Gas Supply Licence.
Tariff Code	has the meaning given to it in the SPAA.
Tariff Page	means 11 Tariff Codes grouped together for the purpose of allocation to a single Retail Gas Supplier.
Unallocated Tariff Page	means a Tariff Page that has not been allocated by the Prepayment Meter Infrastructure Provider to any Retail Gas Supplier.
Unused Tariff Code	means a Tariff Code that has not been used over the previous 30 days by a Retail Gas Supplier for the purpose of any Prepayment Gas Tariff.
Unused Tariff Page	means a Tariff Page that is allocated to a Retail Gas Supplier but which has not been used over the previous 30 days by the Retail Gas Supplier for the purpose of any Prepayment Gas Tariff, including in the circumstances set out in Article 5.

2.11 In these Undertakings any reference to:

- (a) '**day**' means calendar days;
- (b) a '**person**' includes any individual, firm, partnership, body corporate or association;
- (c) '**written**' or '**in writing**' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
- (d) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.

Part 2

Undertakings to relinquish Tariff Pages

3. Restriction on the number of Tariff Pages held at any one time

- 3.1 Subject to Article 3.2, Southern Electric Gas undertakes to ensure that no more than 12 Tariff Pages are allocated to it at any one time.
- 3.2 Southern Electric Gas will however be permitted to use up to 14 Tariff Pages, provided that the Prepayment Meter Infrastructure Provider has confirmed in writing that the total number of Unallocated Tariff Pages is equal to ten or more.
- 3.3 Southern Electric Gas undertakes to relinquish any Tariff Page that it holds in excess of 14 Tariff Pages no later than 30 April 2017.
- 3.4 Subject to Articles 5 and 7, Southern Electric Gas undertakes to relinquish any Tariff Page that it holds in excess of 12 Tariff Pages pursuant to Article 6:
- (a) no later than 30 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if Southern Electric Gas holds Unused Tariff Pages; or
 - (b) no later than 150 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if Southern Electric Gas does not hold Unused Tariff Pages.
- 3.5 For the purpose of ensuring compliance with Article 3.4, Southern Electric Gas shall request the Prepayment Meter Infrastructure Provider to notify it as soon as the total number of Unallocated Tariff Pages becomes fewer than ten.

4. Obligation to comply with directions to relinquish Tariff Pages

- 4.1 Southern Electric Gas undertakes to comply with any direction to relinquish a Tariff Page that is given by GEMA in the following circumstances:
- (a) when the total number of Unallocated Tariff Pages is fewer than five and Southern Electric Gas holds one or more Unused Tariff Pages; or
 - (b) when there are no Unallocated Tariff Pages and a New Entrant has informed the Prepayment Meter Infrastructure Provider that it needs to

acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.

4.2 Subject to Articles 5 and 7, Southern Electric Gas undertakes to relinquish a Tariff Page, pursuant to Article 6:

(a) no later than 30 days after receiving a direction from GEMA in the circumstances set out in Article 4.1(a);

(b) no later than 150 days after receiving a direction from GEMA in the circumstances set out in 4.1(b).

5. Allocation of Tariff Codes across Tariff Pages

5.1 For the purposes of Articles 3.4 and 4.1 Southern Electric Gas will be deemed to hold one Unused Tariff Page for each combination of 11 Unused Tariff Codes it holds across different Tariff Pages.

5.2 Subject to Article 7, Southern Electric Gas shall give appropriate instructions to the Prepayment Meter Infrastructure Provider so as to ensure that any Tariff Page to be relinquished pursuant to these Undertakings contains only Unused Tariff Codes.

6. Process for relinquishing Tariff Pages

6.1 For the purpose of relinquishing a Tariff Page pursuant to these Undertakings, Southern Electric Gas shall notify the Prepayment Meter Infrastructure Provider as soon as practicable of its intention to relinquish a Tariff Page within a timeframe that is compliant with Articles 3, 4 and 5, as applicable.

6.2 If Southern Electric Gas relinquishes a Tariff Page in the circumstances set out in Articles 5.1 and 5.2, the relevant time period for compliance set out in Article 4.2(a) will be extended by a further 90 days, and a further 15 days if Southern Electric Gas requested a direction under Article 7.

6.3 Southern Electric Gas is entitled to a refund of the Development Fee associated with any Tariff Page it relinquishes pursuant to these Undertakings.

7. Direction for alternative compliance

7.1 If an obligation to relinquish a Tariff Page arises in the circumstances set out in Article 5.1, Southern Electric Gas may apply to GEMA to request a direction concerning the compliance with these Undertakings.

- 7.2 If GEMA considers, after consultation with the CMA and having had regard to the principle of proportionality, that the relinquishing of a Tariff Page may cause material consumer detriment for certain customers of Southern Electric Gas, it shall give a direction requiring Southern Electric Gas to comply with Articles 3 or 4 by releasing 11 Unused Tariff Codes in lieu of a Tariff Page.
- 7.3 If GEMA has issued a direction to Southern Electric Gas pursuant to Article 7.2, Southern Electric Gas undertakes to comply with such direction within 30 days from the date the direction was issued.
- 7.4 In the circumstances where Southern Electric Gas relinquishes 11 Unused Tariff Codes in lieu of a Tariff Page pursuant to Article 7, Southern Electric Gas undertakes not to modify any of the values associated with the Tariff Pages which relate to any such Tariff Codes without the consent of the Retail Gas Supplier(s) who hold such Tariff Codes.

Part 3

Monitoring, compliance, termination and miscellaneous

8. Monitoring and compliance

- 8.1 Southern Electric Gas undertakes to provide, or request SPAA Ltd to provide, as soon as practicable any information and documents that the CMA or GEMA may from time to time reasonably require for the purposes of monitoring the allocation of Tariff Pages and compliance with the Undertakings.
- 8.2 Southern Electric Gas undertakes to comply with such reasonable written directions as the CMA or GEMA may from time to time give to take such steps within their reasonable competence as may be required for the purpose of carrying out or securing compliance with these Undertakings.

9. Termination

- 9.1 Subject to Articles 9.2 and 9.3, Southern Electric Gas recognises and acknowledges that these Undertakings shall be in force until such time as they are varied, superseded or released under section 159(4) or (5) of the Act.
- 9.2 Southern Electric Gas shall be released from the undertakings given in Article 4.1 if 50 or more new Tariff Pages become available on the Prepayment Meter Infrastructure following the entry into force of these Undertakings.

- 9.3 Southern Electric Gas shall be released from the Undertakings given in Articles 3 to 7 if the CMA, after consultation with GEMA, confirms by way of a direction that an implemented modification proposal achieves the aim of the provisions set out in these Undertakings. In this event, Southern Electric Gas undertakes not to apply for a derogation under Clause 14 of the SPAA in relation to the provisions implemented through this modification proposal without prior approval from GEMA.
- 9.4 Southern Electric Gas shall be released from these Undertakings if the CMA, after consultation with GEMA, confirms by way of a direction that the requirement set out in Condition 33.1 of the Gas Supply Licence has been satisfied.
- 9.5 Southern Electric Gas recognises and acknowledges that the variation, supersession or release of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, supersession or release.

10. Effect of invalidity

- 10.1 Southern Electric Gas undertakes that, should any provision of these Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

11. Governing Law

- 11.1 Southern Electric Gas recognises and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 11.2 In the event that a dispute arises concerning these Undertakings, Southern Electric Gas undertakes to submit that dispute to the courts of England and Wales.

FOR AND ON BEHALF OF SOUTHERN ELECTRIC GAS LIMITED

Date: 19 December 2016

(signed)

Will Morris

Director

ENERGY MARKET INVESTIGATION

UNDERTAKINGS GIVEN BY SCOTTISHPOWER ENERGY RETAIL LIMITED

The Energy Market Investigation (Gas Tariff Codes) Undertakings 2016

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority (GEMA), 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 (GA86) and section 43 of the Electricity Act 1989 (EA89)), 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.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act 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 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 Prepayment AEC.
4. 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

¹ [Energy market investigation terms of reference.](#)

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.
5. 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.
6. In the Report, the CMA decided on a package of remedies to remedy, mitigate or prevent the Prepayment AEC and/or associated detriment that it found. Among other things, the CMA decided to seek undertakings from active relevant gas suppliers including the following three components: (a) a cap on the number of gas tariff pages that each relevant gas supplier can hold at no more than 12; (b) an obligation on the relevant gas suppliers to provide relevant information for GEMA to monitor the allocation of the gas tariff codes; and (c) an undertaking from the relevant gas suppliers to follow a direction from GEMA to transfer one or more gas tariff pages to another supplier.
7. The CMA also recommended that, absent such undertakings, GEMA should introduce a new licence condition in suppliers' standard licence conditions, to implement this remedy.

On behalf of ScottishPower Energy Retail Limited, with the number SC190287 and with its registered office at 1 Atlantic Quay, Robertson Street, Glasgow G2 8SP (hereafter, ScottishPower Energy Retail) and any Affiliate Licensees, ScottishPower Energy Retail now gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to sections 138 and 159(1) and (3) of the Act. These Undertakings may be varied, superseded or released by the CMA in accordance with section 159(4) or (5) of the Act.

Part 1

General and Interpretation

1. Commencement

- 1.1 In accordance with section 159(3) of the Act, these Undertakings shall come into force when they are accepted by the CMA, except Articles 3 and 4 which shall come into force on 1 April 2017.

2. Interpretation

- 2.1 The following provisions shall apply in the interpretation of these Undertakings.
- 2.2 These Undertakings give effect to the conclusions of the CMA stated in paragraph 20.25(b) of the Report and shall be construed consistently with, and to give effect to, those conclusions.
- 2.3 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in the Undertakings.
- 2.4 The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.6 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include references to bodies of persons, whether corporate or incorporate.
- 2.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.8 References to Articles are references to Articles of these Undertakings.
- 2.9 The Interpretation Act 1978 applies to these Undertakings except where words and expressions are expressly defined.
- 2.10 In these Undertakings:

Act	means the Enterprise Act 2002.
Affiliate Licensee	has the meaning given to it in the Gas Supply Licence.
CMA	means the Competition and Markets Authority.
Development Fee	means any payment made to the Prepayment Meter Infrastructure Provider by a Retail Gas Supplier upon gaining access to a Tariff Page which, under contractual agreements with the Prepayment Meter Infrastructure Provider in force at the time of these Undertakings, the Retail Gas Supplier is entitled to recover when relinquishing a Tariff Page.
Domestic Customer	has the meaning given to it in the Gas Supply Licence.
Gas Supply Licence	means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
GEMA	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
New Entrant	means a Retail Gas Supplier who does not hold any Tariff Pages and has notified the Prepayment Meter Infrastructure Provider that it needs to acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.
Prepayment Gas Meter	means any gas meter operating in a mode which requires a customer to pay charges in advance.
Prepayment Meter Infrastructure	has the meaning given to it in the SPAA.
Prepayment Meter Infrastructure Provider	has the meaning given to it in the SPAA.
Prepayment Gas Tariff	means a Tariff in respect of any domestic supply contract or deemed contract with a Domestic Customer that is supplied gas via a Prepayment Gas Meter, and which includes a requirement to pay charges through a Prepayment Gas Meter, regardless of whether such contract continues to be capable of being entered into by Domestic Customers.

Retail Gas Supplier	means any person authorised to supply by virtue of a Gas Supply Licence.
SPAA	means the Supply Point Administration Agreement, as defined in the Gas Supply Licence.
SPAA Ltd	means SPAA LIMITED, a company incorporated in England and Wales (registered number 04365599) whose registered office is at Grafton House, 2-3 Golden Square, London W1F 9HR.
Tariff	has the meaning given to it in the Gas Supply Licence.
Tariff Code	has the meaning given to it in the SPAA.
Tariff Page	means 11 Tariff Codes grouped together for the purpose of allocation to a single Retail Gas Supplier.
Unallocated Tariff Page	means a Tariff Page that has not been allocated by the Prepayment Meter Infrastructure Provider to any Retail Gas Supplier.
Unused Tariff Code	means a Tariff Code that has not been used over the previous 30 days by a Retail Gas Supplier for the purpose of any Prepayment Gas Tariff.
Unused Tariff Page	means a Tariff Page that is allocated to a Retail Gas Supplier but which has not been used over the previous 30 days by the Retail Gas Supplier for the purpose of any Prepayment Gas Tariff, including in the circumstances set out in Article 5.

2.11 In these Undertakings any reference to:

- (a) '**day**' means calendar days;
- (b) a '**person**' includes any individual, firm, partnership, body corporate or association;
- (c) '**written**' or '**in writing**' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
- (d) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.

Part 2

Undertakings to relinquish Tariff Pages

3. Restriction on the number of Tariff Pages held at any one time

3.1 Subject to Article 3.2, ScottishPower Energy Retail undertakes to ensure that no more than 12 Tariff Pages are allocated to it at any one time.

3.2 ScottishPower Energy Retail will however be permitted to use up to 14 Tariff Pages, provided that the Prepayment Meter Infrastructure Provider has confirmed in writing that the total number of Unallocated Tariff Pages is equal to ten or more.

3.3 ScottishPower Energy Retail undertakes to relinquish any Tariff Page that it holds in excess of 14 Tariff Pages no later than 30 April 2017.

3.4 Subject to Articles 5 and 7, ScottishPower Energy Retail undertakes to relinquish any Tariff Page that it holds in excess of 12 Tariff Pages pursuant to Article 6:

(a) no later than 30 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if ScottishPower Energy Retail holds Unused Tariff Pages; or

(b) no later than 150 days following receipt of a notification from the Prepayment Meter Infrastructure Provider that the total number of Unallocated Tariff Pages is fewer than ten if ScottishPower Energy Retail does not hold Unused Tariff Pages.

3.5 For the purpose of ensuring compliance with Article 3.4, ScottishPower Energy Retail shall request the Prepayment Meter Infrastructure Provider to notify it as soon as the total number of Unallocated Tariff Pages becomes fewer than ten.

4. Obligation to comply with directions to relinquish Tariff Pages

4.1 ScottishPower Energy Retail undertakes to comply with any direction to relinquish a Tariff Page that is given by GEMA in the following circumstances:

(a) when the total number of Unallocated Tariff Pages is fewer than five and ScottishPower Energy Retail holds one or more Unused Tariff Pages; or

(b) when there are no Unallocated Tariff Pages and a New Entrant has informed the Prepayment Meter Infrastructure Provider that it needs to acquire one Tariff Page in order to supply gas to one or more Domestic Customers via a Prepayment Gas Meter.

4.2 Subject to Articles 5 and 7, ScottishPower Energy Retail undertakes to relinquish a Tariff Page, pursuant to Article 6:

(a) no later than 30 days after receiving a direction from GEMA in the circumstances set out in Article 4.1(a);

(b) no later than 150 days after receiving a direction from GEMA in the circumstances set out in 4.1(b).

5. Allocation of Tariff Codes across Tariff Pages

5.1 For the purposes of Articles 3.4 and 4.1 ScottishPower Energy Retail will be deemed to hold one Unused Tariff Page for each combination of 11 Unused Tariff Codes it holds across different Tariff Pages.

5.2 Subject to Article 7, ScottishPower Energy Retail shall give appropriate instructions to the Prepayment Meter Infrastructure Provider so as to ensure that any Tariff Page to be relinquished pursuant to these Undertakings contains only Unused Tariff Codes.

6. Process for relinquishing Tariff Pages

6.1 For the purpose of relinquishing a Tariff Page pursuant to these Undertakings, ScottishPower Energy Retail shall notify the Prepayment Meter Infrastructure Provider as soon as practicable of its intention to relinquish a Tariff Page within a timeframe that is compliant with Articles 3, 4 and 5, as applicable.

6.2 If ScottishPower Energy Retail relinquishes a Tariff Page in the circumstances set out in Articles 5.1 and 5.2, the relevant time period for compliance set out in Article 4.2(a) will be extended by a further 90 days, and a further 15 days if ScottishPower Energy Retail requested a direction under Article 7.

6.3 ScottishPower Energy Retail is entitled to a refund of the Development Fee associated with any Tariff Page it relinquishes pursuant to these Undertakings.

7. Direction for alternative compliance

- 7.1 If an obligation to relinquish a Tariff Page arises in the circumstances set out in Article 5.1, ScottishPower Energy Retail may apply to GEMA to request a direction concerning the compliance with these Undertakings.
- 7.2 If GEMA considers, after consultation with the CMA and having had regard to the principle of proportionality, that the relinquishing of a Tariff Page may cause material consumer detriment for certain customers of ScottishPower Energy Retail, it shall give a direction requiring ScottishPower Energy Retail to comply with Articles 3 or 4 by releasing 11 Unused Tariff Codes in lieu of a Tariff Page.
- 7.3 If GEMA has issued a direction to ScottishPower Energy Retail pursuant to Article 7.2, ScottishPower Energy Retail undertakes to comply with such direction within 30 days from the date the direction was issued.
- 7.4 In the circumstances where ScottishPower Energy Retail relinquishes 11 Unused Tariff Codes in lieu of a Tariff Page pursuant to Article 7, ScottishPower Energy Retail undertakes not to modify any of the values associated with the Tariff Pages which relate to any such Tariff Codes without the consent of the Retail Gas Supplier(s) who hold such Tariff Codes.

Part 3

Monitoring, compliance, termination and miscellaneous

8. Monitoring and compliance

- 8.1 ScottishPower Energy Retail undertakes to provide, or request SPAA Ltd to provide, as soon as practicable any information and documents that the CMA or GEMA may from time to time reasonably require for the purposes of monitoring the allocation of Tariff Pages and compliance with the Undertakings.
- 8.2 ScottishPower Energy Retail undertakes to comply with such reasonable written directions as the CMA or GEMA may from time to time give to take such steps within their reasonable competence as may be required for the purpose of carrying out or securing compliance with these Undertakings.

9. Termination

- 9.1 Subject to Articles 9.2 and 9.3, ScottishPower Energy Retail recognises and acknowledges that these Undertakings shall be in force until such time as they are varied, superseded or released under section 159(4) or (5) of the Act.

- 9.2 ScottishPower Energy Retail shall be released from the undertakings given in Article 4.1 if 50 or more new Tariff Pages become available on the Prepayment Meter Infrastructure following the entry into force of these Undertakings.
- 9.3 ScottishPower Energy Retail shall be released from the Undertakings given in Articles 3 to 7 if the CMA, after consultation with GEMA, confirms by way of a direction that an implemented modification proposal achieves the aim of the provisions set out in these Undertakings. In this event, ScottishPower Energy Retail undertakes not to apply for a derogation under Clause 14 of the SPAA in relation to the provisions implemented through this modification proposal without prior approval from GEMA.
- 9.4 ScottishPower Energy Retail shall be released from these Undertakings if the CMA, after consultation with GEMA, confirms by way of a direction that the requirement set out in Condition 33.1 of the Gas Supply Licence has been satisfied.
- 9.5 ScottishPower Energy Retail recognises and acknowledges that the variation, supersession or release of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, supersession or release.

10. Effect of invalidity

- 10.1 ScottishPower Energy Retail undertakes that, should any provision of these Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

11. Governing Law

- 11.1 ScottishPower Energy Retail recognises and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 11.2 In the event that a dispute arises concerning these Undertakings, ScottishPower Energy Retail undertakes to submit that dispute to the courts of England and Wales.

FOR AND ON BEHALF OF SCOTTISHPOWER ENERGY RETAIL LIMITED

Date: 19 December 2016

Date: 19 December 2016

(signed)

(signed)

Neil Clitheroe

Marc Rossi

Global Retail Director

Finance Director