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BEIS consultation: Reforming Competition and Consumer Policy

Centrica response, October 2021

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About Centrica

- As an energy services and solutions company, we put customers and colleagues at the heart of everything we do, to add value for all.
- Centrica, through brands including British Gas, Hive, PH Jones and Centrica Business Solutions, delivers innovative energy and services solutions for our customers. Supported by around 7,500 engineers and technicians, we are committed to creating a cleaner future, and we're making significant changes to help us get there.
- Starting with zero carbon energy and green tariffs, we are encouraging our customers to take steps to reduce their own carbon emissions. By installing EV charge points, energy efficiency technology, heat pumps and hydrogen ready boilers, we offer a range of solutions to support our customers on the journey to net zero.

Executive Summary

We welcome the opportunity to respond to this consultation and are supportive of many of the measures being made to streamline the competition regime and bring improved outcomes for consumers. As an energy supplier, as well as a provider of an integrated services insurance product (Homecare) we have an interest from both an energy and financial services perspective.
There are a few areas of concern we would like to draw your attention to and would value further discussions with officials on.

Competition
We are concerned that several proposals contained within this consultation seek to pursue speedy decision making at the expense of accountability for the Competition and Markets Authority (CMA). Of particular concern are the proposals to reduce perceived procedural burdens on the CMA, relating to interim measures and the level of scrutiny it is subject to on appeal. The CMA has the power to impose significant penalties and the existing safeguards were created to reflect this. Diluting these as proposed risks negative impacts on a market, damaging consumer confidence, reducing innovation and investment as well as undermining trust in regulatory intervention.

Further, if these proposals are implemented alongside more regular strategic steers, there is a risk of perceived political interference, which could be damaging to the UK as a centre for investment. This loss of confidence could be particularly counter-productive in times of change, such as the continued exponential growth of the digital economy and the drive towards net zero and if the CMA intends to use its market powers more proactively to assist early stage market development (such as it did in relation to the Electric Vehicle charging market).

Consumer
Ombudsman complaints timeframe
For our customers, the proposals to halve the time that companies have to resolve complaints before customers can go to the Ombudsman from 8 to 4 weeks, will likely lead to worse outcomes. Whilst we understand that the intention behind this proposal is to drive an improved consumer experience by ensuring complaints are resolved quicker, for complex markets such as energy and finance services, this will likely worsen consumer satisfaction and potentially lead to further delays. There are valid reasons for complaints cases in regulated sectors like energy and financial services to be open for as long as they are, whether that is down to the complexities of the cases or the need

for reconciliation runs and industry processes to be followed for issues to be resolved. A shortened timeframe would not give businesses enough time to properly investigate and resolve complicated complaints.

If complaints can be referred to Ombudsman services in regulated sectors at an earlier point this could result in these services becoming involved in the initial investigation of complaints while businesses and consumers are still working together to resolve the issue. We are concerned that this would mean that the investigation of more complex complaints would be effectively outsourced to Ombudsman services. This would result in Ombudsman services resource being diverted to carrying out the initial investigation of complaints, rather than their traditional remit as a final referee between an individual and a company. If Ombudsman services regularly become involved in the initial investigation of complaint this could undermine public confidence in them as properly independent arbiters.

In addition, in contrast to other sectors such as Telecommunications, in the energy sector there is currently just one Ombudsman, which would need to pick-up the increase in demand. We do not believe the OS:E has the resource and capacity to deal with an increase in case volume, caused by an earlier referral point. We would strongly support an opt-out for this proposal for the energy and financial services sectors.

Subscription contracts
The proposals made in this consultation to tighten the rules around subscription contracts must not apply to essential utilities such as energy. We understand that the intention is not to include utilities within the scope of the legislation, but to ensure that this is the case, we would either like a specific exemption.

Specific Questions

Q1. What are the metrics and indicators the CMA and government could use to better understand and monitor the state of competition in the UK?
We support competitive markets and believe that these deliver the best outcomes for consumers and help society to meet the most important challenges, such as achieving net zero. We are therefore supportive in principle of any efforts to better understand and monitor the state of competition in the UK in order to inform genuinely pro-competitive policy making and decisions.

We have no specific views on which metrics and indicators would be the most suitable. We consider that it is more important that these metrics are chosen and deployed according to four principles:

1. Transparency: If state of competition reviews in the UK are to be used as the basis for policy making then these measures must be transparent and understandable.
2. Objectivity: Measures must be chosen for their objective value in carrying out independent, empirical assessments of competition. Measures should also be applied objectively and capable of being monitored. They should not be subject to intervention and change to suit specific political priorities or zeitgeists.
3. Consistency: The CMA and government should use the same or similar measures throughout consecutive assessments. This enables results to be compared, providing a clearer view of the state of competition in the medium to long term and how it is evolving.
4. Sector relevant: Where the CMA is considering specific sectors within its work, metrics and indicators must be tailored accordingly. This ensures that policy interventions are appropriate and relevant. For example, the weight placed on switching levels is inappropriate for some sectors and at best can be ineffective (such as in relation to current accounts) and sometimes creates perverse incentives (such as the development of unsustainable pricing models in the energy sector).

Q2. Should the CMA have a power to obtain evidence specifically for the purpose of advising government on the state of competition in the UK?
We disagree with this proposal. The CMA has taken significant steps to improve its outreach and engagement with organisations of all sizes throughout the UK and we consider that these measures are sufficient to gather the information which the CMA requires. Having a general power to obtain information for advising the government risks undermining the open and frank dialogue which is necessary to create good policy. There is also a concern that the CMA could use its powers if it has concerns in specific areas, where work under the Markets regime would be more appropriate.

Q3. Should government provide more detailed and regular strategic steers to the CMA?
We disagree with this proposal. The impartiality of the CMA is a pillar of the UK's competition regime, providing certainty and objectivity. These features are necessary to support investment decisions, particularly the long-term choices which are required to address major current challenges, such as the transition to net zero. We would be concerned that more frequent strategic steers could undermine this certainty, as government would be seen to be more interventionist. Given the high-level content of a Steer, which we consider suitably balances government support for the CMA without undermining the latter's independence, we would also more generally question the value of regular or ad-hoc documents of this nature in providing regular direction to the CMA (as opposed to the CMA's own Annual Plan).

Q4. Should the CMA be empowered to impose certain remedies at the end of a market study process?
We disagree with this proposal. The markets regime is designed to ensure that the extent of the remedies is appropriate to the depth of analysis undertaken. This ensures that significant, disruptive measures are only imposed when the CMA has carried out a thorough review of all the available evidence and parties have been given sufficient opportunity to make representations. Imposing stricter remedies at the end of a market study, without this depth of review, does raise concerns about whether the CMA can legitimately claim to have established a clear theory of harm that justifies intervention. Whilst the proposals provide for an extra 6 months to oversee the remedies, this does not solve the more fundamental issue of the review being insufficiently thorough to accurately identify theories of harm with sufficient certainty.

Q5. Alternatively, should the existing market study and market investigation system be replaced with a new single stage market inquiry tool?
We support consideration of proposals to reduce the duration of the process by removing duplication. However, this must not be at the expense of retaining the impartiality and rigor of the existing regime. The distinction between market studies and market investigations promotes better regulatory decision making and it is important that any changes to the framework retain such checks and balances. While the proposals consider that this could be achieved by appointing a panel to oversee final harms and remedies, it is not clear how much duplication would be saved, whilst the handover to a panel still takes place, particularly as the panel will still need to test, examine and understand the basis for the case team's conclusions.

The alternative proposal, to provide the CMA with greater flexibility to define the scope of the investigation, would be more effective at increasing speed, provided the CMA was prevented from "scope creep" during the process. We consider that the requirement to consult on a market investigation reference after 6 months should be retained as this is efficient and provides certainty for consumers and business regarding the potential implications of a market inquiry.

Q6. Should government enable the CMA to impose interim measures from the beginning of a market inquiry?

We strongly disagree with this proposal. As recognised in the consultation document, allowing the use of interim measures from the outset of a market inquiry could risk prejudicing regulatory incentives and lead to unintended market distortions, including reducing innovation risking "UK PLC" falling behind its competitors in other jurisdictions.

The comparison with Competition Act investigations is also flawed. Competition Act investigations typically involve one or only a handful of companies, rather than being sector wide, so there is limited scope for sector wide distortions. A Competition Act investigation is also opened where the CMA already holds sufficient evidence of harm to meet the relevant legal tests, arguably providing a more legitimate basis for imposing interim measures. However, the threshold to open a market study is much lower and, crucially, does not require any evidence of actual illegal conduct or clear theory of harm.

Overall, imposing interim measures as proposed, would therefore risk inadvertent negative impacts on a market, damaging consumer confidence reducing innovation and investment as well as undermining trust in regulatory intervention. This type of intervention could be particularly counter-productive in times of change, such as the continued exponential growth of the digital economy and the drive towards net zero and if the CMA intends to use its market powers more proactively to assist early stage market development (such as it did in relation to the electric vehicle charging market).

Q7. Should government enable the CMA to accept binding commitments at any stage in the market inquiry process?
We would support this proposal in principle, subject to further consideration of timing, initiation of commitments and the potential for uneven enforcement.

As noted in the consultation document, it is important that consideration of commitments does not delay the market inquiry. We therefore support the proposal for the CMA to only consider commitments which have a high likelihood of being accepted. As an alternative to stopping the clock, the creation of a separate group to consider the proposed commitments, alongside the market inquiry and once the need for remedies is established, would help to ensure the overall timetable was not disrupted.

We would also be concerned that the threat of more intrusive interventions following a full inquiry should not be used to pressure parties to accept apparently less invasive commitments at an earlier stage, as opposed to "hedging their bets" by waiting for the outcome of a full investigation. This issue could be moderated to some extent by giving the parties the initiative to offer commitments and confining the CMA to a reactive role.

Finally, any regime would also need to consider the risks of uneven enforcement if commitments are not accepted from all parties, which would have parallels with "hybrid settlements" in anti-trust enforcement cases. Uneven enforcement creates confusion for consumers and may also disincentivise companies from offering commitments if this could create a first mover disadvantage. Any proposals must carefully consider how this issue would be overcome.

Q8. Will government's proposed reforms help deliver effective and versatile remedies for the CMA's market inquiry powers?
Following the conclusion of a market inquiry, it is important that the remedies are implemented in a way which provides certainty for businesses going forward, so they can make any adaptations they are required to and continue to focus on delivering for customers and addressing wider challenges. It is clearly important that any changes to the remedies' rules do not lead to a loss of this certainty.

For example, any powers to review and supplement remedies should include a structured framework. In respect of reviewing remedies, this could be either a review at a regular interval (such as two yearly) or when certain pre-defined, objective criteria are met. The scope of review for supplementing remedies should also be clearly defined to ensure there is no opportunity to reopen the inquiry by proxy. As proposed, reviews should also pro-actively consider the removal of remedies, to ensure that businesses are given the opportunity to demonstrate where regulation may be reducing their ability to innovate or deliver other benefits for their customers. Finally, from a procedural perspective, parties should be given the same opportunity to make representations and benefit from the same rights of appeal as applied during the main market inquiry.

In contrast, it is not clear that the case for new information gathering powers has been made out. The markets regime already includes compulsory information gathering powers to assist with the preparation of remedies. Further, any orders giving effect to remedies could include provision for any information gathering required as part of a review. New powers would seem to have little purpose beyond creating overlapping regulation.

Q9. N/A.

Q10. Should the current jurisdictional tests for the CMA's merger control investigations be revised? If so, what are your views on the proposed changes to the jurisdictional tests?
We consider that the existing thresholds in the jurisdictional tests are fit for purpose although we do not have any objections to the proposed reforms. We support the commitment to the existing voluntary, non-suspensory regime.

Q11. N/A

Q12. What reforms are required to the CMA's merger investigation procedures to deliver more effective and efficient merger investigations?
We are broadly in favour of the reforms proposed in the consultation and look forward to reviewing detailed proposals.

Q13. Should the CMA Panel be retained, but reformed as proposed above? Are there other reforms which should be made to the panel process?
The independent Panel is an asset of the UK regime, bringing a wealth of diverse knowledge and helping to demonstrate independent decision making. Whilst there are potential efficiency gains in having a smaller panel, we are concerned that this proposal could undermine the inherent benefits of the Panel structure.

The diversity of the Panel will be impacted not just in terms of a smaller pool inevitably possessing a narrower skill-set but also as the profile of candidates may change. In a speech delivered to the Law Council of Australia's ACCC, Panel member Richard Feasey noted that a "relatively low" hourly rate already meant that Panel members were likely to be approaching retirement rather than at the earlier stage of their careers. Full time appointments to the Panel would exacerbate this trend as members would have to sacrifice more of their main career. This could lead to a potentially self-selecting panel, from a cohort which does not necessarily reflect the diversity of backgrounds represented in wider society. Recruitment structures would need to be designed to avoid these issues by, for example, offering competitive benefits packages, pro-active recruitment strategies, which tap into a diverse talent pool and, overall, ensuring that the role carries the prestige to attract candidates away from top employers.

Most crucially, if membership of the Panel is the main source of employment for individuals, it is important that measures are introduced to ensure there is no perceived bias, as Panel members may inevitably have continued employment in the back of their mind when making decisions. These concerns could be ameliorated to some extent by offering fixed, non-renewable appointments. Fixed salaries could be paid regardless of the work undertaken by the members.

Q14-16 N/A

Q17. Will the reforms being considered by government improve the effectiveness of the CMA's tools for identifying and prioritising investigations? In particular will providing holders of full immunity in the public enforcement process, with additional immunity from liability for damages caused by the cartel help incentivise leniency applications?
This question points to a delicate balancing act between the wider benefits which more leniency applications and enforcement may bring (such as increased deterrence) with the rights of individuals to recover losses from illegal conduct. Allowing cartelists to avoid both an administrative fine and damages risks a perception that companies are not being suitably punished, undermining public confidence in the regime and deterrence.

With this in mind, immunity from damages actions should be limited to "Type A" leniency applicants only. The CMA should also ensure that applicants fully comply with the conditions for leniency. Finally, BEIS should consider whether it would be appropriate to grant the CMA a discretion to require leniency applicants to offer some form of collective redress in lieu of a damages action, should there be no other cartel participants for third parties to seek damages from (for example, if all other members are insolvent or of much more limited financial strength compared to the leniency applicant). This should be available to individual consumers and business, ensuring that the rights of third parties were maintained.

Q18. Will the CMA's interim measures tool in Competition Act investigations be made more effective by (a) changing the procedures for issuing decisions and/or (b) changing the standard of review of appeals against the decision?
We do not support these proposals, which raise matters of fundamental concern regarding key legal rights and have the potential for widespread negative consequences within a sector and the economy.

The principle of interim measures is sound and they serve a useful purpose in helping to minimise the potential for harm during long running investigations. However, interim measures are still serious interventions which may cause harm to the legitimate financial and reputational interests of companies being investigated, particularly as they are imposed before any wrongdoing has been established. It is precisely for these reasons that the requirements to use them are "burdensome", as stated in the consultation. It is imperative that the targets of interim measures have the right to defend themselves, which clearly requires robust procedures and sight of the underlying evidence base relied on by the CMA.

It is also important to recognise that although interim measures are temporary, their impact on innovation and development within a market can be longer lasting. Businesses within the sectors under investigation will be aware that they are under scrutiny by association which could impact their behaviour and ability to gain investment. Interim measures imposed without merit could have particularly long-term repercussions in fast moving tech and net zero markets, which are central to modern society and consumers.

The proposal to include a simple statement of the reasons for a decision is clearly inappropriate for enabling recipients to understand the case against them and to determine whether to exercise their legitimate rights to defend themselves. The proposed approach would risk introducing arbitrariness into Competition Act cases, damaging business confidence in the system. Further, in relation to the standard of appeal, parity with the CMA's mergers and markets functions is not a basis to justify changing the standard of appeal for interim measures decisions. Interim measures decisions are linked to Competition Act investigations which, as is widely cited, are quasi-criminal in nature and therefore completely distinct from the administrative mergers and markets proceedings. The standard of appeal should reflect this and be merits based review.

Q19. Will the reforms in paragraphs 1.170 to 1.174 improve the effectiveness of the CMA's tools for gathering evidence in Competition Act investigations? Are there other reforms government should be considering?

We have no objections to these proposals in principle. We would be concerned that suitable safeguards should be in place in respect of any new seize and sift at domestic premises, particularly in respect of documents or devices which may be used by a member of a household who is not connected with the investigation. The CMA should be required to objectively demonstrate that a document or device is connected to the investigation before removing it. Likewise, in respect of proposals to extend the requirements to preserve evidence, measures must be workable, particularly recognising that investigations can be confidential at an early stage, which presents challenges in communicating the requirement to preserve evidence (particularly within third parties).

Q20. Will government's proposals for the use of Early Resolution Agreements help to bring complex Chapter II cases to a close more efficiently? Do government's proposals provide the right balance of incentives between early resolution and deterrence?

This is a pragmatic and sensible proposal provided suitable safeguards are in place to protect the interests of all parties. For example, there should be clear, objective and robust processes for reviewing, amending and / or revoking commitments which can be placed on the relevant undertaking. Further, settlement payments should be set according to a methodology which allows for deterrence to be considered.

Q21. N/A

Q22. Will government's proposed reforms help to speed up the CMA's access to file process and by extension the conclusion of the CMA's investigations?

Whilst there are benefits in adopting a prescribed framework, this would clearly need to be robust and have the trust of all parties involved. It would also need to include flexibility to adapt to specific situations of each case, which limits how prescriptive it can be and therefore how much time could realistically be saved.

We would be very concerned about any condition whereby third parties were not permitted to make representations in relation to information they have submitted. The CMA already places very high barriers for parties who seek to block disclosure of their information into a confidentiality ring but making representations at least enables the parties to understand the information which is being disclosed. Practically speaking, disclosure of this information, may also cause contractual issues where information which is confidential to contractual counterparties who are not involved in the investigation at all and cannot be informed due to the authority's confidentiality restrictions. If parties who have submitted information to the CMA are not aware their information is further disclosed into a confidentiality ring, this could leave them at risk of inadvertent contract breaches.

Finally, we would expect that parties would still have the opportunity to review and make representations on the disclosure of their information within any final infringement decision.
We consider that an alternative approach would be speed-up the Procedural Officer process, to enable objections by parties and third parties to be heard in a way which minimises delays to the overall investigation.

Q23. Should government remove the requirements in the CMA Rules on the decision makers for infringement decisions in Competition Act investigations?
We have no objections in principle to the CMA determining the rules it will apply when making decisions. However, processes must be created which ensure that trust in the system is retained for companies, whether they are under investigation or not, and the general public. Any procedures should therefore be transparent, objective and applied consistently so stakeholders have a clear understanding of how decisions are made. New procedures should also not be designed to limit scrutiny of CMA decisions by courts and should be supported by full merits review.

Q24. What is the appropriate level of judicial scrutiny for decisions by the CMA in Competition Act investigations?
Competition Act cases are quasi-criminal proceedings, where the CMA has powers to impose remedies which can have a major financial, commercial and reputational impact on a company and, by association, the individuals involved in the conduct under investigation. Speaking generally, it is therefore only appropriate to use a full merits appeal to ensure legal rights to challenge these decisions are guaranteed. For the reasons set out below, we also consider that any move away from merits based review would have significant negative impacts on consumers, the timeliness of reviews and the development of competition law post-Brexit.

First, the government's own evidence demonstrates that merits review is more expert and focused, and leads to better decisions and superior outcomes for consumers.[1] Whilst the CMA has expressed its opposition to merits review, the empirical case against this approach has not been set out in any detail.

Further, whilst hearing a case under judicial review principles superficially appears to be more straightforward, this is far from guaranteed. A recent example is Centrica's judicial review of Ofgem's energy retail price cap. The decision in this case was made on 6 November 2018, and the court's final judgment was handed down on 13 November 2019 – over a year later. Ofgem did not then complete the remittal process, until 5 August 2020 – 21 months after the error was made. In contrast to this scenario, merits review by the Competition Appeal Tribunal, deploys specialist skills and expertise (including economic expertise), placing the Tribunal in a better position to impose an appropriate remedy, rather than merely ordering quashing and remittal, which would be the extent of its powers under judicial review. Avoiding a further remittal process has numerous benefits including avoiding additional time, expense and resources as well as providing regulatory certainty more quickly. If the objective of this proposal is to speed-up regulatory appeals and reduce resources, it is not clear that this would be the case, introducing uncertainty for consumers and businesses alike.

Finally, removing full merits appeal risks stagnating the development of UK competition law in this crucial post-Brexit period. Competition law has relied on the precedents of the UK and EU courts to

[1] One 2013 stakeholder response to a Government impact assessment established that merits review tends to lead to corrections of errors benefiting consumers of around £50m to £100m each case; a similar 2016 impact assessment considered the benefit to be £10m to £40m in each case. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535648/2016-05-24_Appeals_-_impact_assessment.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207702/bis-13-924-regulatory-and-competition-appeals-impact_assessment.pdf.

identify new categories of infringements and set out the respective legal tests. Relying on precedent enables the law to flex over time and adapt to changes in the economy, such as digitalisation and the importance of sustainability and the net zero agenda. The role of the judiciary in the development of the law will grow as the UK moves out of the orbit of EU competition law. However, if courts are limited to judicial review, with an inherent deference to regulatory expertise, the CMA will be effectively left as judge, jury and executioner, developing the law as it sees fit with no binding doctrine of precedent. This creates uncertainty for companies and investors who will struggle to self-assess whether agreements are compliant. This also creates risks of false positives leading to consumer harm and false negatives which limit innovation. In the long-term, the UK's body of competition law will be significantly poorer under a judicial review system.

Q25. What is the appropriate level of judicial scrutiny for decisions by the CMA in relation to non-compliance with investigative and enforcement powers, including information requests and remedies across its functions?
Please see response to question 24 above.

Q26. N/A

Q27. Will the new investigative powers proposed help the CMA to conclude its investigations more quickly? Are the proposed penalty caps set at the right level? Are there other reforms to the CMA's evidence gathering powers which government should be considering?
We support the objectives to speed up Competition Act investigations. As part of the consideration of these reforms, it is important to remember that for most of the duration of an investigation, the "ball is in the CMA's court" as it analyses submissions and decides next steps. The CMA has more recently tended to accelerate timetables by placing additional burdens on the parties under investigation (and third parties) with short deadlines for searches, access to file processes and periods to make representation. This must be recognised in any reforms, so that the onus is on the CMA and third parties to ensure that investigations are concluded more quickly. The current proposals do not strike this balance, placing more emphasis on the parties under investigation, where further reductions in the time they have to respond to various requests would risk undermining their ability to adequately defend themselves.

Q28. Will the new enforcement powers proposed improve compliance? Are the proposed penalty caps at the right level? Are there other reforms to the CMA's enforcement powers which government should be considering?
We have no objection to the level of the proposed penalties, although it is not clear that there are or have been compliance failures which justify these changes. Further, the ability to impose further reaching penalties strengthens the case to maintain the status quo regarding standards of appeal and ensure that objective and transparent guidelines on how fines will be calculated. It is essential that the level of scrutiny and accountability which the CMA is subject to is commensurate with the powers it has.

Q29. N/A

Q30. Do you agree with the description of a subscription contract set out below? How could this description be improved?
Centrica is generally supportive of the Government's proposals to modernise the rules on subscription contracts.

However, there need to be exclusions from some of the general rules for certain essential contracts like insurance and those for energy supply. Such exclusions are needed to ensure these contracts are not unintentionally suspended and consumers left in an undesirable situation.
The financial services and energy sectors also have detailed rules governing the renewal of contracts which provide consumers with a higher level of protection than is proposed in this consultation. We believe these sector specific rules should continue to apply in these sectors rather than the general rules proposed here.

Q31-35 N/A

Q36. Should traders be required, a reasonable period before the end of a free trial or low-cost introductory offer to (i) provide consumers with a reminder that a "full or higher price" ongoing contract is about to begin or (ii) obtain the consumer's explicit consent to continuing the subscription after the free trial or low cost introductory offer period ends?
Centrica agrees with the principle behind these proposals. However, it is our view that the proposals regarding long-term inactive subscriptions should not apply to energy supply contracts, as they would be inappropriate, unnecessary, and detrimental to consumers.

In particular, we believe the proposals would: risk the health and welfare of consumers; unnecessarily duplicate existing and sufficient sectoral regulation; and contradict wider government policy, in particular the Universal Service Obligation in the domestic electricity supply market.

As background, in most sectors when a customer's contract with a business ends or is suspended, the business can stop supplying that customer. However, this is not the case with energy companies. The default arrangements in the Gas and Electricity Acts ensure that electricity and gas are supplied to a property even where the customer has not agreed a contract with their energy supplier or where their contract has ended. Due to the default arrangements suppliers still incur the cost of providing a live supply to the property even if energy is not actively used.

We are concerned any rules on the suspension of long-term inactive subscription contracts would interact with the Universal Service Obligation in an unintended manner.

Q37-40 N/A

Q41. Are there certain contract types or types of goods, services, or digital content that should be exempt from the rules proposed and why?
There needs to be exclusions from some of the general rules for certain essential contracts like insurance and energy supply contracts.

The financial services and energy sectors have detailed rules governing the renewal of contracts which provide consumers with a higher level of protection than is proposed in this consultation. We believe these sector specific rules should continue to apply in these sectors rather than general rules which may dilute the protections already in place in these sectors.

These types of contracts also need to be excluded from any requirement to suspend long-term inactive subscriptions, to ensure these contracts do not unintentionally get suspended and leave consumers in an undesirable situation such as being uninsured or potentially having their energy supply suspended.

Q42. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a

person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?
Centrica strongly supports the Government's plan to add the commissioning of fake reviews to the blacklist of automatically unfair practices in the CPRs. However, we do not support a complete ban on the commissioning of consumer reviews. Any ban should be restricted to fake reviews.

Q43. What impact would the reforms mentioned in Q42 have on a) small and micro businesses, both offline and online b) large online businesses and c) consumers?
We believe that banning fake reviews would help ensure that rogue traders do not have an unfair advantage over businesses who only show genuine reviews.

However, we do not support a complete ban on the commissioning of consumer reviews. Any ban should be restricted to fake reviews.

Businesses have many legitimate reasons to encourage their customers to review their goods and services, as consumers often use ratings when deciding which products to buy. For example, it can be key to the success of a start-up business to build up their online reviews.

Q44. What 'reasonable and proportionate' steps should be taken by businesses to ensure consumer reviews hosted on their sites are 'genuine'? What would be the cost of such steps for businesses?
We believe that if the government bans businesses (1) commissioning or incentivising individuals to write or submit fake reviews, and (2) offering to submit fake reviews that this should be sufficient to address the issue of fake reviews.

We are concerned that requiring businesses to take steps to verify the reviews hosted on their website are genuine would place an unnecessary administrative burden on them (particularly SMEs) without providing a significantly increased level of protection for consumers.
Such an obligation might also have the unintended consequence of giving businesses a justification to remove genuine negative reviews.

Q45. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?
Centrica supports such a ban.

Q46-54 N/A

Q55. Do you agree with government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?
Broadly we support the government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts, but only with respect to sectors which are not subject to sectoral regulation.

Currently sectoral regulators, such as Ofgem in the energy space, have concurrent jurisdiction over consumer law enforcement, but typically sectoral rules will be even more robust than consumer law - therefore it is important that duplication is not created in regulated industries; the purpose of the new regime should be for those sectors which are not subject to sectoral regulation (and penalties should mirror those in regulated sectors).

Q56 N/A

Q57. What processes and procedures should the CMA follow in its administrative decision-making to ensure fair and proportionate administrative decisions?
We agree with the Government that it is vital that the decision-making process should ensure fairness and consistency in the decisions taken, with appropriate procedural protections for businesses subject to such enforcement action.

In light of this we believe that the CMA processes and procedures should broadly reflect those that it already applies in competition law investigations under the Competition Act 1998. In particular, we believe that the CMA needs to publish detailed guidance on the processes and procedures which it will follow should it be granted the right to enforce consumer law directly.

Q58. What scope and powers of judicial scrutiny should apply in relation to decisions by the CMA in consumer enforcement investigations under an administrative model?
Currently there is rigorous independent scrutiny of the CMA's enforcement process, as it has to enforce consumer law through the courts. This ensures an appropriate level of accountability.

However, if the CMA is granted powers to enforce consumer law directly (which we support) this key independent oversight will be lost. It is therefore vital that CMA decisions should be appealable on their merits to a specialised tribunal. This is vital to ensure that there continues to be the appropriate level of accountability for CMA decisions.

Q59. Should appeals of administrative CMA decisions be heard by a generalist court or a specialised tribunal? What would be the main benefits of your preferred option?
Centrica believes only the CAT has the right level of expertise to hear appeals of administrative consumer law decisions made by the CMA.

As in competition law, complex, technical economic analysis plays a key role in establishing whether consumer law has been breached during market investigations.

CAT expert panels already have significant experience in reviewing and assessing this type of evidence in their existing role as the appeals body for CMA competition decisions. Panels have their own individual commercial and economic expertise which means they are uniquely placed to review CMA decisions in this field. The general courts could not be expected to build up similar expertise and would not have access to the same vital expertise.

Q60. Should sector regulators' civil consumer enforcement powers under Part 8 of the EA 02 be reformed to allow for enforcement through an administrative model? What specific deficiencies do you expect this to address?
Centrica strongly believes that sector regulators should not be given powers to enforce consumer law using an administrative model and that these powers should only be granted to the CMA. Consumer law applies across the whole economy in a wide range of sectors and industries. We are concerned that if a sector regulator in a highly regulated sector were to take direct enforcement action under consumer law (rather than sector specific rules), its enforcement action could set a precedent for other less regulated sectors. This could lead to unnecessary red tape, particularly for small and medium sized businesses. As sector regulators are focused on an individual industry or sector they may not have a complete view of how their decisions might indirectly affect other sectors in the economy.

However, if the Government ultimately decides to give sector regulators the power to enforce consumer law through an administrative model, they should have to obtain the approval of the CMA to exercise these enforcement powers. This would help ensure coherent delivery of enforcement

across the broad consumer landscape and ensure that enforcement action is taken by the regulator best placed to act.

Q63. Should there be a formal process for agreeing undertakings that include an admission of liability by the trader for consumer protection enforcement?
The CMA should properly document its process for agreeing undertakings that include an admission of liability and the factors that it takes into account when agreeing such undertakings.

Transparency in the CMA's decision-making process is a key element in ensuring that the regulator can be held accountable for the decisions it makes. It is also a key factor in ensuring procedural fairness and consistency across CMA decisions. Such consistency is a key factor in making sure enforcement action sends a clear deterrent message to the market.

Q64 N/A

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?
We support the Government's plan to improve consumer awareness of and signposting to ADR by working with consumer bodies like Citizens Advice.

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?
We disagree with the proposal to reduce the 8-week threshold to 4 weeks. There are a large number of complaints cases that cannot be resolved more quickly within our sectors. There are valid reasons for complaints cases in regulated sectors like energy and financial services to be open for as long as they are, whether that is down to the complexities of the cases or the need for reconciliation runs and industry processes to be followed for issues to be resolved. A shortened timeframe would not give businesses enough time to properly investigate and resolve complicated complaints. In this context, we believe that it would not be appropriate to reduce the 8-week threshold to 4 weeks.

If complaints can be referred to Ombudsman services in regulated sectors at an earlier point this could result in these services becoming involved in the initial investigation of complaints while businesses and consumers are still working together to resolve the issue. We are concerned that this would mean that the investigation of more complex complaints would be effectively outsourced to Ombudsman services. This would result in Ombudsman services resource being diverted to carrying out the initial investigation of complaints, rather than their traditional remit as a final referee between an individual and a company. If Ombudsman services regularly become involved in the initial investigation of a complaint this could undermine public confidence in them as properly independent arbiters.

In contrast to other sectors such as Telecommunications, in the energy sector there is currently just one Ombudsman, which would need to pick-up the increase in demand. We do not believe the OS:E has the resource and capacity to deal with an increase in case volume, caused by an earlier referral point. Given the time required to open and investigate an Ombudsman case, a greater volume of Ombudsman complaints would be expected to increase the average length of the customer complaint journey in the energy sector. We have concerns about whether Ofgem would be able to hold the OS:E to account for its performance, should this be negatively impacted by an earlier referral point.

We also question whether earlier access to ADR would actually improve outcomes for customers in energy and other regulated sectors, and question what impacts these changes could have on a customer's experience and complaint journey, particularly if they were in a vulnerable circumstance or experiencing a period of stress. Adding an additional body into the investigation process at too early

a stage is likely to show down the investigation process and discussions between the parties. It would also add complexity to the process which is likely increase the potential for consumers to experience stress and confusion, worsening the customer journey and experience through the complaints process.

The speed at which complaints are resolved once they reach reaches an Ombudsman service is a key factor in assessing whether there are any customer benefits to shortening the referral time. Customer benefit would only be realised if complaints referred to an Ombudsman at an earlier point were to be consistently resolved in a timeframe that meets customer expectations. Customers signposted to an Ombudsman service at a point at when their complaint was close to resolution with their supplier could otherwise be frustrated to have found themselves steered towards a process that extends the length of their complaint and increases the effort required of them to reach a resolution.

We also question the complexities and practicalities around BEIS' consideration of whether exceptions could be made to allow more time to resolve complex cases. For example, we question how this would work in practice and which party would decide whether a case was more or sufficiently complex and was, therefore, allocated more time for the supplier to resolve. We would ask that BEIS clarifies whether it envisages this responsibility falling on either the OS:E, Ofgem or the supplier. Additionally, we question the complexities involved in offering differing timescales for different complaints cases and how fairness would be ensured across the supplier community and, indeed, customers.

Q69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?
We support the Government's decision to make business participation in ADR mandatory in sectors which see a high level of complaints including the motor vehicles and home improvements sectors. Indeed, we believe that BEIS should extend their proposal to include Third-Party Intermediaries (TPIs), such as price comparison websites, operating in the energy sector. Given that these organisations are not currently regulated by Ofgem, consumers currently have little scope for redress where they encounter an issue with a TPI which cannot be resolved directly with the TPI other than initiating legal action before the courts.

Q70-71 N/A

Q72. To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?
Centrica strongly opposes any proposal to introduce a right of collective action under consumer law. We believe collective redress would create more harm for consumers than good by creating the scope for growth of speculative claims management businesses, the lengthy processes before consumers obtain any redress and the fact that consumers will not be able to retain all of their redress as a substantial portion will be kept by the claims management business or claimant law firm. Existing redress mechanisms such as alternative dispute resolution options like Ombudsman services are a much more effective approach for consumers as consumers can navigate the process themselves, it is relatively quick and consumers can retain all of their redress themselves.

A better option to be explored would be for sector regulators and the CMA to determine whether penalties for breaches of consumer law should include a requirement to pay into consumer redress funds as frequently happens today for breaches of sectoral regulatory obligations.

Q73. What impact would allowing private organisations and consumer organisations to bring collective redress cases in addition to public enforcers have on (a) consumers, and (b) businesses?
ADR provides a much quicker resolution for consumers and gives them more control of the conduct and resolution of their complaint than collective redress actions. Also, as consumers do not generally require legal representation during consumer ADR processes, they keep the full amount of their compensation. In collective redress processes there are likely to be significant deductions from any compensation awarded.