RIIO-3 APPEALS 2026

Final determination Volume 1: Background chapters

29 October 2026



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1. Introduction

1.1 The Office of Gas and Electricity Markets (**Ofgem**) regulates the monopoly companies that operate the gas and electricity networks in Great Britain. Ofgem takes decisions on price controls and enforcement, acting in the interests of existing and future consumers. Ofgem is a non-ministerial department.[1]

1.2 Ofgem is governed by the Gas and Electricity Markets Authority (**GEMA**), which was established by section 1 of the Utilities Act 2000 to regulate the gas and electricity markets in Great Britain.[2] GEMA's principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by transmission or distribution systems.[3]

1.3 On 4 December 2025, GEMA published its Final Determinations for the gas distribution, gas transmission and electricity transmission sectors (the **FDs**) under the third RIIO (Revenue = Incentives + Innovation + Outputs) price control framework.[4] The FDs set the revenues and outputs for relevant network companies for the five-year period from 1 April 2026 to 31 March 2031. This price control process is referred to as RIIO-3 (**RIIO-3**).

1.4 Following consultation on licence modifications to implement the FDs, GEMA made a decision on 3 February 2026 (the **Decision**) to modify the gas transportation licences of gas distribution network companies (**GDN**s) in order to give effect to the RIIO-3 price control.[5]

1.5 On 3 March 2026, the following GDNs sought permission to appeal GEMA's Decision to the Competition and Markets Authority (**CMA**) pursuant to section 23B(3) of the Gas Act 1986 (**GA86**):

(a) Cadent Gas Limited (**Cadent**);

(b) Northern Gas Networks Limited (**NGN**);

(c) Southern Gas Networks plc and Scotland Gas Networks plc (together, **SGN**); and

(d) Wales & West Utilities Limited (**WWU**)

(together, the **Appellants**).

1.6 On 31 March 2026, the CMA granted permission to appeal to all Appellants on all grounds, subject to the condition that each of the Appellants' grounds of appeal

[1] Ofgem website.
[2] Energy companies in Northern Ireland are regulated separately by the Northern Ireland Authority for Utility Regulation.
[3] Gas Act 1986, section 4AA(1) and Electricity Act 1989, section 3A(1).
[4] RIIO-3 Final Determinations for the Electricity Transmission, Gas Distribution and Gas Transmission sectors | Ofgem
[5] Ofgem (2026) Licence Modification Notice of the Gas Transporter Licences held by licensees.

relating to GEMA's assessment of ongoing efficiency (**OE**), which each of the Appellants raised in their respective Notices of Appeal, be considered together.

1.7 On 23 April 2026, Citizens Advice (the **Intervener**) applied for permission to intervene in the appeals (**CA Intervention**). On 28 April 2026, the CMA granted Citizens Advice permission to intervene in relation to the grounds of appeal concerning GEMA's assessment of OE.[6]

Conduct of the appeals

1.8 The CMA is conducting these appeals in accordance with the procedure set out in Schedule 4A of the GA86, the Energy Licence Modification Appeals: Competition and Markets Authority Rules (**CMA70**) and the associated Energy Licence Modification Appeals: Competition and Markets Authority Guide (**CMA71**).

1.9 Throughout these appeals, we have had regard to the overriding objective of CMA70, which is to enable the CMA to dispose of appeals 'fairly and efficiently and at proportionate cost' within the time period prescribed by the GA86.[7]

1.10 This document contains the CMA's final determination of the appeals. In reaching this final determination, we have considered all submissions and information provided by the Appellants and GEMA including the Appellants' Notices of Appeal and supporting documents (**NoA**s), GEMA's response to the Appellants' NoAs and supporting documents (**GEMA's Response**), the Appellants' replies to GEMA's Response (**Replies**) and responses to various Requests for Information (**RFI**s). We also considered submissions from the Intervener.

1.11 On 29 April 2026, the Appellants and GEMA delivered a factual 'teach-in' (**Teach-in**) providing background and context to the CMA. On 17 June 2026, we held a joint hearing in relation to OE which all Appellants and GEMA attended. On 19 June 2026, we held a hearing with SGN and GEMA in relation to the SGN-specific grounds. The Appellants and GEMA were given the opportunity to submit closing statements in writing after the completion of the hearings.

1.12 On 6 August 2026, the CMA issued its provisional determination of the appeals in relation to OE and the Appellants, GEMA and Intervener were provided with the opportunity to make submissions in response to it. On 14 August 2026, the CMA issued its provisional determination of the appeal in relation to the SGN-specific grounds (together with the OE provisional determination, the **PDs**) and SGN and GEMA were provided with the opportunity to make submissions in response to it.[8]

[6] CMA Decision on Permission to Intervene by Citizens Advice.
[7] Rule 4.1 of CMA70.
[8] The PDs were not published. Instead, we published a short summary of the PDs for transparency.

In reaching this final determination, the CMA considered the parties' submissions in response to the PDs.[9]

1.13 On 18 August 2026, the Appellants (jointly) sought an extension to the statutory deadline for issuing the final determination under section 23F(3) of the GA86. The CMA decided on 4 September 2026 to extend the deadline for the determination of the appeals by one month to 31 October 2026.[10]

1.14 This document contains the CMA's final determination of the appeals. It is accompanied by an Order to implement relief, where we have allowed the appeals. A non-sensitive version of the final determination and Order will be published on the CMA case page as soon as reasonably practicable after they are issued.

1.15 Under the statutory framework for the appeals process, the CMA must reach its final determination by 31 October 2026.[11]

Structure of this final determination

1.16 Our final determination report comprises four Volumes:

Volume 1: Industry background and Legal framework

(a) Industry background: an overview of the role of GDNs in Great Britain, the parties to the appeals, and of GEMA's high-level approach when setting the price control for RIIO-3;

(b) The decision under appeal;

(c) The legal test on appeal.

Volume 2: Ground 1 - Ongoing efficiency

(d) Our assessment and final determination of the grounds of appeal advanced in the NoAs in relation to OE.

Volume 3: Grounds 2A and 2B - Totex model allowances

(e) Our assessment and final determination of the grounds of appeal advanced in the SGN NoA in relation to Totex model allowances.

[9] The Appellants and GEMA submitted their responses to the PD in relation to OE on 27 August 2026. SGN and GEMA submitted their responses to the PD in relation to the SGN-specific grounds on 7 September 2026.
[10] Notice of extension.
[11] Section 23F(1)(a) of the GA86, having extended the statutory deadline by a month.

Volume 4: Relief and glossary

(f) For those grounds where we have found for the Appellants, in Volume 4 we set out the appropriate relief and approach to implementing that relief.

(g) Lastly, we provide a glossary of the terms used in this final determination.

1.17 A non-confidential summary of this final determination is published separately on the CMA case page.

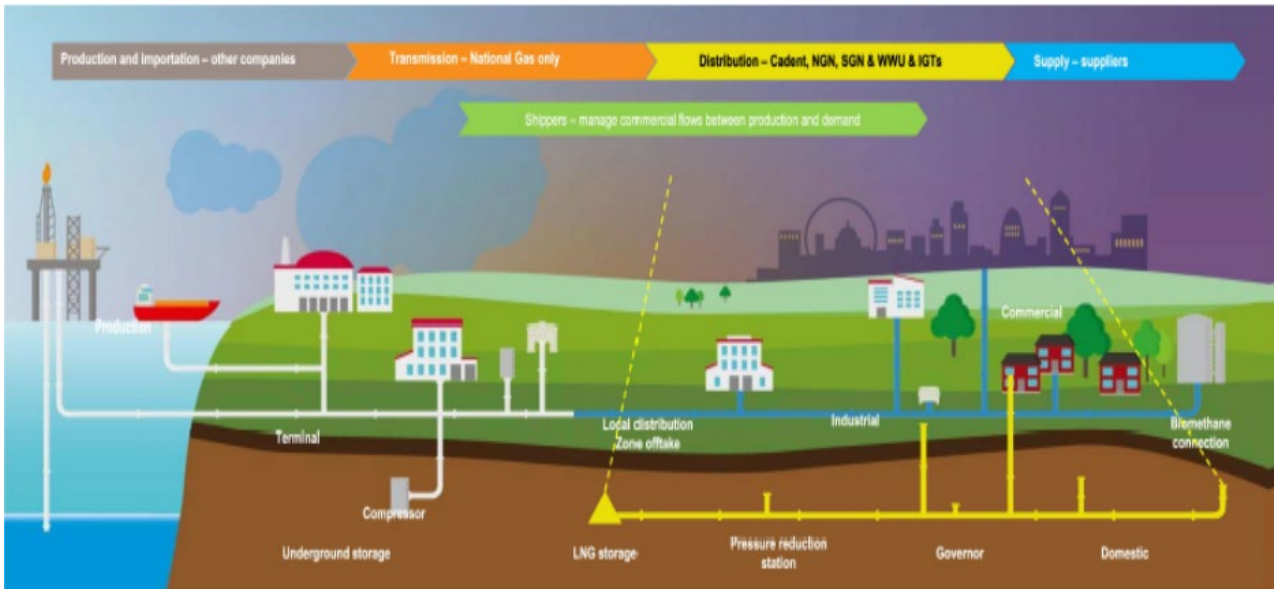
2. Industry background

2.1 This chapter briefly summarises the role of GDNs in Great Britain, the parties to the appeals (GEMA, GDNs and the Intervener), and GEMA's high-level approach when setting the price control for RIIO-3.

Gas Distribution Network companies (GDNs)

2.2 There are four GDNs operating in Great Britain: Cadent, NGN, SGN and WWU. GDNs own and operate underground gas pipes that take gas, at a lower pressure, from the transmission network to 22 million homes, businesses and industrial users connected to their networks. This is illustrated below.

Figure 2.1: Gas Distribution Networks



Source: Teach-in session (Part 1), slide 5[12]

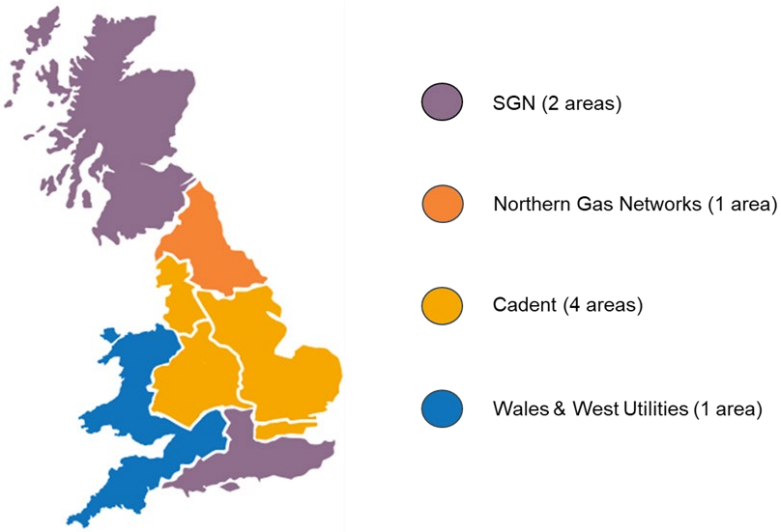
2.3 Customers of GDNs are diverse and wide ranging, including domestic customers, commercial and retail, and schools, hospitals and other public institutions, as well as power generators and biomethane gas producers.[13]

2.4 GDNs are regional monopolies, owned and operated by private companies. There are currently four GDNs that operate across Great Britain. These are set out in Figure 2.2 below. We note that some companies operate across multiple geographic regions.

[12] IGTs are Independent Gas Transporters.
[13] Teach in session (Part 1), slide 10.

2.5 As monopolies, GDNs are licensed operators subject to regulation by GEMA. GDNs are responsible for delivering a range of services under GEMA's RIIO-3 framework.[14] These are that GDNs are responsible for providing safe, secure and resilient gas networks, a high-quality customer service and for delivering infrastructure fit for a low-cost transition to net zero.[15]

Figure 2.2: Geographic areas covered by each gas distribution network



Source – Teach-in session (Part 1), slide 9

2.6 Cadent is the largest operator geographically, serving four regions: North London, the East of England, the North West of England, and the West Midlands. NGN covers regions in Yorkshire, North East England, and parts of Cumbria. SGN operates two distinct regional networks covering Scotland and the South East of England, reflecting its structure as two licensed entities within the same group. Finally, WWU serves Wales and the South West of England.

The parties to the appeals

2.7 The parties to these appeals are:

(a) GEMA;

(b) The Appellants (GDNs) (all four for Ground 1 and SGN alone for Ground 2); and

(c) The Intervener in relation to Ground 1, Citizens Advice.

[14] Teach in session (Part 1), slide 14.
[15] Net Zero Strategy: Build Back Greener - GOV.UK.

GEMA

2.8 GEMA is the sectoral regulator for the energy sector in Great Britain, and acts as Ofgem's senior board.[16] See paragraphs 1.1 and 1.2 for further information about GEMA/Ofgem.

The Appellants (GDNs)

2.4 Details of the Appellants, namely the four companies which operate GDNs in Great Britain, and their ownership structures, are set out below.

Cadent

2.5 Cadent is a private limited company with its registered office in Coventry, England.[17] Cadent holds a gas transporter licence under section 7(2) of GA86.[18]

2.7 Cadent's ultimate parent company is Quadgas Holdings Topco Limited, which in turn is owned by a consortium of investors.[19]

2.8 Cadent owns, manages and operates four of the eight regional gas distribution networks in Great Britain, specifically: (i) North London, (ii) East of England, (iii) North West, and (iv) West Midlands.[20] In doing so, it transports gas to around 11 million homes, schools, hospitals, offices, and businesses.[21]

NGN

2.8 NGN is a private limited company with its registered office in Leeds, England.[22] NGN holds a gas transporter licence under section 7(2) of GA86.[23]

2.9 NGN is owned by a consortium of three partners: CK Infrastructure, Power Assets Holdings (which is also partly owned by CK Infrastructure), and SAS Trustee Corporation.[24]

2.10 NGN's operating region covers the north of England, including Yorkshire, the North East and Northern Cumbria.[25] NGN distributes gas to around 2.7 million customers through 37,000km of pipes.[26,27]

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[16] Ofgem website.
[17] Companies House.
[18] Cadent NoA, paragraph 2
[19] Cadent (2025) Annual Accounts, p67. Teach-in session (part 1), slide 9.
[20] Cadent NoA, paragraph 2.
[21] Cadent NoA, paragraphs 2.1 and 2.3.
[22] Companies House.
[23] Ofgem website, list of all gas licensees including suppliers.
[24] NGN website (accessed May 2026); CK infrastructure website (accessed May 2026).
[25] NGN NoA, paragraph 1.
[26] Teach-in session (Part 1), slide 9.
[27] NGN website (accessed May 2026).

SGN

2.11 Southern Gas Networks plc is a public limited company with its registered office in Horley, Surrey, England.[28] Scotland Gas Networks plc is a public limited company with its registered office in Edinburgh, Scotland.[29] Each of these companies holds a gas transporter licence under section 7(2) of GA86.[30] The ultimate parent company of both companies is Scotia Gas Networks Limited.[31]

2.12 Scotia Gas Networks Limited is owned by three shareholders: The Ontario Teachers' Pension Plan Board, Brookfield Super-Core Infrastructure Partners and Global Infrastructure Partners.

2.13 SGN has two operating regions in Great Britain:[32]

(a) South East and central South of England: serving 4.2 million customers through 50,212km of pipes; and

(b) Scotland: serving 1.8 million customers through 25,064km of pipes.

WWU

2.14 WWU is a private limited company with its registered office in Newport, Wales.[33] WWU holds a gas transporter licence under section 7(2) of GA86.[34]

2.15 WWU is owned by a consortium comprising of Cheung Kong (Holdings) Limited (3%), CK Infrastructure Holdings Limited (39%), Power Assets Holdings Limited (36%) and CK Asset Holdings Limited (22%).[35]

2.16 WWU's gas distribution network covers the areas of Wales and the South West of England. It serves around 2.5 million homes and businesses (representing a population of around 7.5 million people) using around 35,000km of gas pipe-lines.[36]

[28] Companies House.
[29] Companies House.
[30] Ofgem website, list of all gas licensees including suppliers.
[31] SGN 2025 Annual Report, page 43; SGN Natural Gas is licensed to conveyance gas within the West distribution licensed area in Northern Ireland, but is not directly relevant to this appeal, see https://www.uregni.gov.uk/gas-licences.
[32] SGN NoA, paragraphs 11 and 12.
[33] Companies House.
[34] WWU NoA, paragraph 1.2.
[35] WWU 2025 Annual Accounts, retrieved from Companies House, page 94.
[36] WWU NoA, paragraph 1.6.

The Intervener

2.17 Citizens Advice is a charity that provides free advice on issues such as debt, consumer rights, and witness support.[37] It also acts as the statutory consumer advocate for energy.[38]

Regulation – RIIO (Revenue = Incentives + Innovation + Outputs)

Context for regulation

2.18 GDNs and other regulated network companies (**Regulated Network Companies**) are natural monopolies and therefore there is no direct competition to drive better service, greater efficiency or more investment. Instead, GDNs are subject to oversight from a sectoral regulator, GEMA.

2.19 GEMA sets price controls to protect the interests of consumers (both existing and future), which includes determining, ex ante, the amount of revenue that each GDN (and other Regulated Network Companies) is allowed to recover over a fixed time period. The GDNs (and other Regulated Network Companies) undertake the necessary activities to meet their obligations to deliver the relevant services safely and collect the revenue that GEMA has allowed. This revenue is collected from downstream participants and ultimately paid for by consumers of gas and electricity through their energy bills, with network charges making up around 25% of the average dual-fuel bill.[39]

RIIO-3 context and decisions

2.20 RIIO-3 is the third set of price controls implemented under the RIIO model which is used to set price controls for the gas and electricity network companies of Great Britain. The RIIO model is an incentive-based model under which GEMA sets both the amount that Regulated Network Companies can earn over the price control period and what the companies must deliver in return for those revenues. Although it is referred to as a price control, GEMA sets the total revenues each company can recover rather than specific prices.

2.21 GEMA set the price controls for GDNs (**RIIO-GD3**) and electricity Transmission Owners (**TOs**) (RIIO-ET3) in parallel. RIIO-GD3 is the subject of this appeal. RIIO-3 covers the five-year period from 1 April 2026 to 31 March 2031.

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[37] Citizens Advice website (retrieved May 2026).
[38] Citizens Advice intervention notice, paragraph 13.
[39] Teach in session (Part 1), slide 6: Figures from Ofgem Dual Fuel Price Cap April-June 2026.

GEMA's cost assessment framework

2.22 The aim of GEMA's cost assessment is to determine the efficient level of costs that will enable GDNs to maintain safe and reliable networks and deliver an appropriate level of service.[40]

2.23 GEMA has set totex allowances "Allowed Revenue" of £14.8bn for RIIO-GD3.[41] The total amount of revenue allowed by GEMA under RIIO-3 comprises the following regulatory building blocks, which are illustrated in Figure 2.3 below. They include:

(a) the baseline revenue;

(b) mechanisms that adjust this revenue during the price control period relative to company performance, eg rewards and penalties that create additional specific incentives; and

(c) other adjustments to baseline revenue, eg due to the availability of uncertainty mechanisms that increase or reduce allowances within the price control period.

2.24 Baseline revenue is the revenue that a company needs to cover the efficient operating and financing costs of delivering outputs and long-term value for money, including allowances for maintenance of, and investment in, capital assets and taxation. GEMA assesses the efficiency of these costs.

2.25 Baseline revenue comprises four different categories:

(a) An allowance for expenditures that is set at the time of the price control review. These expenditures are called total expenditure (**totex**), a share of which is included in the in-period revenues.

(b) The depreciation of the existing regulatory asset value (**RAV**).

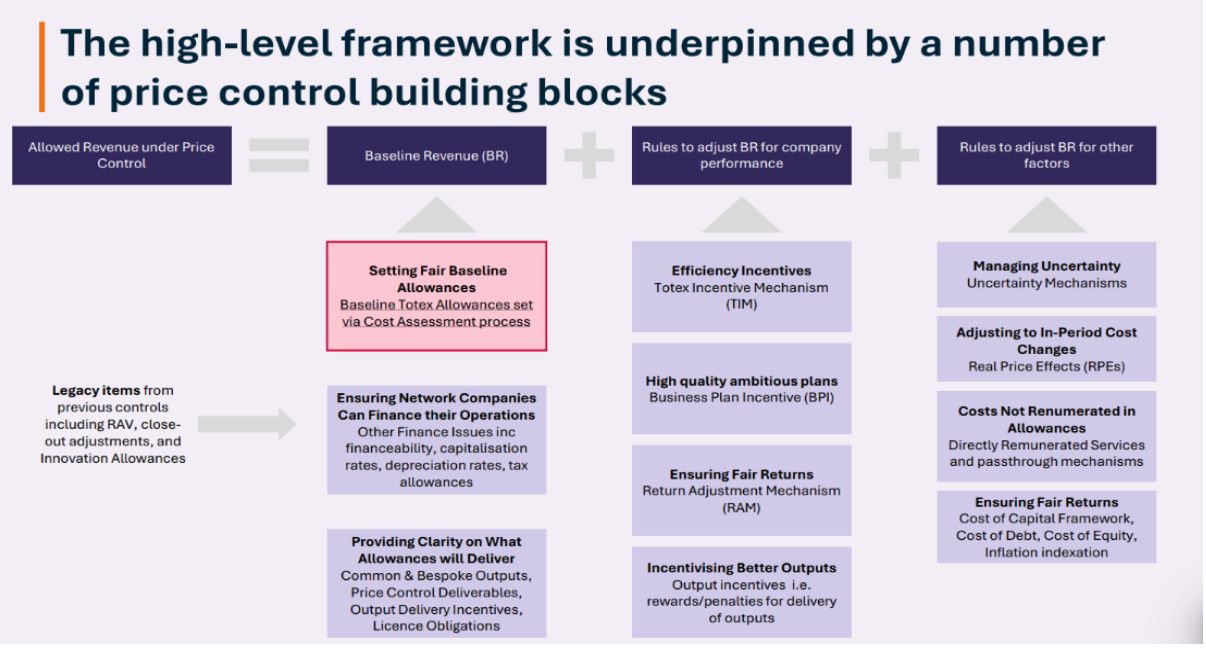
(c) An allowance intended to reflect the cost of capital for an efficient, notional company.

(d) Tax.

2.26 RIIO adopts a totex approach to ensure that companies make balanced decisions between different types of solution. Totex for GDNs includes capital expenditure (**capex**), operating expenditure (**opex**), and replacement expenditure (**repex**).

[40] Teach-in session (Part 2), slide 5.
[41] Teach-in session (Part 2), slide 8.

Figure 2.3: RIIO-3 building blocks



Source: Teach-in session (Parts 2 – 4), slide 6.

2.27 The price control for RIIO-GD3 took effect on 1 April 2026 following consultation and engagement with stakeholders over a three-year period.

2.28 GEMA's timeline included the following consultations and formal decisions:

(a) December 2023 / July 2024: The process began with the Sector Specific Methodology Consultation and Decision. Around July 2024, GDNs submitted their draft Business Plan Data Templates (**BPDTs**) to Ofgem.

(b) December 2024: All GDNs and National Gas submitted their final Business Plans and BPDTs to Ofgem.

(c) July 2025: Ofgem published its Draft Determinations (**DDs**), outlining the proposed approach and structure for the RIIO-3 framework, including totex allowances for gas distribution, gas transmission and electricity transmission network companies.

(d) August 2025: Stakeholders, including the GDNs, responded to Ofgem's DDs by submitting their consultation responses.

(e) December 2025: Ofgem published its FDs finalising the positions set out in the draft stage.

(f) February 2026: Ofgem published its Decision to modify the gas transportation licences of the relevant network companies in order to give effect to the RIIO-3 price control. Following this, Ofgem and the GDNs undertook a final snagging process to resolve outstanding issues in the GD3

model suite. A ‘post-snagging’ model run was shared with GDNs on 23 February 2026.

(g) Later in 2026: Changes from the post-snagging model run are expected to be implemented through a Statutory Licence Consultation.[42]

[42] Teach-in session, (Part 2), slide 7. See also Ofgem, RIIO-3 Final Determination (2025) pp.14 to 15.

3. The decision under appeal

3.1 One of GEMA's specific functions under the GA86 is to license persons engaged in various activities in the gas supply chain, including the conveyance of gas through pipes.[43]

3.2 GEMA's periodic price controls are given effect by way of modifications to licences. By virtue of section 23 of GA86, subject to the prescribed notice having been provided,[44] GEMA may make modifications of:

(a) the conditions of a particular licence;

(b) the standard conditions of licences of any types mentioned in sections 7, 7ZA, 7A(1) or (2), 7AA, 7AB or 7AC of GA86.

3.3 The price controls which are at issue in the present appeals were introduced by way of modification to the gas distributors' licences under section 23 of GA86. The Decision to modify the licences was published on 3 February 2026 and gave effect to GEMA's *RIIO-3 Final Determinations for the Electricity Transmission, Gas Distribution and Gas Transmission Sectors* published on 4 December 2025 (the FDs). Prior to issuing the FDs, GEMA consulted on its DDs in July and August 2025.

GEMA's objectives, powers and duties

3.4 In carrying out its functions in relation to the supply of gas under Part I of the GA86, GEMA is subject to a statutory 'principal objective', which is to protect the interests of existing and future consumers in relation to gas conveyed through pipes.[45]

3.5 In this context, section 4AA(1A) of GA86[46] explains that the 'interest of existing and future consumers' means their interests taken as a whole, including:

(a) their interests in the Secretary of State's compliance with the duties in sections 1 and 4(1)(b) of the Climate Change Act 2008 (net zero target for 2050 and five-year carbon budgets);

(b) their interests in the security of the supply of gas to them; and

[43] GA86, section 7.
[44] GA86, section 23(2).
[45] GA86, section 4AA(1).
[46] GA86, section 4AA(1A).

(c) their interests in the fulfilment by GEMA, of the 'designated regulatory objectives'.[47]

3.6 Section 4AA of GA86 goes on to set out a series of specific duties with which GEMA must comply in relation to its principal objective, as well as a series of considerations to which it must (or, in some cases, may) have regard in performing those duties.

3.7 First, under section 4AA(1B), GEMA is required to carry out its functions under GA86 in the manner which it considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes.[48]

3.8 Second, before deciding to carry out its functions in a particular manner with a view to promoting competition as mentioned under section 4AA(1B), section 4AA(1C) requires GEMA to consider:

(a) to what extent the interest of consumers would be protected by the manner of carrying out those functions; and

(b) whether there is any other manner (whether or not it would promote competition) in which GEMA could carry out those functions which would better protect those interests.[49]

3.9 Third, under section 4AA(2) when performing the duties described in sections 4AA(1B) and (1C), GEMA must have regard to:

(a) the need to secure that all reasonable demands for gas are met;

(b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by various pieces of legislation;[50] and

(c) the need to contribute to the achievement of sustainable development.[51]

[47] The "designated regulatory objectives" means under GA86 the objectives set out in Article 40(c) to (h) of the Gas Directive 2009/73/EC but read with modifications as stated in the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.
[48] GA86, section 4AA(1B).
[49] GA86, section 4AA(1C).
[50] The legislation in question is Part 1 of GA86, the Utilities Act 2000, Part 5 of the Energy Act 2008 or section 4, Part 2, sections 26 to 29 of the Energy Act 2020, or Chapter 1 of Part 2, Chapters 2 and 3 of Part 4 and sections 245 to 247 of the Energy Act of the Energy Act 2023.
[51] GA86, section 4AA(2).

3.10 Fourth, under section 4AA(3), in performing its duties set out in sections 4AA(1B), (1C) and (2), GEMA shall have regard to the interests of a number of specified categories of individuals (eg those who are disabled).[52]

3.11 Fifth, under section 4AA(5), subject to the requirements set out in sections 4AA(1B) and (2),[53] GEMA must carry out its functions in relation to the supply of gas in the manner which it considers is best calculated:

(a) to promote efficiency and economy on the part of persons authorised by licences or exemptions under the GA86 to carry on any activity, and the efficient use of gas conveyed through pipes;

(b) to protect the public from dangers arising from the conveyance of gas through pipes or from the use of gas conveyed through pipes or the provision of a smart meter communication service;

(c) to secure a diverse and viable long-term energy supply.

3.12 In carrying out those functions, GEMA must have regard to the effect on the environment of activities connected with the conveyance of gas through pipes or the provision of a smart meter communication service.[54]

3.13 Sixth, in carrying out its functions in relation to the supply of gas, GEMA must have regard to:

(a) the principles under which regulatory activities should be transparent, accountable, proportionate and targeted only at cases in which action is needed;[55]

(b) any other principles appearing to it to represent the best regulatory practice;[56]

(c) any guidance issued by the Secretary of State on social and environmental factors;[57] and

(d) any advice given by the Health and Safety Executive about any gas safety issue.[58]

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[52] GA86, section 4AA(3).
[53] This duty is also subject to the requirements in section 132(2) of the Energy Act 2013, namely that GEMA must carry out its functions under Part I of the Electricity Act 1989 (**EA89**) in a way which it considers is best calculated to promote the delivery of policy outcomes. By virtue of section 131 of the Energy Act 2013, the Secretary of State may designate a statement as the strategy and policy statement. This statement sets out the particular outcomes to be achieved as a result of the implementation of that policy (amongst other things).
[54] GA86, section 4AA(5).
[55] GA86, section 4AA(5A)(a).
[56] GA86, section 4AA(5A)(b).
[57] GA86, section 4AB.
[58] GA86, section 4A(2).

3.14 Seventh, where the following is affected by the carrying out of its functions, GEMA may have regard to:

(a) the interest of consumers in relation to electricity conveyed by distribution systems;

(b) communication services and electronic communications apparatus; or

(c) water services or sewerage services.[59]

The appeals

3.15 GEMA's decisions to modify conditions of gas licences are subject to a specific appeal regime. Appeals are brought pursuant to section 23B GA86, which provides that an appeal lies to the CMA against a decision by GEMA to proceed with the modification of a condition of a licence.[60]

3.16 Only certain persons are entitled to appeal GEMA's decision to the CMA.[61] These include: (i) a person who holds a licence where the decision at issue involves a modification to the terms of that licence (referred to in section 23(10) of GA86 as a 'relevant licence holder'); as well as (ii) any other person who holds a licence of any type under section 7, 7ZA, 7A(1) or (2), 7AB or 7AC of the GA86 and whose interests are materially affected by the decision.[62]

3.17 Potential appellants require permission from the CMA to bring an appeal.[63] In the present case, on 3 March 2026, four parties sought permission to appeal, claiming standing as 'relevant licence holders':

(a) Cadent Gas Limited;

(b) Northern Gas Networks Limited;

(c) Southern Gas Networks plc and Scotland Gas Networks plc;[64] and

(d) Wales & West Utilities Limited.

3.18 The CMA granted permission to appeal to all parties on 31 March 2026, subject to the condition that the common grounds of appeal pleaded by all four Appellants

[59] GA86, section 4AA(4).
[60] GA86, section 23B(1).
[61] GA86, section 23B(2).
[62] The other categories of persons who are entitled to bring an appeal are, per s.23B(2)(c), a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b); and, per s.23B(2)(d) Citizens Advice or Consumer Scotland or those bodies acting jointly in the capacity of representing consumers whose interests are materially affected by the decision.
[63] Under section 23B(3) of GA86, no appeal may be brought without the CMA's permission.
[64] These two parties submitted a joint application.

(relating to OE) would be heard together. The Totex Model Allowances ground pleaded by SGN was to be considered separately.

3.19 Section 23F(1) of the GA86 provides that the CMA must determine an appeal against a price control decision within the period of six months beginning with the permission date. However, on 4 September 2026, following a request and representations by the parties, we decided to extend the time period for determination of the appeals to seven months pursuant to section 23F(4)(a) of the GA86. Accordingly, the statutory deadline for our final determination on the appeals is 31 October 2026.

Parties' written evidence

3.20 Each of the Appellants submitted factual and expert evidence in support of their NoA. We have considered the witness statements and supporting documents submitted by each of them.

3.21 Cadent instructed NERA UK Limited (**NERA**) to provide expert evidence on GEMA's approach to OE.[65] In support of its NoA, Cadent submitted a report from NERA dated 27 February 2026 relating to OE, entitled "Expert Report on GEMA's Approach to Ongoing Efficiency at RIIO-GD3" (the **NERA Report**), exhibited to a witness statement of the same date by the author of the report, Mr Richard Druce, Senior Managing Director at NERA, setting out his professional experience and involvement in the RIIO-3 price control process.

3.22 NGN, SGN and WWU instructed Frontier Economics (**Frontier**) to provide an expert report relating to OE entitled "Assessment of GEMA's Approach to Setting Ongoing Efficiency at RIIO-3" dated 2 March 2026 (the **Frontier Report**), exhibited to a witness statement of the same date from Matthew Roberts, Executive Director at Frontier, setting out his professional experience and involvement in the RIIO-3 price control process.

3.23 SGN separately instructed Frontier to produce a report relating to its Totex Model Allowances Ground, entitled "Frontier Economics, Assessment of Two Aspects of GEMA's RIIO-GD3 cost assessment methodology" dated 3 March 2026 (the **Totex Report**) exhibited to a witness statement from Matthew Roberts and Caitlin Russell, Senior Principal at Frontier, of the same date, setting out their professional experience and involvement in the RIIO-3 price control process.

3.24 In the Appellants' joint response to the PD, the Appellants referenced further evidence in the form of economic analyses and academic literature. The CMA

[65] First Witness Statement of Richard Peter Edward Druce, paragraphs 8 and 9.

decided that in the circumstances of the case, it was appropriate and fair to allow the admission of the material as evidence in these appeals.

4. The legal test on appeal

4.1 Under section 23D(4) of the GA86, having granted permission, the CMA may allow an appeal only where it is satisfied that the decision appealed was wrong on one or more of the following specified grounds. Namely, that:

(a) GEMA failed properly to have regard to the matters to which it must have regard in carrying out its principal objective under section 4AA of GA86, and its duties under sections 4AA, 4AB and 4A of GA86;

(b) GEMA failed to give the appropriate weight to any of the matters in (a);

(c) the decision was based, wholly or partly, on an error of fact;

(d) the licence modifications fail to achieve, in whole or in part, the effect stated by GEMA in the decision (as required by section 23(7)(b) of GA86);

(e) the decision was wrong in law.

4.2 The test is whether the CMA is satisfied that GEMA's decision was wrong on one or more of the statutory grounds, and not whether it was merely 'wrong'.[66] Thus, an appeal does not give rise to a re-run of the original investigation or to a de novo hearing of all the matters that were before GEMA.[67] Instead, the CMA is required to consider the merits of GEMA's decision only through the prism of the specific errors alleged by the Appellants.[68]

4.3 Section 23D(2) of the GA86 provides that, in determining appeals (following the grant of permission), the CMA must have regard, to the same extent as is required of GEMA, to the matters to which GEMA must have regard:

(a) in the carrying out of its principal objective under section 4AA of GA86 (see paragraph 3.4 above);

(b) in the performance of its duties under section 4AA of GA86 (see paragraph 3.6 above); and

(c) in the performance of its duties under sections 4AB and 4A of GA86 (set out at paragraphs 3.13(b) and 3.13(d) above).

4.4 The CMA has had such regard in the present appeals.

4.5 Section 23D(3) of the GA86 provides that, in determining an appeal, the CMA may have regard to matters which GEMA was not able to have regard to in relation to

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[66] *R (Wales and West Utilities Limited) v Competition and Markets Authority [2026] EWHC 99 (Admin)*, ('*R (Wales and West Utilities Limited'*) paragraphs 140.
[67] *R (Wales and West Utilities Ltd)* paragraph 138.
[68] *R (Wales and West Utilities Ltd)* paragraph 139.

the decision. However, the CMA must not, in determining the appeal, have regard to any matters which GEMA would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

4.6 Section 23D(5) of the GA86 provides that '[t]o the extent that the CMA does not allow the appeal, it must confirm the decision appealed against'.

Standard of review

4.7 The CMA's role is not limited to reviewing the decision on judicial review grounds. The CMA is required by the GA86 to consider the merits of the decision under appeal, albeit by reference to the specific grounds of appeal laid down in that Act.

The meaning of "wrong"

4.8 As explained in paragraph 4.2 above, the CMA must decide whether the appealed decision was wrong on one or more of the statutory grounds, and not whether that decision was merely 'wrong'.[69]

4.9 In *R (Wales and West Utilities Ltd),* the High Court stated that the different grounds on which the CMA may find that GEMA's decision was 'wrong' 'necessarily require consideration of the way in which the appeal is put, based on the conclusion reached by GEMA and the findings of fact and analysis that led to that conclusion'.[70] The High Court confirmed that the CMA should regard themselves as being in the position described by Green J in *Hutchison 3G UK Ltd and British Telecommunications PLC and others v Ofcom* [2017] EWHC 3376 (Admin) at [40] that 'there is no blank canvas upon which the parties can paint a new picture which fails to heed the reasoning in the decision under challenge.'

4.10 We set out below the review to be applied when considering grounds that fall under each subsection of section 23D(4).

Subsections (a) and (b): grounds alleging that GEMA failed properly to have regard to – or failed to give the appropriate weight to – any matter mentioned in section 4AA of GA86, and its duties under sections 4AA, 4AB and 4A of GA86

4.11 When considering grounds that allege that GEMA has failed properly to have regard to, or has failed to give the appropriate weight to, any matter mentioned under section 4AA, or its duties under sections 4AA, 4AB and 4A, the CMA will make its own assessment of what is proper regard and appropriate weight.[71]

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[69] *R (on the application of Wales and West Utilities Ltd) v CMA (R Wales and West Utilities Ltd)* [2026] EWHC 99 (Admin), paragraph 139, 140.
[70] *R (Wales and West Utilities Ltd)*, paragraph 141.
[71] *R (Wales and West Utilities Ltd)* paragraph 151.

4.12 The CMA does not start from scratch, which is to say that it does not adopt its own approach and then compare the merits of that approach with that of GEMA. This reflects that GEMA is the primary decision maker. However, in light of the expertise of the members of the CMA Group for these appeals and our powers to require the parties to provide us with evidence, we intensively scrutinise the merits of GEMA's evaluation and judgement.

4.13 In *R (Wales and West Utilities Ltd*), the High Court set out that what is required for a ground engaging subsections (a) and (b) to succeed is that the alternative approach advanced by an appellant is materially better than GEMA's approach. We will find an alternative approach to be materially better when, weighing up the pros and cons of the different approaches, we consider the alternative approach offers something more than GEMA's in respect of the duty or duties in question. If, however, GEMA's approach is equally good to the other approaches then we will uphold it, even where we may have preferred one of the other approaches.[72]

Subsection (c): grounds alleging that GEMA's decision was based, wholly or partly, on an error of fact

4.14 Where an appellant alleges that the decision is wrong on the grounds of an error of fact, the CMA will apply the test in *E v Secretary of State for the Home Department,* endorsed in the *R (Wales and West Utilities Ltd)* judgment:[73]

(a) First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter.

(b) Secondly, the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable.

(c) Thirdly, the appellant (or its advisers) must not have been responsible for the mistake.

(d) Fourthly, the mistake must have played a material (not necessarily decisive) part in GEMA's reasoning.

Subsection (d): grounds alleging that the licence modifications in question fail to achieve, in whole or in part, the effect stated by GEMA by virtue of section 23(7)(b)

4.15 Section 23(7) GA86 requires GEMA to state the effect of any modifications of conditions of relevant licences. Section 23D(4)(d) provides that a decision GEMA

[72] *R (Wales and West Utilities Ltd)* paragraphs 156-159.
[73] *E v Secretary of State for the Home Department* (2004) QB 1044 at paragraph 66, and *R (Wales and West Utilities Ltd)* paragraph 142.

made may be wrong if the modifications it imposes fail to achieve, in whole or in part, the effect stated.

4.16 Where an appellant alleges that 'the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 23(7)(b)' the CMA is required to determine whether, in fact, the effect was achieved as outlined by GEMA. This may, depending on the circumstances, call for the CMA to carry out its own investigation.

Subsection (e): grounds alleging that the decision was wrong in law

4.17 In *R (Wales and West Utilities Ltd),* the High Court stated that determining whether GEMA's decision was wrong in law will involve assessing 'whether there has been an error in construction, or whether GEMA has reached a conclusion that was irrational: including whether GEMA reached a conclusion that was not open to it on the evidence'.[74]

4.18 The concept of 'wrong in law' includes matters of statutory construction and the full range of issues which would otherwise be subject of an application to the High Court for judicial review.[75] GEMA's decisions will therefore be wrong in law where, inter alia, GEMA has: (i) acted ultra vires, i.e. outside powers and obligations, properly interpreted; (ii) made an unreasonable decision; (iii) failed to take into account relevant matters (or taken into account irrelevant ones); (iv) failed to take reasonable steps to acquaint itself with relevant information; or (v) acted with procedural unfairness.

Process and outcome irrationality

4.19 As noted above, GEMA's decision will be wrong in law if – among other things – it is irrational. In the recent case of *Spreadex Ltd v Competition and Markets Authority* [2026] CAT 24, the Competition Appeal Tribunal (**CAT**) provided a summary of the concept of irrationality, noting that within judicial review caselaw, two heads of irrationality – process irrationality and outcome irrationality, have been developed:

> 49. […] In modern public law, rationality challenges have come to be classified under two broad heads. So, an applicant may complain that a public body has erred in the process of reasoning by which it reached a decision (sometimes referred to as "process

[74] *R (Wales and West Utilities Ltd)*, paragraph 144.
[75] *Northern Powergrid* (2023), para. 3.66; H7 (2023) para. 3.39 and *Utilita* (2024) at 3.54, citing *E v Secretary of State for the Home Department* (2004), para. 42 and *Mohamoud v Birmingham* (2014*)] EWCA Civ 227,* para. 23. See also *WWU v CMA* (2024) at para. 144 (which provides the specific examples of irrationality and conclusions not otherwise open on the evidence).

rationality"), or the applicant may complain about the outcome (sometimes referred to as "outcome rationality").

> 50. Process rationality includes the well-known requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but it goes further. So, in addition, the public body's process of reasoning should contain no logical error or critical gap. As sometimes said in the cases, a decision that "does not add up" is one where there is an error of reasoning which robs the decision of logic. Another more practical way of putting this is to ask whether the body's conclusions follow from the evidence, or whether there is an unexplained evidential gap or leap in reasoning which fails to justify the conclusion. ….. It is important, however, to always bear in mind that more than one conclusion can in public law terms follow from the evidence. That is particularly the case where a public body is required to make a decision based on inferences from incomplete evidence.
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> 51. Outcome rationality, on the other hand, is concerned with situations where the process of reasoning is not materially flawed, but the outcome is outside the range of reasonable decisions open to a decision-maker. […].[76]

4.20 As regards the adequacy of GEMA's reasoning, in line with the statement of principle summarised in *Firmus Energy (Distribution) Limited v Northern Ireland Authority for Utility Regulation 2017 (**Firmus**),*[77] an appeal is against the decision, not the reasons for the decision. Therefore, it is not enough for an appellant to identify some error of reasoning; an appeal can only succeed if the decision cannot stand in light of that error. If the decision can be supported on a basis other than that on which the regulator relied, then the appellant will not have shown that the decision was wrong and will fail.[78]

Errors as to the interpretation of evidence amounting to errors of law

4.21 An error on the part of a decision maker in interpreting a piece of evidence may amount to an error of law. The Court of Appeal noted in the recent case of *Pfizer Incorporated & Anor v The Competition and Markets Authority* [2026] EWCA Civ 765:

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[76] A similar summary of the concepts of process irrationality and outcome irrationality is provided by Chamberlain J in *R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 370 (Admin) at [55] and [56].
[77] *Firmus*, at paragraph 3.20(b).
[78] *Firmus*, at paragraph 3.20(h). *Everything Everywhere Ltd v Competition Commission* [2013] EWCA Civ 154, and *Virgin Media v Office of Communications* [2020] CAT 5 at paragraph 58.

> 42. Challenges to findings of primary fact or findings based upon an evaluation of evidence can in principle amount to a point of law, but the threshold for success in such a challenge is high. It must be established that the decision maker's conclusions were outside the margin of appreciation that a specialist body, such as the CMA or CAT, has over the facts.

4.22 We may, therefore, find an error of law if GEMA's decision is based on unreliable data or fails to take account of the relevant evidence.

Procedural deficiencies

4.23 In *Firmus,*[79] the CMA found that: 'If the CMA is satisfied that the regulator's decision was correct, then the fact that the regulator's consultation process was deficient ought not to matter, unless that process was so deficient that the CMA cannot be assured that the regulator did indeed get it right.'

4.24 GEMA's decision may also be 'wrong in law' on the basis of a procedural deficiency. Consistent with the statement of principle summarised in *Firmus Energy*, the decision will be 'wrong in law' only where the procedural deficiency (including a flawed consultation process) was so serious that the CMA cannot be assured that the decision was not 'wrong'.[80]

Our approach where an appellant argues that GEMA's decision is wrong under more than one subsection of section 23D(4):

4.25 As we detail further in Volume 2 and Volume 3, several of the errors that are alleged by the Appellants in the present case are characterised by them, in the alternative, as rendering GEMA's decision wrong on multiple bases and statutory grounds.

4.26 At the hearing on 17 June 2026, Counsel for WWU stated that:

> The materially better standard is most naturally at home there where the question is one of regulatory discretion, applying statutory duties, whether it's a failure to regard or accord appropriate weight. But that distinction can be overstated and it is important to outline the practical significance of that for this particular appeal. That is because the GDNs here have raised multiple statutory grounds across A through to E. Many are overlapping. Many grounds of appeal can be justified on alternative bases within section 23D(4).[81]

[79] *Firmus*, at paragraph 3.20.
[80] Firmus at paragraph 3.20(e).
[81] Transcript of hearing on 17 June 2026, page 149, lines 10 to 17.

4.27 Where an appellant has argued that a particular alleged error by GEMA renders the decision wrong under more than one subsection of section 23D(4), the CMA takes the following approach:

(a) It considers whether the GEMA has, in the way alleged, made an error of law or an error of fact, or a failed to achieve the stated effect of the licence modifications.

(b) It considers whether GEMA has, in the way alleged, failed to have proper regard to, or failed to give appropriate weight to, the matters to which GEMA must have regard under the relevant statutory duties raised by the appellants. In this context, the CMA considers whether there was a materially better approach available to GEMA.

4.28 The CMA may find that GEMA has done both (a) and (b). Alternatively, given that it may allow an appeal (only) where one or more of the statutory grounds is met, the CMA may, where it finds for an appellant on one such ground, determine an appeal (or part of an appeal) on that ground alone even where the appellant has pleaded more than one of the statutory grounds. The CMA may do so, having regard to the overriding objective,[82] where taking that approach is sufficient to dispose of the appeal in a relevant respect.

4.29 The final determination in this appeal applies the approach described in the preceding paragraphs. This approach is consistent with the *R (Wales and West Utilities Ltd)* judgment.

The level of deference to be given to GEMA

The exercise of regulatory judgement

4.30 In *R (Wales and West Utilities Ltd)* the High Court stated that

> GEMA is a specialist body which is expected to have great familiarity with the sector for which it is the regulator. Price control decisions, such as those involved in the appeals that were considered in this case, take time to determine and will involve a great degree of analysis. In the circumstances, the statutory scheme requires that some deference needs to be shown by the CMA to GEMA's evaluation or judgment.[83]

[82] To enable the CMA to dispose of appeals 'fairly and efficiently and at proportionate cost' within the time period prescribed by the GA86. Rule 4.1 of CMA70.
[83] *R (Wales and West Utilities Ltd)* paragraph 153.

Errors of primary fact and certain errors of law

4.31 The concept of a margin of appreciation is not apt in relation to alleged errors of fact. The making of factual findings does not involve the exercise of regulatory discretion or judgment

4.32 We will, however, take into account the advantages – if any – that GEMA may have had over the CMA in its consideration of the evidence on which it made the factual findings in question. In *E.ON*[84], in relation to an appeal under Energy Act 2004, the Competition Commission (**CC**) found in relation to errors of fact that:

> GEMA, as the specialist regulator may well have an advantage over the CC in finding the relevant primary facts. … GEMA … has an advantage of experience, and will often have the benefit of having conducted a consultation with the industry … For these reasons, the CC will be slow to impugn GEMA's findings of fact. Nevertheless, the CC has a clear jurisdiction in respect of factual errors, and we will exercise that jurisdiction where we conclude that GEMA has based its decision on a plain error of fact.

4.33 The above passage remains a correct statement as to the appropriate approach to alleged errors of fact.

4.34 As regards certain errors of law, in its recent decision in the SSE code modifications appeal,[85] the CMA agreed with the parties that '… in the context of challenges relying on an alleged error of law, … there [is] no role for 'regulatory judgement' or discretion on the question of what is the correct construction of legislation" and also that "…on that question, the concept of reasonable judgement, as embodied in the Wednesbury test, has no part to play.'

Regulatory judgement and statutory grounds (a), (b) and (e)

4.35 In relation to the appeal grounds in section 23D(4)(a) and (b), which involve matters of evaluation or judgement, the Court in *R (Wales and West Utilities Ltd)* recognised, as we say above, that, '… the statutory scheme requires that some deference needs to be shown by the CMA to GEMA's evaluation or judgment'.[86] When considering the degree of deference to be shown to GEMA, the CMA takes into account the fact that, as noted by the Court in that case, '… the CMA contains members with relevant expertise, and has powers to call for evidence'.[87]

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[84] *E.ON*, at paragraph 5.16.
[85] *SSE Generation Limited v GEMA and National Grid Electricity System Operator Limited and Centrica plc/British Gas Trading Limited*, Decision, 30 March 2021, at paragraph 5.17.
[86] *R (Wales and West Utilities Ltd) paragraphs 149, 151 and 153.*
[87] *R (Wales and West Utilities Ltd) paragraph 152.*

4.36 Broadly the same is true where an error of law is alleged in respect of a regulatory judgement GEMA made. In *BT v Ofcom*[88] the Court of Appeal considered the CAT's approach to its jurisdiction to review Ofcom's exercise of judgement. While that appeal concerned a different statutory scheme, the court confirmed the general principle underlying the approach, saying:

> Whether or not it is helpful to encapsulate the appropriate approach in the proposition that Ofcom enjoys a margin of appreciation on issues which entail the exercise of its judgment, the fact is that the Tribunal should apply appropriate restraint and should not interfere with Ofcom's exercise of a judgment unless satisfied that it was wrong.

4.37 In line with *BT v Ofcom*, where the exercise of regulatory judgement is involved (including where GEMA makes predictions for the future), GEMA will have a margin of appreciation. The CMA applies appropriate restraint but will interfere with GEMA's judgements if it considers them wrong on the relevant ground(s).[89]

Interlinkages

4.38 In *RIIO-1*, the CMA received submissions that GEMA's decision was 'an interrelated and integrated whole' and that disturbing one element of that decision may have knock-on effects on other parts of the decision. It also received submissions that 'cherry picking' would make the appeal process unfair, for example, if considering one element in isolation would undermine the global bargain struck by the relevant licence holders.[90]

4.39 The CMA rejected those arguments in *RIIO-1*. It cited the Competition Commission Energy Licence Modification Appeals Rules (CC14) which require each appellant to state in its notice of appeal the grounds of appeal on which it relies and to include a statement of facts and reasons supporting each ground of appeal on which it is relying. The CMA considered, '…that these provisions clearly envisaged that we must determine the appeal 'through the prism of the specific errors' alleged by the appellant'.[91]

4.40 The CMA recognised, however, that price control decisions may be taken and accepted on a global basis or reflect an 'in the round' assessment by GEMA and the licence holders. It also acknowledged that in some circumstances it might be necessary to take care that overturning one aspect of a complex regulatory

[88] *BT v Ofcom* [2014] EWCA Civ 133, at paragraph 87; see also *Firmus*, at paragraph 3.20.
[89] In *R (Hutchison 3G UK Limited) v Office of Communications* [2017] EWHC 3376 (Admin), Green J described factors which affect the extent of the margin of appreciation that should be afforded to decision-makers.
[90] *Northern Powergrid,* at paragraphs 3.42-3.43 and *British Gas*, at paragraphs 3.46-3.47.
[91] *Northern Powergrid,* at paragraph 3.47 and *British Gas*, at paragraph 3.48.

decision did not have knock-on consequences for other, unappealed aspects of the decision.[92]

4.41 Furthermore, the CMA considered that the question as to whether there are sufficient links between the parts of the decision which are challenged and parts which are not challenged must be decided on a case-by-case basis, taking into account the circumstances of each case.[93]

4.42 Similarly, in *SONI Limited v Northern Ireland Authority for Utility Regulation, 2017 (**SONI**)*, the CMA recognised the risk of knock-on effects from changing one aspect of a complex regulatory decision. The principle that the CMA adopted in that decision is 'to consider on a case-by-case basis any evidence submitted to the CMA regarding links between the parts of the decision which are challenged and parts which are not.'[94]

4.43 In line with the CMA's decisions in *RIIO-1* and *SONI*, we have adopted an approach in relation to the issues of 'cherry picking' and 'in-the-round' assessments that strikes the right balance between recognising our role as an appeal body whilst at the same time recognising that price control decisions are complex. We have accordingly considered interlinkages where appropriate on a case-by-case basis.

Precedents

4.44 Past decisions taken by the CMA in other regulatory appeals are not binding. This means that we are not required to adopt an identical approach to determining the issues, nor to ensure that our decision in the present appeals mirrors assessments made and conclusions reached by the CMA in other regulatory appeals. While the CMA may have regard to such past decisions in considering the present appeals, it will also take into account the fact that other regulatory appeals may be subject to different statutory regimes and relate to different sectors.

Materiality

4.45 In deciding what is wrong, the CMA may look at an aspect of GEMA's decision-making process and decide that there was an error, but nevertheless conclude that the error was not material. The CMA may, on that basis, find that the decision under appeal, or that element of the decision, was not 'wrong'.

4.46 An error in GEMA's decision may be immaterial either because:

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[92] *Northern Powergrid,* at paragraph 3.49 and *British Gas*, at paragraph 3.50.
[93] *Northern Powergrid,* at paragraph 3.51 and *British Gas*, at paragraph 3.52.
[94] *SONI*, at paragraph 13.3.

(a) it did not play a material part in GEMA's reasoning; or

(b) it had such a small impact, as a percentage of the overall price control, as to be immaterial.

4.47 In the appeals from GEMA's RIIO-1 determinations for electricity Distribution Network Operators in 2015, the CMA adopted the approach that 'We consider that an error will not be a material error where it has an insignificant or negligible impact on the overall level of price control set by GEMA.'[95] Offering a non-exhaustive list of criteria that the CMA may take into account in determining materiality, the decisions in *RIIO-1* stated:

> Whether an error is material must be decided on a case-by-case basis taking into account the particular circumstances of each case. Relevant factors would include the impact of the error on the overall price control, whether the cost of addressing the error would be disproportionate to the value of the error, whether the error is likely to have an effect on future price controls, and whether the error relates to a matter of economic or regulatory principle.[96]

4.48 In *Firmus*[97], the CMA noted that, in the context of a telecoms appeal, the CMA has stated that where the impact of the error as a percentage of the charge control is below 0.1%, the error is unlikely to be capable of producing a material effect on the charge control. The CMA noted further that this is 'not intended to be a 'bright–line test'; it is but one factor in an overall assessment based on all the circumstances of the case.'

4.49 In principle, the CMA should determine whether each alleged error is material in itself. In *Firmus*,[98] however, quoting the Competition Commission's approach,[99] the CMA did not exclude the possibility that in certain cases an aggregation of immaterial errors could amount to a material one:

> …. no formal general approach has been identified that would determine when, if at all, immaterial errors should be aggregated. The CC was mindful that to aggregate immaterial errors would have the effect of converting an error that was in and of itself immaterial into a material error through its combination with other immaterial errors. Those other errors may be unrelated and may lie in different and discrete aspects of the price control. The CC did

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[95] *Northern Powergrid (Northeast) Limited and Northern Powergrid (Yorkshire) plc v the Gas and Electricity Markets Authority, 2015 (**Northern Powergrid**)*, at paragraph 3.58 and *British Gas*, at paragraph 3.60.
[96] *Northern Powergrid*, at paragraph 3.58 and *British Gas*, at paragraph 3.61.
[97] *Firmus*, at paragraph 3.24.
[98] *Firmus*, at paragraph 3.26.
[99] Competition Commission's determination in *Carphone Warehouse (LLU)*, 31.8.10 at paragraph 1.64.

not rule out the possibility that there may be cases in which such aggregation was justifiable where the cumulative effect of discrete errors had a highly significant impact on the price control set by the regulator. However, as a general approach, the CC stated it would be cautious about elevating the immaterial into the material. It observed that aggregation might encourage a scattergun approach on the part of appellants, which was not the purpose of the appeal process.

4.50 The approach described in the preceding paragraph continues to apply.

The CMA's powers on determination of the appeals

4.51 In the event and to the extent that the CMA does not allow an appeal, the CMA is required to confirm the decision appealed against.

4.52 If the CMA allows to any extent an appeal in relation to a price control,[100] it must do one or more of the following:

(a) quash the decision (to the extent that the appeal is allowed);

(b) remit the matter back to GEMA for reconsideration and determination in accordance with any direction given by the CMA;

(c) substitute the CMA's decision for that of GEMA (to the extent that the appeal is allowed) and give any directions to GEMA or any other party to the appeal.[101]

[100] Section 11F(7) of EA89 and section 23E(7) of GA86 provide that for the purposes of section 11E of EA89 and section 23D of GA86, a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the CMA's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.
[101] Section 11F(2) of EA89 and section 23E(2) of GA86.