

CMA Energy Market Investigation

Response to the Provisional Findings and Remedies Notice

1 Introduction

- 1.1 This is the response of First Utility Limited (**First Utility**) to the Summary of Provisional Findings (**Summary**), the Provisional Findings Report (**Provisional Findings**) and the accompanying Notice on Possible Remedies (**Remedies Notice**) published or notified by the Competition and Markets Authority (**CMA**) on 7 July 2015.
- 1.2 We welcome the Provisional Findings and proposed Remedies and look forward to engaging further with the CMA on them. We note that the CMA's timeframe for response submissions has been challenging given the scale of the findings and the numerous questions relating to the various proposed remedies. First Utility has engaged with the Provisional Findings and Remedies Notice as best it can in the time available.
- 1.3 The **key points** First Utility would make in response to the Provisional Findings and Remedies Notice are as follows:
- (a) We agree that there are fundamental problems in the GB gas and electricity retail markets driven by *lack of customer engagement* and the strategies adopted by the Big Six to perpetuate this disengagement. We agree with the CMA's finding that the Big Six are *each unilaterally dominant* in relation to a base of disengaged customers who do not consider switching supplier, and that they *exploit their most loyal customers* by charging far higher rates under standard variable tariffs (**SVTs**) than those customers would pay if they engaged actively in the market.
 - (b) We therefore welcome the underlying purpose of the proposed remedies addressing lack of customer engagement. The CMA must however be very careful in the design of the remedies to tackle this problem that it does not inadvertently increase levels of complexity or impose other measures that facilitate the Big Six maintaining or adapting their current strategies aimed at seeking to discourage engagement. Further, we have some concerns that certain of the remedies appear contradictory in intent or potential impact, e.g. the removal of the four-tariff rule and the focus on comparability and the competitiveness of Price Comparison Websites (**PCWs**), with each other and with suppliers.
 - (c) The Retail Market Review (**RMR**) was intended to "reset" the retail market and foster consumer engagement. In this context, the four tariff rule remains useful to prevent a significant and material proliferation of retail tariffs albeit that at this relatively early stage following its implementation, some elements of RMR may not have worked as well as hoped for to foster that engagement, e.g. complex billing, no requirement for monthly billing, use of standard variable tariff as a comparison at fixed-term expiry (which has led to confusion, as well as disappointment when actual savings are less than expected) and banning supplier use of cashback, causing confusion amongst suppliers and cashback sites on what can actually be done.

- (d) We share the CMA's concern that customers are protected whilst the proposed remedies are being implemented and in the period before they take effect to address the adverse effects on competition (**AEC**) the CMA has identified as arising from an overarching lack of customer engagement caused by a combination of features, including supplier behaviour as noted above. However, we have some material concerns around the safeguard tariff being proposed. A more proportionate approach may be to have a short-term fixed-tariff where e.g. each quarter, the supplier tells the customer about any price changes. We believe this more regular communication would drive up engagement. It would not have the complexity of a tariff control (however described) requiring central input, would not dictate a particular hedging strategy, and would be set by suppliers. Customers could move off it without any fee. If this were coupled with communications from the supplier which included an average or sample of the market cheapest tariffs, this could help foster greater engagement amongst customers defaulting from a fixed tariff or those whose supplier (and tariff type) hasn't changed in a number of years, precisely the customers at most risk of unfairly high prices.
- (e) We are disappointed that the CMA has failed to recognise the AEC created through the absence of a meaningfully liquid wholesale electricity market. The CMA's main justification for its provisional views in this respect appears to be the fact the Big Six engage in wholesale market trading and that independent retailers, such as First Utility (who *require* a liquid wholesale market unlike the vertically integrated participants who have access to generation) are able to replicate the trading strategies of the Big Six. This analysis and outcome appears perverse, and we would encourage the CMA to revisit this in its Final Report.
- (f) In spite of this disappointment, we welcome the CMA's recognition of the need for active monitoring of certain key changes in wholesale market rules, including marginal imbalance pricing and the Supplier Obligation, imposed to provide certainty to generators within the Contracts for Difference (**CfD**) regime: both of which impose risks on suppliers that cannot effectively be insured against – or hedged – which means that suppliers have less flexibility in terms of retail pricing. Ofgem and DECC need to be ready to review and change their policies if customers and suppliers are adversely impacted by them.
- (g) We also welcome the CMA's focus on the regulatory regime and its detailed consideration of, and approach to, industry governance and change. However, we wonder how easily certain of the proposed remedies can be developed in the time available given the inherent complexities involved. This needs to be fully worked through to prevent unintended outcomes.

1.4 The remainder of this response is structured as follows:

- (a) First Utility's views on the main Provisional Findings; and
- (b) First Utility's views on the Remedies Notice (which includes comments on those remedies the CMA is not minded to consider further where relevant).

2 First Utility's views on the Provisional Findings

2.1 First Utility believes that the Provisional Findings have drawn some correct conclusions and also missed opportunities to address other features of the market which lead to an adverse effect on competition (**AEC**). We summarise below our views on the findings of most immediate concern to us and set out in the next section, our more detailed response on the findings:

- (a) **We disagree with the CMA's view that absence of a meaningfully liquid wholesale market does not constitute a market feature giving rise to an AEC:** The CMA's analysis in this respect does not, in our view, give sufficient weight to the importance of the availability of shaped wholesale products along the forward curve to allow retail independent suppliers to compete on a level playing field with vertically integrated suppliers – i.e., the Big Six. We note that the analysis has also been performed in a historic period of low market volatility, which risks understating the liquidity risk and leading to the wrong conclusions being drawn for times of more “normal” volatility.
- (b) **We welcome the CMA's finding that the combination of features in domestic gas and electricity retail markets gives rise to an AEC:** We recognise the weak customer response described by the CMA, and have explained in our previous submissions to the CMA how it is in the Big Six's interests to perpetuate that lack of engagement through a variety of strategies. We agree with the CMA's provisional finding that the Big Six each enjoy unilateral market power in relation to their incumbent “sticky” customers, and that they exploit these customers by consistently pricing SVTs at a level some way above competitive market prices.¹
- (c) **We disagree with the CMA's view that the “four tariff” component of RMR amounts to a market feature leading to an AEC:** The CMA has observed that weak customer engagement is a problem in retail markets and that engagement among certain categories of customer is lower (e.g., those who are elderly, live in social and rented housing or have relatively low levels of income or education).² The four tariff rule was introduced with the intention of increasing simplicity and transparency in retail competition. We do not believe that this rule has materially restricted innovation, as new tariffs can be introduced to replace older ones, and white labels and collective switches offer additional avenues and derogations from the rule. Further, we believe it has great benefits in preventing tariff complexity being used to deter customer engagement, or use of short, introduction tariffs to push customers on to SVTs once these tariffs have lapsed.
- (d) **We note that issues can arise around gas settlements which amount to an AEC.** As we noted in our earlier response on settlement and metering, we do see the potential for some shipper gaming of the Annual Quantity (**AQ**) process and welcome the CMA's focus on this.

¹ We note the CMA found certain market characteristics that may be conducive to a strategy of tacit coordination among the Big Six. In our view these characteristics could equally be viewed as part of the AEC in need of remedy, although we would hope that the remedies targeted at domestic retail markets will be sufficient to encourage engagement and entry and prevent the characteristics supportive of tacit coordination developing further in future.

² See, e.g. paragraph 12.5 of Provisional Findings.

- (e) **We agree that half-hourly settlement would help to increase customer engagement, and therefore that the absence of a firm plan to move toward half-hourly settlement could lead to an AEC:** Nevertheless, we perceive that implementing any remedy or remedies to address this issue will give rise to certain challenges, which we discuss in further detail in responding to the Remedies Notice in Section 3 below.
- (f) **We agree that weak customer response from microbusinesses is a market feature which may give rise to an AEC:** First Utility is focused on domestic retail supply: accordingly, we do not comment on this AEC or the remedies being proposed to address this.
- (g) **We partially agree that certain of the regulatory features identified by CMA and features relating to code governance give rise to an AEC:** Whilst we recognise and agree that with certain key changes, some parties have had conflicting interests and/or limited incentives to promote and deliver those policy changes, we are concerned that the inferences drawn are from too limited a selection of industry and regulatory changes and that consequently, the proposed interventions risk exacerbating an already complex change environment without securing the hoped-for benefits of change in consumer interest.
- (h) We note here that **the CMA has not found specifically that the lack of ability for independent and smaller market participants and consumer representatives fully to participate to the same extent as larger market players constitutes a AEC.** We believe that nevertheless this remains of material concern and include in our comments on remedies how this persistent concern could proportionately be addressed.

2.2 Below we address specific sections of the Provisional Findings in further detail. We have not been able in the time available to address the Provisional Findings in their entirety and reserve our position on those sections on which we have not commented.

Locational pricing for transmission losses

- 2.3 First Utility notes the CMA's finding that the absence of locational pricing for transmission losses is a feature of the market giving rise to an AEC. We suggested in our response to the Updated Issues Statement that rather than considering location-based charging for transmission losses, the CMA should address the issue of distribution losses.³ We remain of this view.
- 2.4 Distribution system losses have a greater potential adverse impact on customers than transmission losses. The only distribution-connected customers who have cost-reflective charging (incorporating that greater losses on the network are incurred at times of peak demand) are those who are Half-Hourly (HH) metered and settled. Remaining charges are billed to suppliers and recouped through a "smearing" across all other customers. The consequence is that domestic customers pay a higher proportion of costs attributable to losses,

³ Please see paragraphs 1.2 *et seq* in the main body and paragraph 1.1 in Annex 1 of First Utility's response to the Updated Issues Statement (https://assets.digital.cabinet-office.gov.uk/media/553e51a5e5274a1572000055/First_UTILITY_response_to_updates_issues_statement.pdf)

and there is also little incentive on Distribution Network Operators (**DNOs**) to reduce losses, which hinders tariff innovation.⁴

- 2.5 Taking this into account, we query the basis for focusing assessment of any potential adverse effects on competition, and consequent remedies, on transmission network losses only. If the case for introduction of location-specific charges for losses is made out in principle, we are therefore concerned around the rationale for focusing on this single aspect of locational charging where there is a greater need instead to incentivise increased technical efficiency and innovation in reducing losses on the distribution networks. There is also a related concern that failure to do so may have an adverse impact on suppliers' ability to innovate around retail tariffs, e.g. around time-of-use (**ToU**).
- 2.6 We also consider that a number of inferences could be drawn from the case study for locational charging for transmission losses,⁵ the first being that there can be rational and significant differences of view as to the impact of and consequences for participants of proposed changes,⁶ the second that there can be differences of opinion as to what is in the interests of existing and future consumers,⁷ the third being that this raises concerns for the proposed remedy enabling Ofgem effectively to mandate industry change. The case study highlights the constraints originally on Ofgem to operate within Panel timeframes, which was addressed to some extent by the Code Governance Review (**CGR**) changes.⁸ Resource constraints apply to Ofgem as much as to industry participants, which should also be borne in mind in considering certain of the proposed remedies.

EBSCR reforms to imbalance prices

- 2.7 First Utility agrees with the CMA assessment that the move to single cash-out is "positive for competition", noting that the CMA received no representations to the contrary.⁹
- 2.8 However, the concerns around sharper prices remain even with single cash-out. We set out those concerns in our response to the Updated Issues Statement.¹⁰ The CMA considers the argument that sharper pricing for imbalance "is a particular disadvantage to smaller players does have some merit."¹¹ There is a significant difference between the imbalance positions of the Big Six, as against the smaller players, as the CMA has highlighted,¹² and we remain concerned that a sharper PAR (coupled with the other changes) could actually decrease liquidity as market participants retain plant flexibility to address their own imbalance risk rather

⁴ Whilst distribution losses are reflected in regional network costs, a uniform approach is taken on the sharing of these between NHH sites, both domestic and non-domestic. This creates a barrier to entry/barrier to development of ToU tariffs, where the economics would be made much stronger if distribution losses had a time of day element (at peak times, there are more system losses).

⁵ Included in Appendix 11.2, Codes and Regulatory Governance.

⁶ As summarised by the CMA at paragraph 5.52 and 5.53, Provisional Findings

⁷ As highlighted by the differences in view of Ofgem, as summarised by the CMA at paragraph 5.62 and the CMA itself at paragraphs 5.62 and 5.65 of the Findings

⁸ Paragraph 79, Appendix 11.2 Codes and Regulatory Governance

⁹ Paragraph 5.100, Provisional Findings

¹⁰ Paragraphs 1.6 et seq: First Utility response to the Updated Issues Statement

¹¹ Paragraph 5.105, Provisional Findings.

¹² Descriptive Statistics: Generation and Trading Working Paper, paragraph 31 and see paragraph 1.10 of our response to the Updated Issues Statement.

than offer it to the market, potentially further decreasing the product availability in the wider wholesale market that enables other participants to manage that same risk.¹³

- 2.9 For this and other reasons, in our view, the modification may not in practice lead to the behavioural changes modelled, as not all market participants can respond to those signals to effect that change.¹⁴ We do not share the CMA's view that there are a number of options available, e.g. it is not necessarily open to all such market participants to contract for more flexible generation as lack of scale or ability to forecast likely demand may adversely affect the appetite of generators to enter such arrangements.¹⁵ Nor do we agree with the inference drawn that the concerns rest more on increased forecasting and contracting per se. We accept however that the CMA is persuaded by the overall efficiency arguments of a change to substantially greater marginal pricing for imbalance, tempered with their concern to ensure that should the real-life consequences not in fact lead to efficient and manageable price signals, "Ofgem should halt the move from PAR 50 to PAR 1."¹⁶
- 2.10 We welcome Ofgem's subsequent commitment, given in its letter of consent to P305, to monitor the outcome and we look forward to participating in the discussions around and workshops for the monitoring framework.¹⁷ This approach will be useful for all changes expected to yield behavioural change: in addition, development of an appropriate modelling framework and the gathering of data is likely to help in developing proposals for and assessing the impact of other changes.
- 2.11 This is particularly important given our concerns around liquidity and, as we note above, our concern around how "low liquidity compounds the size of imbalance risk faced by independent suppliers, particularly if the price ratio of Peakload-plus-Baseload-to-Shape starts to increase materially in less benign market conditions ..."¹⁸
- 2.12 We also take the opportunity to reiterate our concern that much of the modelling work for the proposed changes drew from data derived from benign wholesale trading conditions. Conceptually, of course, sharper pricing is intended to drive behavioural change, thus working as an economic signal: however, this assumes that there is sufficient liquidity to meet the requirements of participants. As noted in our earlier response, we consider that "further modelling, based on actual market data, is needed, and reflecting those market conditions that the modification is actually intended for".¹⁹
- 2.13 We agree with the CMA that the EBSCR was "a long and involving process".²⁰ It was perhaps made longer and more involved by the unexpected raising by National Grid, at Ofgem request, of P304, which concerned reductions to the PAR value only, and hived off this element of the

¹³ We reiterate our concerns around low levels of liquidity in our comments on Vertical Integration and Liquidity.

¹⁴ Paragraphs 5.116 and 5.117, Provisional Findings, summarise the concerns of smaller and one-sided market participants, with which we agree.

¹⁵ See paragraphs 3.21 and 3.22 of our response to the Updated Issues Statement, noting inter alia Drax' comment of how it trade close to delivery due to the inconvenience of trading non-standard products and the fact that demand becomes more predictable closer to delivery.

¹⁶ Paragraph 5.130, Provisional Findings.

¹⁷ Page, 14, Ofgem letter approving P305: https://www.ofgem.gov.uk/sites/default/files/docs/2015/04/p305d_1.pdf

¹⁸ Paragraph 1.11, First Utility response to Updated Issues Statement

¹⁹ Paragraph 1.8, First Utility response to Updated Issues Statement.

²⁰ Paragraph 5.82, Provisional Findings.

EBSCR changes from those of single cash-out. Our concern around the reduction of PAR, without single cash-out, was that this would disproportionately affect independent and smaller market participants adversely impacting competition (amongst other adverse impacts). These concerns were one factor within Ofgem's consideration of P304 and P314, leading to its rejection of these modifications.

Contracts for Difference

- 2.14 We note the CMA's provisional finding that certain mechanisms for allocating Contracts for Difference (**CfDs**) are a feature of the GB electricity wholesale market that gives rise to an AEC.²¹ Energy customers essentially pay for these contracts, and their supplier's costs in managing the risks inherent in the regime. It is therefore essential that CfD contracts are procured in as competitive way as possible, which as the CMA has found, is the most appropriate means to secure value for money. We do not consider this finding further in this response, save with regard to the CfD Feed in Tariff (**FIT**) Supplier Obligation below.

CfD FIT Supplier Obligation

- 2.15 Although the CMA has not found that the CfD FIT Supplier Obligation is likely to give rise to an AEC,²² the CMA has considered the concerns we raised regarding the volatility in the cost of the Supplier Obligation in our response to the Updated Issues Statement which we reiterate here.²³ These concerns stem from the significant transfer of risk from generators to suppliers designed into this Obligation, which we continue to believe will in itself significantly impact the prices that retail customers pay.
- 2.16 As the CMA notes, the risks suppliers will face may not be possible to hedge entirely. We reiterate that the hedging strategy of a CfD FIT receiving plant is entirely different to the hedging requirements of a retail supplier, and there are no wholesale products traded to hedge CfD FIT risks. We agree with and support the CMA's encouragement to DECC "to monitor and continue engaging with the sector around the impact of the Supplier Obligation on suppliers' risks, and to be prepared to amend the arrangements if necessary in the future."²⁴ We see it as unavoidable that the Supplier Obligation will have to be adapted as the schemes grows, otherwise suppliers will be faced with a material risk that they cannot hedge, which would undermine retail competition.

Liquidity

- 2.17 We agreed with the CMA's concerns earlier in the investigation that if liquidity is poor, it would adversely affect competition between respectively the vertically integrated and independent energy firms both (i) "down the curve" (i.e. further ahead of the time of delivery) by increasing the risk for independent suppliers/generators or causing them to pay a premium to reduce such

²¹ Paragraph 5.260, Provisional Findings.

²² Paragraph 5.261, Provisional Findings.

²³ Annex 1, First Utility response to the Updated Issues Statement.

²⁴ Paragraph 5.241, Provisional Findings.

risk; and/or (ii) “near-term” (i.e. closer to the time of delivery) by exposing independent suppliers to cash-out and thereby increasing their costs.²⁵

- 2.18 We are therefore disappointed that the CMA has provisionally concluded that vertically integrated firms do not appear to be experiencing a significant competitive advantage in relation to liquidity at present²⁶ and that current levels of liquidity in the electricity wholesale market therefore appear to be sufficient to allow independent energy firms to trade in a similar way to the vertically integrated energy firms.²⁷ We believe that the low market volatility of recent years may have skewed the analysis of the competitive advantage.
- 2.19 Although the CMA found that the trading and hedging patterns of the six largest incumbent suppliers, i.e. the Big Six, differed from those of independent energy firms²⁸, the CMA stated that it had not found evidence that product availability was likely to be causing this difference, since – according to the CMA - the Big Six generally conducted their hedging strategies using products that were available and traded, and that there was no indication that they were gaining an advantage by systematically using internal trades of products that were not available to other, non-integrated (or less integrated) energy firms.²⁹
- 2.20 We had hoped that the CMA would consider the – in our view - more important question whether non-vertically integrated market players can sell and buy electricity *as they require* in order to offer fair and stable prices to consumers. We note that the CMA dismissed considering this question on the grounds that it interpreted it to mean whether non-vertically integrated market players can sell and buy electricity *as they desire*³⁰, which we agree is not a measurable standard. However, we submit that the CMA may have misinterpreted First Utility’s question; it is not an issue of *wanting* but *needing* to trade differently from the Big Six. It is not correct to assume the hedging strategy required by an independent supplier should be the same as that for an integrated player, as hedging is the management of risk: these two participant types have very different risk exposures.
- 2.21 The CMA acknowledges that the trading and hedging patterns of the Big Six differ from those of independent energy firms³¹, but concludes that non-vertically integrated energy firms are able to trade *basic [emphasis added]* products that are – in our view erroneously - necessary to participate in upstream or downstream electricity markets.
- 2.22 First Utility remains of the view that only wholesale market liquidity for a wide variety of products, including forward shaped products – as opposed to mere basic products as suggested by the CMA - will deliver the vigorous wholesale competition required to enable independent suppliers and generators to enter the market and expand their businesses, which in turn will drive competition along the entire energy supply chain.³² First Utility considers that there is currently little to no liquidity in the more bespoke products and that there is still a distinct

²⁵ “Liquidity”, CMA working paper published on 13 March 2015 (**Liquidity WP**), paragraphs 106 and 107; and Appendix 6.1: Liquidity, paragraphs 101 and 102.

²⁶ Paragraph 6.26, Provisional Findings.

²⁷ Provisional findings report, paragraphs 6.32 and 6.37.

²⁸ Provisional findings report, paragraph 6.33.

²⁹ Provisional findings report, paragraph 6.34.

³⁰ Appendix 6.1: Liquidity to the Provisional findings report, paragraphs 111 and 112.

³¹ Provisional findings report, paragraph 6.33.

³² As stated in First Utility’s response to the Updated Issues Statement dated 27 March 2015, paragraph 3.3.

lack of forward shaped products in the market. This lack of liquidity in forward shaped products prevents non-vertically integrated electricity suppliers from competing effectively with the Big Six, as independent suppliers rely on products available in the wholesale market to manage shape risks since they have no natural hedge, i.e. the ability to purchase the required bespoke products from their own generation arms coupled with the offsetting risk reduction this provides.

- 2.23 Many of the other market participants – both suppliers and generators – seem to agree that liquidity in the wholesale markets is at a low level. Indeed, the Big Six themselves appear to agree that there is limited liquidity for some products and/or that if it were possible to improve liquidity in some products it would be to the benefit of all market participants, although they generally consider that liquidity in the electricity wholesale market is sufficient for their purposes.³³ Further, the CMA's period of review coincides with relatively benign wholesale market conditions. As we have noted previously, we believe it would be dangerous to assess wholesale liquidity threats to competition based on market conditions in recent years alone without also considering scenarios of increased wholesale market volatility that have occurred historically, and will doubtless be repeated. The wholesale market needs to be fit for purpose for all volatility conditions if it is to be fully competitive.
- 2.24 More specifically, whilst we agree that there is some transparency of pricing in the wholesale market via exchanges and over-the-counter contracts, we do not experience any transparency in “longer term bespoke products” which we consider key for independent suppliers. We continue to see this as hampering the ability of independent and smaller market participants from competing effectively by constraining their ability to pursue new areas or expand.³⁴ We also note little change to the entry (or otherwise) of intermediaries.³⁵
- 2.25 First Utility also does not fully support the CMA's provisional conclusion that Ofgem's Secure and Promote licence condition ensures the general availability of products which are most widely used for hedging by the Big Six. As previously submitted to the CMA³⁶, First Utility considers that the Secure and Promote licence condition has to date had very little impact on the overall liquidity in the electricity wholesale market. It has not introduced any new products for sale to mitigate shape risks (intra-day, intra-week and intra-season) along the forward curve and the two one-hour trading windows have reduced the number of opportunities in a day for independent suppliers to execute trades on the market. The CMA itself acknowledges that the Secure & Promote licence condition may have improved liquidity in the designated windows but that this improvement may have been at the expense of liquidity in other parts of the day.³⁷
- 2.26 We agree to a certain extent with the CMA that the wholesale procurement of energy “is one of the key functions of the retailer”, amounting to “the largest single cost item in the price of domestic electricity and gas.”³⁸ As the CMA notes, one of the key aims of energy retailers is the efficient management of the risk of wholesale energy purchasing and that overall, suppliers can have “only a moderate degree of influence over the overall level of wholesale cost that they

³³ Appendix 6.1: Liquidity to the Provisional findings report, paragraph 30.

³⁴ Paragraph 3.26, First Utility response to the Updated Issued Statement.

³⁵ Paragraph 3.30, as above.

³⁶ Paragraphs 3.37 to 3.43 First Utility's response to the Updated Issues Statement, and First Utility's response of 20 October 2014 to the CMA's questions on liquidity, question 3.

³⁷ Appendix 6.1: Liquidity to the Provisional findings report, paragraph 89.

³⁸ Paragraph 7.22, Provisional Findings.

bear for a given volume of demand in the long run.” As we observed above regarding the need for a fully liquid market, independent suppliers currently work with the wholesale energy products available to manage this risk as best they can, absent any price signals for and availability of more bespoke products substantially prior to delivery. However, we are strongly of the view that the lack of product availability and price transparency in the wholesale electricity market has material downstream consequences for customers, which remains the reason why we consider that in order fully to address the AECs in the retail market, the CMA should reconsider its provisional finding that there is sufficient liquidity in the wholesale market.

Domestic retail: weak customer response, supplier behaviour and regulations

- 2.27 For the reasons set out below, we agree, albeit with some limited exceptions in the case of regulations, with the CMA’s provisional finding that there is a “combination of features of the markets for the domestic retail supply of gas and electricity in Great Britain that give rise to an AEC through an overarching feature of weak customer response which, in turn, gives suppliers a position of unilateral market power concerning their inactive customer base which they are able to exploit through their pricing policies or otherwise.” As the CMA goes on to say, these features work together “to deter customers from engaging in the domestic retail gas and electricity markets, to impede their ability to do so effectively and successfully, and to discourage them from considering and/or selecting a new supplier that offers a lower price for effectively the same product.”³⁹

Weak customer response

- 2.28 We agree with the CMA’s conclusion that the customer survey provides evidence of a material degree of customer disengagement.⁴⁰ The most telling statistics are that apparently 89% of consumers are aware that they are able to switch, but only 25% have done so in the last three years, despite the considerable savings that the CMA has demonstrated are available, with 70% of Big Six customers paying the exploitative SVT prices.⁴¹ In broad terms, the results highlight the importance of consumers understanding the *potential gains* from switching: if consumers were better informed about the savings available – and given the precedence they place on lowest cost/tariff⁴² – we would expect switching rates to be far higher than currently (and/or prices more competitive).
- 2.29 We do not consider that the arguments put forward (notably by the Big Six) to challenge the efficacy of these findings have merit, and we agree with the CMA that (i) there was little or no evidence provided to support these arguments; and (ii) the evidence put forward did not appear to have anything other than a negligible impact on the overall outcome. Indeed, we consider that the CMA’s survey methodology went to great lengths to ensure that the outcomes were not biased. If anything, this may have led to an understatement of the lack of customer engagement given the underlying assumption in the survey that a customer is currently on a tariff, tariff structure and payment method that they want to be on and that they have selected and that they want to retain, whereas in reality a large number are on SVTs which they have defaulted to

³⁹ Paragraph 8.300, Provisional Findings.

⁴⁰ Paragraph 7.65, Provisional Findings.

⁴¹ Paragraph 4, Appendix 8.1: CMA domestic customer survey results (CMA survey)

⁴² Amongst those who had never considered switching supplier, paragraph 165, and those who considered switching in the next three years at paragraph 171, CMA survey.

without ever making a positive choice: those findings around lack of knowledge on their ability to switch tariff, change payment method or change supplier are illustrative in this respect.

- 2.30 We welcome the CMA's thorough and credible modelling of the potential gains to be made by customers from switching over the period Q1 2012 to Q2 2014 and the scope of that modelling taking into account tariff type, payment method and choice of supplier.⁴³ The results highlight that the supplier behaviours encouraging lack of engagement have a material consequence for the Big Six's customers, who remain on the most expensive tariffs available in the market place.
- 2.31 We agree with the findings of "material potential savings that are persistent over time" which are available for take up by domestic customers but are not exploited and that this is "evidence of weak customer response in the domestic retail markets for electricity and gas in Great Britain."⁴⁴ Our own assessment, conducted as part of our "Scrap the Variable" campaign⁴⁵ and focussed on Big Six SVT customers, found an overall annual national overpayment for energy of £3.4 billion⁴⁶ with the 70% of Big Six customers on SVTs overpaying by an average of £235 each per year.⁴⁷ This is not to say that differentials don't exist between other suppliers' SVTs and their fixed-price tariffs. In contrast, however, we communicate with them more than twelve times a year, including our "Supplier Cheapest Tariff" at the relevant time.⁴⁸
- 2.32 We agree with the CMA's inference that "availability of relevant information, ability to access and assess this information, and confidence in switching" are important to effective customer engagement in energy.⁴⁹ It is therefore important that the information provided does actually assist customers in answering the questions they pose, e.g. potential savings, alternative options and billing.
- 2.33 In our view there remain effectively two domestic retail energy markets in Great Britain: (i) a contested market made up of those customers who actively switch, engaging in the market via e.g. PCWs; and (ii) the vast majority of customers who remain or have defaulted to SVTs and are disengaged and exploited. A vast majority of these are within the legacy territories of Big Six former monopoly suppliers. As we said in our response to the Updated Issues Statement⁵⁰, this situation is made worse by the ability of the Big Six to cross-subsidise attractive, even in some cases aggressive entry tariffs with SVTs, a strategy which allows them to win engaged customers on price, who then fail to maintain their levels of engagement and revert back to SVT tariffs.

⁴³ Paragraph 7.181 *et seq*, Provisional Findings.

⁴⁴ Paragraph 7.192, Provisional Findings.

⁴⁵ <http://www.first-utility.com/scrap-the-variable>

⁴⁶ Calculation based on 70% of UK dual fuel households served by the Big Six (90% of 22.7m homes) on variable tariffs, each overpaying by average of £235 = £3.36bn (rounded up to £3.4bn). The CMA found that, based on customer number data submitted by the Big Six, an average of 71% for electricity and 69% for gas, were on the SVT in 2014: paragraph 7.68, Provisional Findings.

⁴⁷ Based on the difference between the average annual Big Six dual fuel variable tariff for typical usage (£1,154) and First Utility's cheapest dual fuel tariff at typical annual use (£919). Typical usage defined as 13,500 kwh gas and 3,200 kwh electricity

⁴⁸ We have around 15% of our customers on our SVT. In contrast to other suppliers, we bill our customers monthly and provide other communications as well.

⁴⁹ Paragraph 174, CMA survey.

⁵⁰ Paragraph 6, First Utility's response to the Updated Issues Statement.

Supplier behaviour

- 2.34 We raised in our previous submissions that we believe the behaviour of the Big Six (in a manner which is commercially rational) seeks to maintain customer disengagement and high numbers of consumers on SVTs. In this context, we agree with the CMA's view that there is an interaction between SVTs and fixed-price fixed-term tariffs in that, if the Big Six price their fixed tariffs at too low a level, "it will cause previously inactive SVT customers to engage, and either take up the cheaper tariff offered by the supplier or leave the supplier altogether."⁵¹
- 2.35 We also agree that this concern on the part of the Big Six has led to them seeking to target the engaged customer population through less direct methods, so that it is less immediately obvious to their broader customer base that they are offering cheaper tariffs to the market. Two of the methods used in this respect and identified by the CMA are use of "online tariffs and the increasing use of white labels on the part of several of the Six Large Energy Firms."⁵² These strategies employed by the Big Six could be characterised as cynical, but they are merely commercially-sensible strategies designed to preserve a highly profitable disengaged customer base on SVTs.
- 2.36 On the point regarding use of white label tariffs, as the CMA notes, the failure to notify existing customers of a partner white label tariff will be addressed by rule changes coming into effect on 1 October 2015.⁵³ It will be interesting to see how such notifications are presented, and whether this leads to any change in the behaviours of the Big Six to try to avoid publicising to SVT customers the cheaper fixed-term white label tariffs they are offering. In the meantime, the behaviours observed by the CMA continue, as seen with the very recent announcement by Sainsbury's Energy of their one-year-fixed tariff priced at £903.50.⁵⁴ This replaces the short-lived July 2015 one-year fixed tariff, priced at £930, which is now no longer available. These aggressive acquisition tariffs are being put into the market for very short periods to promote visibility to engaged customers, but limit uptake. However, these acquisition tariffs are not being offered in a "fair" way as they are not being (and currently do not need to be) actively notified to customers of the partner supplier (in this case, British Gas) which offers a short term fix more than £200 more expensive and an SVT more than £250 more expensive. It is also a concerning counterpoint to the recent British Gas reduction of £35 saving off their average Dual Fuel bill.⁵⁵
- 2.37 We include a comparison table below.⁵⁶

⁵¹ Paragraph 7.137, Provisional Findings.

⁵² Paragraph 7.138, Provisional Findings.

⁵³ https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/wl_decision_document_v10_-_web.pdf 03.06 0.pdf

⁵⁴ This has been rounded up to £904 for comparison purposes in the table below.

⁵⁵ <http://www.britishgas.co.uk/products-and-services/gas-and-electricity/reducing-energy-bills.html>

⁵⁶ Please note all rates are for customers paying via DD and after the standard variable rate reductions applicable as at 24th July 2015.

	Average Standard Rate	Average Short Term Fixed	£ Difference	% Difference
British Gas	£1,156	£1,129	£27.43	2.37%
EDF	£1,155	£965	£190.11	16.46%
E-ON	£1,135	£1,101	£33.93	2.99%
E-ON Collective Switch	£1,135	£885	£249.79	22.01%
nPower	£1,169	£984	£184.82	15.81%
Scottish Power	£1,155	£946	£209.35	18.13%
SSE	£1,158	£1,123	£35.00	3.02%
Sainsburys Energy	£1,156	£904	£252.49	21.84%
M&S Energy	£1,158	£1,122	£36.01	3.11%

2.38 As previously submitted to the CMA in our response to the Updated Issues Statement⁵⁷, First Utility considers that the conditions on the GB energy market enable the Big Six energy suppliers to coordinate their pricing behaviour, which has the potential to reduce strategic uncertainty among competitors to the detriment of customers.

2.39 In our view each of the three limbs of the three-fold test to assess whether features of the GB electricity retail markets are conducive to coordinated behaviour as set out in the CMA's Guidelines for Market Investigations⁵⁸ is satisfied:

- (a) The Big Six can reach an understanding and monitor each other's behaviour. They have the ability to monitor each other's retail pricing behaviour and respective customer volumes (and locations), since information on prices and terms of supply is readily available;
- (b) The coordination is "internally" sustainable because it is in the Big Six' interest to adhere to a coordinated strategy. Each of the Big Six wants to protect its existing customer base and to push up prices to increase revenues, rather than competing aggressively for new (i.e. each other's) customers by driving down tariffs through competition; and
- (c) The coordination is "externally" sustainable since we consider that there are weak competitive restraints on the Big Six.

2.40 Furthermore, First Utility considers that the Big Six suppliers' conduct in the market shows signs of coordinated behaviour. In our view, the CMA has assessed whether the Big Six have been modifying their behaviour in relation to the scale or timing of their price announcements to a standard akin to establishing whether or not there is cartel-like behaviour - and not, as First Utility believes, appropriately considered whether there are conditions which might support the lower standard of coordinated behaviour among the Big Six. While we appreciate that the Big Six may not be modifying their individual behaviour to follow each other in relation to price announcements, this does not negate tacit coordination. Indeed, evidence of modified behaviour post-announcements would be indicative of far more serious anti-competitive behaviour.

⁵⁷ Paragraphs 4.35 to 4.37 and Appendix 2.

⁵⁸ Guidelines of market investigations: "Their role, procedures, assessment and remedies", paragraph 250.

- 2.41 Nevertheless, whilst First Utility may not fully agree with the CMA's provisional conclusion that the evidence does not suggest that there is tacit coordination between the domestic retail energy suppliers in relation to price announcements⁵⁹, we consider that the CMA's provisional finding that the Big Six enjoy a position of unilateral market power over their inactive customers base and have the ability to exploit such a position through pricing their SVTs materially above a level that can be justified by the cost differences from their non-standard tariffs⁶⁰, reaches in effect the same ultimate conclusion, namely that the behaviour of the Big Six energy suppliers has an adverse effect on competition.
- 2.42 First Utility therefore welcomes this provisional conclusion on the AEC resulting from the Big Six suppliers' unilateral market power but wants to note its disagreement with the CMA's provisional conclusions on the lack of tacit coordination in the GB energy retail market for completeness.

Regulatory rules

RMR "simpler choices" and the four tariff rule

- 2.43 The purpose of the RMR and its "simpler choices" component was to reset the market for consumers, from that where there were a large number of tariffs, of varying complexity, available to customers, to where the multiplicity of dead tariffs were cleared away with the aim of fostering the engagement of so-called sticky customers.⁶¹ This was undertaken against a background of concern around the lack of trust in which the industry appeared to be held.
- 2.44 The "simpler choices" component came into effect from 31 December 2014.⁶² Industry participants have committed resource to implementation of and compliance with the rules. As "RMR has been recently introduced, and [...] [it] is therefore a relatively early stage to be considering its impact on engagement"⁶³, we are concerned that there has been insufficient time to verify the CMA's broad concerns as to the long term impact on customer engagement of all aspects of the RMR "simpler choices" requirements. At best, only inferences can be drawn as to the impact of these rules. Notwithstanding, our view is that the four tariff rule has not dampened supplier's ability to innovate around tariffs and is "workable" in the interests of ensuring the avoidance of "tariff bloat" in the short term.⁶⁴
- 2.45 Ofgem has said that it will review RMR in full no later than 2017⁶⁵ and is currently reviewing responses from a call for inputs on RMR and the Secure and Promote regime.
- 2.46 We said in our response to the Updated Issues Statement in March 2015 that in our view, there is sufficient flexibility within the four tariff rule to be able to incorporate new products as required. As the CMA notes, there are a number of tariff options available to customers, as

⁵⁹ Paragraph 8.215, Provisional Findings.

⁶⁰ Summary of the Provisional findings report, paragraph 133.

⁶¹ Paragraph 4.40, First Utility's response to the Updated Issues Statement.

⁶² https://www.ofgem.gov.uk/sites/default/files/docs/2013/08/the_retail_market_review_-_implementation_of_simpler_tariff_choices_and_clearer_information_0.pdf

⁶³ Paragraph 8.223, Provisional Findings.

⁶⁴ Paragraph 4.42, First Utility response to the Updated Issues Statement.

⁶⁵ <https://www.ofgem.gov.uk/ofgem-publications/39350/retail-market-review-final-domestic-proposals.pdf>, at paragraph s 1.41 and 1.42.

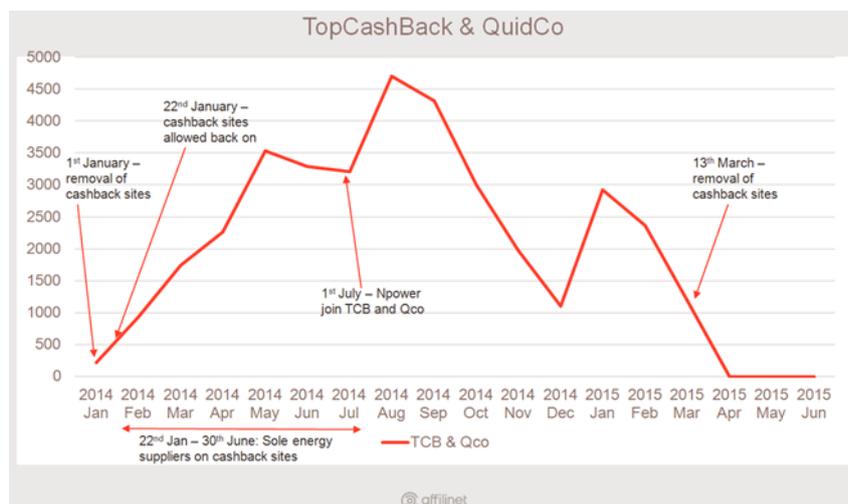
illustrated by the number of tariffs available with options around payment methods, account management and single or dual fuels.⁶⁶

PCWs

- 2.47 We disagree with the CMA’s provisional finding that PCWs are unable to secure exclusive tariffs from suppliers because of the four-tariff rule.⁶⁷ This is because PCWs are already competing with each other through differing commissions charged to suppliers and, more recently, with hosting their own collective switches, allowing them to offer additional bespoke tariffs.
- 2.48 We do however have some concerns that such collective switches can appear as acquisition tariffs, albeit as “collective switches” not being subject to the full requirements of the RMR protections. It may be the right time explore whether a return to the first principles of collective switches and joint purchasing schemes, potentially with active support from Ofgem, could encourage engagement from so-called sticky customers, which was the original intent of these specific exceptions to the RMR rules.

Cashback

- 2.49 In our view, and notwithstanding the relatively short period since RMR implementation, a strong inference can be drawn that competition between PCWs has reduced following Ofgem’s position around cashback. As can be seen in the analysis we have undertaken below with data provided by Affilinet, from when cashback was initially removed to when it was reintroduced some three weeks later, this acquisition channel generated a further 5,500 leads at its peak for First Utility until its final removal from 13th March 2015.



- 2.50 According to the Internet Advertising Bureau (IAB)’s response to Ofgem on the impact of measures introduced as part of RMR⁶⁸ in May 2015, cashback withdrawal may result in UK consumers missing out on a total of upwards of £3 million per year, potentially impacting up to

⁶⁶ Paragraph 25, Appendix 8.2: Impact of the Retail Market Review

⁶⁷ Paragraph 8.247, Provisional Findings.

⁶⁸ Cited with permission.

85,000 switches. Furthermore, the IAB notes that statistics gathered through the Experian service, Hitwise, seem to indicate that many users access cash back platforms after researching tariff options on the Ofgem-accredited price comparison websites. On this basis, we agree that RMR is harmful to competition to the extent that PCWs “can no longer attract customers by sacrificing commission, [...] directly by way of cashbacks”.⁶⁹

Gas settlement

- 2.51 Shippers do not update AQ’s directly: shippers submit reads to Xoserve, who recalculate the AQ and send it back to shippers. An AQ will not be updated more frequently than monthly, so if four reads are submitted within the month, the AQ will be updated once. The gaming issue is around the fact that a shipper can calculate what impact submitting a read will have on the current AQ, a shipper could then withhold reads that result in AQ’s being increased and only submit reads that result in AQ’s being reduced.⁷⁰
- 2.52 Notwithstanding, and for the reasons noted by the CMA and by participants, including ourselves, we agree with the CMA’s finding that the current system of gas settlement gives rise to an AEC “through the inefficient allocation of costs to parties and the scope it creates for gaming ...”⁷¹ We note that new entrants face more risk than established suppliers here, due to having a higher percentage of new customers in their portfolios and thus a lag between winning a customer and gaining enough meter readings to be sure their AQ accurately reflects their usage.

Half-hourly (HH) domestic settlement

- 2.53 First Utility believes that settlement by profile is less beneficial for customers, who may be paying more than is efficient, forgoing the benefits of more targeted consumption.⁷² The current regime for domestic and SME settlement for this reason amongst others, clearly distorts supplier incentives and inhibits innovation and competition. It is a fair inference that incumbents favour the current regime to that of putting in place the necessary conditions to maximise the benefits of technological development, which has an ongoing disproportionate adverse impact on non-incumbent suppliers. We therefore agree that the absence of a firm plan to move to HH settlement for domestic electricity customers and of a cost-effective option of elective HH settlement is a feature of the GB energy market giving rise to an AEC.⁷³
- 2.54 The industry is currently undertaking a large number of substantial programmes, which consume substantial resources of and incur ongoing and material costs for all market participants. Ideally, those potential programmes that benefit existing and future consumers should be prioritised and care must be given to (i) ensuring support for consumer representation around prioritisation and in the development of programmes and (ii) ensuring that independent and smaller market participants can fully contribute, allowing incumbent and new entrant thinking to be brought to bear on issues that ultimately impact the customer.

⁶⁹ Paragraph 8.247, Provisional Findings

⁷⁰ As noted by a number of participants: paragraph 8.267, Provisional Findings.

⁷¹ Paragraph 8.273, Provisional Findings.

⁷² Paragraph 8.227, Provisional Findings.

⁷³ Paragraph 8.286, Provisional Findings.

- 2.55 It may be more appropriate and likely to have a greater degree of effectiveness to facilitate ongoing consumer representation during all parts of major change processes, so that the interests of existing and future consumers can be factored into all key stages of the programme or project. This is also likely to be more efficient in terms of resource and value for money.
- 2.56 We note for completeness that with the introduction of HH-capable smart and advanced meters into the Non-Half-Hourly (**NHH**) settled market, more NHH sites will also have the ability to be settled on a HH basis. This could significantly increase the opportunity to calculate site-specific distribution use of system charges, thereby incorporating a ToU/locational specific element.⁷⁴ This would help make tariffs and charges more cost-reflective and would in turn better support ToU tariffs, which can be used to incentivise demand shifting and demand reduction in order to reduce losses and constraints on the networks. This underscores the importance of addressing this element of the AEC and we set out our views on the proposed remedies in Section 3 of this response.
- 2.57 Further, we note that significant work will need to be done to replace the Grid Supply Point Group Correction Factor “smearing” of e.g. theft and losses, in electricity settlement to ensure this industry-wide cost is shared fairly around all consumers not just domestic and SME as Profile Classes 5-8 move to HH settlement.

Social and environmental obligations – small supplier exemptions

- 2.58 As we noted in our earlier submission to the CMA, First Utility and the other mid-tier suppliers participate in the social and environmental schemes alongside the Big Six, with the costs applied across our customer base in the same way as for the bills of Big Six customers.⁷⁵ Our principal concerns are to ensure a level playing field and also to secure as few barriers to switching as possible. Customers need to be clearly informed as to the availability of such schemes to avoid any erroneous expectations on switching, e.g. to a supplier who does not currently offer the WHD.

Structure and governance of the regulatory framework

Financial data

- 2.59 We agree that the financial data reported on does not easily enable an understanding of “generation and retail supply as stand-alone businesses selling their output and procuring their energy on the open wholesale market”,⁷⁶ with a “clear, relevant and consistent demarcation of activities between generation, trading and retail supply” of the Big Six.⁷⁷ We share the CMA's concerns that this raises a risk of poor policy-making where such information is required.
- 2.60 In the time available, however, we have not focused on this Provisional Finding or the proposed remedies intended to address it.

⁷⁴ Industry has already started the process to enable this to happen with a change to the DCUSA⁷⁴ industry code which is seeking to amend the existing tariff structure by introducing HH metered tariffs for connections below 100kW. Associated with this is a change to the Balancing and Settlements Code which seeks to introduce new measurement classes for aggregated HH settled customers (domestic and non-domestic) to support the HH DCUSA tariff changes.

⁷⁵ Paragraphs 4.45 – 4.47, First Utility response to the Updated Issues Statement

⁷⁶ Paragraph 11.30, Provisional Findings.

⁷⁷ Paragraph 11.33, Provisional Findings.

Policy trade-offs

2.61 We agree that policy analysis around the trade-offs between supply security, decarbonisation and affordability need to be “communicated more effectively to a wider audience”.⁷⁸ This lack of widespread communication has, in our view, contributed to a lack of what could be called the democratic legitimacy of certain social and environmental costs included on energy bills. This has led to widely expressed concerns that these are not fair, adversely affecting the level of trust accorded to the sector. In one respect, this perception is correct: bills are regressive in nature (unlike general taxation). This underpins the call from Energy UK and others that such policy costs are more fairly borne through general taxation than through energy bills, to avoid the poorest consumers effectively subsidising those better placed to make the most of the various environmental schemes on offer. As the CMA notes in the context of considering a tax on energy consumption, such measures “would, of course, be politically difficult.”⁷⁹ However, politics is part of any energy policy trade-off and we believe that all such considerations could usefully be made more transparent.

Regulatory interventions by Ofgem that have not promoted effective competition

2.62 In considering this aspect of the Provisional Findings, we note the following:

- We do not share the strong views of some commentators that the prohibition on regional price discrimination had an adverse effect on competition;⁸⁰ and
- We are supportive of the aims of RMR and consider that “overall, the package of measures resulted in a much-needed resetting of the market, clearing away dead tariffs and focusing on the means to engage so-called sticky customers.”⁸¹

2.63 We agree with the CMA that there is a concern Ofgem felt constrained in pursuing competition-based policies as a result of their statutory duties and objectives. As noted above however, we do not share the CMA’s concerns that the regulatory interventions cited had or have the potential to amount to an adverse effect on competition. Indeed, in our view, RMR did not go far enough to address the lack of customer engagement, and we consider in our response to Remedy 4 specific aspects of the provisional finding on weak customer response.⁸²

Overlap between Ofgem’s roles and functions and those of DECC

2.64 The CMA describes three case studies where policy goals were “delayed (or suboptimal) due to a lack of coordination between DECC, Ofgem and the industry.”⁸³ We comment here on two of those case studies: quicker switching and the latter stages of the EBSCR. On the latter, we included in our response to the Updated Issues Statement a case study on P304/P314.⁸⁴ As we noted there, Ofgem did consider the impact of DECC’s development of the capacity market

⁷⁸ Paragraph 11.50, Provisional Findings

⁷⁹ Paragraph 11.44, Provisional Findings

⁸⁰ Paragraph 4.39 of our response to the Updated Issues Statement: https://assets.digital.cabinet-office.gov.uk/media/553e51a5e5274a1572000055/First_Utility_response_to_updates_issues_statement.pdf

⁸¹ Paragraph 4.40 of our response, cited previously.

⁸² Paragraph 128, Summary of Provisional Findings, 7 July 2015

⁸³ Paragraph 11.66, Provisional Findings.

⁸⁴ Appendix, p. 61-66: https://assets.digital.cabinet-office.gov.uk/media/553e51a5e5274a1572000055/First_Utility_response_to_updates_issues_statement.pdf

as it worked up its own proposals for cash-out, by delaying that development following representations by industry. Taking this into account, we think that a greater level of coordination could also have led to speedier decision-making. We would also observe that large-scale projects in any event need to attempt greater coordination between them for pragmatic reasons, including the better management and availability of resource within the industry, and the pro-active management of any code or other regulatory dependencies.

- 2.65 We therefore agree “a more coordinated solution ... with more transparency (and appropriate consultation phases)” could have led to less complex solutions – both for the capacity market and the cash-out/marginal price changes: lessons can be learnt around the coordination of the work of DECC and Ofgem regarding policy, regulation and implementation. Both bodies are working together within the Challenger Business Forum, aimed at smaller market participants, where participants have raised such concerns as information requests that cover the same or similar questions (with the consequent cost and resource implications), the timing of consultations, focusing on the assumptions underpinning impact assessments (that is, not assuming that all participants operate like legacy suppliers) so it is fair to say that the need to be more coordinated in terms of engagement with industry and around the information being provided is recognised.

The governance of industry codes

- 2.66 Overall, we agree with the CMA’s provisional finding that there is “a combination of features of the wholesale and retail gas and electricity markets in Great Britain that are related to industry code governance and which give rise to an AEC through limiting innovation and causing the energy markets to fail to keep pace with regulatory developments and other policy objectives.”⁸⁵ We would highlight in particular as giving rise to this AEC, the lack of an overarching change mechanism, the use of the “normal” code modification processes to effect major change and the lack of systemic mechanisms to support participation by independent and smaller industry participants.
- 2.67 We also recognise the CMA’s concerns around the “limited ability of Ofgem to influence the development and implementation processes” to ensure that changes which are in the consumer interest are not held up or delayed.⁸⁶ The difficulty in practice is to distinguish between those debates that reflect genuine differences of view, e.g. based on market experience or differences in systems, to tactics intended to slow down or prevent change that is perceived adversely to affect certain participants’ market positions. The CMA rightly notes that challenges and alternative modifications are “legitimate” but the consequence can be delay in the implementation of change.⁸⁷
- 2.68 We believe that a number of inferences can be drawn from the case studies, including those drawn by the CMA, namely that the current industry governance structure “is inadequate for delivering major reforms.”⁸⁸ This is because the governance structures were not (so far as we understand) designed to cover major projects, but incremental change. The change processes

⁸⁵ Paragraph 11.161, Provisional Findings.

⁸⁶ Paragraph 11.110, Provisional Findings.

⁸⁷ Paragraph 11.143, Provisional Findings.

⁸⁸ Paragraph 11.122, Provisional Findings.

have been adapted to address overarching objectives, major policy change (through the more recent Significant Code Review process) and cross-code interactions (to a certain extent now addressed through the Code Administration Code of Practice or CACoP) but not the detailed implementation work required to put in place cross-system and cross-process changes affecting all industry participants.

2.69 This has been seen more recently in Project Nexus, where, as the CMA notes, substantial financial costs are involved.⁸⁹ One of the issues with Project Nexus was that there were many stakeholders with differing priorities and those stakeholders who had invested in making the necessary changes had to manage the consequences for the project and their own internal project planning of others who had not undertaken that investment, which raised a risk to the implementation of the project as a whole. These competing concerns are not specific to Project Nexus. Here, it appeared that neither the code administrator nor the governance bodies could fully act to address this. In the end, Ofgem facilitated a specific arrangement (the Project Nexus Steering Group) to bring together participants, in which Ofgem itself could participate by giving comments and reactions.

2.70 We also reiterate the concerns we raised in our response to the Codes Working Paper,⁹⁰ which noted the following:

- The formal framework for and focus on participation by smaller market participants in code governance and change is helpful but does not of itself mean that such participants can participate;
- This is likely to lead to a favouring of the current systems or the focus on change to benefit those who can and do actively participate – if smaller participants struggle to participate in modification proposals, the potentially more serious lack is the constraint on them raising modifications themselves;
- That smaller participants cannot participate in all code governance bodies, which deprives those bodies of valuable differences in experience and perspective (similar constraints apply to consumer bodies);
- That the number of modifications ongoing across all codes is substantial: not all of these are major projects, most affect industry interfaces or processes to a greater or lesser extent so do nevertheless impact on market participants.

2.71 These concerns, where they manifest in practice, can amount to a barrier to the development of innovative business models or the maximisation of alternative business models, which has been picked up by the CMA around code governance.⁹¹ We note however that whilst it may be the case that “the composition of industry panels does not show a fundamental bias towards the Six Largest Energy Firms”⁹², in our view, it is the context in which the code panels operate that is

⁸⁹ Paragraph 29, Appendix 11.2: Codes and regulatory governance.

⁹⁰ Annex 3, First Utility response to the Updated Issues Statement: https://assets.digital.cabinet-office.gov.uk/media/553e51a5e5274a1572000055/First_Utility_response_to_updates_issues_statement.pdf

⁹¹ Paragraph 11.141, Provisional Findings.

⁹² Paragraph 11.125, Provisional Findings and , paragraph 67, Appendix 11.2: Codes and regulatory governance

important for determining potential issues of preference or advantage, and which merits further consideration.⁹³

- 2.72 To implement any change, a modification must be raised, so at the lowest level of the process, there is a "proposer": the proposer is often an employee of one of the Big Six. If a work group is required, this must be established. These groups are often attended by employees of the Big Six, who are better placed to ensure attendance in person. Workgroups (of which there may be a number going on over the same period) ideally need to be attended in person (teleconference facilities are provided but can be sub-standard). Assuming that a change proposal requires Ofgem approval, what is presented to the Panel and subsequently to Ofgem has been framed and developed within the context described above.
- 2.73 Independent and smaller suppliers often do not have the resources to actively participate across the range of code governance and modification processes, which means that overall, the benefits of new and growing suppliers' views may not be fully explored in the framing of modification proposals or the work of any groups set up to consider them. The process is already framed, and to a certain extent fixed (notwithstanding the ability to raise alternative modifications) before consultation commences. While it is of course inevitable that smaller suppliers will have more limited resource, safeguards are needed to ensure an avoidance of regulatory capture and that the interests of smaller suppliers are not marginalised in these processes.
- 2.74 We do not consider that code administrators can or should be considered as the means to address these issues, or to address those gaps in governance highlighted during Project Nexus.⁹⁴ We agree that these bodies are not regulated in broad terms but are not convinced that this is the underlying cause for the concerns around delayed or halted delivery of major reform projects.⁹⁵ In some ways, not being subject to regulation has made certain administrators more flexible in dealing with larger projects. We consider in our response to the proposed remedy 18b the actions taken by the relevant code governance bodies around implementation of the Theft and Risk Assessment Service (**TRAS**).
- 2.75 This is not however to deny the very real adverse impact that ongoing difficulties around project management and implementation can cause, and the costs incurred by all participants as a result. The CMA refers to Ofgem's concerns around a code administrator's failure to implement a change on a timely basis, with Project Nexus as an example.⁹⁶ This may however be attributable to a lack of resources or the depth of knowledge and experience needed for the scale and scope of the project as a whole, that is, beyond the delivery of the systems upgrade at the heart of the Project or the fact that the code administrator is not fully accountable across the industry participants impacted by its actions, which may create skewed incentives.⁹⁷

⁹³ The CMA describes stages of the code modification process at paragraph 11.135, Provisional Findings.

⁹⁴ Paragraphs 11.128 and 11.129, Provisional Findings.

⁹⁵ Paragraph 11.133, Provisional Findings.

⁹⁶ Paragraph 11.151, Provisional Findings.

⁹⁷ This element is being considered by the industry through work sponsored by the gas transporters, who cover the funding for the code administrator around the financing, governance and ownership of that body.

3 Detailed comments and responses to the questions posed in the Remedies Notice.

3.1 We have set out below the text of the various remedies proposed in the Remedies Notice, and, where we are able to respond, the specific questions raised. Below each remedy we provide First Utility's initial response and comments.

Remedy 1 – Introduction of a new standard condition to electricity generators', suppliers', interconnectors', transmission, and distribution licences to require that variable transmission losses are priced on the basis of location in order to achieve technical efficiency

3.2 First Utility does not have specific comments on this proposed remedy. We are concerned however that the material effort involved in constructing such a remedy may be disproportionate given the downstream impact on customer bills (whilst costs do not equate to losses, we observe that distribution costs typically form a much greater component of the bill (around 20%) against 2%-8% for transmission costs).⁹⁸ We have considered this point further in our comments on the provisional findings on locational charging for transmission losses.

Remedy 2 - Administration of the Contracts for Difference mechanism

3.3 We welcome the CMA's proposed remedies for improving economic efficiency in the CfDs allocation process to address the provisional finding that certain mechanisms for allocating CfDs are a feature of the GB electricity wholesale market that gives rise to an AEC.⁹⁹ We have no specific comments on the remedies being proposed here, but would welcome DECC (and Ofgem) actively and continuously monitoring all aspects of the implementation of the CfD regime in terms of the volatility of the costs of the Supplier Obligation as discussed in our response on the Provisional Findings.

Remedy 3 – Remove from domestic retail energy suppliers' licences the 'simpler choices' component of the RMR rules

3.4 We agree with the CMA that remedy options being proposed in relation to the "simpler choices" component of the RMR rules¹⁰⁰ fall logically for consideration alongside those remedies proposed to address the AEC findings from weak customer response on the basis that this component was intended to deal with the lack of customer engagement, as well as that this regulatory remedy is relevant in considering remedies directed at customer engagement as a whole.¹⁰¹ This does not mean that we agree that distortions in the market have arisen wholly as a result of this component of RMR. We consider this in our comments on the provisional findings around RMR.

⁹⁸ Cornwall Energy 'Hiatus in non-energy cost increases', 28th July 2015.

⁹⁹ Paragraph 5.260, Provisional Findings.

¹⁰⁰ The CMA describe the 'simpler choices' component of the RMR rules as including the following measures: (a) the ban on complex tariffs; (b) a maximum limit on the number of tariffs that suppliers are able to offer at any point in time; and (c) the simplification of cash discounts (paragraph 139, Provisional Findings).

¹⁰¹ Paragraph 31, Remedies Notice and paragraph 138, Provisional Findings.

(a) Would this remedy be effective in increasing competition between domestic retail energy suppliers and/or between PCWs? What additional tariffs would energy suppliers be likely to offer that they currently do not due to the RMR restrictions?

- 3.5 We do not consider that this remedy would be effective in increasing competition between domestic retail energy suppliers and/or between PCWs. It does not of itself address the issue of sticky customers and the setting or application of SVT tariffs to sticky customers. It risks unintended consequences in the active segment of the market by adding to the complexity and confusion around energy tariffs for those actively seeking to switch.
- 3.6 In addition to the tests to be met for any specific remedy, it is essential that any remedy or package of remedies retains the overall aim to deal with how to engage sticky customers.
- 3.7 We think that it is more proportionate to focus on the derogation process as a more effective means of addressing the concerns raised by respondents, i.e. by considering the ability to hold short-term tariff trials. This could be through a deemed derogation for e.g. a maximum of 5,000 customers. This would be particularly useful in the context of the roll-out of smart meters and with subsequent HH settlement, enabling suppliers to test a range of different ToU tariffs. The derogation process itself could also be reviewed and adapted, so as to deal with the delays in granting derogations.

(b) Removing the four-tariff rule is likely to increase the range of tariffs on offer and result in different tariffs being offered on different PCWs. Are there, therefore, any remedies that the CMA should consider alongside this remedy, to encourage domestic customers to use more than one PCW in order to facilitate effective competition between PCWs and domestic energy suppliers?

- 3.8 We do not consider that the issue to be addressed is a lack of competition between PCWs and domestic energy suppliers nor that there is a barrier to consumers using more than one PCW at present. We are therefore concerned that this conception of retail competition will lead to the wrong remedies being proposed. It is important that any proposed remedy is likely to be effective in fostering customer engagement. If this proposed remedy is intended to incentivise those SVT customers to engage in the switching process, we do not consider that removal of the four tariff rule will have that incentive effect. Nor do we see how such a proposal would increase engagement overall in the sector.
- 3.9 This proposed remedy may have the unintended consequence of adding to any perception of the complexity or to the hassle factor of switching, which could therefore reinforce existing lack of engagement or lower levels of engagement amongst more active switchers. It could also add to the lack of trust should it transpire after switching that in fact, the deal attracting the change was subsequently perceived not to be the best available. This could increase complaints, with the consequent negative impact on customer experience, levels of trust and cost for complainant and supplier.
- 3.10 However an area for improvement is on the approach PCWs take in calculating customer consumption projections for comparison purposes: mistrust in the switching suppliers could also be exacerbated by the different methodologies/refinements PCWs use, which represent

differentiation between PCWs and their perceptions (taking account of the Confidence Code and applicable rules) of what their customers would like to see.

- 3.11 To encourage engagement more broadly, and to return to the market what we see as an important acquisition route which has customer support (demonstrably so in other sectors and as noted in our comments on the Provisional Findings), we would support the re-introduction of cashback through switches from consumers using cashback websites. We agree that the current situation has caused confusion amongst suppliers and TPIs alike as well as shutting out a beneficial avenue of customer engagement. Cashback has been shown to act as a genuine incentive to encourage engagement in the energy market and to further competition. This proposed remedy would further incentivise competition between switching sites, enable suppliers to innovate around discount offerings and give back 'missing money' to consumers, which would increase customer satisfaction with the switching process.

(c) We note that if this remedy were to be imposed, Ofgem's Confidence Code requirement for PCWs to provide coverage of the whole market appears likely to become impractical as the number of tariffs offered increases and PCWs agree different tariff levels and commissions with energy suppliers. Should this element of the Confidence Code be removed, therefore, as part of this remedy? If so, are alternative measures to increase confidence in PCWs required? For example, in order to maintain transparency and trust, should PCWs be required to provide information to customers on the suppliers with which they have agreements and those with which they do not?

- 3.12 For the reasons set out in the preceding paragraphs, we do not agree that the removal of the four-tariff limit is an effective or proportionate remedy. We also do not consider that a focus on encouraging competition between PCWs and suppliers in the manner suggested is appropriate, nor likely to be effective in terms of encouraging customer engagement. It follows that on this basis, we do not consider that this consequential change is appropriate.
- 3.13 We would support "commission transparency", i.e. PCWs could be required to inform the switching customer how much of a fee it has been paid for the switch. This would be the equivalent of commission transparency in retail financial products.

(d) Rather than removing all limits on tariff numbers and structures, would it be more effective and/or proportionate to increase the number of permitted tariffs/structures? If so, how many should be permitted and which tariff structures should be allowed?

- 3.14 We do not consider that the four-tariff limit has prevented tariff innovation overall. We have made some practical suggestions around the derogation process above. It follows that we do not consider an increase in the number of tariffs to be justified or appropriate.
- 3.15 We have also suggested that the "standard variable tariff" be replaced by a differently-named tariff, e.g. an 'out of contract' tariff. This tariff would encourage more frequent communication as the supplier would need to update the customer on any price changes for the forthcoming e.g. three months. We describe this in more detail in our response to Remedy 10.

(i) For example, would requiring domestic energy suppliers to structure all tariffs as a single unit rate in pence per kWh, rather than as a combination of a standing charge and a unit rate, reduce complexity for customers, while avoiding restricting competition between PCWs? Alternatively, would such a restriction on tariff structures have a detrimental impact on innovation in the domestic retail energy markets?

- 3.16 We do not consider that this suggestion would reduce complexity for customers. We consider that this suggestion could also have unintended consequences, potentially around increasing prices paid by customers for their energy. The current rules permit, and there are already, tariffs available on the market with low or zero standing charge but a comparatively higher unit rate. Other tariffs do not take this approach. In our view, moving to a structure where all tariffs are a single unit rate is likely to lead to much higher unit rates being applied to customers generally, since they will have to pay more to cover the risks suppliers would face and to enable them to cover the fixed costs of supply through the meter. This could also lead to over-recovery on fixed costs as compared to separate charges for standing charges and unit rates, and may particularly disadvantage low consumption households who often choose a low standing charge but high unit rate tariff.

Remedy 4a – Measures to address barriers to switching by domestic customers

(a) Will the roll-out of smart meters address the feature of uncertified electricity meters? If not, what additional remedies should we consider to address this feature?

- 3.17 The roll-out of smart meters will help to address the concerns around uncertified meters in the long term. We note however that smart meters have a reduced certified life due to the increased use of electronic components in comparison with the traditional mechanical units. As an illustration, First Utility's smart meter installations have a certified life of 10 years compared to 15 years for mechanical electricity meters – these can then be recertified for a further 15 years. It is likely therefore that many smart meters installed by 2020 will have to be exchanged again by 2030. This raises concerns regarding meter engineer resourcing – if there is a spike in installations in 2019, we would predict a similar spike in 2029. The industry will again have to ramp up meter engineering resource which will potentially be costly for the consumer. We propose that to remedy this issue, no more than 10% of meters are ever exchanged in a single year.
- 3.18 Electricity meters must be certified, which requirement is also included in the Balancing and Settlement Code (**BSC**). We are concerned about a current (and likely ongoing in the short-medium term) issue around the rising number of uncertified meters, which we (and no doubt other gaining providers) are taking on from losing providers following a customer switch. Our statistics show that 12% of all meters taken on are not certified, with a further 8% with blank certification dates: this rate increases to 16% for uncertified meters (with a further amount having blank certification dates) for one supplier which particularly concerns us. This is one of a number of issues that could benefit from a more direct inter-supplier incentive arrangement charged to losing suppliers, which should also include those costs incurred by gaining suppliers in remedying this situation.

(b) Will the roll-out of smart meters address the barriers to switching faced by customers with Dynamic Teleswitched (DTS) meters? If not, what additional remedies should we consider to address this feature?

3.19 We do not have any comments in response to these questions.

(c) Should PCWs be given access to the ECOES database (meter point reference numbers) in order to allow them to facilitate the switching process for customers?

(i) To what extent would this reduce the rate of failed switches and/or erroneous transfers?

(ii) Are there any data protection issues we should consider in this respect?

(iii) Will access to this database still be relevant once smart meters have been introduced?

3.20 In principle, we consider that PCWs should be permitted to use MPAN and MPRN data as this would facilitate fulfilment of customer switches and assist with ensuring that customer switching experience does not suffer from a lack of relevant data being provided to the gaining supplier. This would not necessarily require access to the ECOES database as a whole and indeed, a first order question would be whether the outcome could be achieved through use of existing data access arrangements, such as around QR codes and the Midata programme. This though will be dependent on a developing a stronger mandate for the Midata programme, with compliance to it by the majority of energy companies, in order to realise the full benefits for which it was set up.

3.21 We do not however consider that this measure alone would reduce the rate of failed switches and/or erroneous transfers. This is because this change would not of itself address the many data quality issues that gaining suppliers struggle with during and following the Change of Supply process. Ofgem and some industry participants have considered data quality issues.¹⁰² We think it would be appropriate to consider a review of the outcomes of these work streams, including the ongoing work being undertaken on specific data flows within relevant Codes, to assess whether elements of data exchange, or issues around data quality, that if modified or otherwise addressed would improve the customer switching experience, were missed: data quality issues do continue to arise for customers and gaining suppliers.

3.22 We do not consider that the more limited approach outlined above would of itself raise data protection issues. PCWs handle personal data and will be aware of the requirements around registration, retention, use and handling of personal data.

¹⁰² Paragraph 1.15 *et seq*, First Utility response to the Updated Issues Statement.

(d) Should there be penalties for firms that fail to switch customers within the mandated period (currently 17 days, next day from 2019)? How should these penalties be administered? At what level should the penalties be set? Should customers who suffer a delayed or erroneous switch receive the penalty as compensation?

- 3.23 Our initial view would be that if there are process failures in the switching process leading to a failure of or delay to a switch, an appropriate inter-supplier penalties regime may create an incentive for those process failures to be addressed, including potentially payments to customers. There are two broad aspects to consider:
- Actions by the potentially losing supplier that result in a failed or delayed switch; and
 - Actions by the potentially gaining supplier that result in a failed or delayed switch.
- 3.24 In the first case, we consider that there could be merit in considering further the imposition of a financial incentive regime for potentially losing suppliers whose actions or inactions have resulted in a failed or delayed switch, not including those cases where the failure is due to the exercise of specific industry processes or through the customer changing their mind. The incentive would need to be set so as to encourage the underlying causes to be addressed, including by way of self-governance modifications, and would include the recovery of costs incurred by the potentially gaining provider. This could include payment to a customer in the event of a delayed switch. We are considering something along the following lines for customers: that the gaining supplier pass on the difference in rates between the new tariff and the old if the switch takes longer than 20 days from the switch being accepted.
- 3.25 As there are likely to be disputes around the causal links between supplier failure and switch failure, this could be an area where a dispute resolution mechanism would be appropriate. In the interests of speed of resolution, this mechanism should lead to a binding outcome. Our initial view is that a specific appeal mechanism from this decision is not required as it is in effect a private law remedy.
- 3.26 In the second case, this is more complicated. Given the cause of failure or delay may not be down to the potentially gaining supplier, it would be unfair to impose a penalty on them for such delay, e.g. where delays are caused by data quality issues within the industry databases. As noted previously, data quality issues represent a key barrier to switching with little incentive on incumbent suppliers to keep updated all industry records. As described above in the context of potentially losing supplier failure, an incentives-based regime could work to focus on solutions, namely greater accuracy by incumbent suppliers with the data itself and in recording it appropriately.
- 3.27 If clear circumstances of gaining supplier failure could be specified, it may be more appropriate to consider regulatory enforcement. If failure or delay has occurred to a more than specified *de minimis* level, this could indicate potential systemic issues. This could be provided for through the relevant codes and include audit, ongoing monitoring and, where continued issues occur, penalties levied for breach.

(e) When next-day switching is introduced, will a ‘cooling-off’ period still be required? Could it be avoided by requiring that no exit fees are charged within two weeks of switching?

3.28 ‘Cooling-off’ periods are required by consumer rights legislation¹⁰³ and we are not aware that such rights, where applicable, can be readily set aside.

(f) Are specific measures required to facilitate switching for customers living in rented accommodation (either social or private)?

3.29 Our initial view is that specific measures are not needed to facilitate switching for customers in rented accommodation. It is likely that the drivers on tenants to engage in the switching process are lower in short term rented properties, as fixed-tariff periods on offer may not align with length of tenancy and/or offer the best deals for customers. Further, the industry already has processes in place for engaging with new customers on a change in tenancy. We note that this also triggers correspondence with the new occupiers of a property.

(a) Does the ‘Midata’ programme, as currently envisaged, provide sufficient access to customer data by PCWs to facilitate ongoing engagement in the market? Should PCWs – with customer permission – be able to access consumer data at a later date to provide an updated view on the potential savings available?

3.30 First Utility believes that the Midata programme does provide a good balance between the commercial interests of PCWs and the interests of consumers in its current form. However, implementation of Midata is not yet widespread. Without a stronger mandate for the programme, and compliance with it by the majority of energy companies, it is not likely to realise the benefits for which it was set up.

3.31 We do not believe it is necessary for PCWs to access consumer data to enable them to provide subsequent views on potential savings. As we note above, we do not think this conception of competition as between PCWs and suppliers or its lack is what is driving a lack of engagement. By definition, those customers who have switched via a PCW are more active and working to encourage more engagement within this segment of customers does not appear to address the lack of engagement of the so-called sticky customers. We would be concerned if PCWs could also do so as this risks customer confusion and annoyance. This could also apply to future home occupiers should they receive unwanted communications and based on previous occupants data.

(b) Do customers need more or better information or guidance on how their new smart meters will work?

3.32 We do not currently consider that customers need more or better information or guidance on how their smart meters work.

3.33 When smart meters are installed, suppliers will be working to the Ofgem-approved Smart Meters Installation Code of Practice (**SMICoP**). This will mean customers should get a

¹⁰³ Consumer Rights Directive (Directive 2011/83/EC).

consistent standard of service through the installation process with the benefits and how to get the best from the accompanying In Home Display explained.

Remedy 4b – Removal of exemption for Centrica on two-year inspection of gas meters

- 3.34 On 23rd July 2015, Ofgem published a consultation regarding the removal of the underlying obligation on supplies to inspect meters.¹⁰⁴ Ofgem indicates that this is in the interests of better regulation, noting there are other obligations regarding meter inspection.¹⁰⁵ As noted in the summary to the consultation, this proposal follows the work of the Meter Inspections Subgroup, established by DECC within the crowded space of smart meter-related working groups.
- 3.35 Ofgem cites a number of factors as contributing to its proposals, including its increasing focus on principles-based regulation, the arrival of smart meters reducing the need for meter inspections, the application of the obligation to electricity meters for NHH meters only, and other rules and processes supporting use of meters and any consequences of misuse, including the TRAS scheme currently being implemented through the SPAA and DCUSA. Ofgem also highlights the adverse impact on competition that the British Gas consent on meter inspections has, as well as the proposal made by the CMA to address this AEC by proposing that this issue represents an AEC and needs to be addressed.¹⁰⁶
- 3.36 Ofgem is proposing two options (as well as a “minimal change option” for assessment purposes), with one option being to vary the frequency of inspections to every five years and the other, the removal of the licence condition requiring meter inspections itself.¹⁰⁷ Ofgem also includes some behavioural nudges for suppliers, aligning implementation around meter inspection to progress on TRAS, as well as highlighting the importance for customers of suppliers of accurate information being provided between suppliers and to DNOs, including “accurate and timely recording and transfer of metering details and the date of the last meter inspection on change of supplier”.¹⁰⁸ We agree with this diagnosis by Ofgem and its exhortation to industry on this key data, as well as for all other data flows that underpin Change of Supply.

(a) Would this remedy be effective in removing the distortion to competition that currently exists as a result of Centrica’s derogation on the inspection of gas meters?

- 3.37 We agree that this proposed remedy would be effective in removing the distortion that currently exists as between Centrica and other suppliers given the derogation granted to them and the subsequent constraints on other suppliers seeking equivalent consent for their alternative arrangements.
- 3.38 However, noting that Ofgem is proposing the removal of the licence condition altogether as its preferred option, we would suggest that the CMA is now able to take into account other options being considered by industry participants as a result.

¹⁰⁴ https://www.ofgem.gov.uk/sites/default/files/docs/2015/07/reforming_suppliers_meter_inspection_obligations_final_0.pdf

¹⁰⁵ <https://www.ofgem.gov.uk/publications-and-updates/reforming-suppliers-meter-inspection-obligations>

¹⁰⁶ See paragraphs 1.20 – 1.22, Ofgem consultation on supplier meter inspection obligation.

¹⁰⁷ See pages 10-12 and chapter 4, Ofgem consultation.

¹⁰⁸ See paragraphs 5.9 and 5.11, Ofgem consultation.

(b) Would it be preferable to remove Centrica's derogation, or extend the derogation to other suppliers?

- 3.39 The focus of this remedy may have changed in light of Ofgem's consultation around the meter inspection obligation and as a result, the CMA may now have a wider range of alternatives to consider.
- 3.40 Our preferred outcome taking into account Ofgem's proposals is that the inspection obligation be removed in its entirety from the licence. However, we would suggest that the CMA consider at a minimum recommending to Ofgem that the derogation granted to Centrica not be renewed on its expiry, whatever the outcome of the consultation.

(c) If Centrica's derogation were removed, should it be phased out over a period of time? If so, how long should Centrica be given in this respect?

- 3.41 Taking into account Ofgem's consultation, it may not be proportionate to put in place a transition regime or a phasing out of the derogation requiring Centrica effectively to commence inspections in the period prior to any industry-wide regime removing this obligation coming into effect, if that is indeed the outcome of Ofgem's consultation.
- 3.42 On this basis, some flexibility on transition arrangements is needed. We think it would be also appropriate to consider requirements on Centrica around ensuring and demonstrating that the data that has, and may continue to be, recorded by them regarding meter inspections is available and accurate for all relevant Change of Supply data flows.

Remedy 5 – Requirement that energy firms prioritise the roll-out of smart meters to domestic customers who currently have a prepayment meter

- 3.43 We welcome the CMA's focus on smart meters and the positive impact on customers' energy experience that this technology is likely to have. We are aware of a number of technological and communications-based challenges that may need to be resolved, whether or not focusing on whether particular customer groups could benefit from prioritisation of roll-out. Key here is that any such groups would not suffer a negative experience as a result of these challenges, which could occur if prioritisation preceded effective resolution. All participants have an interest in minimising any potential risk of the development of distrust around smart meters or otherwise adding to any pre-existing concerns.

(a) Would this remedy be effective in allowing prepayment customers to engage fully in the market and benefit from a wider range of tariffs? Would it be effective in reducing the costs of supply to prepayment customers?

- 3.44 We do not think it is possible to say given that the question assumes that suppliers would make additional tariffs available.

(b) Which version of this remedy would be more effective and/or proportionate?

- 3.45 We consider that version (a) of the remedy would be more proportionate given the additional cost implications for the roll-out should prepayment meters be mandated as the first priority. However, certain issues would need to be considered as a consequence, e.g. if a prepayment customer with a prioritised smart meter switches supplier, the meter has to be taken back into

'safe' mode into credit. This is because prior to the DCC roll-out, suppliers do not have the capability to read each other's prepayment meter solutions should customers switch supplier. Furthermore, suppliers need to be confident that once the DCC goes live, any smart meters installed now (including by way of prioritised meters) will be fully compatible and will have a full life – otherwise this risks increasing costs of the smart meter roll-out by having to replace installed meters for a second time.

(c) Would any additional or alternative measures be required to ensure that this remedy comprehensively addressed the overarching feature of weak customer response arising in particular from those with prepayment meters?

- 3.46 We think that weak customer response, particularly from those with prepayment meters, could be addressed by the development of more customer-friendly interactions, whether through top-up channels, the use of in-home displays, and/or credit and balance warnings.

(d) What issues may arise as a result of prioritising the installation of smart meters in the homes of customers who currently have prepayment meters?

- 3.47 The most significant impact of prioritising pre-payment meter installations is that in contrast to an area-based roll-out, this would result in a much more expensive smart meter roll-out programme, due to the dispersed nature of customers, meaning installers would have to revisit areas. Furthermore this could lead to frustration amongst other customer groups resulting from installation delay and further undermine the roll-out programme.
- 3.48 From a supplier point of view, there may also be other customer groups where there are notable benefits for prioritising smart meter implementation. These include customers who never provide reads or for those with mobility issues who struggle to read their meters.
- 3.49 Additional areas of concern cover whether the technology is stable enough for prepayment customers at this time, and that multiple dwellings remain a technical challenge. At the moment there are solutions for 70% of properties; by 2018 for a further 25%. For the remaining 5% of properties, there is no industry agreement yet.

(e) Would it be more effective and/or proportionate to require energy suppliers to accelerate the roll-out of smart meters across the retail markets as a whole, in order to facilitate engagement more broadly, rather than focusing on customers on prepayment meters?

- 3.50 As noted in our response to question (b) above, even with version (a) of the remedy, there is a risk of stranded assets and a requirement to replace meters for a second time because a) prior to the DCC, when a prepayment customer with one of these smart meters switches supplier, the meter has to be taken back into 'safe' mode into credit, and b) there is no guarantee yet that once the DCC has gone live, the smart meters installed now will be fully compatible and will have a full life.
- 3.51 On this basis and in order to minimise the cost of the smart meter roll-out to consumers, First Utility would support a more flexible approach, whereby each supplier would design a roll-out plan that is best tailored to the requirements of its customer base which includes the benefits of prioritising the roll-out to vulnerable groups as highlighted in our response to question (d) above.

On this basis, we do not think it would be more effective or proportionate to require energy suppliers to accelerate the roll-out of smart meters as a whole.

Remedy 6 – Ofgem to provide an independent price comparison service for domestic (and microbusiness) customers

(a) Would this remedy be effective in increasing customers' trust in PCWs and thereby encourage engagement in the markets and switching?

- 3.52 First Utility believes that to the contrary, an Ofgem price comparison service may decrease customers' trust in PCWs and potentially adversely impact on levels of customer engagement. We do not consider that Ofgem is best placed to provide such a service, nor that an independent price comparison service is either effective or proportionate to address any issues around PCWs. We would also be concerned that Ofgem's role as regulator and its potential remit as a PCW. We would note USwitch's entry into this space, where it could be argued that their stated role as consumer champion appeared at odds with charging the same switching fees as others. This dual role could cause substantial confusion for consumers.
- 3.53 We believe that a more effective alternative would be to consider reverting to first principles for collective switches and collective purchasing, to consider a role for Ofgem in being more proactive in supporting local government or other bodies to provide such opportunities.
- 3.54 We are also concerned that the proposed remedy could have a chilling effect on PCWs more generally, particularly taking account of the obligations on them intended to address questions of trust, e.g. showing all available tariffs. PCWs are an important acquisition tool for independent and smaller suppliers and this proposed remedy risks destabilising the part of the market that has seen substantial active switching.
- 3.55 Further, the nature of there being an additional "official" reference service may in fact compound any remaining lack of trust by suggesting it is needed, e.g. implying that PCWs may be hiding tariffs. As discussed in our response to Remedy 3, question (b), on removal of the four-tariff rule, this proposed remedy may increase the "hassle factor" in switching even further by requiring customers to take an additional step in order to ensure they have obtained the best deal for them. This could lead to increasing the cost of switching for them, in terms of time and effort and potentially lower engagement.
- 3.56 Mistrust in the switching sites could also be exacerbated by the different methodologies and refinements PCWs take in calculating customer consumption projections for comparison purposes, with Ofgem likely to quote a different annual projection than that which some PCWs may show. Ofgem not least has faced substantial criticism for the methodology it laid down which requires a customer's projection to include the move to their supplier's SVT once their fixed term tariff has expired. As a consequence, this leads to perceived savings being overstated, leading to disappointed customers and a rise in mistrust as a result.
- 3.57 Furthermore there will also be time, resource and cost implications to starting an Ofgem price comparison service and to keep it up to date, with a key question being how this should be funded.

3.58 Essentially though, there must be an “additionality” rule: an Ofgem PCW should only go ahead if it will prove to bring additional customers to switch supplier, rather than take business away from the existing PCWs. Already this is at risk with the new Confidence Code requirement to show an “all market view” of available tariffs: the CMA cites uSwitch’s comment that its monthly tariff fulfillability report was starting to show an emerging trend of declining fulfillability levels among the most price competitive tariffs on the more common payment types.¹⁰⁹ We have also seen this and understand that acquisition volumes through PCWs have been declining as a result.

3.59 If this trend continues, PCWs will face a further downturn in customer revenue which may lead them to exit the market. This would be of significant detriment to the whole industry as PCWs constitute a significant acquisition channel especially for growing suppliers, and PCWs undertake substantial marketing activity that Ofgem would have to undertake instead (with consequence cost and funding consequences).

(b) Should this service be online-only, or should it also operate over the telephone for those customers without access to the internet?

3.60 We do not consider that this proposed remedy is appropriate or likely to be effective. On this basis, we have not considered how it could best be made to work. It would seem logical however to make access to any service as wide as possible, noting that to the extent that such a service could act to serve disengaged customers, some disengagement may be due to lack of internet access or confidence in ability to access data safely online.

(c) Is there a risk that such an independent service could undermine the development of other PCWs in the energy sector? How could this risk be mitigated?

3.61 We consider that there is a substantial risk that such an independent service would undermine the activity of other PCWs in the energy sector.

3.62 Consumer trust in PCWs would however increase if it were more widely known that they are accredited by Ofgem, and if Ofgem were to provide clear guidance on issues such as cashback as discussed under Remedy 3, question (b). We agree with the CMA findings that on the one hand Ofgem has said it allows cashback from a TPI if the cashback is not linked to a particular tariff; however it has conversely told suppliers that this is not permissible.

3.63 Along these lines, robust auditing and Ofgem signposting to accredited PCWs would be very helpful. Should sanctions be required, then a timeframe for implementing changes before accreditation is withdrawn should instead be provided.

3.64 An Ofgem PCW should also be for information only: otherwise, it could reduce the traffic to PCWs and consequently, their revenues, with potential consequences as described in our response to question (a) above. Only if an additionality rule is met where an Ofgem PCW could prove it would bring additional customers to switch supplier, rather than take business away from the existing PCWs, should the site also enable switching.

¹⁰⁹ Paragraph 8.260, Provisional Findings.

(d) Should the Ofgem website quote the energy suppliers' list prices only? Or should it seek to provide full details of all quotes available on the market (including on other PCWs), i.e. function as a meta PCW?

3.65 We set out above our views on having such a comparison service. Nevertheless, if this is to be workable, it would need to be as comprehensive as possible. It would therefore need to provide full details of all quotes available on the market including any PCW specific tariffs (should the four tariff rule be lifted as proposed in our response to Remedy 3) and collective switches. Otherwise, we cannot see what it would offer to the market more generally and to customers in particular. A more limited, constrained or selected set of data would risk causing further mistrust towards the industry if customers subsequently realise they did not get all the right information to enable them subsequently to obtain the best deal for them.

(e) How could we ensure that an Ofgem price comparison service was robust in terms of offering all tariffs available on the market? Should there be an obligation on retail energy suppliers and/or PCWs to provide information to Ofgem on their tariffs?

3.66 We consider that this would be a significant up-front undertaking which Ofgem itself is not set up for. Elsewhere, commentators have observed the tension between Ofgem as regulator and Ofgem as schemes administrator through E-Serve. We do not comment here on whether additional powers or functions would be needed. We observe that the databases, systems and interfaces needed to hold, display and update tariff data may be significant. It is not likely that Ofgem would have anything comparable at present. It would therefore need to procure such a system, along with any ongoing change management and maintenance, from the market. This would in itself be a significant undertaking, and would lead to a sizable contract to be administered by Ofgem. It is also likely to have an impact on suppliers, who would be concerned to see any of their data displayed correctly and on an up-to-date basis such that they suffer no adverse consequences in terms of customer confusion most importantly and adverse impact on brand or corporate reputation more widely. This is addressed contractually with PCWs. It is not clear how this would be addressed with the regulator.

(f) Should any price comparison service operated by Ofgem be transactional, i.e. be able to carry out switches for consumers, or should it provide information only?

3.67 We do not consider it to be appropriate for the Ofgem price comparison service to be transactional. This would be a conflict of interest for Ofgem as regulator (even if set up on an arms-length basis or in a separate trading entity or otherwise under contract) and would in our view fundamentally adversely impact the current and any potential new entrant PCWs appetite to invest or continue to invest in the energy sector.

(g) What would be the likely costs to Ofgem of offering this type of price comparison service? Would Ofgem need additional funding and/or statutory powers in order to provide this type of service? If so, where should this funding come from?

3.68 As noted above, we do not consider that this proposed remedy is appropriate or proportionate, nor likely to be effective in addressing the various AECs found by the CMA. On that basis, we have not considered in detail what would be required. It would also depend upon whether Ofgem would make or buy such a service. Cost categories could include, but would not be limited to:

- Procurement, specification and professional support fees to outsource the whole service (e.g. provisioning and operation which could be done by one entity or different entities) or elements of the service (e.g. provision of databases, servers, security and website/interface capability, etc.);
- System and licence costs, as well as any costs to increase server or other hardware capacity costs;
- Staff costs for procurement, provisioning, contract management and operation of the service or components of the service, as well as maintenance, change management and upgrade costs;
- Call centre capability;
- Marketing and advertising costs; and
- Assurance, monitoring and compliance costs, as well as insurance and other liability management costs.

3.69 A wider question on accountability for the service arises, not just to those suppliers whose businesses may be inadvertently misrepresented by incorrect data or to customers who entered into contracts that do not represent the best deal for them, but more generally in terms of how the service is performing, its accuracy, the efficacy of any marketing budget and other aspects of governance.

(h) How should customers be made aware of the existence of this service? Should information be provided by energy suppliers on bills/during telephone calls? Should PCWs be required to provide links to the Ofgem website during the search process to allow customers to cross-check prices?

3.70 We do not think that this proposed remedy is appropriate for the reasons set out above so have not considered these specific questions.

(i) Is there any additional information that Ofgem should provide on its website relating to energy suppliers and/or tariffs to facilitate the customer search and switching process?

3.71 Ofgem should seek to provide engaging information on how to switch and could provide a list of accredited PCWs. By also providing key elements of the Confidence Code, and that it has audited the accredited PCWs against, this would help build trust in the sector.

3.72 We would also hope that the research being carried out by Ofgem as part of its review of RMR would highlight areas of ongoing consumer concern or confusion that it could usefully address.

Remedy 7a – Introduction of a new requirement in the licences of retail energy suppliers to provide price lists for microbusinesses on their own websites and to make this information available to PCWs

Remedy 7b – Introduction of rules governing the information that TPIs are required to provide to microbusiness customers

Remedy 8 – Introduction of a new requirement into the licences of retail energy suppliers that prohibits the inclusion of terms that permit the autorollover of microbusiness customers on to new contracts with a narrow window for switching supplier and/or tariff

3.73 As we noted in our response to the Updated Issues Statement, we are exiting the SME market. Taking that into account, we have no comments on remedies 7 and 8 at this time and refer to the comments made in that earlier response.¹¹⁰

Remedy 9 – Measures to provide either domestic and/or microbusiness customers with different or additional information to reduce actual or perceived barriers to accessing and assessing information

(a) Does the current format and content of energy bills facilitate engagement by customers? Is there additional information that should be included on bills? Should the quantity of information on bills be reduced to enhance clarity?

3.74 We do not think that the current format and content of energy bills helps customers engage with their energy use and costs. In the survey we commissioned as part of the development of our “Scrap the Variable” campaign, we found that 80% said more transparent bills and more information about the best tariffs available would increase their level of trust in energy companies.¹¹¹ Further, 80% of those surveyed would find it useful to see more information about cheaper tariffs from their existing supplier and those from others in the market

3.75 Taking this into account, we think that customer engagement with bills, and the information contained in them, could be improved by the following:

- Reducing the amount of information on bills to a core set of data;
- Increasing the required frequency of bills; and
- Inclusion of “market cheapest tariff” messaging on bills (and potentially other customer communications).

3.76 Our initial view is that a reduction in the quantity of mandatory information on bills and an increase in the frequency for billing would improve clarity and promote customer engagement.¹¹² Examples of mandated information that, at this relatively early stage of RMR

¹¹⁰ Please see in particular, section 3 of Annex 1 (p. 46) to our response to the Updated Issues Statement.

¹¹¹ Research carried out by Opinion Matters, commissioned by First Utility, between 17/10/2014 and 27/10/2014 surveyed 2,044 UK adults who are electricity and / or gas bill payers.

¹¹² Paragraph 4.16 et seq, First Utility response to the Updated Issues Statement.

implementation could be considered for removal include the TCR and the TIL.¹¹³ The TCR has also been subject to criticism as this is not used in the search results of comparison tables, and therefore its value and inclusion in bills has had the effect of confusing customers. Concerns around the mandated Ofgem methodology for projected annual spends is also leading to the provision of potentially misleading signals for possible savings.¹¹⁴

- 3.77 We also think that mandating the precise format of bills has stifled innovation in formatting and approach by suppliers. If a core set of data is determined and a minimum frequency for bills set, suppliers can innovate around approach to and format of billing.
- 3.78 Of greater importance is that a one size approach does not fit all. Customers vary in their level of interest and engagement with bills. Some would like more information, others would like less. Consideration should focus on increasing the engagement of currently unengaged SVT customers, and encouraging consumers to at least switch to a cheaper tariff from their own supplier. Allowing suppliers to innovate in bill design will help facilitate much progress in this area. It is also likely that some information may not be most effectively provided with or in a bill but in separate communications: this could be an area for supplier innovation provided that it was recognised that negative messaging would not be considered fair and appropriate.
- 3.79 RMR rules do not mandate frequency of billing: First Utility would therefore welcome a remedy to increase the frequency of billing to consumers to once a month.
- 3.80 Our experience under the Supplier Cheapest Tariff rule under RMR has shown it is effective in encouraging customers to switch tariffs within a company.¹¹⁵ Seeing what saving could be made by switching to a competitor would be a much greater driver to engage in the switching process, and would encourage much greater use of PCWs. Given what we believe to be the differential in price between the SVTs and the cheapest tariffs on the market, it is only through communicating the market's cheapest deals in an appropriate way that customers can be fully informed about the potential savings on offer. Informing customers however they could save £250 if they switched provider, would likely prove to be a much greater incentive to act. We believe that this would be a much greater driver to engage in the switching process, and would also encourage much greater use of PCWs.
- 3.81 We therefore urge the CMA to reconsider a form of Market Cheapest Tariff remedy: the CMA has discounted this remedy but we consider that it can be set up in a manner different to that discounted by the CMA, which would be more proportionate and would, in our view, be an effective remedy for the AEC.
- 3.82 Given the complications the CMA has highlighted through the original proposal (although suppliers already share detailed pricing with the switching sites, which is made public), the alternative to requiring suppliers to advertise competitors' tariffs would simply be to show a level of total savings that could be achieved through switching to the cheapest supplier on the

¹¹³ Paragraph 4.41, First Utility response to the Updated Issues Statement.

¹¹⁴ For customers on a fixed tariff, the Ofgem methodology requires the assumption that customers will move onto the supplier's SVT tariff once the tariff expires – thereby inflating savings against a customer's current bill and expectations resulting in disappointment and distrust.

¹¹⁵ Please see above under our response to Remedy 3.b and the summary views of a number of suppliers at paragraph 21, Appendix 8.2, Impact of the Retail Market Review: https://assets.digital.cabinet-office.gov.uk/media/559fb629ed915d1595000038/Appendix_8.2_Impact_of_RMR.pdf

market. There are multiple ways of doing this without showing which brand e.g. the average of the top three or five tariffs.

(b) When customers seek to switch tariffs, are they given enough/too much information on the terms and conditions of their new contract?

3.83 First Utility believes that sufficient information is provided to customers when they seek to switch tariffs. We note above some concerns around the comparison measures we are required to use.

(c) Should customers be prompted to read their meters (quarterly or annually), either by information on their bill or by a phone call from their energy supplier? Would this increase engagement by improving the accuracy of billing?

3.84 Prior to the full smart roll-out, anything that incentivises customers to provide regular meter readings would in our view be beneficial to the billing and settlement process and consequently to customer experience of the sector overall, as well as to the amounts customers actually pay. Whilst smart meters will largely address the issue of estimated bills, there is a substantial period in which current problems will persist: meter readings are a key way to deal with this. Based on our own experience, such prompts are a significant tool to encouraging customers to understand their consumption and ability to save money on their bills and one that has had success in prompting engagement.

3.85 We would therefore encourage the CMA to consider requiring more frequent prompts for customers to read their meters: such is the importance of this for customer billing that we would urge a more radical reminder period of e.g. each month. We would suggest that placing this information on a bill is not the most effective way of prompting engagement and the costs of providing sufficient resource for calls may be prohibitive. Other methods could be: opt-out mobile prompts, email prompts and online pop-up notices.

(d) Once customers reach the end of a contract period, should subsequent bills highlight that they have now been moved onto the standard variable tariff and/or other default tariff and encourage them to check whether they are on the most appropriate tariff for them?

3.86 We agree that as customers reach the end of their contract periods, 'fixed term expiry' communications are key to engaging with them so that they are able actively to move to an alternative tariff rather than the SVT. As we highlighted in our response to the Updated Issues Statement, the term 'standard variable tariff' seems too neutral to act as a "nudge" to consider appropriate alternatives or at least to clearly inform them they are on a default tariff.¹¹⁶

3.87 As described above, we have called for the standard variable tariff to be scrapped, and replaced instead with a short-term and fixed 'out of contract' tariff. There does need to be a default tariff: such an "out of contract" tariff could operate e.g. as a three month rolling fixed-price tariff with no exit fees. Each new fixed term would be communicated in the same way as a traditional fixed-contract expiry which, based on our own experience and that of others, does act to trigger customer engagement. Suppliers would be free to set the price for each three month period as they wished, but must communicate any changes to be made for the following period. We

¹¹⁶ Please see paragraph 4.17 of our response to the Updated Issues Statement.

consider that this possible approach would provide customer protection in a more proportionate manner than the cost-plus safeguard tariff proposed as Remedy 11 (in which regard, please see our comments below).

Remedy 10 – Measures to prompt customers on default tariffs to engage in the market

(a) What information should be included in the prompts to customers on default tariffs in order to maximise the chances that they are acted upon?

3.88 As noted above, SCT prompts have proved useful in prompting customer activity between their own supplier tariffs. However, we think that the prompts could go further to spur engagement and include (on prompts and on customer bills) Market Cheapest Tariff messaging. This would help customers sample other tariff offerings in the market and is likely to encourage greater use of tariff search activities, including use of PCWs. For those customers who have remained with their legacy supplier, the potential savings may be more substantial than those available through their SCT and consequently, may prompt engagement.¹¹⁷

(i) Should customers who have failed to engage be informed that they are ‘no longer under contract for energy’, that they have been ‘rolled onto a safeguard tariff’, or an alternative message, for example, emphasising how many customers in their area have switched in the last year?

3.89 As noted in our response to remedy 9 above, we consider that the description for any default tariff should have sufficient negative connotations itself to act as a prompt when seen by customers: we have suggested “out of contract tariff”.

(b) How should prompts be communicated to customers? For example, there is some evidence from the financial sector that text prompts are particularly effective at raising awareness in terms of overdrafts etc.

3.90 Ideally, prompts should be communicated to customers according to their preferred contact methods, e.g. by text, email or online. As communication methods evolve, suppliers should have flexibility to adapt to this. As we have observed elsewhere, a one size fits all approach may not be the most effective one, and could act further to disengage some customers. We would also urge the inclusion of an appropriate “opt out” from prompts.

(c) What should be the timing and frequency of prompts in order to balance effectiveness in terms of encouraging engagement with the cost and potential irritation that might arise from repeated prompts?

3.91 For customers on an “out of contract” tariff, frequency of prompts would depend on the structure of such a tariff. Our proposal would be for a three-month rolling fixed-price tariff, with prompts in the usual manner as for FTE. This would run in parallel with monthly billing including Market Cheapest Tariff messaging. It may also be appropriate to consider a form of prompt to allow the

¹¹⁷ Please also see supplier comments at paragraph the summary views of a number of suppliers at paragraph 21, Appendix 8.2, Impact of the Retail Market Review: https://assets.digital.cabinet-office.gov.uk/media/559fb629ed915d1595000038/Appendix_8.2_Impact_of_RMR.pdf

customer to signal that they have actively chosen to default to the “out of contract” tariff and asking if they would like a reminder prompt in X weeks/months. We agree that it is important to balance such prompts with the potential to cause customer irritation and lead to further disengagement.

(d) Who should provide the prompts: customers’ energy suppliers, Ofgem or another party?

3.92 We consider that it is appropriate and effective for prompts to come from suppliers. Customers who switched via a PCW can also receive alerts from that PCW to remind them about possible savings they can make through considering alternative suppliers.

3.93 We would also urge further consideration be given to Ofgem’s ‘Be an Energy Shopper’ campaign, which helped to raise the profile of switching, as well as the marketing campaign run by DECC earlier this year.

(e) Are there particular groups of customers who should receive prompts at specific points? For example, should house-buyers be prompted to engage with the market on completion of their purchase?

3.94 There is an existing industry process for engaging with new customers on a change in tenancy: once a customer leaves a property, they are required to provide the supplier with a meter reading. This also triggers correspondence with the new occupiers of a property. If suppliers were to combine such communications with messages around the Market Cheapest Tariff, this would serve to further engage these customers.

(f) Is there benefit in others in the markets, such as rival energy providers or TPIs, being made aware of which customers remain on default tariffs (or have been rolled on to the safeguard tariff)? In this respect, data protection issues would need to be carefully considered. The ability of other market participants to identify inactive customers, however, has the benefit of potentially encouraging the customer to switch tariffs once out of contract.

3.95 As we note above, we believe that a more proportionate and effective measure would be to develop Market Cheapest Tariff or MCT messaging for bills, to be issued monthly. This would build on the proven utility of the SCT messaging, focusing attention outside each customer’s current supplier. In principle, we see some benefit in requiring suppliers to provide data on their SVT customers to a trusted third party who could use that to offer targeted switching campaigns, subject to data protection and privacy rules. We see any such approach as being additional to that of SCT and MCT messaging

Remedy 11 – A transitional ‘safeguard regulated tariff’ for disengaged domestic and microbusiness customers

(a) Should the safeguard tariffs be set on a cost-plus basis, or should they be related to other retail prices?

3.96 First Utility does not believe that a safeguard tariff based on the setting of a maximum price level by either Ofgem or the CMA is a proportionate means of offering protection to those customers that have not engaged with the market, nor is it likely to be the most effective means

of securing or incentivising customer engagement, regardless of the aim of supporting competition. We are concerned that there would be significant unintended consequences, including but not limited to an adverse effect on competition. As the CMA notes, “there are risks to controlling outcomes in markets”.¹¹⁸ Conceptually, we are also concerned that such a measure, whilst not expressed as a “price control” in the same way as water or distribution/transmission network controls, risks behaving like one without having being established in the manner of such controls, increasing the risk of unintended consequences for suppliers and, worse, for customers.

3.97 A “safeguard tariff” would actively discourage customer engagement, effectively almost rewarding it: the name is benign, suffering from the same neutrality as “standard variable tariff”. Although this could be addressed, it raises material questions about the intended effect of the tariff itself. We would propose as an alternative a shorter-term fixed price tariff, applied on a rolling three month basis. This would be “built” by suppliers and would not operate under a pre-determined “cap”. “Expiry” would prompt all the current FTE communications, as amended by the proposals above around other supplier tariffs. Exit fees could not be applied to such a tariff. We think that this structure will help foster engagement through more frequent communication whilst offering greater assurance on a short-term basis to those who have not or not been able to or do not want to engage with the market. It is possible that such a cap would incentivise greater marketing spend by suppliers to try to promote engagement and movement onto non-capped tariffs, and the cap would presumably need to take account of this possibility.

3.98 We consider that the approach taken in New South Wales can be distinguished from the circumstances in the GB market, in particular regarding the approach to network costs and regulation. This market does highlight a helpful means of displaying price information which merits further consideration. We also note that price caps have been removed from most retail markets: the EU too does not favour retail price controls, save in limited circumstances.

(b) If the safeguard tariffs were set on a cost-plus basis, which approach(es) we should consider to determining the wholesale energy cost element of the tariffs? What are the relative merits of the proposed approach(es) in the context of the purpose of the safeguard price cap?

3.99 In our view, this is one of the biggest challenges of a ‘safeguard tariff’ with what seems to us to amount to a regulated return. All suppliers will hedge their retail contracts in slightly different ways based on the following:

- Exactly how they wish to ‘lag and smooth’ wholesale market volatility for their customers (there is no “correct” hedging strategy);
- Their appetite for holding market risk in different forward delivery periods;
- Their view of weather risks and the cost of insurance products to mitigate this;
- Their view of “shaping risks” and costs;
- Their imbalance volumes, risks and costs;
- Their access to wholesale market products (price, volume and tenor access, any other fees applicable to their counterparties);

¹¹⁸ Paragraph 91, Notice of Possible Remedies, 7 July 2015

- Their cost of credit and access to working capital to support credit requirements of hedging;
- Their view of customer churn rates in their portfolio; and
- Their view of customers moving between tariffs inside their business.

3.100 Each of the points identified above will be addressed differently by each supplier, meaning that there will be a range of wholesale costs, performances and risks faced by each supplier in the market – which should be expected across a range of different companies with different arrangements and focuses. This means that no single approach will correctly estimate costs for all suppliers and a single mandated price will have different gross margin implications for each business, creating winners and losers.

3.101 Further, a single mandated price will imply one single hedging strategy. This could over time lead to all suppliers migrating to exactly the same business approach to variable tariff products and no differentiation within the retail market on this product.

3.102 This question highlights strongly the concern we expressed above, that such a safeguard would both look and feel like a price control, and would in practice amount to a price control, albeit not being based on the detailed build-up needed fully to construct such a control.

(c) Could the imposition of a transitional safeguard price cap result in energy suppliers reducing the quality of service offered to customers on this tariff? Is this risk reduced by customers' ability to choose alternative, unregulated tariffs?

3.103 As suppliers will remain subject to the Standards of Conduct and other relevant licence conditions, we do not believe that this would impact quality of service offer to customers on this tariff. It will instead lead to profitability or gross margin cross subsidy implications for suppliers who must meet the relevant licence condition requirements but with no potential 'lever' in that tariff to collect extra margins to fund that quality of service in the event that the margin is insufficient. In such a situation the prices of other tariffs in the market may increase to fund any shortfalls. This may depend upon how the "headroom" is approached: we would be concerned if the approach is too rigid, noting that different suppliers have different cost bases, efficiencies and approach to risk, and that a number of regulatory and other costs are effectively not hedgeable.

(d) Should all domestic and microbusiness customers on default tariffs be rolled onto the safeguard tariff, or should this remedy only apply to a subset of these customers? If this remedy should not apply to all customers, why? And how should energy suppliers identify those customers who should be covered?

3.104 It is important to consider that a small number of customers may actively choose an SVT, e.g. if they may only be in a property on a short term basis. In this case, a measure intended to protect inactive customers would appear disproportionate, although weighted against that would be the administrative overhead and costs associated with disaggregating customers. Alternatives could include those customers who have not switched in e.g. the last five years or another specified period or those customers receiving e.g. the Warm Homes Discount, those notified to each supplier as in receipt of specific benefits such that they are entitled to that Discount or those included on the Priority Services Register. These measures are not entirely

correlated with customers who may be entitled to protection in this context but may represent those groups who are disproportionately hampered in their engagement with the energy market in broad terms.

3.105 In practice, it would be very difficult to disaggregate certain customer groups for whom this should apply. On this basis, it would be appropriate that such a safeguard tariff, would apply to all current and future SVT customers.

(e) How should the headroom be calculated to provide the right level of customer protection while not unnecessarily reducing healthy competition?

3.106 We consider that this potentially complex issue is avoided altogether by considering a different type of safeguard tariff, perhaps along the lines suggested above of a three-month rolling tariff that customers can switch away from at no fee. This would be based on a supplier's own costs, likely to be more manageable given the short-term fix, but not determined centrally. No "headroom" is needed on this model for the safeguard tariff.

(f) What regulatory information would be required to set the safeguard tariffs?

3.107 Our initial view is that the following regulatory (and related) information would be useful.

For electricity:

- a) Ranges for items (i) to (ix) in our response answer to part (b) of this question above; and
- b) Robust and regularly updated forecasts for each of the following items: transmission, distribution and balancing charges, social and environmental costs,¹¹⁹ Capacity Mechanism and Supplier Obligation costs; AAHEDC; transmission and distribution losses; imbalance costs (noting that PAR500 moves to PAR50 and perhaps to PAR1 during the period, all requiring modelling), small scale FITs; DCC charges; and metering costs.
With regard to the CFD FIT Supplier Obligation costs, this will be a growing and fully variable cost each quarter that suppliers cannot hedge, so we have particular concerns relating to this cost item. If costs spike in relation to this item, there would unavoidably be a lag before this can be factored into retail tariffs.
- c) Profile Coefficients, Line Loss Factors, Transmission Loss Multipliers, Grid Supply Point Group Correction Factors (noting that the increasing levels of intermittency due to unmetered embedded generation will make these increasingly harder to forecast – so some kind of guarantee for these would be welcomed); and
- d) For completeness, we note that whether included as a "cost" or a "plus", A view of average business internal 'cost to serve' per kWh supplied is needed, to set the cap and for suppliers to consider if the approach to headroom is sufficient to cover any increases here to reflect investment cycles and other potential areas of cost increase.

3.108 We note that these items would need to be calculated:

- For each region;

¹¹⁹ Some of these costs have thresholds of customer numbers before they are payable and this would need to be factored in so as to work for larger and smaller suppliers in relation to such costs.

- for each domestic meter configuration (PC01 and PC02);
- With full half-hourly granularity of volumes and prices;
- Over an agreed delivery period; and
- With an agreed method of rolling forward if the safeguard tariff was to continue for more than the first delivery period, so that suppliers could have signals on how best to hedge the risk beyond the first period.

3.109 The equivalent of this non-exhaustive list would also be required for establishing the gas safeguard tariff, if this is intended too, given that the retail market competes on a dual fuel tariff basis.

(g) How long should the safeguard price caps be kept in place? Is it appropriate to include a specific sunset provision, or should there be a commitment to review the need for and level of the safeguard price caps after a certain period of time?

3.110 The duration of the remedy is dependent on the extent and appropriateness of it as an intervention into the market. Such a safeguard tariff on a cost-plus basis is likely to reduce the incentives for SVT customers to engage in the market (lowering churn) and also have a detrimental impact to retail competition. On this basis, the shorter the duration of the mechanism, the better. We have significant concerns about what would happen if, as a result of the safeguard price, competition and engagement reduces.

3.111 There is a risk that a temporary safeguard tariff could become an enduring feature of the retail market, which would risk entrenchment of any resulting lower churn and reduction in retail competition. While in such a situation the disengaged customers have more protection, this would not be a market environment that would foster vigorous competition and innovation and consequently could work to justify retention of the mechanism for protection purposes.

3.112 Conversely, we would also be concerned about the potential adverse consequences of the removal of the safeguard tariff, implying that any post-safeguard tariff market is less well protected or otherwise prejudicial to customer interests. This would enforce or risk re-introducing distrust of the sector, further encouraging disengagement.

3.113 On that basis, a sunset clause is essential, as is the messaging around any imposition of this remedy.

(h) How frequently – if at all – would the level of the cap need to be reassessed? If the cap is set on the basis of directly passing through wholesale and network costs, then it may not be necessary to revisit the safeguard price level.

3.114 The answer to this depends upon the CMA view of what the 'best value' hedging strategy would be in the wholesale market to protect customers from wholesale price spikes. This might be defined as a wholesale 'index price' within the benchmark. Given that wholesale electricity forms less than 50% of the total costs of electricity supply, the benchmark would have to index all the other unhedgeable costs within the time period that cap level is enforced. If the frequency of re-evaluation of the "basket" of costs was too low, there is a risk that cost item shocks would make the safeguard tariff loss-making and in a worst case, even lead to retail failures. The challenge is that suppliers set tariffs on a forward basis, forecasting costs taking account of known "set" costs to date and assumptions of costs changes on a forward basis.

Whilst the ability to change prices to reflect cost shocks may not have been used often within variable tariffs, the option must be available to suppliers. A smaller “buffer” in any cap would lead to a need for more frequent (re) assessments of the costs.

3.115 This illustrates the challenge: in order to set a regulated safeguard tariff, there needs to also be a robust view of regulated/industry costs for the same period. Perhaps this could be managed if the safeguard tariff is set to a formula so that any unhedgeable ‘cost shock’ triggers a reset of the regulated cap.

(i) Which energy suppliers should be subject to the safeguard cap, and why? Should it be restricted to the Six Large Energy Firms, or should all retail energy suppliers be covered?

3.116 If implemented, a safeguard cap should only be implemented on companies who have an incumbent base, where between 40 and 60% of customers have never switched. However, its application to this group would have an impact on that group and on all suppliers in the market and unintended consequences across both groups.

(j) How should the transition from the current arrangements be managed? We note that an immediate requirement to change the prices for all customers on standard variable tariffs, rollover, evergreen, deemed and out-of-contract tariffs might put pressures on certain suppliers more than others. Should there be, therefore, a period over which the safeguard price cap is phased in? If so, how long should this period be and how should the transition work?

3.117 Suppliers have already sold one, two and three year fixed tariffs, as well as variable tariffs, and hedged these tariffs based on the current market and regulatory arrangements. Any sudden change to the rules will create winners and losers. While we feel other remedies would better address the mischief that this remedy is trying to solve, if it was brought in we feel it should be brought in over an extended period of time. This could be achieved by (i) determining what the cap target is, (ii) determining how far away from the cap target the current SVTs are, (iii) setting the cap at the SVT level on day one and lowering it linearly towards the cap target over a to-be-determined number of months within the overall period determined for its application.

(k) Would energy suppliers have the ability to circumvent the remedy, for example, by encouraging disengaged customers to switch on to less favourable, unregulated tariffs, and how such risks could be mitigated?

3.118 Suppliers are subject to Standards of Conduct and other relevant licence conditions that would address any behaviour which (in broad terms) is not fair to customers. In addition, general consumer law deals with mis-selling and both general consumer law and licence conditions deal with the information to be provided at point of “sale”.

3.119 For completeness, we observe that some customers do opt for longer term tariffs – some up to three or four years in duration – to gain cost certainty for that longer period alongside any other benefits that they consider they gain with that tariff.

(l) Should the CMA set the level of the safeguard price caps itself, or should make a recommendation to Ofgem to do so?

3.120 We do not consider that this proposed remedy is appropriate, proportionate or likely to be effective in addressing the harm discovered by the CMA. If set by Ofgem or the CMA, we struggle to see the difference between this tariff approach and a more traditional price control, particularly given the duties applicable to each in this context. That said, we would foresee a role for Ofgem in providing an appropriate form of assurance around regulatory and network costs, any increases, and the information on each, to ensure that suppliers can rely upon the same information in constructing their tariff mechanisms.

3.121 Were either Ofgem or the CMA actually to set those costs, the important point is that robust cost forecasts for every cost item would need to go into any calculation, which would need to be made using a verifiable and quality assured fit-for-purpose pricing system. The fully granular cost and volume forward curve forecasts, the system and its calculation should all be fully audited by independent experts to ensure that the resultant cap is a fair reflection of 'cost plus' faced by a range of different supplier businesses.

(m) Are there any potential unintended consequences of setting safeguard price caps, for example, in terms of their potential impact on the level of other, unregulated tariffs?

3.122 We have highlighted in our previous responses our concerns about this proposed remedy, which we reiterate here. Certainly with the safeguard price cap approach, the administrative costs associated with this would be considerable, both for Ofgem and suppliers, and would need to be reflected in prices. The approach would neither stop the deep discounting approach of the Big Six which can be seen in their acquisition tariffs from collective switching, white label tariffs and their own brand as part of their four tariff offerings.

3.123 If the safeguard cap lowers the SVT, it is possible that this acts to lower the ability to provide a gross margin cross-subsidy to market leading one year fixed price deals. This tariff price convergence effect will act to:

- (i) reduce energy costs for the most disengaged customers, lowering their incentive to look at other offers in the market;
- (ii) lower the benefit of switching for the more engaged customers, perhaps reducing the number of active customers in the market; and
- (iii) lower retail competition. With or without the four tariff cap, it might lead to the creation of more expensive tariffs that suppliers attempt to move their SVT customers onto in order to reduce the impact of the cap on their businesses. In the absence of the four tariff rule, this could have a more marked effect.

3.124 The only way to avoid SVT customers being disadvantaged, is to engage them in the switching process, which also acts to drive vigorous retail competition for those currently disengaged customers. As discussed in our responses previously, we consider that this is more proportionately and effectively achieved through the recasting of the required default tariff into an 'out of contract' tariff and inclusion of the Market Cheapest Tariff messaging.

Remedy 12a – Requirement to implement Project Nexus in a timely manner

(a) How long should the parties be given to implement Project Nexus?

3.125 The CMA will be aware that recently the Project Nexus Steering Group, constituted at Ofgem urging and based on terms of reference drafted by Ofgem, determined that the Project should be delivered in a single phase, with an implementation date of 1 October 2016. National Grid has raised UNC 0548 to give effect to this implementation date.¹²⁰ We do not comment here on the contents of that proposed modification, nor on whether any further or other consequential or transitional changes may be needed.

3.126 In this specific context, it would be appropriate for the CMA to recognise that relevant parties have in effect determined a workable date for the implementation of Project Nexus and by definition, the appropriate period of time, based on information provided by the Project Assurance contractor, amongst other information, for that implementation. We note that most of the information provided towards determining a workable date was from the primary enabling party – Xoserve.

3.127 The implementation of Project Nexus involves a large number of parties, many with differing views, motivations and priorities. There are parties however that ‘enable’ the project as a whole for go live, e.g. the gas transporters (**GTs**), independent gas transporters (**IGTs**) and Xoserve) and there are other parties that need to be ready to connect into the enabled systems. The enablers should be given sufficient time consistent with good programme governance to ensure the system works correctly; the new UK Link system (being delivered through Project Nexus) is a billing system and the invoices it generates must be both accurate and if incorrect contestable. If inaccurate invoices are generated, shippers could incur significant costs unless processes are established in advance that allow shippers (especially smaller shippers) to challenge the invoices and be released from having to pay them until the issue(s) is(are) corrected.

3.128 There is a risk however that shippers “game” Project Nexus by working on internal cost improvement projects (for example) and leave Project Nexus changes until the last moment, creating the risk that some shippers are not ready. There is also a risk that due to the way Project Nexus has been managed (requiring significant shipper engagement resource) that smaller shippers have been unable to engage with the project. For these reasons we recommend that if >50% of shippers are ready in each of the following categories, the new UK Link System should “go live”:

- (i) Large Shippers (6)
- (ii) Mid-tier Shippers (4)
- (iii) Smaller Shippers (the rest excluding I&C)
- (iv) I&C Shippers

¹²⁰ http://www.gasgovernance.co.uk/sites/default/files/Modification%200548%20Urgent%20v1.0_0.pdf

3.129 By taking this approach, it would be clear that it is possible for all shippers of varying size to engage with the project, if they resourced their projects adequately. Whilst going live without all shippers being ready would cause some issues across the industry, the benefits of going live would in our view outweigh the downside of those issues. Further, shippers would be strongly incentivised to make ready their systems as they would be unable to take on any new customers until they had done so.

(b) Should the CMA implement this remedy directly (e.g. via an order and/or a licence modification) or should it make a recommendation to Ofgem to implement the remedy?

3.130 It is likely that the modification referred to above will be approved before any remedy can be put in place. However, we suggest that the CMA nevertheless recommend to Ofgem that it continue its current role in the implementation programme, including around contracting for project assurance, and approve any modification that addresses the mechanics of go-live, the proportion of shippers and others to be ready that will be a factor in the go-live decision and overall, to provide a framework for industry to be in the best position to meet the agreed implementation date. As noted, we do believe that mandating a go-live date for such a large project is practicable without putting shippers at significant risk should the system not work. However, ensuring the mandating of a process for and assessment of go-live is entirely appropriate.

Remedy 12b – Introduction of a new licence condition on gas shippers to make monthly submissions of Annual Quantity updates mandatory

(a) Is it proportionate to require the mandatory monthly updating of AQs? Would it be more proportionate to require less frequent updating of AQs? Would less frequent updating still be effective in terms of removing the scope for gaming of the system?

3.131 As noted in our response to the Provisional Findings above on gas settlement, the concern arises because shippers can assess what impact submitting a read will have on the current AQ, and potentially then withhold reads that result in AQ's being increased and prioritise the submission of meter readings that result in AQ's being reduced.

3.132 We do not support mandating monthly read submission, because shippers themselves do not receive monthly reads for traditional meters. We support mandatory monthly read submission for smart gas meters that have working communications and a monthly read is available. This is because in our view, a mandatory monthly obligation for smart meter reads will resolve the AQ gaming issues as the smart programme progresses. We do not think it is proportionate to require traditional meters to be read more often between now and when smart meters are rolled out.

Remedy 13—Requirement that domestic and SME electricity suppliers and relevant network firms agree a binding plan for the introduction of a cost-effective option to use half-hourly consumption data in the settlement of domestic electricity meters

3.133 First Utility welcomes a possible move to HH settlement for domestic use profiles. We noted in earlier evidence submitted to the CMA that the main issue for First Utility is whether to move to this format through a 'big bang' approach on a certain date or to spread the migration over a longer period of time.¹²¹ We do not however underestimate the significant work that needs to be done to manage the myriad issues, whichever form of implementation approach is taken.

(a) Would this remedy be effective in stimulating tariff innovation, in particular in terms of time-of-use tariffs?

3.134 In our view, this proposed remedy would not itself enhance tariff innovation: successful implementation of cost-effective domestic and SME HH settlement would however ultimately enhance the scope for tariff innovation, allowing suppliers to offer ToU tariffs which would be settled according to ToU instead of by profile.

(b) How long should the parties be given to agree this plan?

3.135 First Utility has concerns regarding the number of large industry projects that are currently running in parallel with each other. Alongside these large-scale projects are numerous medium-sized and smaller projects that, when combined, consume significant resource. We believe that currently Project Nexus and Smart Metering are likely delaying each other as industry experts attend working group after working group and struggle to provide adequate input between meetings. If existing projects slip, projects that are later in the pipeline should be reviewed and potentially delayed or adjusted to accommodate any resultant resource constraints in order to ensure that the current project situation is not made worse.

3.136 That said, we are not against projects running in parallel when they are at different stages in the project lifecycle. We believe that Nexus and Smart are currently in the early delivery phase because changes are still being included albeit at a lower rate in recent months.

3.137 HH settlement is an electricity project requiring electricity subject matter experts that we believe are not all "consumed" by Nexus or Smart. We therefore propose a portfolio-based approach to industry projects to reduce the number of projects running at the same stage in parallel, e.g. it would not be good if Nexus, Smart and quicker switching all went live in the same month.

3.138 We are aware that an impact assessment has already been carried out in 2011 on HH domestic settlement.¹²² We are also aware that Ofgem has published a launch statement: Electricity settlement reform – moving to half-hourly settlement.¹²³ Since then, the DCC has been formed and the SEC introduced, leading to greater certainty (although not necessarily around timing)

¹²¹ Paragraph 37, First Utility hearing summary: https://assets.digital.cabinet-office.gov.uk/media/55560db1e5274a1575000076/Summary_of_hearing_with_First_UTILITY_on_19_March_2015.pdf

¹²² <https://www.elxon.co.uk/wp-content/uploads/2012/01/Profile-Class-1-4-HH-Settlement-Final-Report-v1-0.pdf>

¹²³ <https://www.ofgem.gov.uk/ofgem-publications/87053/electricitysettlementlaunchstatement.pdf>

around how Smart will operate going forward. We are aware also that the quicker switching project is also ramping up and has some challenging timescales associated with it.

- 3.139 Taking the above into account, in particular the phases of these current projects (a portfolio view) and the subject matter expert requirements for each of those phases (where a realistic assessment is needed which should include a plan incorporating additional resource or expertise if needed, early in the process), we would like to see the next stage of HH settlement for PC1-4 started as soon as possible with an obligation to complete the planning work within 12 months.
- 3.140 One potentially limiting factor is that the cost-benefit analysis (**CBA**) to date has not been carried out to a sufficient level of detail on the potential options for roll-out of HH settlement. This is to be expected with the number of large projects currently being undertaken by the industry. We hope that Elexon's Settlement Reform Advisory Group, the successor to the Profiling and Settlements Review Group¹²⁴, will take this forward, but we understand that without a modification raising a HH settlement proposal, then industry will be constrained as to its ability to work through a full CBA as they may be unable to fully comment on the proposals' impact on the BSC code objectives. We therefore suggest that a modification is raised by a BSC party as soon as possible to commence a dual-track CBA / Planning Phase. The dual-track nature of the work-group should then assist in resolving the issue of how to cost something the scope and extent of which is not entirely clear.

(c) What are the principal barriers to the introduction of a cost-effective option to use half-hourly consumption data in electricity settlement for profile classes 1 to 4? How could these be reduced?

- 3.141 There is considerable variance and complexity in the settlement and register configuration of meters. When industry attempts to tackle a problem such as this, parties tend to raise every possible problem, no matter how material and the project often therefore attempts to cater for absolutely every scenario. This change should be implemented incrementally with an initial phase that allows a large proportion of the market to benefit from HH settlement with subsequent phases to tidy up the remaining, more complex, issues. We recommend therefore that the scope for the initiative is phased to ensure the initial phase (that might e.g. provide benefit for 90% of consumers with smart meters) is not delayed by 2 years (for example) for the benefit of the remaining 10% of consumers. We would recommend however that obligations are put in place to ensure that this is completed (for the remaining 10%).

(d) Should the use of half-hourly consumption data in settlement for these profile classes (or certain of them) be optional for energy suppliers, or should it be mandatory? What are the advantages/ disadvantages of each approach?

- 3.142 We consider that the use of HH consumption data should be optional in an initial phase for the following reasons: (i) that it allows the capability to be implemented without the need for all suppliers to be ready at the same time; (ii) it avoids the risk that the project is delivered on the timeline of the slowest supplier, (iii) there would be no incentive for disengaged parties to slow or delay the project, (iv) fewer parties might engage reducing the impact of the "design by

¹²⁴ <https://www.elexon.co.uk/group/settlement-advisory-reform-group-srag/>

committee” culture of the industry, (v) it is very low risk for those that have not engaged with the change process in respect of avoiding any unintended consequences from mandating HH settlement in an initial phase, (vi) it should be delivered more quickly and with less red tape providing consumer benefit sooner, and (vii) it might stimulate more switching if some suppliers can offer features that others choose not to offer. Overall, it allows for issues/unintended consequences to be addressed with smaller customer numbers, leaving risk in the industry where in this case, it can be more effectively managed. We do not current foresee any unintended consequences to this approach.

- 3.143 Once HH settlement capability is delivered and working without issue (in a manner to be defined so that assessment is as objective as possible, such assessment to be completed on a planned basis and within a defined timescale), we would like to see its use being mandated across all suppliers within a two year time period. We believe that this would still be within a shorter timeframe than if HH settlement was mandatory from the end of the smart meter roll-out.

(e) Are there any distributional considerations that we should take into account in relation to time-of-use tariffs? For example, might vulnerable customers end up paying more if they fail to change their consumption patterns? Or will the decline in the required generation capacity outweigh any increase in peak prices?

- 3.144 The concerns raised here are in themselves reasons why it would be good for suppliers to be able to trial ToU tariffs outside the four tariff rule as discussed in our response to Remedy 3, question (a), above.¹²⁵ This will also avoid the need for suppliers to withdraw one of their current four tariffs as well as the associated costs and delays with applying for a derogation. Suppliers may also design different tariffs that can reflect the needs of different customer groups.

(f) When should the (optional/mandatory) use of half-hourly consumption data replace settlement based on assumed customer profiles? Is it necessary to wait until 2020 when all domestic customers have smart meters installed? Alternatively, could the use of half-hourly consumption data be phased in for those customers with smart meters prior to 2020?

- 3.145 We think that a phased approach is appropriate. We do not, for example, consider it sensible to require a change to HH settlements on the same day a smart meter is installed. We would not want to see a dependency on immediate HH settlement for smart meters as this might lead to aborting smart meter installations when communications do not initially work. We also consider that there will always be a requirement for profile-based settlement: customers can refuse a smart meter, and there will be locations where communication is not possible (in basements or where there is no communication coverage even above ground).

¹²⁵ Under the Electricity Supply Licence Condition 22B. on restrictions on Tariff numbers and Tariff simplification, SLC 22B.2(b) states that no more than four of its Core Tariffs are available to a Domestic Customer in relation to each different metering arrangement listed.

Remedy 14 – Remedy to improve the current regulatory framework for financial reporting

3.146 As we said in our comments on the Provisional Findings, we have not focused on these issues or the proposed remedies in the time available, although we reserve the right to do so at a later stage.

Remedy 15 – More effective assessment of trade-offs between policy objectives and communication of impact of policies on prices and bills

(a) Are such assessments of the impacts of policies on prices, bills and on the trilemma trade-offs carried out to a sufficient extent currently? Are there specific areas where such assessments are not currently carried out, or might be undertaken more comprehensively?

(b) Are the assessments sufficiently scrutinised?

(c) Are the assessments sufficiently disseminated to interested parties? Which parties need to be informed about these assessments?

(d) Is there an additional role for either Ofgem and/or DECC in carrying out assessments of the impacts of policies and trilemma trade-offs, or communicating the results of them?

(e) Should further, authoritative analysis be published to assist the public discussion? What form might this take? Which existing bodies are best positioned to undertake this role?

(f) Is there a sufficient case to justify creating a new, independent body tasked with scrutinising the impact assessments of policymaking bodies and/or providing authoritative analysis to inform the public debate?

3.147 We are aware of areas where potential trade-offs have not been fully considered or considered to a sufficient extent. Our understanding is that energy efficiency is a key area where a full cycle CBA is not always undertaken. That this area also sees a number of departments and bodies concerned with policy and implementation may be one cause of this.¹²⁶ This also occurred in the development of the CfD FIT regime and the Capacity Market. The development of the Supplier Obligation proceeded, in our view, with insufficient assessment of the risks and costs to suppliers of managing a variable obligation as against the costs to the Low Carbon Contracts Company (LCCC) having finance-raising capability. HM Treasury did not fully consider the wider implications on supplier costs and retail tariffs in their cost analysis, thereby skewing the outcome and minimising any benefits to the LCCC having such powers.

3.148 We consider that this proposed remedy has two broad elements (i) being informed of, and having views elicited for developing policy questions, and (ii) the information needed to contribute to policy assessment. Public consultation and workshops go some way to informing consumers about developing policies, as does the contributions of consumer groups through responses, research and surveys. However, the perception remains that had “the public” been asked for its view of the various trade-offs being made, affordability would have been given far greater weight than decarbonisation or security of supply in some more recent policy interventions. We think it is reasonable to infer that the bodies cited by the CMA as providing

¹²⁶ One example could be the changes to the building regulations and the zero carbon homes policy.

“independent scrutiny of energy sector impacts” may not reach beyond those already familiar with the issues at stake.

3.149 We do not consider that there is a sufficient case to justify creating a new, independent body tasked with scrutinising the impact assessments of policymaking bodies and/or providing authoritative analysis to inform public debate. We do consider that the existing bodies could provide the information required, although they will need to be more creative in how they do so in order to ensure that everyone concerned – both consumers and citizens – can inform themselves to the extent they want to understand these key concerns.

Remedy 16 — Revision of Ofgem’s statutory objectives and duties in order to increase its ability to promote effective competition

(a) What specific changes should be made to Ofgem’s statutory objectives and duties in order to ensure that it is able to promote effective competition in the energy sector?

(i) For example, would it be possible to revert to the role of competition that existed before the introduction of the Energy Act 2010?

3.150 We believe that vigorous competition is the most important outcome of wholesale and retail market design, and that the aim of regulations and policies must be to achieve this outcome: this is generally the best means to ensure that consumers get the benefits of choice, value for money and quality of service. There are of course some circumstances where competition alone, not matter how vigorous, will not fully or as effectively protect consumers but there is at least a risk that the current duties as amended have tipped too far away from the conception of applying an aim of effective competition “where appropriate”. In principle therefore, we support a review of Ofgem’s statutory objectives and duties.

3.151 We do however have some concerns that this proposed remedy is not likely effectively to address the harm provisionally identified by the CMA that “a combination of features of the wholesale and retail energy markets in Great Britain give rise on an AEC through an overarching feature of a lack of robustness and transparency in regulatory decision-making.”¹²⁷

3.152 The question posed by sub-paragraph (i) above seems to us effectively to be a counterfactual: what would Ofgem have done had its statutory objectives and duties not been amended by the Energy Act 2010? One regulatory decision highlighted as potentially having an adverse effect on competition – the prohibition on regional price discrimination – predated the taking effect of these changes.¹²⁸ This raises at least a question as to whether this proposed remedy could effectively address the causal factors leading to that decision, and its subsequent inclusion as one of a number of decisions provisionally considered by the CMA as potentially having led to an adverse effect on competition.

3.153 Notwithstanding, and as the CMA highlights concerning the outcome of amendments to Ofgem’s statutory objectives and duties made by the Energy Act 2010, “the role of competition

¹²⁷ Paragraph 205, Summary and paragraph 11.86, Provisional Findings

¹²⁸ Paragraph 198, Summary

in pursuing Ofgem’s objectives could be considered to be unclear and in need of clarification.”¹²⁹

We agree. Noting the CMA observation that should Ofgem consider that its duties “impose a constraint in practice on its ability to pursue competition-based policies”, this would be “significant cause for concern”¹³⁰ and on that basis, a review is called for. We believe that any such review would need to take account of a wider range of decisions made by Ofgem, and to consider in principle whether the duties and objectives can and should be the same for the Secretary of State where the exercise of relevant powers is subject to those same specific objectives and duties.

3.154 In the interests of transparency and to provide a broader sense of accountability for public bodies to the wider public currently and after any such review, it would be useful at a minimum for DECC and Ofgem to make publicly available a consolidated version of the statutory objectives and duties. Transparency could be increased by a recommendation to Ofgem and DECC to prepare and publish a consolidated version of the statutory objectives and duties applicable to them. Each body should be challenged to consider more appropriate ways to discuss their exercise of their functions, a point that is reflected in the CMA’s provisional finding as to a “lack of robustness and transparency in regulatory decision-making.”

Remedy 17 – Introduction of a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making can be addressed transparently

- (a) In which circumstance should Ofgem have the right or duty to express views on DECC’s policies and DECC/Ofgem strategy for their implementation? What format should such views take? Should DECC have a duty to formally respond?**
- (b) In what circumstances should Ofgem have the right to seek a formal direction from Ofgem to implement a certain policy?**
- (c) Would DECC’s formal direction undermine (or appear to undermine) Ofgem’s independence?**
- (d) Would other measures be effective in promoting the independence of regulation?**

3.155 Our initial view is that a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making can be addressed transparently is not appropriate as a remedy of the provisional finding that a combination of features of the energy market give rise to an AEC of lack of robustness and transparency in regulatory decision-making.¹³¹

3.156 Greater actual coordination, and transparency around how this manifests, could address any perception that certain situations or actions could have undermined or raised the perception of undermining Ofgem’s independence, which question was raised by Ofgem itself.¹³²

¹²⁹ Paragraph 11.63, Provisional Findings

¹³⁰ Paragraph 11.61 and 11.62, Provisional Findings.

¹³¹ Paragraph 11.86, Provisional Findings.

¹³² Paragraph 11.74, Provisional Findings.

- 3.157 Ofgem and DECC are working together to provide information and support for smaller market participants within the ambit of the Challenger Business Forum. The various papers for the Forum cover both high level principle, as well as a means of delivery, within the context of naming responsible officials. In this regard, we would suggest that, whether or not the draft Strategic Policy Statement is adopted or a new draft developed,¹³³ a similar practical approach document as between DECC and Ofgem, for wider policy and regulatory work, could usefully be adopted, taking a similar approach to that of the Challenger Business Forum, aiming overall at better coordination.
- 3.158 Alternatively, this could take the form of a Memorandum of Understanding (**MoU**) covering how Ofgem and DECC will work within their respective remits and where these meet, setting out best practice for handling this. Although not entirely analogous, there are examples of MoUs between public bodies, e.g. between the CMA and Ofcom, or (in the form of a letter of understanding) between Ofcom and the Information Commissioner's Office (**ICO**).¹³⁴ This could focus on specific issues, e.g. Ofcom has a joint action plan with ICO to address nuisance calls, which has been updated, providing a degree of transparency for industry and concerned consumers on their respective actions,¹³⁵ or be of more general application.

Remedy 18a – Recommendation to DECC to make code administration and/or implementation of code changes a licensable activity

- 3.159 We do not consider that making code administration and/or implementation of code changes a licensable activity would be an effective or proportionate remedy for those features of the wholesale markets that relate to industry governance and which give rise to an AEC through limiting innovation and preventing the energy market from keeping pace with technological developments.¹³⁶
- 3.160 We start by noting that - as mentioned in Section 2 above - First Utility does not have substantial experience in the governance for and change processes within the electricity codes, whether commercial or technical. This puts us, and other independent and smaller players in a similar position, at a disadvantage in providing constructive comments on and any effective alternatives to the package of remedies around codes. We possess neither the historical range nor the deep familiarity with the rules of the game that longer standing participants do. In our view, this is one of the aspects of change management that makes it harder for independent and smaller participants to make their voices heard within any change process.
- 3.161 We do not consider however, that the code administrators in general terms have added to the challenges facing smaller and independent participants. There are certainly instances where a lack of appropriate accountability and responsibility have contributed to some delay in change processes. Nor do we consider lack of consistency of itself to hamper change in general or specific change processes in particular.

¹³³ Paragraph 11.70, Provisional Findings.

¹³⁴ <http://www.ofcom.org.uk/about/how-ofcom-is-run/organisations-we-work-with/>

¹³⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/silentcalls/JAP_update.pdf

¹³⁶ Paragraph 11.161, Provisional Findings.

(a) Is this recommendation likely to result in a positive change in the initiation, development and/or implementation of code changes that pursue consumers' interests?

3.162 As noted in our response above, we do not see code administration being an issue as such. The codes themselves describe how the code administrator should carry out its duties. Our experience is that code administrators are effective in carrying out their duties, and that they are not a hindrance to the code change processes.

3.163 We would however like to see closer regulatory scrutiny of code compliance. Whilst a supplier not complying with an industry code is a breach of their supply licence, we do not see the regulator taking an active role with enforcing code breaches. Code administrators and companies such as Xoserve are reluctant to publish information that indicates that a supplier or shipper is in breach of a code, we would like to see an obligation on such organisations to raise a breach within a defined time period from them becoming aware of the breach. Our belief is that many code breaches lead to poor customer experience and the task and cost of resolving the issues often falls on new entrant suppliers that tend to be acquiring customers.

(b) Would this remedy be more effective if certain functions currently carried out by code panels and/or network owners (eg setting up working groups) were transferred to code administrators?

3.164 We do not consider that this remedy would be more effective. Code administrators currently deal with the actual setting up of the groups once approved, and provide governance and secretarial support, e.g. chairing the meetings, and publishing the minutes. We see this as working effectively and do not see any benefit to changing this.

(c) Would this remedy be more effective if Ofgem or DECC were to impose stricter requirements relating to the selection (eg competitive tender), financing and/or independence of code administrators (and/or delivery bodies)?

3.165 As mentioned previously, First Utility has not experienced issues with code administration. We see opportunity for code optimisation, for example a single code modification web-site that tracks all modifications and all modification work groups would give all parties a more holistic view of industry change and significantly reduce administrative costs.

Remedy 18b – Granting Ofgem more powers to project-manage and/or control timetable of the process of developing and/or implementing code changes

3.166 We do not consider that overall, Ofgem lacks powers to require specific industry change to be initiated and completed, subject to due process, policy consultation and formal change consultations (e.g. for licence modifications). A recent example is the imposition of the TRAS, where the outline of a scheme and the back-stop date was included in a licence modification. Subsequently, the industry has worked to put in place the elements required to meet the licence requirements by the defined date, including through joint procurement by the governance bodies of each of the Distribution and Use of System Code (**DCUSA**) and the Supply Point Administration Agreement (**SPAA**) of a service provider to develop and build the systems and provide the services that underpin the scheme. This licence modification and code change process did not arise through a Significant Code Review.

- 3.167 The TRAS scheme implementation is being project managed by Electralink. This is being undertaken through a separate commercial contract, meaning that whilst they remain the code administrators of both codes, this is a separate arrangement, with accountability provided through that contract, not as code administrator. The lessons from this process, and the tools acquired by code parties to manage it, including working to align the different change processes for the purpose, offer some useful lessons in what may be required for projects of this scale. The implementation date is 29th February 2016 so it is too early to say if the governance and project management arrangements have enabled the industry as a whole to meet its licence obligations. Also, these mechanisms were developed with the specific code processes, and the licence requirements, in mind and may not be the most relevant model or precedent in all cases.
- 3.168 In our view, TRAS utilised tools over and above those ordinarily called on for code changes. Current industry change processes were developed for incremental change. In our view, many large projects have been delayed because the industry attempts to use this incremental change methodology for large change projects such as Project Nexus. For example, workgroups for large projects conduct significant amounts of work only for the output of that work to be channelled through the modification process resulting in Nexus modifications taking years to be approved.
- 3.169 There is a balance to be struck between building substantial and costly programme management capability and being able to put in place the necessary building blocks for such management, tailored to the programme in question. We see this type of approach as being effective in managing projects where a license condition change was needed to create an appropriate sense of urgency amongst licensees.
- 3.170 Our view is that the AEC identified by the CMA is proportionately and effectively addressed by the development and implementation of a separate framework methodology for large-scale change, which does not impose one particular project or programme model on industry but enables the putting in place of governance, management, planning and other resources, in order to arrive at project or programme models appropriate to the matters to be addressed.¹³⁷

(a) Is this recommendation likely to result in a positive change in the development and/or implementation of code changes that pursue consumers' interests?

- 3.171 We do not think that this remedy would result in positive change in the development and/or implementation of code changes that pursue consumers' interests. Further, we do not think that Ofgem requires, or is necessarily the appropriate, body to have specific project-management powers for major industry change, nor that this would of itself address the issues and challenges faced by major change programmes across industry.
- 3.172 In a way, all industry change has an effect or impact on consumers, from small-scale process change, to major projects such as Project Nexus. We consider that the AEC could more

¹³⁷ We note that in gas, a modification on managing major industry change, UNC 0549, has been put forward.

proportionately be addressed by considering mechanisms for supporting increased consumer body participation in code change processes, on panels or other governance bodies.

(b) Would this undermine the principle (and effectiveness) of industry-led code changes?

3.173 As noted above, we do not consider that this remedy would be effective to address the AEC identified by the CMA. We consider that it would undermine the principle and effectiveness of industry-led change, albeit that as industry change includes large-sale projects, the necessary building blocks for programme and project management do need to be put in place.

(c) Should this power be limited to the completion of certain elements of the development or implementation phase (e.g. consultation, setting up working groups)?

3.174 We do not consider that giving Ofgem project-management powers would address the AEC identified by the CMA overall or for specific elements of the development or implementation phase.

3.175 However, an alternative approach, providing for a specific project and programme management building block, may be to consider project assurance and monitoring capability. For Project Nexus, this is currently being undertaken through a contractor retained by Ofgem, which contractor broadly reports to the Project Nexus Steering Group but remains contractually accountable to Ofgem. Ofgem already has powers to let contracts to meet its functions. We also consider that project assurance is more appropriately contracted for through Ofgem than through the industry. This enables the appropriate arms-length handling of industry data, the separate contractual accountability which provides a form of independence from industry and increases the likelihood of the contractor remaining sufficiently critical to exercise its own functions robustly vis the industry participants. Industry could in principle jointly procure such functions and manage the constraints around information handling but are not necessarily best placed to do so. In any event, this could not by definition be seen to be independent from industry.

3.176 It may also be useful to develop a form of “early life support” for after post “go-live” for major change projects. This could include continuation of an appropriate form of project assurance, with closer monitoring and a period where participants are assisted to full compliance, prior to any more formal enforcement action (whether through code governance bodies or otherwise).

(d) Should Ofgem’s ability to use this power be limited to defined circumstances (e.g. modification proposals which are relevant to Ofgem’s principal objectives) or should it be left to Ofgem’s discretion?

3.177 As stated previously, we do not consider that this proposed remedy would be effective in addressing the AEC identified by the CMA.

Remedy 18c – Appointment of an independent code adjudicator to determine which code changes should be adopted in the case of dispute

(a) Are there benefits in terms of independence, impartiality and/or industry know-how of an independent code adjudicator that are not available with Ofgem, given its other responsibilities, when undertaking the adjudicator role?

3.178 First Utility presumes that the CMA is considering the establishment of an independent code adjudicator such as the Groceries Code adjudicator, created following the 2009 market investigation into the supply of groceries in the UK, or the Pubs Code adjudicator. As experience with the Groceries Code adjudicator shows, adjudication works best where there is a clear framework and rules the interpretation of which is at issue. This means of dispute resolution would be useful for bilateral commercial disputes. We also consider that adjudication would be useful for areas of breach where the consequences have resulted in adverse commercial impacts on one or more parties. Enabling bilateral resolution would speed up resolution of such issues, create an independent and impartial means of addressing such issues and remove such concerns from code panels and code administrators. However, for code changes where differences of view, impact or best means of implementation a body in place of Ofgem does not appear to offer any benefits.

3.179 The project-management aspect of the remedy is, in our view, different: it would not in our view, sit well with the power to resolve a dispute as the functions are different.

3.180 A useful precedent for the energy sector may be the Office of the Telecommunications Adjudicator (**OTA2**). The OTA2 was created in a specific context and by agreement with a number of industry participants. The adjudication scheme, and the adjudicator's role, is set out in a Memorandum of Understanding.¹³⁸ The adjudicator is appointed by Ofcom, the industry regulator, by contract. The scheme of adjudication has similar aims to those arising from the AEC the remedy for which is being considered here – the faster and more efficient resolution of industry-wide change – but ultimately does not replace other formal routes for raising concerns. The OTA2 works within a defined regulatory framework, including general authorisations, market power conditions and the undertakings offered by British Telecom and accepted by Ofcom which led to the setting up of Openreach.

3.181 The adjudicator is well-known and well-regarded in the industry (supported by a small office) and “facilitates” cooperation between scheme participants, to help them “quickly reach substantial agreement on the specification of enhanced product functionality/processes and how new and enhanced product functionality/processes are to be implemented, thereby accelerating implementation within reasonable timescales and reducing the possibility of Formal Dispute Proceedings in circumstances where there are industry wide implications.”¹³⁹

3.182 As noted, the OTA2 does not displace formal dispute resolution routes: instead, it aims to help participants arrive at an agreed solution faster than through those routes, and one that works for

¹³⁸ <http://www.offta.org.uk/OTA2MemorandumOfUnderstanding2010.pdf>

¹³⁹ Ibid., paragraph 3.5.

all participants. Linking this type of role to the ability to impose requirements or issue a binding decision in a dispute would seem to us to conflict with a project-management or facilitation role.

(b) Would there be unintended consequences, arising for instance from an increased lack of coordination between code modification governance, licence modifications and legislation?

3.183 We think that there would likely be material unintended consequences, including those highlighted in the question, albeit that it is hard to say definitively given the lack of clear scope of this possible remedy. We would also reiterate that we do not consider an alternative body to Ofgem, which would either be able to exercise Ofgem's powers (so would, and should in our view, be subject to the same legal framework as Ofgem) or would be somehow separate, so potentially not as constrained in terms of due process, is appropriate or likely to be effective to address this AEC. The former would have the same public law and due process requirements as Ofgem and we struggle to see that this would lead to shorter timescales. The latter would not have such due process constraints, and here, we would be concerned that this would prevent full and appropriate consultation, including with consumer representatives. It is already challenging to ensure that the views of all participants are given and considered. A system that had fewer opportunities may lead to further sub-optimal outcomes.

3.184 We described above a possible approach to dealing with areas where industry participants may have different views but recognise the benefits of being assisted with coming to an agreed view, without displacing existing mechanisms. We would urge that further consideration be given to that or similar models, which are appropriately outside more formal processes but work with the grain of those processes.

3.185 As we noted in our response to the Updated Issues Statement, we had several initial thoughts to address the challenges faced by code participants. We reprise those below for ease of reference:

"[5.18] First Utility does have some initial thoughts on possible means to manage this complexity and assist all market participants in general and smaller participants in particular, as follows:

5.18.1 reconstituting the Cross-Codes Forum,¹⁴⁰ with wider and more active marketing of it to encourage greater participation (whether in person, by phone, etc.). Whilst there are issues and sensitivities around scope of work for each code body, it would be possible to establish a joint code bodies working arrangement, building on current cooperation, to support this forum. The forum could have as one of its stated aims to facilitate smaller participant engagement in all codes. This could manifest in the provision of information, teach-ins and specific assistance, pushing information to such participants in an appropriate form, and also pulling information from them for inclusion in ongoing modification processes. This could include, for example, for workgroups without any smaller participant representation, putting a questionnaire or giving homework to such

¹⁴⁰ This was managed by Elexon but there have been no meetings since October 2013 - <https://www.elexon.co.uk/group/crosscodes-electricity-forum-cccf/>

participants so their perspective can be obtained. Whilst the various consultation stages do allow this, the aim here would be to inject such input earlier in the process;

- 5.18.2 cross-code change pipeline management, which could be done through the Cross Code Forum or through a specifically constituted Change Body. The aim would be to canvass industry and policy-maker views on possible matters for change; change suggestions could be categorised into non-material, cross-code impacting, material, major or other appropriate categories, and the amount of change in each category assessed and grouped. The aim would be to pro-actively manage cross-code changes to best achieve timely resolution whilst managing the potential clash of major changes at the same time (or otherwise managing this). This could also help to feed in smaller participant views earlier in the process. For example, SPAA modifications, the consultation process, whilst a valuable check-point for gathering wider views, can raise significant matters that cause the modification to be reworked. This can lead to delay and inefficiencies in the process;
- 5.18.3 use of smaller market participant representatives in workgroups and adjusted voting - if representing other smaller suppliers, a representative can vote on their behalf in addition to their own or, where relevant, have any votes weighted or representation otherwise pro-rated by total market share of those being represented (which approach is more suited to governance, where a similar approach could be adopted for constituent representatives); and
- 5.18.4 a review of code governance bodies and the process, terms and conditions and frequency for contracting for them. The aim here would be to consider this contracting process as a means of encouraging other companies into the market with different experiences and viewpoints. There is always a trade-off between longevity and familiarity (where there is little or no cost to learning after a certain point) and promoting different approaches and widening the number of companies, and individuals, with experience of and familiarity with the codes, albeit with a potential initial cost uplift.
- 5.19 First Utility recognises that all the above initial thoughts would themselves have resource and time implications against which any benefits would need to be weighed. First Utility would welcome the chance to engage further with the CMA on these initial views and more generally on the codes.”