

COMPETITION AND MARKETS AUTHORITY ENERGY MARKET INVESTIGATION



Response to the Notice of Possible Remedies

5 August 2015

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INTRODUCTION

- 0.1 This submission is made by EDF Energy plc ("**EDF Energy**") on behalf of EDF Group companies. EDF Energy welcomes the opportunity to respond to the Competition and Markets Authority's ("**CMA**") Notice of possible remedies ("**Remedies Notice**"), dated 7 July 2015, as part of its market investigation in respect of the supply and acquisition of energy in Great Britain.
- 0.2 This response should be read in conjunction with EDF Energy's response to the CMA's Provisional Findings document. We have made this response as full as possible given the time available but note that it may be necessary and appropriate to make supplemental submissions on some specific areas.
- 0.3 As stated in our response to the Provisional Findings, it is our strong contention that the retail markets overall are competitive with a number of established companies and new entrants competing for all customers with many products and tariffs available. However, there are some specific features that give rise to an Adverse Effect on Competition ("**AEC**").
- 0.4 EDF Energy has long identified the issue of weak customer response and has advocated the need to address the concern throughout the market investigation and prior to it. It is the key feature of the domestic market that affects the competitive dynamic. We therefore agree that the retail market can be improved and the crucial element to ensure that there is a healthy market, now and in the future, is to increase customer engagement. EDF Energy wishes to see fully engaged and empowered customers making informed decisions with respect to their choice of tariff and supplier, within a trusted and trustworthy market.
- 0.5 It is with customer engagement in mind that we have considered the remedies proposed by the CMA. We have judged each remedy against whether it:
- Empowers customers to make choices;
 - Provides triggers for customers to engage;
 - Helps the customers it is intended to help; and
 - Encourages suppliers to compete and innovate.
- 0.6 When we consider the benefits, or otherwise, of the proposed remedies, we believe that this should be in the context of not just the market of today but also that of tomorrow. It is vital that the remedies take into account the increasingly rapid transition to a digital and low carbon energy industry.
- 0.7 EDF Energy believes that it essential that appropriate consideration is given by the CMA of the need to 'road test' many of the potential remedies before a final judgement is reached about whether to proceed with them, particularly those remedies that may directly impact customer engagement and behaviour. We would welcome the opportunity to work with the CMA to help design appropriate pilots and surveys, including potentially with our customers, to consider the effects of the proposed remedies. Robust testing will help to ensure that any final remedies are effective, reasonable and proportionate.
- 0.8 As a challenger that has been seeking to increase customer engagement and advocate change, we consider that most of the remedies proposed by the CMA meet the criteria set above. For ease of discussion, we will consider the remedies under three broad headings: domestic customers, microbusinesses and regulation.

Domestic customers

- 0.9 EDF Energy has shown that positive actions to influence customer behaviour and increase engagement can be successful, as demonstrated by the percentage of our customers on fixed-rate tariffs. While we broadly support many of the remedies proposed by the CMA, it is particularly with customer engagement in mind that we support a package consisting of Remedies 3, 5, 6, 9 and 10 for the domestic market.
- 0.10 To be able to demonstrate the success of the remedies, we believe that it is important to be able to define a suitable metric for measuring 'customer engagement'. As we have previously stated, switching supplier is not, and must not be, the only measure of competition in a market. We consider that customers who change tariff with the same supplier or who search, but who actively choose not to switch, are also engaged. The challenge for the CMA will be to set success criteria for any remedies proposed that reflects this range of engagement and which, in turn, will determine their duration. This is particularly the case for the transitional 'safeguard regulated tariff' and we comment further on this in our detailed response to Remedy 11.
- 0.11 EDF Energy supports the removal of the 'simpler choices' component of the Retail Market Review ("**RMR**") rules, as proposed under Remedy 3, as it will enable greater product innovation and help promote increased competition in the market. However, we recognise that more choice could potentially increase complexity for customers when choosing tariffs. We believe that there will therefore be a vital role for suppliers' comparison tools and Price Comparison Websites ("**PCWs**") to assist customers in making informed decisions. This will be complemented by industry-wide initiatives such as Midata and Quick Response ("**QR**") codes that will help empower customers to make these informed choices about products and services.
- 0.12 The roll-out of smart meters will also help improve customer engagement. We support the appropriate prioritisation of some customer groups, such as prepayment customers, in the roll-out programme if this can be done in an efficient manner i.e. one that does not add significant costs that negate any benefits from prioritisation. Any amendments to the programme must be properly considered to ensure that it is delivered in a way that minimises disruption to the existing timeline, does not add a disproportionate cost, and enhances trust overall.
- 0.13 The Ofgem independent price comparison service proposed under Remedy 6 should help customers engage with the market as it will reduce their search time and should also give them confidence that they have a view of the whole market. We believe that this should take the form of a non-transactional service so as not to damage the business models of PCWs and, additionally, to minimise the cost of provision. We also consider that telephone and face-to-face support provided by trusted partners, such as Citizens Advice, will be important features of the price comparison service.
- 0.14 EDF Energy's experience has demonstrated the importance of appropriate transparency and triggers in developing customer engagement, as exemplified by our "Blue+Price Promise", which provides an alert service to our customers if there are any deals available from our competitors which are on average more than £1 per week cheaper (at typical consumption). We consider that customers who have signed up to our Blue+ tariffs are making an informed choice with respect to switching. The transparency provided gives customers the assurance the tariff level is appropriate. If the gains become very large then we would expect more switching as a result. We therefore support Remedies 9 and 10 that seek to prompt customers to engage in the market by providing them with simple and relevant information to make an appropriate choice.

- 0.15 EDF Energy's view is that the transitional 'safeguard regulated tariff' proposed under Remedy 11 is a disproportionate intervention to the level of harm that the CMA has provisionally found. It has many design challenges and may have the unintended consequence of decreasing rather than increasing customer engagement. We also believe that the weaknesses in the CMA's profitability analysis, which underpins the assessment of the degree of harm and the CMA's provisional finding of Unilateral Market Power ("**UMP**"), are such that the implementation of a regulated tariff cannot be considered a proportionate remedy.
- 0.16 Furthermore, we are concerned that the transitional 'safeguard regulated tariff' would not complement the package of remedies that are aimed at increasing information and triggers to promote engagement, but rather will make those remedies less likely to be effective by decreasing the incentives for customers to engage in their choice of supplier or tariff. EDF Energy would welcome the opportunity to provide further support to the CMA's ongoing consideration of the rationale for the remedy and its design. In particular, we propose that important considerations include: the determination of the customers who should be protected by such a tariff, how the level of the tariff could be set so as to avoid significant competitive distortions, and crucially, what the criteria should be for determining that the transitional tariff is no longer required. It is our view that without such clarity there is a real risk that a transitional remedy could harm competition if it is set at the wrong level or if it is in place for too long.
- 0.17 In the Provisional Findings, we note that the CMA identifies a number of characteristics of customers who have the potential for the highest gains from switching supplier or tariff. These characteristics include households that are in rented accommodation, have annual incomes below £18,000 and those that are in receipt of a Warm Home Discount rebate. EDF Energy believes that these characteristics are highly relevant to the scope and design of remedies. In particular, if it is the CMA's intention for the proposed transitional 'safeguard regulated tariff' (and other remedies) to protect 'vulnerable' customers then it is necessary for this group to be clearly defined and easily identifiable for suppliers. We understand that this is not a straightforward task and would be happy to discuss this further with the CMA over the coming months. One option may be to define these customers as households that are in receipt of income-based benefits in a list provided by the Government. This should be similar to the list provided for those identified as the core group for the Warm Home Discount. However, given that in EDF Energy's experience a significant proportion of customers that may be identified as vulnerable will be engaged, it is important that appropriate opt-out provisions exist.

Microbusinesses

- 0.18 EDF Energy believes that the package of proposed remedies for microbusinesses represents a significant step forward for the microbusiness market in terms of transparency, ease of price comparison and prompts for engagement.
- 0.19 As with our domestic customers, we have demonstrated that it is possible to engage microbusiness customers in the current market as evidenced by the percentage of our customers on fixed-price products (and on our alternative 'Freedom' product for our smaller customers). We therefore, in particular, support a package consisting of Remedies 6, 7a, 7b, 8, 9 and 10 that will help increase engagement among microbusinesses.
- 0.20 A clearly agreed and simple, standard definition of the term "microbusiness" will be an important first step in the design of these remedies. We propose that the current Ofgem definition is simplified to cover only business customers of up to five sites¹, with profile class 3

¹ There will generally be one metering point per fuel type for a business site / business premise.

and 4² electricity meters and gas demand below that where Automated Meter Reading (“**AMR**”) meters are mandated (i.e. with gas meter capacity below 11 cubic meters per hour). All other criteria from the current Ofgem definition should be removed. We comment further on this in our detailed response to remedy 7a. A clear definition is vital as it will influence the assessment of the proportionality of any proposed remedies, as well as clarify the outcomes sought, as these will vary by consumption banding and the proportion of total costs that a business spends on energy. Our responses in the main body of the text with respect to microbusinesses are based on electricity customers, but also relate to gas customers except where explicitly stated otherwise.

- 0.21 It is our experience that more widespread use of targeted triggers, as proposed under Remedies 9 and 10, with clear, simple information for customers will help improve customer engagement. However, we would highlight that the starting point in the microbusiness market is not the same as for domestic customers as price transparency currently does not widely exist. Therefore the introduction of greater transparency in the form of published prices and the development of PCWs is likely to have significant impact on both customer engagement by reducing search costs for time-poor customers and by giving them confidence that they are making an appropriate choice. Furthermore, PCWs are not prevalent and so Remedy 7a should enable their development.
- 0.22 In order to encourage the existence of commercial PCWs, it is important that the Ofgem independent price comparison service proposed under Remedy 6 is not transactional but simply provides a view of the market together with support for customers during the switching process. Due to the more complex nature of Small and Medium Enterprise (“**SME**”) prices, some of which are bespoke and subject to bilateral negotiation, it will not be practical or appropriate for this to be a whole market view. However, we believe it will be appropriate for customers that fall within our proposed revised definition of “microbusiness”. It should be noted that the largest proportion of disengaged customers are those with very low levels of consumption and who consequently have low energy bills. The potential savings for these customers are small, with around [3<] % of our customers having an annual bill of less than £[3<] – much lower than many domestic customers. Therefore it is reasonable to predict that such customers may still choose not to engage, even with the development of PCWs.
- 0.23 Third Party Intermediaries (“**TPIs**”) are active market participants for larger microbusiness customers and can provide a valuable service. We support Remedy 7b as it will bring greater transparency to the behaviour of TPIs and enable customers to achieve consistent outcomes regardless of which channel they choose to engage through. TPIs must be subject to the same direct principles-based regulation as suppliers, requiring them to treat customers fairly and transparently, to ensure a level playing field for competition. This would benefit all non-domestic customers. In order to establish trust, it is essential that TPIs and PCWs are licensed by Ofgem in the future, and are subject to the same Standards of Conduct expected of suppliers with respect to acting in the best interest of customers. While a suitable licensing regime is being established, we support the establishment of an agreed Code of Practice for TPIs and strengthening the requirements for PCWs to be accredited under the existing Confidence Code as an interim step only.
- 0.24 The same concerns expressed above regarding Remedy 11 for domestic customers also apply for microbusinesses. We would highlight that there is already a licence condition requiring that ‘Deemed’ prices are “not unduly onerous” under Standard Licence Condition (“**SLC**”) 7. The application of this license condition through more explicit guidance would be a proportionate remedy.

² ‘Profile class’ is defined by Elexon as “a classification of profiles which represents an exclusive category of customers whose Consumption can be reasonably be approximated to a common profile for Settlements purposes”.

Regulation

- 0.25 EDF Energy broadly supports the package of remedies proposed in relation to the regulatory framework governing domestic and SME retail energy markets, and in general we support those initiatives that increase transparency with respect to both the operation of the market, such as the allocation of Contracts for Difference ("**CfDs**"), and the wider regulatory decision-making in the industry. In the specific case of transmission losses, we recommend updating the analysis of the potential impacts of introducing locational pricing to determine whether there are realisable customer benefits in practice.
- 0.26 We support effective regulation of the energy market and welcome remedies that enhance the strength and the independence (including political) of Ofgem. We see a vital role for Ofgem to provide independent, robust and trusted information on the operation of markets, including communication on prices, costs, profits and associated drivers and trends.
- 0.27 Improving public trust in the energy market is mainly the responsibility of the energy companies but effective communication by the regulator has an important role to play. In particular, it will help to counter the development of false or misleading narratives that limit the quality of public debate and policy decision making, which we discuss further in our response to Remedy 15. However, for Ofgem to fully undertake such a role it must be able to act and publically express its views independent of the Government, including providing its own view of the cost impacts of Government policies, and therefore we have some concerns regarding Remedy 17.
- 0.28 We agree that there is merit in improving the governance of industry codes but, in contrast to the proposal in Remedy 18b, support an approach where the code change process remains the responsibility of the industry and Code administrators. While Ofgem should have more control over the change process, we do not believe that it should have the power to be overly prescriptive about the timetable or drafting of specific modifications as this will not necessarily improve the end result of codes. The experience of Significant Code Reviews ("**SCRs**") demonstrates that industry input to these processes is valuable and ensures that Ofgem's proposals can be turned into workable solutions.

EDF ENERGY'S RESPONSE TO THE POSSIBLE REMEDIES

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

- 1.1 EDF Energy considers that the empirical evidence to support the finding of an AEC needs updating to ensure such a conclusion is robust. This is essential given that any change is likely to have material distributional effects, both between existing generators and between customers. Subject to this, we provide the following points on the proposed remedy.

Specific questions

(a) What would be an appropriate method for ensuring that variable transmission losses are priced on the basis of location?

- 1.2 The right balance needs to be struck between the predictability of loss factors and their cost reflectivity. We are concerned that the solution advocated in the code modification proposal P229 (i.e. to introduce a seasonal zonal transmission losses scheme) may not be robust to the generation mix that we have today, and expect to have in the future. It is important that the loss factors are accurate enough to reflect actual losses given the changes to the generation mix and the impact that wind, and increasingly solar generation, have on transmission losses. A historic assessment of losses, for example based on last year's data, may not be representative of the loss factors for the current year, even on a seasonal basis. This is down to the current pace of new plant additions to the grid impacting historic data, and also the level of weather dependency of today's generation mix. We would highlight that it may not be possible to get a sufficiently accurate view of expected generation and net demand patterns on a particular day until quite near to real time.
- 1.3 Having factors that are only known near real time will create challenges to market participants in ensuring that they can respond to this information in their trading and dispatch decisions, and may in some cases impact their willingness to trade ahead. This may reduce liquidity and bring volatility to near term prices and increase risk particularly for smaller parties.
- 1.4 Alternatively, fixing loss factors well ahead of time provides market participants with certainty, and allows them to respond to these signals and limit unpredictable risks to their cash flow. However, it is likely that the loss factors will be inaccurate for any given outturn circumstance as they will depend heavily on whether intermittent plant is running or not. Therefore the technical efficiency expected from providing these signals through locational factors to parties is likely to be sub-optimal.
- 1.5 EDF Energy recommends that further modelling is undertaken to assess the right balance that should be struck to achieve the most benefit from such a remedy.

(b) How should the variable transmission losses be allocated between generators and suppliers?

i) Is the 45-55 split appropriate or could efficiency be improved further by changing this allocation?

- 1.6 It is our view that up-to-date modelling needs to be undertaken to form a view on the specific elements of the remedy. We note that the current allocation is based on a 50:50 split in principle between delivery to the transmission system and offtake from it; this is then adjusted slightly to take account of losses due to the metering locations for offtake. Our initial view is that given

both generators and suppliers (representing customer demand) contribute to the loss over the transmission system, a simple allocation between delivery and offtake appears fair and reflects costs appropriately. EDF Energy is not aware of any evidence suggesting that a change in the allocation would bring greater economic efficiency.

(c) What will be the distributional impacts of this remedy? Should the CMA take these into account in coming to a view on the proportionality of this remedy?

1.7 EDF Energy believes that it is first important to establish a clear view of the benefits under a credible range of scenarios. As noted above, this will require updated modelling. In addition, the specific details of how the remedy would work need to be known and optimised. It is then important to assess the scale of the distributional effects relative to the scale and certainty of the expected benefits. It is imperative that the benefits case is strong as the scale of the distributional effects is likely to be large and potentially uneven. It could have a significant effect on the financial positions of existing market participants and so affect historic and future investment decisions.

(d) Should the CMA implement this remedy directly, i.e. via an order, or should it make a recommendation to Ofgem to initiate a BSC modification instead? Are there particular aspects of Ofgem's objectives and duties to which the CMA should have regard if implementing this remedy by licence change?

1.8 We believe that such a change should go through the normal Balancing and Settlements Code ("BSC") modification process to avoid parallel processes being developed. Our overriding point is that whatever the route, it is important that relevant experts including industry parties and National Grid are given the opportunity to support the detailed assessment and development of such a change. As noted above the detailed design of this remedy will be very important to ensure that modelled benefits are achieved in practice.

Remedy 2a - DECC to undertake and consult on a clear and thorough impact assessment before awarding any CfD outside the CfD auction mechanism

2.1 EDF Energy supports this remedy. We agree that, wherever possible, competitive auctions are the best way of ensuring efficient allocation of CfDs and securing good value for customers.

2.2 We note that there are occasions where there is not sufficient competition to enable an appropriate competitive allocation process. Other mechanisms may therefore be required to encourage low carbon investment including via a bilateral process, as long as it is properly assessed. We welcome the recognition of this point by the CMA in its Provisional Findings:

5.211. We recognise that certain projects may be unable to compete in CfD auctions, and bilateral negotiations between DECC and the parties may be the only way of securing investment in these projects. For example, some projects (such as Hinkley Point C) have asset lives considerably longer than those competing in the CfD auctions, potentially making them unsuitable to compete in standard CfD auctions.

2.3 EDF Energy welcomes the CMA's view that DECC should undertake and consult on a clear and thorough impact assessment, to support the case for a CfD outside the CfD auction mechanism. EDF Energy looks forward to working with DECC to ensure that the impact assessment is well defined, ensuring that it is clear and thorough for all stakeholders.

2.4 When allocating CfDs outside of the auction allocation process, it is of vital importance that the project under assessment is carefully considered from a value for money perspective. This should ensure that the project can demonstrate not only that the benefits of proceeding outweigh the

costs, but also that the proposed CfD award is the most desirable in terms of the ratio of benefits to costs among the different options considered.

- 2.5 EDF Energy has been involved in such a process in its bilateral negotiations for a CfD for its planned nuclear power station, Hinkley Point C (“HPC”). The agreement on key commercial terms between EDF Group and the UK Government in October 2013 was subject to a rigorous scrutiny of cost estimates and had a strong focus on securing value for money for customers.
- 2.6 EDF Energy would highlight that the European Commission, in its HPC State aid decision document³, stated that “the selection procedure used by the UK to identify a suitable CfD contractor for new nuclear investments was based on a clear, transparent and non-discriminatory framework, which can be considered equivalent to a tendering procedure in terms of transparency and non-discrimination”.
- 2.7 We believe that DECC, when developing any future impact assessments for CfD allocation outside the auction process, should consider the extensive process undergone by the HPC project.

Specific questions

(a) Would the remedy ensure that CfDs that are allocated outside the auction mechanism are awarded only when the benefits of doing so outweigh the costs?

- 2.8 EDF Energy agrees that for those occasions where it is not possible to allocate a CfD through the auction mechanism, that there should be a rigorous process to determine whether a project should proceed and whether the CfD strike price awarded is appropriate.
- 2.9 We welcome the CMA’s proposed remedy that an impact assessment would help to ensure that a CfD will only be awarded when the benefits of doing so outweigh the costs. Such a process can further build upon DECC’s existing process of determining whether a project should be awarded a CfD outside of the auction mechanism, and will also offer further transparency to the process that DECC undertakes to make its final award decision.
- 2.10 DECC has previously worked through a successful and stringent process with respect to the HPC project to ensure that the CfD strike price was appropriate (and which subsequently received State aid approval from the European Commission as noted above). Therefore, DECC has shown that it is able to ensure that CfDs are allocated when the benefits of doing so outweigh the costs. Having a clearly defined process for CfD allocation outside of the auction mechanism means that such CfDs can be allocated efficiently and quickly when appropriate.

(b) How much discretion should DECC retain in terms of the weight it places on each factor that it takes into account in coming to a decision on which projects to award CfDs outside the CfD auction mechanism? Should DECC be required to consult on and determine these factors and their relative importance in advance to enhance transparency? Should the weighting of each factor be constant across projects?

- 2.11 The decision to award a CfD outside of the CfD auction mechanism is at the discretion of DECC, subject to the approval of the European Commission. We therefore believe the decision on the weight that DECC places on each factor should ultimately be decided by it, within the overarching objective of delivering the best overall value for customers.
- 2.12 That being said, transparency is important, so that stakeholders can understand how a decision has been made and are able to confirm that the project under assessment is being awarded a CfD at a fair strike price. However, we would note that particularly as CfDs are expected to be

³ Paragraph 364, Commission decision of 8.10.2014 on the Aid Measure SA 34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for Support to the Hinkley Point C Nuclear Power Station

awarded at early stages in the development of projects, data submitted is likely to be commercially sensitive. Any process must therefore ensure that an appropriate level of commercial confidentiality is maintained at all times.

2.13 In developing this process, the Government should consult publicly to ensure that the different factors and their respective weightings are appropriate. It should also be able to justify why different weightings have been used for different or specific projects.

(c) In which, exceptional circumstances should DECC be able to allocate CfDs outside the auction process? For example, for reasons of industrial policy, where there are wider market failures, or where there may be insufficient competitors to hold an auction?

2.14 EDF Energy agrees that, wherever possible, competitive auctions are the best way of ensuring efficient allocation of CfDs and securing good value for customers. However, with the CfD scheme still a fairly new process, it is foreseeable that the Government could have reasons to allocate CfDs outside of the auction process in pursuit of the overall objectives of the CfD scheme.

2.15 Since the inception of Electricity Market Reform (“**EMR**”) there have been two different cases where projects have not participated in an auction process: HPC and the Final Investment Decision enabling for Renewables (“**FIDeR**”) process. The rationale for HPC is outlined above, and we discuss the FIDeR process in more detail in our response to the Provisional Findings. We note here that the FIDeR process that resulted in CfDs being awarded to a number of projects at the same time, but outside of a fully competitive auction, was specifically put in place as part of the initial introduction of EMR and we would not expect such a process to take place again in the future.

2.16 In our view, the exceptional circumstances where CfDs should be considered outside of the auction process include where:

- **The new build market is not mature** i.e. other competing projects are much less advanced and a shift to competitive auctions could stymie development.
- **Cost and timing uncertainty is highly linked to the immaturity of the market** such that developers would face significant development costs to reach the point to be able to bid. The current bilateral process with the Government provides greater clarity and certainty to support a fledgling industry towards its “first-of-a-kind” project. Feedback can be provided immediately to avoid large development losses for the project developer where indicative costs are judged too high by the Government.
- **Differences in existing project statuses are material**, with respect to their design, planning, consenting and consultation. This is important when the number of potential projects in a category is small. Any attempt to delay auctions to allow different projects to compete would likely halt leading projects, and so unduly increase their development costs.
- **Differences in site-specific costs are material.** In this way, the result of a given auction may be predictable, placing little competitive pressure on a cheaper site but halting the development of a more expensive, but necessary, site.

2.17 We note that in the long term it may be appropriate to introduce competitive auctions or tenders for the development of project categories which have previously been awarded CfDs outside of the auction process.

Remedy 2b - DECC to undertake and consult on a clear and thorough assessment before allocating technologies between pots and the CfD budget to the different pots

2.18 EDF Energy supports this remedy and welcomes the statement by the CMA in the Provisional Findings that:

5.224. We recognise that the long-run lowest cost path to meeting the government's decarbonisation targets may be to protect certain less developed technologies from competition in the short run, in order to enable them to reduce their costs over time.

2.19 In the long term, in the view of EDF Energy, all low carbon technologies should compete directly with each other, underpinned by a robust carbon price. However, at present there are a number of "less established" technologies with higher costs, but with real potential to reduce costs substantially with time.

2.20 We have previously expressed our view that the Government has struck a reasonable balance in deciding to split the CfD budget into different pots. This approach ensures that the less established technologies are able to receive support, which may not be possible without the protection of separate budgets. In the long term, this support for a diverse set of low carbon technologies should have the overall effect of increasing the level of innovation and enhancing competition. It is also of note that, even within the less established category, projects are exposed to competition for CfDs in that pot.

2.21 We also note that this approach avoids the possibility of excessive rewards to established technologies if they were to receive prices set by more expensive less established technologies in the auction process.

(a) Would the remedy ensure that future decisions by DECC on the allocation of technologies and the CfD budget to the different pots are taken in a robust and transparent manner?

2.22 This remedy recognises that there can be a need for separating technologies in the auction process and EDF Energy would agree that this is the case. We also agree that a clear and thorough assessment is appropriate to underpin the specific allocation of technologies in each auction. A clear understanding of the factors that underlie the need for different auction pots will result in an effective basis for this assessment.

2.23 In principle, we agree that the remedy should ensure that future decisions are taken in a robust and transparent manner. However, for this outcome to be delivered in practice, the details of the assessment will need to be carefully designed to ensure that all relevant factors are taken into account. We identify some of these factors in our response below.

2.24 In addition, the process for the allocation assessment will need to ensure that DECC does implement the outcome of the assessment, or provides clear reasons when different outcomes are selected.

2.25 The assessment should ensure that:

- Technologies that are not demonstrating significant progress do not retain elevated levels of support and funding indefinitely;
- Technologies that do progress are moved into the more competitive pot at an appropriate time;
- There are clear incentives for progress for each technology;
- A technology is not excluded from support simply because the current cost is high;
- Equally, a technology does not remain included automatically, but must demonstrate progress for continued support, even if remaining in the same pot; and
- The assessment process strikes a balance between these competing drivers.

(b) Is the remedy likely to result in a positive change in how DECC makes decisions regarding the allocation of the CfD budget to the different pots?

2.26 EDF Energy believes that this remedy is likely to result in a positive change to allocation decision-making if the proposed allocation assessment includes all the essential factors for this decision (with appropriate weightings applied), and DECC implements the outcome of the assessments consistently.

2.27 We recommend that the process for allocation to different auction pots takes account of the following factors:

- Long-term potential for large scale deployment at competitive cost;
- Magnitude of the potential total low carbon generation that the technology could deliver in the UK;
- Progress in cost reduction delivered to date, taking account of the period of deployment to date and the scale of deployment to date;
- Contribution of the technology to diversity of supply;
- Reliability and level of intermittency of the technology;
- Consequent changes necessary to the overall electricity supply system due to the large scale deployment of the technology, including backup generation and grid reinforcement; and
- Level of development of an established supply chain.

2.28 This should ensure that CfDs are allocated in a way that targets the decarbonisation of GB electricity generation at the lowest long-term cost. In our view, it is essential that “best value” for CfD allocation is judged over the long term.

(c) How regularly should DECC review the allocation of technologies between pots? What information should DECC publish when deciding to amend the allocation of technologies between pots? Should it also on a regular basis consult and/or publish reasons for not amending the allocation of technologies between pots?

2.29 DECC should review the allocation of technologies prior to every auction, although the level of review required will depend on the level of change in circumstances since the previous review. We consider that DECC should be able to apply judgement in deciding on the scope and scale of each review.

2.30 The information to be published when amending the allocation should include the factors outlined in 2.27 for a technology that is proposed to be moved, together with an explanation of why the technology has now met the overall threshold for a move.

2.31 Every review should involve stakeholder consultation, to ensure that DECC has access to all relevant data and factors. As long as this review consultation is carried out, and the conclusions of it are published, there would be no need to separately consult or publish reasons for not amending the allocation of technologies between pots. Such notification would be delivered by the routine pre-auction review and would report whether there were changes or not.

(d) Should DECC be limited in the maximum proportion of the CfD budget that it can allocate to each of the different pots?

2.32 No, there should be no pre-set limits on the maximum proportion of the CfD budget that DECC can allocate to each of the different pots.

2.33 While it is unlikely that a very strong bias in funding towards only one pot would be the most cost-effective approach in the long term, equally it is not possible to determine in advance what the appropriate mix of technologies to be supported will be in any given auction. As a result, we would consider any pre-set limits to be arbitrary.

- 2.34 If the process and factors set out in our previous answers are applied, then the reasons for any substantial disparities in allocation to pots should be clear and evident to stakeholders.

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

- 3.1 EDF Energy supports the simplification of choice for customers as a means of empowering them. We originally supported Ofgem's 'four-tariff rule' and the move to all tariffs consisting of a standing charge and unit rate. This is because we recognised that customers were finding both the number and structure of tariffs to be confusing, and this was inhibiting engagement. Simplifying tariffs for customers was therefore a key priority at the time. However, we agree with those, including Ofgem, who have more recently said that the four-tariff rule is not the best way to encourage innovation and simplicity for customers going forward. We therefore support this remedy as it will allow greater commercial flexibility and promote competition between suppliers to develop more innovative tariffs that are better suited to customers' needs both now and in the future.
- 3.2 Allowing suppliers the flexibility to offer different tariffs on each PCW, as well as on suppliers' own websites, should lead to increased competition, both between PCWs and between PCWs and suppliers.
- 3.3 It is important to recognise that the implementation of this remedy is likely to lead to a proliferation of tariff choices (with some having potentially complex structures). This could make it more difficult for customers to choose the right tariff for them without the appropriate customer tools and advice. There is a high risk that, without mitigating measures or tools, customers could be confounded by too much complexity, and which may have the perverse effect of reducing engagement and switching. This outcome is similar to the problem that the 'simpler choices' component of RMR was originally designed to solve. There was much evidence presented around the time of RMR that some consumers felt that they had made poor tariff decisions in the past and that this was stopping them re-engaging with the market.
- 3.4 The challenge of complexity can be addressed, or at least reduced, if customers have access to appropriate comparison tools together with knowledge of their consumption so that they are easily able to compare tariffs. An increase in competition should encourage the development of effective comparison tools by PCWs and suppliers. The proposed Ofgem independent price comparison service under Remedy 6 will reduce the search time for customers and should also give them confidence that they have a view of the whole market. In addition, the introduction of Midata and QR codes will make it easier for customers to access their consumption data. This is essential when comparing the annual cost of tariffs with different structures.
- 3.5 EDF Energy is also concerned that there may be potential for some suppliers to design tariffs that deliberately confuse customers, as may have been the case prior to the introduction of the 'simpler choices' component of RMR. We believe that Ofgem should apply Standards of Conduct to ensure that such behaviour does not occur.
- 3.6 EDF Energy is aware that not all customers will be able to engage easily with a more complex market. A significant proportion of these customers may be vulnerable (with the characteristics the CMA identifies in paragraph 8.25 of the Provisional Findings) and it is important that their needs are considered when developing solutions. We consider the issue of vulnerable customers further in our response to Remedies 10 and 11.
- 3.7 We consider that there are two main approaches to assist those customers who are currently less engaged in making a choice about their energy tariff or supplier. The first is to help them to engage more effectively with the energy market, the alternative is to remove them from the

market through a separate, dedicated tariff. Our strong preference is to help such customers engage in the market not least because we have seen significant take up of our fixed-rate tariffs, including by 'vulnerable' customers, by proactively engaging with our customers (see our response to Remedy 10).

- 3.8 Telephone and face-to-face support are important features of the Ofgem independent price comparison service proposed under Remedy 6, and will be particularly important for those customers that may find it difficult to engage with the new, more complex market. These services could be provided most effectively if Ofgem were to work with trusted partners such as Citizens Advice.
- 3.9 A critical issue in being able to help such customers to engage is to identify those who might find it more difficult and therefore be less likely to do so. The CMA customer survey results suggest that those who have low incomes, have low qualifications, are living in rented accommodation or who are over 65 are less likely to be engaged in the domestic retail energy markets against a variety of indicators of engagement. We believe that consideration should be given to which agencies, together with the Government, could help identify such customers, and potentially to support them to engage in the market. Given the characteristics identified by the CMA, these could, for example, include Housing Associations and Age UK. This could be by way of the CMA making a recommendation, as part of its remedies package, to such organisations that they raise the issue of switching tariff and supplier – potentially triggered by the receipt of communication as we envisage in Remedy 9.

Specific questions

(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?

- 3.10 EDF Energy has interpreted this remedy to mean allowing suppliers to offer as many tariffs as they like and to structure the pricing of them as they wish. We agree that this remedy would help create competition between suppliers and PCWs, both of which are competing for the relationship with the customer, and also between PCWs given that there will be incentives for PCWs to decrease their commission rates. We believe that there is currently limited price competition between PCWs due to the limitation on the number of tariffs. This remedy would allow price differentiation between PCWs and also enable suppliers to create tailored offerings for customers.
- 3.11 It is important that in solving the problem of too little scope for innovation that we do not recreate previous issues with the unintended effect of reducing customer engagement. Prior to the introduction of RMR, we note that some suppliers designed tariffs employing knowledge of customers' behavioural tendencies in order to influence their choices. These included cashback deals where the incentive of upfront cash influenced customers to choose a tariff which was more expensive than others over its term. Other tariffs offered discounts where customers were attracted by a high initial discount but where, at a future point, this discount was reduced without customers being informed of the change through clear communication.
- 3.12 EDF Energy does not believe that such tariffs should be prohibited. Instead supplier behaviour should be governed by Ofgem through Standards of Conduct (which did not exist pre-RMR) to ensure that customers are able to fully understand the terms and conditions of any tariff that they choose.
- 3.13 Increased competition should encourage the development of effective comparison tools by PCWs and suppliers. The Ofgem independent price comparison service proposed under Remedy 6 will reduce the search time for customers and should also give them confidence that they have a

view of the whole market. In addition, the introduction of Midata and QR codes will make it easier for customers to access their consumption data. This is essential when comparing the annual cost of tariffs with different structures.

- 3.14 EDF Energy would expect to see the re-emergence of some of the types of tariff that were available before the RMR restrictions were in place if the current tariff restrictions are removed. These may include 'green' tariffs, tariffs targeted at specific groups of customers (e.g. vulnerable) and other niche offers including tracker tariffs.

(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?

- 3.15 The introduction of an independent, information-only price comparison service as described in Remedy 6 could act as a meta-PCW providing a whole market view. Links on this website could direct the customer to the supplier or PCW where the actual switch could be carried out, thereby encouraging competition between PCWs and suppliers.

- 3.16 In addition, EDF Energy proposes there should be clear wording on commercial PCWs to explain to consumers that they are not necessarily seeing a definitive total view of the market (if that is the case) and providing a link, or directing them to, the independent price comparison service.

- 3.17 As discussed in our response to Remedy 9, we would highlight that the implementation of Remedy 3 would require regulation around Cheaper Tariff Messaging to be removed as it would no longer be practical or helpful for customers due to the increased number of available tariffs and likely frequency of changes.

(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?

- 3.18 EDF Energy considers that suppliers should not continue to be responsible for the compliance of PCWs with regulations. In our view, PCWs must be licensed by Ofgem in the future but we recognise that as an interim step that strengthening of requirements for PCWs to be accredited under the existing Confidence Code would go some way towards achieving the same outcome.

- 3.19 We agree that the Ofgem Confidence Code requirement for PCWs to provide coverage of the whole market should be removed as part of this remedy. To maintain transparency and trust, all PCWs should be accredited to the Confidence Code and be subject to direct regulation or Standards of Conduct so that consumers know that they can be trusted. PCWs should clearly state if they are not providing a whole market view and show which suppliers are paying them a commission. This should be made clear to consumers switching through the site and in any marketing communications sent by the PCW.

(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?

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?

3.20 Given the number of suppliers currently in the market, the four-tariff rule results in approximately 100 potential choices for a customer for a given payment method and meter type. The four-tariff rule is therefore limited as an effective means of simplifying the comparison process and should be removed.

3.21 There should be no limit to the permitted tariff structures as we believe that any number chosen is likely to be arbitrary and could stifle innovation. Instead, it is important that Standards of Conduct are in place to ensure customers are not deliberately misled and make poor decisions as a result.

3.22 Given the number of potential tariffs in the market and the ability to have structures which allow for features such as cashback and tiered rates, single unit rate pricing becomes less effective as a comparison tool for customers.

3.23 We would highlight that the complete removal of a standing charge would, under current rules, also disproportionately benefit customers with domestic generation such as solar panels as their contribution to network costs would reduce relative to other customers, even though they are dependent on the network capacity and infrastructure in the same way as customers without domestic generation.

3.24 We therefore consider it is more useful to focus on customers having access to the appropriate tools and data to allow them to make accurate comparisons between different tariff types.

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

4.1 EDF Energy supports measures to overcome barriers to customer engagement. We agree that the roll-out of smart meters, faster switching and Midata will make it easier for customers to engage confidently in the market.

4.2 However, the industry changes required to deliver next day switching are complex and costly at a time when the industry is already managing the significant cost and complexity of smart meter implementation. We recommend that the CMA carefully consider the benefits versus costs of faster switching (e.g. 48 or 72 hours) versus next day switching (24 hours). This is because we believe that the majority of benefits to customers could be achieved by the former without incurring the more costly changes that would be required under next day switching.

4.3 EDF Energy also believes there needs to be more defined rules and guidance around the use of Smart consumption data. It is our view that customers should be protected from any potential risks that may arise from giving third parties access to ongoing personal consumption data that may not be apparent when initially asked for permission.

Specific questions

(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?

4.4 Uncertified meters largely result from customers refusing access to a property, a technical inability to replace the meter e.g. due to obstructions or lack of space, or the performance of a supplier with respect to its recertification programme. We believe that the smart meter roll-out will create a strong incentive for suppliers to deploy within the regulated timeframes which will reduce the scale of the issue. We do not believe the current issue is material enough to require remedial action.

(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?

4.5 EDF Energy considers that the roll-out of smart meters will help eliminate the barriers to switching associated with the radio teleswitching system. With smart metering, suppliers will have the ability to switch customers' (generally heating) load with greater flexibility than the system currently operated by Distribution Network Operators ("DNOs"), and will be able to offer customers a greater choice of tariff and load-switching arrangements that better meet their needs. This development will be subject to the necessary improvements to the settlements system referred to in Remedy 13.

(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?**

4.6 EDF Energy has no objection to PCWs being given access to the ECOES database to allow them to facilitate the switching process. We support measures such as this which allow issues to be identified at an early point and which will therefore help to reduce the rate of cancellations once the switching process is initiated. However, we estimate that only around [3<] % of all the applications that we receive from PCWs suffer from a meter number error or other data issue. Therefore, while we agree it would be in the mutual interest of suppliers and PCWs for PCWs to be able to check this information at source, we do not believe that the benefit would be significant. Restrictions on the use of the data would have to be enforced so that only the checking of information on customer initiated switches was allowed.

(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?

4.7 EDF Energy agrees that there should be penalties for firms that perform poorly in this area, and this could be administered by Ofgem. However, it would first be important to establish where the fault arose from. We believe that it would be overly-simplistic to argue that the acquiring supplier was always at fault or vice-versa, as that could affect supplier incentives to resolve erroneous switches. While we do not object to customers receiving the penalty as compensation in principle, we are concerned that this may be difficult to implement in practice and so further consideration would need to be given to this.

(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?

4.8 We anticipate that there would be no change to the general consumer law requirements for a cooling off period. This means that the supplier losing the customer would need to keep the tariff open for the customer to return to if he or she exercised the right to cancel the request to switch. We therefore do not see that delaying the charging of exit fees affects the need for a cooling off period.

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

4.9 EDF Energy does not believe that any specific measures are required - the account holder should have same ability to choose and switch their supplier. EDF Energy understands that some customers living in rented accommodation believe that they cannot switch because of clauses in their tenancy agreements but this issue should be tackled directly with landlords and their tenants, rather than imposing requirements on suppliers. This could be by way of the CMA making a recommendation to the Government that such clauses in tenancy agreements be prohibited.

(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?

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

4.10 EDF Energy fully supports Midata and believes it will help overcome barriers to switching. However, we do have concerns over the management of third party access to data handled by the Data Communications Company (“DCC”). This is especially the case with consumption data as there are potentially serious privacy and safety implications. We are concerned that customers may not understand what they are being asked for permission to share and the implications of doing so. For example, ongoing access to consumption data could show when the customer is present at home or not. EDF Energy believes there needs to be more defined rules around the use of smart consumption data. Third parties should only obtain permission to look at previous consumption data when instigated by the consumer and permission should not be granted for further ongoing access to data by the third party without each time being prompted by the customer. Also, in order to control ownership of the DCC data, we believe that the data should not be able to be sold on by one entity to another without direct permission from the customer.

4.11 EDF Energy does not believe information, guidance or messaging should be too onerous for customers. However, we do believe that a basic level of information should be given, including on functionality that should be common between suppliers and that should not be impacted by switching. Smart Energy GB (“SEGB”) has been set up by suppliers to support engagement and would be an appropriate channel to ensure that customers, including vulnerable and those with prepayment meters, can realise the benefits of smart metering.

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

4.12 EDF Energy supports the creation of a level playing field with respect to the inspection of both electricity and gas meters but does not believe this remedy is necessary due to changes already planned by the regulator. We note that Ofgem has recently published proposals (dated 23 July

2015) to repeal the meter inspection licence conditions with a view to such change being in effect from 1 April 2016.

Specific questions

(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?

4.13 EDF Energy agrees that this remedy would be effective in removing the distortion to competition but believes that it should be unnecessary due to Ofgem's proposals (and the fact that Centrica's derogation expires on 1 April 2016). However, if the proposals do not achieve this outcome then we would support a remedy that did.

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

4.14 Ofgem is currently consulting on proposals to repeal the meter inspection licence conditions. Any final decision to implement such a change will avoid the need to modify Centrica's existing derogation or extend the derogation to other suppliers.

(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?

4.15 Centrica's derogation will expire on 1 April 2016. This should remain unchanged unless the licence requirement is removed prior to that date as recently proposed by Ofgem.

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

5.1 EDF Energy supports the prioritisation of the roll-out of smart meters to prepayment customers but believes that this should occur only once the DCC is operational and Smart Metering Equipment Technical Specifications version 2 ("**SMETS2**") meters are widely available (i.e. suppliers receive sufficient volumes to meet the market demand and rollout profile). As the prioritisation of prepayment customers is likely to introduce inefficiencies into the smart metering programme, careful consideration should be given to the impact on the overall cost and delivery timescales for the wider programme, the timelines of which are already highly challenging.

5.2 We agree that customers with prepayment meters stand to benefit from smart meters to an even greater extent than customers with traditional meters due to the technical constraints imposed by the former. Smart prepayment meters will allow better access to data and enables online top-up of credit, making it more usable than traditional prepayment meters. Smart will also provide the ability to switch between prepayment meters and credit meters without requiring a site visit to replace the meter. These benefits will be fully realised once the DCC is operational to provide the communications platform for switching, and a tested SMETS2 prepayment solution is available. We believe that this is likely to be in Q2 2017.

5.3 Earlier deployment using SMETS1 technology prior to the roll-out of the DCC would be extremely difficult. Customers on SMETS1 who switch supplier may lose their Smart functionality and prepayment customers may lose their ability to top-up. This could create barriers to switching for prepayment customers, and distort competition. In addition, an early poor customer experience of smart meters may create a barrier to future customer engagement. We would highlight that the DCC market model was mandated following extensive Government consultation for this very reason - to ensure interoperability between metering equipment, communications platforms, computer hubs, suppliers and other industry participants.

- 5.4 Overcoming these issues would require the development of short-term, bespoke interfaces to communicate information between suppliers' systems, meters and their respective, interim Smart Meter Systems Operator ("SMSO"). The requirement would mean that suppliers would have to build a temporary integration with each other's communications and prepayment meter service providers to maintain service on change of supply. Furthermore, without additional regulations, it would be down to individual suppliers to choose to put arrangements in place with SMSOs who could manage prepayment meters on behalf of any supplier. We are concerned that such a piecemeal approach will be sub-optimal and will cost tens of millions of pounds to implement with little benefit to customers (given that the arrangements will be obsolete when the DCC is delivered). In addition, it would require further investment to allow enrolment and adoption by the DCC.
- 5.5 Although we are currently not supportive of Remedy 11, which proposes a transitional 'safeguard regulated tariff', we recognise that prepayment customers have fewer tariff options than other customers due to the technical limitations of the prepayment systems. We therefore see some merits in considering applying a regulated tariff to this specific segment of customers as an interim solution until the DCC is available and SMETS2 meters are rolled out. We discuss this further in our response to Remedy 11.

Specific questions

(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?

- 5.6 Smart meters will allow prepayment customers to benefit from a much wider range of tariffs as there are no longer the technical limitations of the current prepayment system.
- 5.7 Smart meters alone do not guarantee that a customer will engage with the market. They are an enabler that provide customers with visibility of their consumption and should act as a prompt to engage. They will also lead to more accurate bills and so reduce complaints and increase trust. The consumption data that they provide can be used by customers to choose the tariff most suitable for them.
- 5.8 Smart prepayment meters remove the need for suppliers to visit a customer's premises to replace a meter or to change it to prepayment mode. In addition, smart prepayment meters can support 'top ups' made remotely and this provides a further cost saving over traditional prepayment arrangements. Smart meters will therefore reduce the cost differential between standard credit and prepayment customers.

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

- 5.9 EDF Energy supports making all new prepayment installations (including routine meter replacements) smart once SMETS2 meters are widely available. This would amount to around [X] prepayment meters per year based on EDF Energy's current rate of installations. In addition, as we believe that the most vulnerable customers can realise significant benefits from smart meters, and recognise a degree of correlation between those customers that are vulnerable and those with prepayment meters, we would support a requirement for suppliers to have completed a significant proportion of their roll-out to prepayment customers by the end of 2018.

(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?

5.10 Smart meters are a tool that enables greater understanding of energy consumption and engagement with the market but there is no guarantee that all customers will use this functionality. EDF Energy believes that coordinated action to engage with customers is required to help them realise the benefits of smart metering.

5.11 SEGB has been set up by suppliers to deliver this co-ordinated engagement and ensure that all customers including vulnerable customers, as well as those with prepayment meters, can realise the benefits of smart metering. We believe that the SEGB, as an independent body, is best placed to deliver this engagement in the near term. SEGB will only exist until the end of the smart meter roll-out programme. Consideration should therefore be given by the CMA as to whether there is potentially a role for the Government to find a successor to the SEGB to supplement the engagement efforts of suppliers.

(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?

5.12 EDF Energy believes that the key issue with prioritising prepayment meters is ensuring that the infrastructure is in place so that these customers can benefit from the full range of supplier tariffs. As discussed above, this requires that both the DCC and SMETS2 meters are available. A prioritised roll-out based on SMETS1 technology would require the development of short-term, bespoke interfaces to communicate information between suppliers' systems, meters and their respective, interim SMSO. This will increase costs and potentially result in a poor switching experience for customers and could inadvertently lead to further disengagement.

5.13 To ensure that all prepayment customers can benefit from smart metering, particularly those that live in flats, suppliers also require a solution to communications within multi-dwelling units where the meters may be sited at a considerable distance from the display and prepayment mechanism. EDF Energy currently has around [X] ([X]%) of its total prepayment customers in multi-dwelling units. DECC and the DCC are progressing the delivery of these solutions but these are not due until some time in 2017. Any delay to their delivery will mean that some customers, including some prepayment customers will be unable to benefit from smart metering until these solutions are available.

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

Domestic Customers

6.1 EDF Energy supports the development of a not-for-profit independent price comparison service for domestic customers by Ofgem. In addition, this service could provide further value-adding support to consumers including providing details on customer service metrics to allow customers to compare non-price features.

6.2 The core of this independent service would be a meta-PCW providing personalised projections of energy costs for all available tariffs in the market. However, the service should not be restricted to online only and should provide telephone and face-to-face contact. The service should not allow customers to transact directly through the service but instead should provide information on prices together with advice on how to switch. There should be clear directions or links to those suppliers and PCWs where a transaction can be completed.

- 6.3 The responsibility for developing and operating the service should sit with Ofgem. It would be desirable if Ofgem worked with trusted partners to provide support to customers using the service, including telephone and face-to-face meetings to help them better understand their tariff options. This service would be available to everybody but could be of particular help to the more disengaged or vulnerable customers. We believe that this will be of particular importance if the number of tariffs in the market increases significantly as a result of Remedy 3 being implemented.
- 6.4 EDF Energy does not consider that the creation of a not-for-profit independent price comparison service would prevent commercial PCWs, many of which provide value for customers, from operating successfully in the market.
- 6.5 We believe that careful consideration should also be given to how the service would be funded and how those costs would be shared across the market to ensure that there would be no unexpected or distortive commercial impacts. With respect to the cost and benefits of the initiative, EDF Energy strongly recommends that the remedy builds upon existing infrastructure, such as Citizens Advice centres, in order to reduce costs and increase operational efficiencies.

Specific questions

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

- 6.6 We consider that the Ofgem independent price comparison service would be effective in increasing trust and could increase engagement in the market. This is because customers who chose to use the service would be reassured by both the fact that the service was run by a trusted independent source, the regulator, and that they had an unbiased view of all tariffs in the market. However, as we believe that the service should be non-transactional, we do not see the price comparison service as competing with commercial PCWs. Given this, it is not clear to us whether the remedy would have a material effect in terms of specifically increasing customers' trust in PCWs per se.

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

- 6.7 EDF Energy strongly believes that the service should also operate over the telephone to ensure the service extends to those who are unable to access the internet. There would also be benefit in offering the service face-to-face, for example in Citizens Advice premises where dedicated advisors could be made available to assist people through the comparison process. This could help reach more vulnerable customers or those who find it difficult engage.

(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?

- 6.8 The independent service is unlikely to undermine the development of other PCWs if it is non-transactional and only provides links or directions to where a customer can switch tariffs.
- 6.9 A non-transactional independent service could increase engagement with, and competition between, commercial PCWs, particularly if Remedy 3 is also introduced. Many customers have a preferred PCW which they use for making comparisons. This preference can result in reduced competition in the PCW market. The introduction of a meta-PCW provides a single place where customers can easily compare offers across the whole market, thereby increasing competition. The impact would be increased if all PCWs and suppliers were required to provide a prominent link to the independent service.

(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?

6.10 The independent website should function as a meta-PCW in order to give full confidence to consumers that it provides a complete and robust view of the market. If it were to show only list prices then it would, at best, only be providing a partial service and, at worst, a misleading one. However, we anticipate that any PCW could display published prices and discounts. Our understanding of the remedy is that suppliers would still have the scope to offer bespoke prices to individual customers either through energy prices and discounts, or through cash and non-cash incentives.

(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?

6.11 EDF Energy agrees there should be an obligation on retail energy suppliers and PCWs to provide information on their tariffs. This could be done through an existing commercial service provider such as Energylinx.

(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?

6.12 The service should not be transactional as this would undermine the development of commercial PCWs. In addition, a transactional element would unnecessarily increase the cost of developing the service.

(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?

6.13 We would propose that the cost of the service should be shared across all suppliers and PCWs without creating any adverse commercial impacts. We would not anticipate the cost to be material but recommend that the CMA requests estimates of the likely costs involved in developing and operating a comparison site from PCWs.

(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?

6.14 EDF Energy agrees that suppliers should provide information such as the web address and telephone number of the service on customers' bills and annual statements together with a prominent link on their website. PCWs should also be required to refer to the service and provide a prominent link for consumers to follow. The service could also be supported by advertising, as was the case with the DECC switching campaign earlier in 2015.

(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?

6.15 In addition to price, the website should also provide information on customer service and, as in the independent comparison website provided by the Australian energy regulator, a view with and without conditional discounts (e.g. paperless billing, online account management).

- 6.16 Providing details on customer service metrics would allow customers to compare non-price features. This could be similar in form to the Defaqto Star rating⁴ used with insurance products. We believe that guidance information on how to use the website to compare tariffs, and on how to proceed with a switch of tariff or supplier should be provided together with items such as FAQs and glossaries.

Microbusiness Customers

- 6.17 EDF Energy supports remedies that will improve transparency and believes that an independent price comparison service for microbusinesses could be a very beneficial market improvement, particularly in conjunction with the requirement to publish prices. It should be recognised that the microbusiness and domestic markets have different starting points for remedies. Remedy 7a will introduce true price transparency into the microbusiness market for the first time as PCWs are not prevalent. This is in contrast to the domestic market where PCWs and price transparency have been features for some time.
- 6.18 Those customers who will potentially benefit most from this service are those with characteristics similar to those of domestic customers (i.e. low to medium energy consumption and with simple requirements) and who could make savings by switching tariff or supplier. We do not believe that this service will significantly benefit higher consumption customers who are already engaged with suppliers, or those served by TPIs, or those customers with very low consumption for whom any potential savings are likely to be very small.
- 6.19 Due to the more complex nature of SME prices, it will not be workable for this solution to show all prices, many of which will not be available to all microbusinesses. Instead the independent service should be a non-transactional site providing personalised projections of energy costs based on the prices published by suppliers under Remedy 7a together with clear directions or links to suppliers (and commercial PCWs when they develop for microbusiness customers) where a transaction can be executed.
- 6.20 The design of the service is more complex than for domestic customers as the range of factors needed to calculate the customer projection is larger. As a result, the service should be targeted at simple (i.e. profile class 3 and 4), single site business customers. This is a subset of our proposed microbusiness definition of up to five sites which is further discussed in Remedy 7a. Careful consideration should be given to the design of the service to prevent potential gaming opportunities for suppliers such as allowing them to show particularly attractive propositions that are not ultimately achievable for most customers.
- 6.21 Although the service should not be targeted at customers with more complex requirements, it may enable them to estimate an achievable price based on their characteristics to aid in any negotiation on price with suppliers and TPIs.
- 6.22 The responsibility for developing and operating the service should sit with Ofgem and it should be available online only. EDF Energy does not believe that the creation of an independent price comparison service would prevent those commercial PCWs who provide value for customers from entering and operating successfully in the market.

⁴ See <https://www.defaqto.com/>

Specific questions

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

6.23 PCWs have traditionally focused on domestic customers rather than microbusinesses. A move to published prices should lead to the development of commercial PCWs for simple microbusiness customers and this remedy should help develop trust in these PCWs. However, for trust to be established with TPIs and PCWs in the small end of the currently defined microbusiness segment, we believe that principles-based regulation through direct licensing, as proposed in our response to Remedy 7b is required.

6.24 Prices must be achievable by the majority of customers of the appropriate size and complexity (i.e. profile classes 3 and 4 with single sites⁵) rather than subject to stringent qualifying criteria so as not to erode trust in the service if customers find they cannot obtain the prices they see on the service when contacting suppliers or TPIs. This could be due to factors such as credit score, business type, consumption levels, or chosen method of payment.

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

6.25 EDF Energy's view is that it is sufficient to have an online service for microbusiness customers as increasing the range of channels would not be cost effective in terms of the additional coverage they would provide.

(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?

6.26 The independent service will not undermine the development of other PCWs if it is non-transactional and only provides links or directions to where a customer can switch to the tariff.

(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?

6.27 Due to the more complex nature of SME prices, some of which are bespoke and subject to bilateral negotiation, it will not be practical or appropriate for this solution to show all prices, many of which will not be available to all microbusinesses. Instead the independent service should be a non-transactional site providing personalised projections of energy costs based on the prices published by suppliers under Remedy 7a.

6.28 The prices listed should be achievable for the majority of customers; suppliers should be prevented through Standards of Conduct from listing cheap headlines prices in order to drive traffic to their own channels where the prices are then not available to the majority of customers due to restrictive qualifying criteria such as exceptionally high credit ratings.

(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?

6.29 Due to the complex, and negotiated basis of some SME prices, it is not practical or appropriate for this to be a whole market view. Instead, the service should be based on the prices that will be published under remedy 7a which would be available directly from the supplier or through

⁵ Please note that this is a subset of our proposed microbusiness definition of "up to five sites" in paragraph 0.20 and which we recommend for this remedy for reasons of simplicity.

TPIs (including commercial PCWs). Products should be provided on specified and comparable terms. Suppliers should be mandated to provide prices as and when they are updated, which can vary in frequency by supplier, but should be on a monthly basis as a minimum.

- 6.30 Even if all tariffs are not visible on PCWs, greater transparency will provide microbusinesses with more information about the range of available tariffs and provide a benchmark around which they might negotiate with potential suppliers.
- 6.31 EDF Energy will be happy to assist in the further work that is required on the detailed design of this remedy.
- (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?**
- 6.32 EDF Energy does not believe the Ofgem independent price comparison service should be transactional. Instead it should operate as a comparison service with links to the relevant website or call centre should the consumer wish to proceed and switch.
- (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?**
- 6.33 The costs will be heavily dependent on the design of the solution, with a non-transactional service being significantly cheaper to implement. In order to reduce costs and make the process more manageable, a standardised template for price files should be agreed with suppliers, and this should be considered in conjunction with the design of remedy 7a. Funding should come from all market participants who are likely to benefit from the service.
- (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?**
- 6.34 It should be included on all customer bills and through prominent links from suppliers, TPIs and other participants' websites.
- (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?**
- 6.35 A clear summary of information that Ofgem currently publishes on supplier performance would enhance this service. It should contain links to the relevant website or call centre should the customer wish to proceed and switch. Once the service has had an opportunity to mature, it may become more appropriate to add in further information about customer service levels and other non-price factors.

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

- 7.1 Increased price transparency for customers is important for increased engagement and so EDF Energy supports both the publication of prices and making this information available to PCWs.

- 7.2 We believe that this remedy should go beyond current supplier activity. For example, we already publish prices for our 'Freedom'⁶ tariff on our website and make fixed-price contract rates easily available through a simple online 'Quote & Buy' platform. In order to make it as simple as possible for customers, there is no mandatory requirement for a customer to leave their contact information.
- 7.3 Suppliers are currently able to tailor prices to customer requirements and risk profile. However, the price that a business pays depends upon a range of factors such as region, payment type, contract length, credit scores, business type, pass-through of costs; and meter types which results in more complex pricing.
- 7.4 EDF Energy believes that the current microbusiness definition is applied inconsistently by suppliers due to its complexity. We propose that the CMA makes a recommendation to Ofgem that the microbusiness definition be simplified to only include profile class 3 and 4 meters and the gas equivalent (i.e. for customers with metering and billing arrangements similar to domestic customers) for business customers of up to five sites, therefore removing all other criteria from the current definition.
- 7.5 EDF Energy is of the view that this remedy should further be restricted to single site customers because this is the starting point for all suppliers' definitions of SME, and would cover the majority of microbusinesses. In our view, any attempt to extend this remedy beyond these customers could result in confusion through additional complexity. However, it would give customers with more than one site visibility of an achievable price.

Specific questions

- (a) **Would this remedy be effective in increasing price transparency for microbusiness gas and electricity tariffs? Would it serve to make comparisons between different suppliers easier, either directly or by encouraging the development of PCW services for microbusinesses? If not, are there other measures that would encourage this development either as an alternative to this remedy or in conjunction with it?**
- 7.6 This remedy would be effective in increasing price transparency for microbusiness customers (as per our proposed definition). A simple, consistent format (i.e. no additional add-ons, pass-through costs or complex restrictive clauses that are not clearly flagged) with a defined scope (i.e. microbusiness definition restricted to a single site⁷) to enable like-for-like comparisons would be effective and easy to use. This could also facilitate the growth of PCW services which would significantly reduce the search costs for customers.
- 7.7 Extending the remedy beyond profile 3 and 4 business customers could result in confusion. This is because on top of the matrix of prices based on region, contract length and payment type, further combinations of prices covering all the major variables that drive price differentials such as credit score, consumption, business type etc. would be required to give a comprehensive view of the price a customer would pay.
- 7.8 There is a danger that the provision of price lists could be open to abuse from suppliers through the publication of relatively low headline prices to attract customers who subsequently face significant add-ons for credit score, business type etc which results in a much higher final price. This type of headline pricing has existed in other industries such as airlines and is more likely to be achievable only for the simplest customers. Effective application of Standards of Conduct regulation should mitigate against this risk

⁶ 'Freedom' is a variable price contract which customers can exit at any time to agree a fixed price contract with EDF Energy or change supplier after giving the appropriate notice.

⁷ Please note that this is a subset of our proposed microbusiness definition of "up to five sites" in paragraph 0.20 and which we recommend for this remedy for reasons of simplicity.

7.9 While the publication of prices could act as a useful reference for customers with complex metering arrangements due to reasons discussed above, we believe that these customers are better served through alternative solutions such as quotation engines. It should also be recognised that direct negotiation is beneficial for some microbusinesses and any solution should not prevent this from occurring.

(b) Do microbusinesses have sufficient access to the information they need (for example on their meter types) in order to engage effectively in the search and switching process?

7.10 Most of the information required to obtain an accurate quote and facilitate a switch is available on the bill or through online account management portals. However, as we discuss in Remedy 9 we believe that this could be displayed more clearly. It should be noted that a customer's consumption level may not be accurate if it is based on estimates. In addition, customers may not know their credit score, including how this will be interpreted by suppliers, as suppliers may use different sources. We would advise that even if the source is the same then it is still possible that the scores may be applied differently.

(c) How long should energy suppliers be given to provide the required information?

7.11 As suppliers currently provide prices to TPIs, the timeframe for publishing these prices should be relatively short, certainly not more than six months for the initial set up. In terms of providing information to customers on an ongoing basis, most information should be easily available as above, or from a phone call to customer services. Where requests are made in writing or e-mail, we would expect a standard Service Level Agreement (e.g. 5-10 days) to apply, as suggested by CMA or Ofgem. The credit score would not be generally made available to the customer from the supplier, as this would not be meaningful without reference to the supplier's individual interpretation of this (which would be proprietary information).

(d) Should energy suppliers be permitted to fulfil this requirement by providing an automated quoting service on their websites (where microbusinesses can put in their details in order to obtain quotes) rather than a list of prices?

7.12 EDF Energy believes that the publication of prices is the most appropriate solution for single site business customers. This is because it provides a view of an achievable price with minimum effort required, and without having to contact each supplier or a TPI. An automated quote service should not be a replacement for this as most suppliers will already have an online quote function. We are concerned that such a service may not provide a quick pricing solution for the customer and instead may be used more as a data capture tool for suppliers. In addition, quotation tools alone would not provide greater transparency and independence for customers.

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

7.13 EDF Energy supports this remedy. We recognise that TPIs have a role to play in the business energy supply market. Much of the TPI activity is in the Industrial & Commercial ("I&C") segment of the market but also extends to larger microbusiness customers where the potential commissions are sufficient to stimulate TPI interest. Therefore this remedy has the potential to benefit the whole of the non-domestic market, not just microbusinesses.

7.14 Two important drivers of customer engagement are transparency and trust. If customer engagement is to increase it is important that this transparency and trust extends to all active participants in the market such as TPIs (including commercial PCWs) as well as to suppliers. Customers should be assured that whichever channel they engage with they are covered by consistent protections.

- 7.15 EDF Energy therefore agrees that TPIs should provide customers with more information as indicated in the remedy design. Additionally, we believe that it is essential that TPIs (including commercial PCWs) become subject to principles-based regulation through direct licensing, requiring them to treat customers fairly and transparently. However, any regulatory intervention does need to be proportionate to ensure that the sector remains attractive to those TPIs who provide a valuable service to customers. The outcome should ensure a level playing field between suppliers and TPIs. This regulation and licensing should be the responsibility of Ofgem and should apply to all TPIs that transact a sale with a supplier on behalf of a customer. We recognise that this will be a significant change and so support Ofgem's Code of Practice for TPIs, as well as strengthening the requirements for PCWs to be accredited under the existing Confidence Code, as an interim step while Ofgem's powers are established.

Specific questions

(a) Would this remedy be effective in improving transparency over incentives and trust in TPIs in the energy sector? How could the CMA ensure that this remedy was enforced, i.e. that TPIs were providing the specified information?

- 7.16 EDF Energy believes that this remedy would improve transparency of TPI incentives by providing greater visibility of commission streams passing between suppliers and TPIs. In order to improve trust, it should be taken into account that there may be complex commission arrangements such as volume bonuses that are difficult to apportion to a particular customer sale. We believe that other incentives need to be declared to Ofgem and communicated to customers, with Ofgem having the power to audit these arrangements to ensure they are in the best interest of customers.

- 7.17 We support a principles-based approach to regulation in general, including in the regulation of TPIs. Ideally, this should be applied across the full non-domestic market rather than be limited to the microbusiness segment. A remedy which only considered microbusinesses would likely result in inconsistencies and confusion which would be detrimental for customers.

- 7.18 Oversight should be the responsibility of Ofgem rather than suppliers. There is a risk that, if allowed to self-regulate, suppliers could interpret and apply the regulations in different ways. This would increase the complexity for TPIs. Direct regulation of TPIs by Ofgem i.e. requiring that they are subject to the same checks and balances as suppliers through Requests for Information (and also letting customers complain directly about TPIs to Ofgem) would therefore be better for both suppliers and TPIs. This should therefore result in a better outcome for microbusiness customers.

(b) What information should be provided by TPIs to microbusinesses in order to enable them to make informed choices?

- 7.19 A 'key facts' document such as those used in financial services would be appropriate. This could include the revenue received by the TPI for the deal; product specifics such as terms and conditions ("T&Cs") and pass-through costs; whether the price is fully fixed; what products were available to the TPI but were not shown to the customer; supplier specific customer service metrics; TPI T&Cs such as cancellation fees and whether exclusivity clauses exist preventing customers speaking directly to suppliers.

- 7.20 TPIs should also have to display their accreditation to the Ofgem Code of Practice and state that they are compliant with this remedy if implemented.

(c) Could the provision of certain types of information have unintended consequences (eg customers choosing tariffs based on commission rates rather than total price)? If so, are there any steps that could be taken to mitigate this effect?

7.21 Customers are ultimately going to make a choice based on the specifics of the products offered. Customers need to see the total price (including TPI commission) at their specific consumption level to militate against potential unit rate / standing charge gaming by suppliers or PCWs. Where a commission rate is set on an uplift basis, this needs to be made clear to the customer as the total amount payable will increase if their consumption increases.

7.22 Transparency of commission rates should allow customers to easily value the service offered by the TPI, and help inform their decision as to whether they should purchase the product directly with a supplier or through a TPI.

(d) Should the specified information be provided to customers in writing or orally (or both)? At what stage in the sales process should this information be provided?

7.23 General information should be provided orally at the time of the quote (or on the product selection page of a PCW) specifying the nature of service at the start of sales process. More specific information should then be provided in writing at the point of sale.

7.24 If a Letter of Authority (“LoA”) is being used⁸, similar communication must be made at the point of any future sale. In addition, it is important that the LoA should not be used to divert all core energy related correspondence sent by the supplier directly to the broker rather than the customer, as our experience is that this is likely to result in complete customer disengagement.

(e) Should this remedy be introduced in addition to Ofgem’s proposed code of conduct? Or should only this remedy (or only Ofgem’s code of conduct) be introduced?

7.25 In EDF Energy’s view, in order to establish trust in TPIs, it is essential that TPIs and PCWs must be licensed by Ofgem in the future and be subject to the same Standards of Conduct expected of suppliers with respect to acting in customers’ best interests. We support the establishment of an agreed Code of Practice for TPIs but only as an interim step whilst Ofgem’s powers are established. EDF Energy believes that the underlying principle of any Code of Practice should be to ensure that all parties within the TPI market always act in the best interest of the customer, and not TPIs or suppliers. Trust across the TPI market can only come through practices that ensure a) transparency on commission and energy price b) honest and accurate marketing and promotion of services and c) fair and robust comparisons of products and suppliers.

(f) Are there any additional measures that should be implemented alongside this remedy to enhance its effectiveness?

7.26 EDF Energy continues to believe that the direct regulation and licensing of non-domestic TPIs by Ofgem is the optimum way to enforce appropriate conduct to assure consumers that they can use TPIs with confidence and trust. This regulation and associated licensing should apply to all TPIs that transact a sale with a supplier on behalf of a customer.

7.27 We would like to see the ending of the practice of enduring LoAs which are used by many TPIs. It is our view that the current practice of using LoAs to provide full authority to agree and enter into new contract on the customer’s behalf, rather than just to simplify the registration process for the customer, is contrary to the spirit and intention of many of the other remedies which seek to encourage engagement. EDF Energy has received a range of styles of LoAs through TPIs, including those that give very little detail on what the TPI is authorised to do on behalf of the customer and those that use generic templates where the customer is required to give only their

⁸ These are letters used to pass over the decision making process from the customer to the TPI.

basic information. Additionally, we are seeing increasing examples of TPIs providing only verbal rather than written confirmation of authority given by their customers.

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

- 8.1 EDF Energy supports measures aimed at making the contract renewal process easier, fairer and better value for small business customers. We agree that if customers have not chosen another contract within a narrow switching window they should not be rolled onto fixed-term contracts which they cannot terminate without penalty.
- 8.2 We believe our current approach to roll-overs represents a viable working example of the solution CMA would like to see delivered by suppliers. All EDF Energy customers who come to the end of a contract are rolled onto our 'Easy Fix' product⁹. This product provides customers with certainty of pricing for 12 months. Customers can, if they wish, terminate the contract with no exit fee by giving 30 days notice.
- 8.3 We note the CMA suggests in the remedy description that a supplier should only roll over customers on to a flexible tariff rather than a fixed-price tariff. EDF Energy is of the view that a more appropriate remedy would be to state that customers can only roll on to a contract that has a reasonable notice period and no exit fee. This gives the customer the certainty of a fixed price but also the flexibility to change tariff/supplier as they wish.
- 8.4 If the CMA decides to adopt Remedy 11, it is EDF Energy's view that it should not apply to these roll-over customers. Research we commissioned from YouGov¹⁰ indicates that customers prefer the certainty of a fixed price to a variable price when they rollover on to new terms at the end of a fixed contract, and we believe that this should still be available to customers as an option.

Specific questions

(a) Would this remedy be effective in allowing microbusiness customers greater opportunity to engage (by removing the narrow window in which they can choose not to roll-over automatically)?

8.5 EDF Energy agrees that this remedy would be effective in increasing opportunities for engagement as it removes the narrow window in which a customer can choose to engage. Our view is that this remedy will be most effective if it is accompanied by measures to increase transparency and triggers for customers.

8.6 EDF Energy supports banning the narrow window for switching as in our experience many customers who roll-over at the end of their contracts are not disengaged. It is simply the case that for the majority of microbusiness customers the demands of running their business take priority over tariff selection. This remedy would give customers greater flexibility, allowing them to engage with the market when it suits them, rather than within a narrow switching window.

(b) Are there any means by which energy suppliers could circumvent this remedy to continue to lock customers into energy tariffs that they have not chosen for extended periods of time?

8.7 Conditions around debt (including poor credit score) may restrict freedom to change supplier or move products for valid reasons. As part of Standards of Conduct, any terms and conditions

⁹ This is unless there are significant debt issues where a customer is instead transferred to 'Extended Supply'.

¹⁰ YouGov Rollovers Contract Survey, 706 business respondents, conducted 23-24 July 2013.

should be fair, transparent and appropriate to the small business market, to ensure this remedy is enacted in the spirit intended.

(c) What is the minimum or maximum notice period that customers should be required/allowed to give in order to exit a contract that they have been rolled on to?

8.8 One month would be an appropriate required notice period, in line with current licence conditions and standard practice in other industries. This would give time to ensure an account is in order before closing and reduces the likelihood of objections being generated.

(d) Should energy suppliers be required to inform customers that they are nearing the end of their contract and prompt them to switch?

8.9 This requirement to inform customers that they are nearing the end of their contract is already prescribed in licence conditions and this should continue. EDF Energy goes beyond these requirements by providing consumption and annual bill values in the renewal letter. Additionally, most customers receive a specific alternative fixed price offer (which an average of [3<]%) of renewing customers have taken up), and we would support suppliers being encouraged to offer similar information to enable easier product or supplier switching in renewal letters. We also proactively call many of our customers to discuss and agree new contracts prior to the renewal window.

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

Domestic Customers

9.1 The key to consumer engagement through communication is not to increase the amount of information but to increase the simplicity and relevance of the information. The results of our own research into bill design in partnership with Relish¹¹ indicates that customers are principally interested in a) how much energy they have used, b) what do they owe and c) when is payment due. Many consumers feel that if the information is not simple then they are less likely to be engaged. This is also supported by the findings of the Ipsos MORI, Customer Engagement with the Energy Market: Tracking Survey 2014¹². Existing prescriptive regulation regarding information displayed on bills, or mandatory sales scripting does not facilitate engagement. We believe that better outcomes can be achieved through the use of principles-based regulation for scripting and bill content, rather than the current mandatory approach which does not allow for any innovation in approach.

9.2 Our current sales script (including for internal switches between tariffs) is regulated and in our view is onerous, lengthy, and ultimately a barrier to engagement. Our own concept testing of our Blue+Price Promise tariff demonstrated that the more effort that was required to explore benefits and compare prices, then the less appealing that tariff became. Consumers need to be given a simple way of comparing offers. As mentioned in Remedy 3, this can be facilitated through customers having access to appropriate comparison tools together with knowledge of their consumption. If Remedy 3 is implemented, regulation around showing the cheapest tariff should be removed as it will no longer be practical or helpful for consumers due to the increased number of available tariffs and likely frequency of changes. Instead there should be clear signposting to the supplier's latest offers and further independent sources of information such as the Ofgem independent price comparison service proposed under Remedy 6.

¹¹ Relish, Post-RMR Bill Design Research, November 2014

¹² Ipsos MORI, Customer Engagement with the Energy Market: Tracking Survey 2014, Report prepared for Ofgem

- 9.3 Furthermore, it should be clearly highlighted to customers if they have defaulted back to the standard variable tariff (“SVT”). As per our response to Remedy 10, we believe that any prompts, in terms of content and channel, should be relevant and personalised as appropriate to each consumer. These customers should be given clear messaging that they may not necessarily be on the best tariff for themselves and could potentially save by changing tariff or supplier. Again these customers should be directed to the supplier’s own website or the independent price comparison service to check the best available tariff for themselves.
- 9.4 As mentioned in Remedy 3, EDF Energy is aware that not all customers are able to engage easily with a more complex market. A significant proportion of these customers may be vulnerable and our preferred approach has been to help such customers engage and allow them to choose the right tariff for their circumstances. We discuss the actions that we taken in detail in our response to Remedy 10.

Specific questions

(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?

- 9.5 EDF Energy believes the current bill format does not facilitate engagement with domestic customers as there is a lot of ‘surplus’ information on their bill which masks the key engagement items. There are terms that consumers simply do not understand. Our own research into bill design¹³ tells us there are key elements that customers are looking for when they open their bill (e.g. How much have I used? What do I owe? When is it due?). When consumers see a communication containing many items (e.g. confusing measurements and inaccurate readings), it becomes difficult to extract the information that is actually needed. This can result in customers becoming apathetic and therefore not take any action. EDF Energy believes that to encourage engagement, any information and messaging needs to be clear and simple. It should direct the customer to the supplier’s own website and the independent price comparison service proposed under Remedy 6.

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

- 9.6 EDF Energy believes that the current regulation regarding sales scripting, particularly affecting the telesales channel, is onerous and lengthy and therefore does present a barrier to engagement.
- 9.7 EDF Energy also believes that the current approach to the Tariff Comparison Rate (“TCR”) and Personal Projections do not appear to be providing the intended assurance that they were meant to. Our Bill Design research highlighted that very few people are aware of the TCR and what it shows as explanations vary in length and accuracy, and can also differ by provider. Cash and cheque payers had particular difficulty with Personal Projections with varying quarterly bills and were not always clear what action to take.
- 9.8 Customers want to be able to make clear comparisons between what they are paying now and what they will pay in the future. The current methodology used to calculate personal projections is at odds with this, as comparisons are against a case of ‘if I do nothing’ i.e. an assumption they revert to SVT at fixed-rate tariff closure rather than actively choose a different fixed-rate tariff. As this may not reflect reality it can lead to inaccurate projections with respect to the gains from switching when comparing different suppliers’ (fixed-rate) tariffs on PCWs.

¹³ Relish, Post-RMR Bill Design Research, November 2014.

(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?

9.9 Meter reading reminders are an established part of EDF Energy's customer communications and we believe that additional reminders would not increase engagement. In addition to Interactive Voice Response ("IVR") and online meter reading channels, we also provide a facility for customers to submit meter readings via an EDF Energy smart phone app simply by taking a photograph of their meter.

9.10 EDF Energy believes that an early life direct debit review after a tariff transfer or a switch, for example after three months, would be a preferable remedy to ensure that direct debit payments are set-up at appropriate levels. We believe that this will provide a higher quality customer experience as customers frequently advise us that incorrect direct debits and inaccurate bills are major areas of frustration in the switching process. An improvement in the accuracy of billing overall would help with engagement as a result of linking consumption more clearly to the billing amount. We note that smart metering has the potential to greatly improve this area, and to empower customers to make considered decisions.

(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?

9.11 EDF Energy supports highlighting to customers where they have defaulted on to the SVT in order to provide prompts to engage in the market. It should be clearly stated that they may not necessarily be getting the best price for themselves.

Microbusiness Customers

9.12 EDF Energy's experience tells us that the key to consumer engagement through communication is not to increase the amount of information but to increase the simplicity and relevance of the information. Existing prescriptive regulation regarding information displayed on bills, or mandatory sales scripting does not facilitate engagement. Principles-based rules on scripting and bill content, rather than the current mandatory approach would be preferred.

9.13 The package of remedies proposed (6, 7a, 7b, 8, 9 and 10) will improve engagement of microbusiness customers by giving them a simple way to compare offers. There are currently barriers to engagement including long sales scripts (including for internal switches between tariffs) which are required to comply with all of the requirements of SLC 7a and in our view are onerous and lengthy.

9.14 Where a customer has defaulted to 'Deemed' or 'Extended Supply', there should be clear signposting to the supplier's latest offers and further independent sources of information such as the Ofgem independent price comparison service as proposed under Remedy 6.

9.15 EDF Energy is committed to ongoing enhancement of and investment in appropriate engagement communications to microbusiness customers as per the guidance of our internal 'Trust Test' (as outlined in our response to the Updated Issues Statement).

9.16 Given the high level of contact that microbusinesses receive from an array of different providers (and the fact that few actively use TPIs) we remain focused upon ensuring the balance between increasing engagement versus creating annoyance and extra costs due to excessive communications.

Specific questions

(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?

9.17 EDF Energy believes the current bill format does not facilitate engagement with consumers as there is lots of 'surplus' information on their bill which masks the key engagement items. There are terms that customers do not understand because of the requirement to reflect SLC 7a concepts which are not always easily to explain in simple terms (e.g. "the relevant date"). When consumers see a communication containing many items (e.g. confusing measurements and inaccurate readings), it becomes difficult to extract what is actually needed. This can result in customers becoming apathetic and therefore not taking action. EDF Energy believes that to encourage engagement, any information and messaging needs to be clear and simple. It should direct the customer to the supplier's own website and the independent price comparison service proposed under Remedy 6.

9.18 With the introduction of smart meters, we will be able to simplify much of this data and customers will be able to better understand the correlation between consumption and payment.

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

9.19 EDF Energy believes that the current regulation with regards to the scripting of information at the point of sales (and in particular affecting the telesales channel) is onerous. This results in lengthy scripts and therefore presents a barrier to engagement. We would welcome further discussion with the CMA or Ofgem on how the content and delivery of this scripting can be improved.

(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?

9.20 EDF Energy has already achieved increased engagement in relation to provision of customer meter readings, although we do not have evidence to support whether this increases the likelihood to switch products or not. Depending on the payment type, we prompt customers to read their meters monthly, quarterly or annually. In addition to IVR and online meter reading channels, we also provide a facility for customers to do this via an EDF Energy app by taking a photograph of their meter and submitting this using their smart phone. We currently receive on average [3<] customer meter readings each month in our SME business, equating to approximately [3<]% of our customers. This represents an increase of [3<]% relative to the situation before we introduced measures such as increased prompts and an improved version of our online account management portal, MyAccount.

(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?

9.21 EDF Energy supports highlighting to customers where they have rolled on to a default tariff in order to provide prompts to engage in the market. EDF Energy's SME customers already receive a prompt on their bills if they are on 'Tariff', 'Deemed' or 'Extended Supply'. This supports the regulatory requirement to communicate this to such customers.

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

Domestic Customers

- 10.1 We support measures to prompt customers to engage. EDF Energy believes that the best way to encourage customers to engage is to present clear messages triggered by key events. These key trigger points from a customer's perspective would be, for example, a bill / direct debit review, receipt of an annual statement, contact with supplier due to a home move, logging onto their supplier's systems to provide a read or check their balance, contacting customer services and when a meter reader visits their property. We support customers being reminded when they have defaulted on to the SVT and so may not be getting the cheapest price.
- 10.2 The prompts and chosen channel should be relevant and personalised where possible. Intrusive channels such as text or telephone should be used with caution. We believe that the focus should be placed on developing a method of comparing tariffs and only showing the information that consumers need. Our research shows the items of most relevance to consumers when seeking to compare tariffs are the estimated monthly cost, length of tariff, whether there is a termination fee and the end date of the tariff. If the remedy is poorly implemented and does not achieve the clarity of comparison then this could lead to disengagement.
- 10.3 We have been proactive in attempting to encourage engagement with our customers on SVTs, and a number of these initiatives are highlighted in Table 1. A number of our initiatives were put in place before similar changes were introduced under RMR e.g. displaying the personal savings available to a customer by switching to an alternative EDF Energy tariff. We would also highlight that such customers have had the continuing option to move to any of our fixed-rate tariffs at any time, and face no barriers if they wish to do so.
- 10.4 The success of our engagement strategy is evidenced by the relatively larger proportion of our customer base now on fixed-rate tariffs compared to some of our main competitors. [redacted].
- 10.5 There are a range of indicators from our Blue+Price Promise customers to indicate that they have the most positive relationship with EDF Energy in comparison to our standard variable customer base, and in that respect are our most engaged customers. The 'Net Promoter Score'¹⁴ ("NPS") for this group, ([redacted]), is high against industry norms, and product knowledge is good ([redacted]%) aware of Fixed Price element, [redacted]% aware that there is no termination fee, [redacted]% aware of the Price Promise feature and [redacted]% aware of the low carbon generation source).

Table 1 - EDF Energy's engagement strategy for standard variable tariff customers

[redacted]
[redacted]
[redacted]

- 10.6 As mentioned in our response to Remedy 3, we are aware that not all customers are able to engage easily with a more complex market, and this may include a number of vulnerable customers. The steps that we have taken to help engage vulnerable customers have included emailing and sending direct mail to around [redacted] customers in March 2015. We targeted customers on the Priority Services Register ("PSR") and those who have claimed the Warm Home Discount in the past, and requested that they contact us to check if they could get a cheaper or better tariff, while also using the opportunity to inform them about our Personalised Support Service digital tool. This tool helps vulnerable customers to identify and access the services that

¹⁴ The NPS measures how likely a customer would be to recommend a company. Customers respond on a 0-10 point rating scale and are categorised as one of "Promoters", "Passives" and "Detractors". NPS is calculated as the percentage of customers who are Promoters less the percentage that are Detractors.

they are entitled to from EDF Energy. We have demonstrated such measures to be successful as we, as at July 2015, have a higher proportion of our customers on the PSR on fixed-rate tariffs ([<]) compared with non-PSR customers ([<]).

Specific questions

(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?

10.7 EDF Energy believes that the first step should be to inform customers that they are paying too much and that there are cheaper tariffs available to them in the market. It is then important to clearly set out the next steps required to switch tariff (and supplier if appropriate), and make them easy to understand for customers. As mentioned in our response to Remedy 9, suppliers should clearly point customers in the direction of their own website or call centre (and the independent price comparison service proposed under Remedy 6 if implemented).

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?

10.8 EDF Energy supports customers being reminded that they are no longer under contract and so are not necessarily getting the cheapest price. Emphasising how many other customers have switched can be a supporting message but in our view is unlikely to be an important one. We believe that it is more important to make it clear to customers that they are no longer necessarily getting the best value tariff available to them.

10.9 In addition, we have concerns that the use of such a term as 'safeguard tariff' could be incorrectly interpreted by consumers and therefore reduce engagement with the market. Further research would need to take place to ensure that any name provided the right trigger for engagement, whilst also accurately reflecting the key aspects of the 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.

10.10 EDF Energy believes prompts, in terms of content and channel, should be relevant and personalised as appropriate to each consumer. Our Qualibus January 2015¹⁵ survey tells us that for some forms of communication, such as providing a meter reading or important information e.g. an overdue bill, telephone and text messages are acceptable. However for the majority of communications consumers find these channels intrusive and too personal i.e. they should be reserved for family and friends.

(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?

10.11 EDF Energy considers that a prompt every six months for those customers on default tariffs to be reasonable. As a general rule, it is important that any information used in communicating to a customer should be relevant. [<][<][<].

¹⁵ EDF Energy Qualibus research report, January 2015 (6 x qualitative discussion groups)

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

10.12 Customers generally expect to receive prompts about their energy from their supplier. There is a risk that if the message is from a source that they do not recognise then they may just ignore it. However, if the prompts are co-branded with both the supplier's and Ofgem's logos prominently displayed, then this is likely to improve trust and therefore engagement. We believe that it would be less efficient for Ofgem to provide this service on its own.

(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?

10.13 We agree that it would be valuable to prompt customers at specific trigger points. Event-triggered messages are best for customer engagement as consumers generally have a status quo bias. The GfK NOP report for the CMA (February 2015) appears to confirm this. Key trigger points from a customer's perspective would be, for example, a bill / direct debit review, annual statement, home move, logging onto their supplier's systems to provide a read or check their balance, contacting customer services and when a meter reader visits their property.

(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.

10.14 EDF Energy believes that opening this group to multiple sales contacts is unlikely to have a net positive effect on their engagement with the energy market. While personalised savings messages could be developed if all suppliers were to receive details of customers' current tariff details, the multiple communications that would likely result could lead to information overload and have an adverse effect on engagement.

Microbusiness Customers

10.15 EDF Energy supports measures to prompt consumers to engage. The prompts and channel should be relevant and personalised where possible.

10.16 EDF Energy supports customers being reminded when they have defaulted to 'Deemed' or 'Extended Supply'. These customers should be given clear messaging that they are unlikely to be on the best tariff for themselves and could potentially save money by moving onto a contract.

10.17 EDF Energy already undertakes a range of trigger activity in an attempt to engage our SME customers on default tariffs and we are supportive of targeted additional triggers. The key to incremental engagement for microbusiness customers will be increased price transparency and ease of energy purchase. Together these will enhance the effectiveness of any additional triggers.

10.18 EDF Energy believes the best way to encourage customers to engage is to present clear messages triggered by key events. These key trigger points from a customer perspective would be, for example, a bill / direct debit review, receipt of an annual statement, Business Move (Change of Tenancy), logging onto their a suppliers system to provide a read or check their balance, contacting customer services and when a meter reader visits their property.

10.19 It should be noted that the largest proportion of disengaged microbusiness customers are those at the very low end of energy consumption, with consequently very low bills. The potential savings are therefore small, with around [3<] % of our customers having an annual bill value of less than £[3<] - much lower than many domestic customers. Increasing the volume of prompts

to these customers is unlikely to materially increase engagement in this segment. These customers are also less likely to be contacted by TPIs. However, given the relatively low value of savings on offer for these customers (in relation to their overall costs), any financial harm from not engaging is likely to be small.

- 10.20 As a result of the smart meter rollout we will be visiting all eligible microbusiness customers to fit new meters and this will provide additional opportunities to engage customers.

Specific questions

(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?

- 10.21 EDF Energy believes there are certain key items that should be included such as how much the customer will pay across different options, how long each tariff is fixed for and whether termination fees apply.

- 10.22 It is important to clearly set out the next steps required to switch tariff, and make them easy for customers. As mentioned in our response to Remedy 9, suppliers should clearly point customers in the direction of their own website and the independent price comparison service as proposed in Remedy 6 (where this is appropriate for those customers).

- 10.23 Prompts should include all of the information required to facilitate a switch, such as consumption, region and meter type. EDF Energy believes when setting targets for effectiveness of this remedy it should be considered that for low consumers the potential savings are minimal and therefore customers may choose not to engage. Reassurance of the ease of changing product, such as highlighting the simple steps required, could encourage customers to act upon the savings. We are currently investigating making this functionality available online.

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?

- 10.24 As mentioned above, EDF Energy supports customers being reminded that they are no longer under contract and so are not necessarily getting the cheapest price. Emphasising how many other customers have switched can be a supporting message but in our view is unlikely to be an important one. We believe that it is more important to make it clear to customers that they are no longer necessarily getting the best value tariff available to them.

- 10.25 In addition we have concerns that the use of such a term as 'safeguard tariff' could be incorrectly interpreted by customers and therefore reduce engagement with the market. Further research would need to take place to ensure that any name provided the right trigger for engagement, whilst also accurately reflecting the key aspects of the 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.

- 10.26 EDF Energy believes prompts, in terms of content and channel, should be relevant and personalised as appropriate to each consumer.

- 10.27 It is our view that business as usual communications, such as bills, are the best way to prompt customers, as long as this is kept clear and simple. EDF Energy already takes the opportunity to prompt these customers at every bill and price change. We are concerned that for the most

disengaged customers, contact details are difficult to obtain and maintain, so other channels may not be practical.

(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?

10.28 EDF Energy believes that correspondence already in place such as bills is the best and most cost effective form to use for prompts. An increase of paper communications to this group will simply raise the overall cost to serve which is not in the best interests of this segment.

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

10.29 Customers generally expect to receive prompts about their energy from their supplier. There is a risk that if the message is from a source that they do not recognise then they may just ignore it. However, if the prompts are co-branded with both the supplier's and Ofgem's logos prominently displayed, then this is likely to improve trust and therefore engagement. We believe that it would be less efficient for Ofgem to provide this service on its own.

(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?

10.30 We agree that there are groups of customers who should receive prompts at specific points. Event-triggered messages are best for customer engagement as consumers generally have a 'status quo' bias. Key trigger points from a customer's perspective would be, for example, a bill / direct debit review, annual statement, business move (change of tenancy), logging onto their supplier's systems to provide a read or check their balance, contacting customer services and when a meter reader visits their premises.

10.31 All microbusiness customers on 'Former Tariff' and 'Deemed' prices will be a suitable audience. With the introduction of PCWs and published prices the amount of savings required by customers will reduce due to the reduced effort involved in comparing prices. Therefore prompts may be particularly effective for small to medium SMEs who would now have sufficient incentive to change tariff. Further to this, we support the current regulations regarding communications to customers at the end of their contract.

(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.

10.32 EDF Energy believes that opening this group to multiple sales contacts is unlikely to have a net positive effect on their engagement with the energy market. While personalised savings messages could be developed if all suppliers were to receive details of customers' current tariff details, the multiple communications that would likely result could lead to information overload and have an adverse effect on engagement.

10.33 Under the current model, TPIs would have little interest in lower consuming businesses on default tariffs as any commissions will be relatively low. EDF Energy, therefore, believes that the objective should be to increase incentives for TPIs to target lower consuming, disengaged customers. This could be achieved through publishing prices and the introduction of PCWs for SMEs, which would have lower operating costs than current TPI models.

- 10.34 Due to the transient nature of many 'Deemed' customers, contact details are difficult to obtain and maintain so this would limit the effectiveness of this initiative for this segment.

Remedy 11 - A transitional 'safeguard regulated tariff' for disengaged domestic and microbusiness customers

Domestic Customers

- 11.1 In our response to the Provisional Findings, EDF Energy agrees that weak customer response in some areas of the domestic supply market gives rise to an AEC. We have sought to build engagement amongst our customers through initiatives such as our "Blue+Price Promise" and have successfully demonstrated the importance of appropriate transparency and triggers in this respect.
- 11.2 The proportion of customers EDF Energy has on fixed-rate tariffs is a clear demonstration that the actions we have taken to increase customer engagement have been successful. We believe that further engagement could be achieved, but have limited our actions to date due to the commercial disadvantage this imposes relative to other suppliers. Adequate and targeted prompts and triggers have, therefore, been proven to work and so EDF Energy supports Remedies 9 and 10 that seek to prompt customers to engage in the market by providing them with simple and relevant information to make an appropriate choice.
- 11.3 EDF Energy's view is that the transitional 'safeguard regulated tariff' proposed under Remedy 11 is a disproportionate intervention given the level of harm that the CMA has provisionally found. It has many design challenges and a high risk of the unintended consequence of decreasing rather than increasing customer engagement. We believe that the weaknesses in the CMA's profitability analysis, which underpins the assessment of the degree of harm and the CMA's provisional finding of UMP, particularly with respect to EDF Energy, are such that the implementation of a regulated tariff cannot be considered a proportionate remedy.
- 11.4 Furthermore, we are concerned that the transitional 'safeguard regulated tariff' would not complement the package of remedies that are aimed at increasing information and triggers to promote engagement, but rather will make those remedies less likely to be effective by decreasing the incentives for customers to engage in their choice of supplier or tariff. If customers believe that they are protected by a 'safeguard tariff' there is a risk that they will not consider switching, even if they could make significant savings from doing so. We would therefore urge the CMA to consider carefully the behavioural impact of a regulatory tariff before making a decision on its implementation.
- 11.5 We would welcome the opportunity to work with the CMA to consider the rationale for, and design of, this remedy further. In particular, we highlight that important considerations include: the price at which it is initially set; the frequency of price updates; the name of the tariff; the criteria for its withdrawal; the customers who would be protected by the tariff.
- 11.6 The initial price needs to be considered carefully to avoid creating distortions in the market. In our view, the prices for any tariff would need to be calculated on an efficient cost plus basis. There are a number of challenges in setting the price, and in determining the appropriate headroom above costs. The key cost components of the tariff would be: energy costs; non-energy costs including policy costs; costs to serve/indirect costs; allowable margin and headroom. There are challenges with setting each of these components but we will focus here on wholesale energy costs, non-energy costs and headroom.
- 11.7 It is important that the wholesale component is something that suppliers can capture through trading in the wholesale market without risk. Any risks would have to be reflected in a higher

allowable margin or an identified risk premium. There are components beyond the baseload price which impact the wholesale price component such as imbalance, seasonal and intra-day shape, and losses. Determining how to incorporate these into the wholesale price component would need to be considered carefully.

- 11.8 Non-energy costs consist of transmission and distribution charges, capacity market charges and metering costs together with low carbon and other policy costs such as feed-in tariffs (“**FITs**”), the Renewables Obligation (“**RO**”), CfDs, the Energy Companies Obligation (“**ECO**”) and the Warm Home Discount. When setting tariffs at present, suppliers must estimate these costs and then are exposed to the risk that the outturn costs will be different from the forecast. Some of these costs are highly volatile and so the risks can be high. Forecasting these costs is not straightforward and indeed Ofgem has consistently underestimated them in its Supply Market Indicator (“**SMI**”) measure. Key questions for a transitional tariff are:
- (a) Who should produce the forecast of these costs?
 - (b) How will the risk around the forecasts of these costs be managed in the tariff?
- 11.9 The setting of the headroom is challenging and there is therefore significant potential for unintended consequences. A tariff set too low could significantly reduce the attractiveness of the market for new entrants and challengers, reducing competition in the market. In addition, potential gains from switching for customers could reduce, with detrimental impacts for both short and long term engagement. Conversely, setting a relatively high price risks attracting political and media criticism, with accusations of consumers on this tariff being overcharged. If consumers failed to engage quickly, or in sufficient numbers, a high price could also provide a competitive advantage to suppliers with disproportionately high levels of disengaged customers which they could use to compete vigorously for those consumers which are engaged.
- 11.10 The frequency of price changes is also an important consideration. When considering the most appropriate frequency it is important to be clear that the target group for this remedy is customers who have been on SVT for some time and are used to prices moving infrequently, normally once or twice per year.
- 11.11 Changing the level of the ‘safeguard regulated tariff’ infrequently would provide price stability for customers, but result in higher risks for suppliers. Given that the aim of the remedies package is to encourage customers to switch from this tariff, there would be significant uncertainty for suppliers regarding customer numbers and so estimating the volume of energy to forward purchase would be extremely difficult. This increases the risk associated with wholesale price movements. In addition, the level of risk associated with non-energy cost movements would also increase. As the number of customers expected to be on the tariff would be reducing over time, it would not be possible to recover any cost movements in future prices. Both of these risks would therefore need to be reflected in the level of the tariff.
- 11.12 The alternative is to change prices more frequently. This reduces the risk for suppliers but potentially increases the volatility of customer bills. This could make it challenging for some customers to budget for bills (which we know is highly valued by customers), and potentially lead to negative commentary in the media with respect to the remedy and its ability to protect consumers.
- 11.13 The energy price element of the tariff could either be defined in relation to wholesale costs set on a backward looking basis using daily spot prices, or using a published index of forward prices. Both would provide a transparent approach but if a backward looking option were adopted then prices for the tariff could not be published in advance. This has the disadvantage of reducing the price signal to consumers and, therefore, lessening a trigger to engage. However, it would carry

least risk from a supplier perspective and as a result the margins within the tariff could be set at a lower level. The forward looking option would require the publication of an index.

- 11.14 If the tariff were updated on a more frequent basis, the demand forecasting, energy hedging and non-energy cost movement risk would be lower than with an infrequently moving price.
- 11.15 In terms of the naming of the tariff, we are concerned that a name such as “safeguard” could result in customers believing that they are on a cheap tariff and as a result they will not consider switching, even if they could make significant savings from doing so. We would recommend that the CMA undertakes research on names that will invoke the desired reaction from consumers whilst accurately reflecting the key features of the tariff and tests options with consumers to understand the potential impact on their behaviour.
- 11.16 The criteria for withdrawal of the transitional tariff need to be very clear from the outset as, otherwise, there is a risk that the remedy will become a permanent regulated tariff for a set of permanently disengaged consumers.
- 11.17 One potential approach to defining exit criteria could be to set a target for the maximum percentage of a supplier’s customers (or a subset of the portfolio such as identified vulnerable customers) that are on the regulated tariff. Once the target is reached then the regulated tariff could be removed for that supplier.
- 11.18 If clear exit criteria can be identified, then an alternative to implementing the regulated tariff would be to use these criteria to, for example, set staged targets for suppliers to reduce the maximum percentage of customers on SVT. Suppliers would have the ability to determine how they achieve the target through their own initiatives and the other remedies proposed by the CMA. Unlike the regulated tariff which could make the other remedies less effective, the presence of these staged targets would, in our view, improve the effectiveness of the other remedies as suppliers would be encouraged to innovate in their approach to engaging customers in order to meet the targets.
- 11.19 A key element determining the proportionality of the remedy is defining the class of customers to which it applies. EDF Energy’s view is that the financial analysis underpinning the finding of UMP is not sufficiently robust and as a result we would not consider the proposed remedy to be proportionate if it were applied to all SVT customers. If the aim is to protect a subset of customers such as vulnerable customers who may struggle to engage with the market and might benefit from doing so, then it is important to identify clearly those customers to whom the proposed remedy would apply and to ensure that this is consistent across all suppliers. However, in these circumstances it is not clear whether the remedy would be a transitional remedy or would result in a permanent regulated tariff for these customers.
- 11.20 Although we are currently not convinced of the merits of having a transitional regulated tariff for all SVT customers, we recognise that prepayment customers have fewer tariff options than other customers due to the technical limitations of the prepayment systems. As discussed in Remedy 5, we can therefore see some merit in a regulated tariff to prepayment customers as an interim solution until the availability of the DCC together with the roll-out of SMETS2 meters that will give them access to the full range of tariffs.
- 11.21 The potential for the introduction of a benchmark tariff as an alternative to a regulated tariff has been discussed, with the suggestion that this could be easier to implement as suppliers would be free to set prices at a different level. In reality, if a benchmark tariff exists, it will have a similar impact on suppliers as a directly regulated tariff due to political and media pressure. As a result the same care is required when setting either tariff, and the challenges described above apply to both.

Microbusiness Customers

- 11.22 At present the microbusiness market is far less transparent than the domestic market. EDF Energy therefore believes that the remedies proposed by the CMA to increase transparency, together with the improved use of prompts, will lead to a significant change in the level of engagement of microbusiness customers. However, even with these proposed changes, we recognise that there will still remain a large number of low-consuming customers who will probably choose not to engage because the savings from switching are too small to make it worthwhile for them. Around [X]% of our customers have an annual bill of less than £[X] – much lower than domestic customers. We therefore believe that choosing not to engage is rational for these customers, and they would not need the “protection” of a regulated tariff.
- 11.23 As is the case with domestic customers, we are concerned that the introduction of a transitional safeguard regulated tariff could reduce the effectiveness of the package of remedies proposed to increase engagement amongst microbusinesses. The design of any such remedy needs to be considered carefully to avoid introducing unintended consequences. Key considerations include the level of the tariff, the group of customers that it is intended to protect, how customers will behave if a transitional regulated tariff is present and the appropriate exit criteria for the removal of the tariff. If the exit criteria are not well-defined, then we are concerned that there is a risk that a transitional remedy could become permanent.
- 11.24 It is our view that such a remedy is not required for the microbusiness segment as there is already an existing licence condition that states that ‘Deemed’ (and by implication ‘Former Tariff’) prices should “not be unduly onerous”. We consider that it would be more appropriate for Ofgem to ensure compliance with this licence condition rather than introduce a transitional safeguard regulated tariff.
- 11.25 EDF Energy does not believe that roll-over customers require protection in the form of a transitional regulated tariff. Many microbusinesses make an active decision to roll-over their contract and we note that Remedy 8 would allow these customers to change contract after roll-over with one-month’s notice.

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

- 12.1 EDF Energy supports the go-live of Project Nexus of October 2016 as recommended by the Implementation Steering Group (“ISG”) and the independent reviews by PwC on market readiness.
- 12.2 We do not believe it is necessary for the CMA to implement this remedy directly. Implementation should be managed through the approach agreed with the ISG in line with the plan developed by PwC.

Specific questions

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

- 12.3 EDF Energy fully supports the aims and objectives of Project Nexus and we are actively engaged in all working groups and industry meetings. We have mobilised a dedicated project team and are investing a significant resource into supporting the programme.
- 12.4 EDF Energy has contributed extensively to the Project Nexus ISG consultations on go-live dates, as well as to the independent reviews by PwC on market readiness. We are aligned with PwC’s recommendation of a single full release for Project Nexus going live on 1 October 2016. We believe this target is a realistic ambition given the current status of Xoserve’s plan and the time

required to complete market trials. This date also enables the updating of Annual Quantities ("AQs") for 2015/2016 based on a customer's most recent gas consumption.

(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?

12.5 EDF Energy does not believe that it is necessary for the CMA to implement the remedy directly. We fully support the approach recommended by the ISG at its recent meeting, namely that an urgent Uniform Network Code ("**UNC**") modification will be raised by Xoserve in collaboration with Ofgem to amend the date of the implementation in line with the plan developed by PwC. The ISG has also agreed to strengthen and expand PwC's independent assurance role. A new reporting framework for Project Nexus will be developed which will include the review of Xoserve's readiness. We believe these measures will go a long way to restore confidence in being able to implement Project Nexus by October 2016.

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

12.6 It is not clear to EDF Energy what the CMA is proposing with this remedy. Under Project Nexus, a meter reading needs to be submitted before an AQ can be updated. If the CMA is proposing a mandatory monthly update of all AQs then we would not support this as it would require a move to monthly meter readings for all customers. While this will be feasible in a Smart world (and is likely to be the norm), we believe that the remedy would be both impractical and disproportionate under the current metering regime.

12.7 EDF Energy notes that a requirement to provide a monthly update of the AQs for which suppliers have a meter reading would be feasible from an operational perspective. However, if this is the intended requirement of the proposed remedy, EDF Energy is of the view that it is unnecessary. Under the new Project Nexus regime of rolling AQ, every time a valid meter reading for a gas customer is loaded by Xoserve, a new AQ will be calculated automatically. There will no longer be the manual amendments and appeals process that exists today. Suppliers can currently potentially use this selectively and so the change will remove any existing opportunity to 'game' the process.

Specific questions

(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?

12.8 EDF Energy considers this to be a disproportionate remedy if the requirement is to update the AQs every month. This is because it would require reading all customer meters every month and this would be an extremely costly exercise. If the requirement is to update all the AQs for which a supplier has a meter reading, then we consider this to be unnecessary as it will occur automatically under Project Nexus. We believe that it would be disproportionate to implement this remedy in the interim given that Project Nexus is planned to go live in October 2016.

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

- 13.1 EDF Energy agrees that lack of a half-hourly settlement regime for domestic customers is a barrier to the development of innovative time-of-use tariffs. Under the current settlements system, suppliers are settled using standard average profiles, so even if they are billing on a specific time-of-use consumption, this will not be reflected in the costs that the supplier incurs. With half-hourly settlements for domestic customers, suppliers will be able to better understand individual customers' demand profiles and so can offer tailored innovative tariffs for time-of-use, demand reduction incentives etc.
- 13.2 We support the development of a clear project plan. To ensure efficient delivery, it is essential that lessons are learnt from other recent major industry change projects such as Project Nexus. We advise that careful consideration must be given at the start of the project to develop a specification that has a realistic time-frame for delivery.

Specific questions

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

- 13.3 With half hourly settlements for domestic customers, suppliers will be able to better understand individual customers' demand profiles and so will be able to offer tailored innovative tariffs for time-of-use, demand reduction incentives etc. We would agree that that the lack of such a regime for domestic customers is currently a barrier to developing many types of tariffs.

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

- 13.4 EDF Energy does not have a firm view at this stage. We believe that to ensure successful and timely delivery, sufficient time must be devoted at the start of the programme by DECC, Ofgem and the industry to scope out the end-to-end changes required to the various industry processes and industry codes. An unambiguous and realistic time frame for this must be agreed. It is essential that lessons are learnt from recent major industry changes such as Project Nexus and P272¹⁶ in order to ensure efficient delivery.

(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?

- 13.5 The roll-out of smart meters is an enabler for half-hourly settlement, but only if the appropriate rules and processes are also developed. We do not consider the existing rules for the settlement of half-hourly business customers to be appropriate for settlement of profile classes 1 to 4. This is because half-hourly settlement for around 30 million profile class 1 to 4 customers (versus around 130,000 meters in the current half-hourly market) cannot be accommodated by simply scaling up the current processes, and will instead require a new set of much more automated processes to be developed to cope with the significant increase in the volume of data flows. We believe that the centralisation of registration and data collection/data aggregation in the DCC could help to minimise these flows and help ensure that the benefits to customers are realised. We would advise that this is an extensive piece of work that should not be rushed.
- 13.6 As we have previously stated, EDF Energy is fully committed to working with DECC, Ofgem and the rest of the industry to deliver the successful implementation of half-hourly settlement and

¹⁶ Proposal to make half-hourly settlement mandatory for all Metering Systems within profile classes 5-8.

demand side response (“**DSR**”) for all customers in a sustainable and cost effective way. There are still a number of key developments that need to take place to realise the full benefit of smart meters. These include:

- Availability of SMETS2 compliant meters.
- Installation of SMETS2 meters in critical mass, a centralised registration system for both gas and power.
- Availability of an efficient and cost effective communication infrastructure.
- Data estimation rules (for Smart and legacy dumb meters during transition).
- A decision on whether half-hourly data collection and aggregation is centralised or left for suppliers to appoint their own Data Collector/Data Aggregator (“**DCDA**”) competitively.
- Easy access to half-hourly data (resolution of data privacy issue).
- A robust transition plan to ensure existing settlement arrangements are not compromised.

(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?

13.7 EDF Energy believes that the use of half-hourly consumption data in settlement for these profile classes should be mandatory. This is because allowing it to be optional would mean having two sets of arrangements in place that customers would need to transfer between when switching supplier. We are concerned that the transfer process could become a barrier to switching, especially if the current complex and manually intensive processes for transferring between half-hourly and non half-hourly settlement arrangements remain in place.

(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?

13.8 EDF Energy agrees that the needs of vulnerable customers will need to be specifically accounted for as part of the development of time-of-use tariffs. There is a risk that some vulnerable customers, especially those who already restrict their demand, may not be able to alter their demand further to take advantage of cheaper energy at certain times. It may also be the case that vulnerable customers may not be able to understand the more complex time-of-use tariff offerings. In both instances there is a risk that such customers will not benefit and could actually see a rise in their energy costs rise as a result.

13.9 Future time-of-use tariffs should also include a fixed charge to reduce the risk of customers with micro-generation capability avoiding paying their fair share of network costs.

(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?

13.10 EDF Energy has always maintained that half-hourly settlement should be introduced at the end of the smart metering rollout. This position is supported by the joint work that has been undertaken by the Ofgem Smarter Markets Flexibility Project and the Smart Grid Forum.

13.11 A single set of processes for all meters is likely to be more efficient than a gradual transition as there are also resource issues with trying to implement fundamental reform before 2020. We would highlight the fact that the industry is already currently undertaking a number of significant reforms such as the roll-out of smart metering, next day switching, the development of the DCC

and Project Nexus. There is therefore a legitimate risk that the industry will not be able to effectively deal with more concurrent changes of this size and complexity.

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

- 14.1 EDF Energy believes that the Consolidated Segmental Statements (“**CSS**”) can be the primary means of improving stakeholder understanding of energy generation and supply profitability. We therefore support improvements to the CSS. It is essential that stakeholders regard the CSS as authoritative to help achieve the expected level of trust in the market.
- 14.2 We therefore support appropriate steps to improve the usefulness of, and confidence in, the CSS, including steps to improve comparability through increased prescription of segments and cost categories. However, it is important that such steps do not prevent firms from maintaining or adopting particular organisational or legal structures. We would not support changes that had this effect as we consider this to be disproportionate to the harm identified by the CMA. It could also have the adverse effect of stifling operational efficiency and limiting business model diversity and innovation.
- 14.3 EDF Energy notes the proposed remedy has no explicit details regarding what is intended, and so welcomes the opportunity to remain involved in any industry consultation with respect to any possible solution. It is important to ensure the final proposal is balanced between improving transparency to build trust, and the impact that the remedy could have on cost, commercial confidentiality and inadvertently facilitating some form of tacit coordination between suppliers.

Specific questions

- (a) Should the scope of the individual areas reported on align with the scope of the markets as set out for generation and retail supply in our provisional findings? For example, should a requirement to report wholesale energy costs on the basis of standard products traded on the open wholesale markets be imposed?**
- 14.4 The CMA has rightly identified the difficulty in trying to obtain comparable financial information across the industry. In particular it can be challenging to take account of how parties allocate their optimisation or trading results between generation and supply. While the CMA notes that this is not a criticism of market participants, it does highlight that this makes it harder for accurate conclusions to be made when comparing results prepared under differing scopes.
- 14.5 EDF Energy considers a defined scope aligned with the scope of the markets as set out in the CMA’s findings to be appropriate. EDF Energy already presents its CSS this way and considers it to be a fair means of allocating profits across our generation and supply divisions. Defining and requiring such an allocation would allow for direct comparability with other CSS.
- 14.6 As noted above, EDF Energy is concerned that any scope that would necessitate an entity to change its legal or organisational structure in order to comply with the requirements would be disproportionate to the harm identified by the CMA.
- 14.7 Given the focus of the CMA’s investigation, EDF Energy would not object to a requirement to report SME results as a new segment. This would require a specific definition as to what constitutes a SME customer, and is likely to require some system alterations for EDF Energy. It is important that sufficient time is allowed for such changes to be made in advance of any requirement coming into effect.

14.8 The CMA may wish to give further consideration as to how feasible in reality it will be to be able to fully compare costs. This is because some treatments, such as the allocation of Corporate and Group costs, are likely to be structured differently between parties.

(b) What regulatory reporting principles would be particularly relevant to the preparation of regulatory financial information in this sector?

14.9 Any regulatory principles should be considered in the light of the harm identified, which in this instance only relates to the transparency of information.

14.10 EDF Energy considers any regulatory reporting principles should be in line with existing Financial Reporting and Accounting Standards. Any move away from such standards could limit the ability of a financially aware reader to interpret the results and require entities to maintain multiple sets of ledgers for the same business with consequential impacts on running costs.

14.11 It is important that definitions as to what is included in revenue / cost categories are precise to ensure consistency. Additional detail on costs specific to the sector (e.g. ECO) may be required and we note that Ofgem is already considering the merits of breaking down the classification of 'social and environmental' costs into specific policies. EDF Energy supports this proposal.

(c) Would summary profit and loss account and balance sheet information for each area be sufficient to enable the effective regulation of the sector and the development of appropriate policies? Or should the large domestic and SME energy suppliers be required to collect and submit additional, more granular financial information?

14.12 EDF Energy does not consider balance sheet information to be necessary for the market to understand profitability. Balance sheet measures are not an appropriate method of measuring a supply business as the profits are not driven from capitalised assets. Significant and subjective alterations would have to be made to EDF Energy's current reported balance sheet for it to be used to understand profitability (as the CMA has experienced in attempting to create a balance sheet to use for its Return on Capital Employed ("ROCE") calculations). The subjectivity of these adjustments, their potential impact on the profit and loss account, and their divergence from generally accepted accounting principles leads us to consider that the creation and presentation of an alternative balance sheet to be inappropriate. The degree of subjectivity would also lead to a lack of comparability of parties, which runs the risk of hindering, rather than improving, transparency.

14.13 The level of granularity of information required would depend very much on the type of policies being considered. As an example, the level of granularity currently shown in the CSS may not be sufficient to make detailed decisions on specific environmental policies. However, EDF Energy considers that all mandated participants should be subject to the same reporting obligations to aid comparability.

14.14 We recommend that care is taken if the granularity of information is to be increased to ensure that the improved transparency does not lead to concerns over commercial confidentiality and raise issues of tacit coordination.

(d) Should Ofgem require that the summary profit and loss and balance sheet information be audited in accordance with the regulatory reporting framework?

14.15 The current requirement is for the CSS to be audited, and we consider this to be appropriate to help ensure increased stakeholder confidence.

(e) Should this remedy apply to the firms that are currently under an obligation to provide Ofgem with Consolidated Segmental Statements? Or should it apply to a larger or narrower set of firms?

14.16 EDF Energy believes that stakeholders need a balanced view of the performance of energy generation and supply firms. For this reason, regulatory accounting requirements should apply to all firms, subject to a de minimis threshold.

14.17 We consider it to be counterintuitive to continue to apply this obligation only to the Six Large Energy Firms. Similarly, while the CMA found that generation profitability of the Six Large Energy Firms was not excessive, we would highlight that this only covers around two thirds of the generation market. If the segmental accounts publication requirements were extended to all participants in the UK energy market (subject to de minimis thresholds), this would give a full view of generation profitability, which would help to increase transparency and trust.

14.18 Additionally, we believe that applying the CSS obligation to other market participants would act as a facilitative measure and encourage new entrants to the market - many of which may have different business models to the Six Large Energy Firms.

(f) What would be the costs of imposing such a remedy? We note that some firms' reporting systems are not currently capable of providing information on such a 'market-orientated' basis and that our remedy could require significant additional system requirements.

14.19 EDF Energy sees the additional cost of preparing statements as relatively small compared to the wider public interest, and should apply to all suppliers. We note that an independent supplier has voluntarily published statements, which is arguably evidence of the costs not being excessive.

14.20 EDF Energy can only comment on its own costs in the light of its current reporting structure. We would caution that the costs we express below are very high level estimates designed to provide an indicative picture only. A full plan would be required to provide an appropriate level of accuracy.

[X]

[X]

[X]

(g) Should the CMA implement this remedy by way of licence modifications or by way of a recommendation to Ofgem?

14.21 The remedy should be implemented through licence conditions but we do not have a view as to whether it should be the CMA or Ofgem that initiates this.

(h) To what extent should this financial information on performance be published?

14.22 Stakeholders' desire for greater financial transparency suggests that the information should be published. EDF Energy supports the current publication of audited CSS. Given the potential for this remedy to lead to additional disclosure requirements, we would advise that care should be taken to ensure the CSS presentation remains clear and concise. Additionally, it is important to consider the appropriate balance between transparency and commercial confidentiality, and any potential impacts on competition as a result of disclosing this information.

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

- 15.1 EDF Energy welcomes the CMA's recognition of the importance of the wider perception of the market, and the central role that authoritative information about price formation plays in promoting consumer confidence and engagement. It is important that customers understand the impact that policy decisions have on the prices they pay and that these are seen to be legitimate and fair.
- 15.2 We agree with the CMA that more effective communication of robust information, including the impact of policies on prices and bills, would increase the transparency of energy market information and improve the quality of public debate and policy decision making. However, if such benefits are to be achieved, it is important to set parameters and consider how best to collect, process and use the data.
- 15.3 In developing such parameters, it is vital that lessons are learned from previous attempts to provide information to stakeholders. For example, Ofgem's (now suspended) SMI attempted to quantify energy supply costs and revenues, but did not include updated projections of policy costs that were not in the public domain. For ECO costs, Ofgem therefore used DECC estimates even though suppliers were publicly stating that higher costs levels were being incurred. Ofgem's approach had the effect of misleading stakeholders into believing that price rises were profit-driven, when in fact they were actually predominantly cost-driven.
- 15.4 In terms of the appropriate body to perform such a function, we do not currently see the need for a new organisation and believe that Ofgem could undertake such a role as long as its independence can be assured. It is difficult to see how a regulatory body could be a trusted source of information on the impact of Government policies if it is not independent, or perceived not to be independent. Consequently, the CMA must ensure that the doctrine of independent regulation is embedded within its remedies.

Specific questions

- (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?**
- 15.5 We strongly agree with the CMA's observation that there has been a lack of shared understanding across many stakeholders (including the general public) of the factors that have led to price increases and in particular the relative contribution of wholesale energy costs, network costs, policy cost and profits. Transparent and accessible information about price formation is central to the operation of a well functioning market, and is also an essential element in the democratic scrutiny of energy policy.
- 15.6 We observe that in the absence of such a shared understanding, various theories arise and in some cases can take root as a "truth" which can then in turn lead to poor policy making. For example, surveys have shown that many consumers believed that price rises in 2007-2009 were primarily driven by increases in energy suppliers profits, when the evidence demonstrates that this was not the case.
- 15.7 We believe that a lack of robust public narratives on energy costs and profits risks both poor policy making and threatens regulatory independence. The causal mechanism for this is simple – there is media and political pressure on the Government and regulator to "do something" about the false, misleading or partial narrative, to the point where this becomes so strong that an initiative is launched to deliver interventions to "solve" the problem.

- 15.8 The CMA proposes certain reforms to reduce the risk of DECC applying institutional pressure to Ofgem. We share the CMA's concerns about the risks of such pressure. As stated above, we believe the root cause of the problem is pressure arising from false, misleading or partial narratives about the market. Many of these have not stood up to scrutiny as demonstrated by the CMA's own provisional findings with respect to vertical integration.
- 15.9 We agree with the CMA that there is broadly not a lack of information in the public domain about the policy impacts on bills. However, given the unreliability of many of the narratives discussed above, there is clearly an issue as to how this information is processed and communicated to customers and other stakeholders.
- 15.10 There are specific areas where information is not available, which can lead to unhelpful and erroneous speculation of the reasons why energy bills are changing. One example of this is the outturn costs of suppliers meeting ECO requirements. A consistent reporting framework is not in place for the reporting of these costs (which have had a significant impact on energy bills). It is our view that Ofgem should use its information gathering powers to obtain information from energy companies in these circumstances, and so a more comparable regulatory accounting framework would help in this regard.

(b) Are the assessments sufficiently scrutinised?

- 15.11 No, see above.

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

- 15.12 The energy industry is complex and is difficult for non-specialist stakeholders to understand. Disseminating expert assessments is not an effective communication for many stakeholders, including parts of the media, consumers and some policy makers. In EDF Energy's view, the key challenge is to provide reliable information that is accessible to all stakeholders, and which provides enough detail to both credibly and neutrally explain the drivers of costs and profits.
- 15.13 EDF Energy believes that such a service needs to be done by a party independent of the Government, for example Ofgem - provided that the independence issues raised by the CMA are addressed. The appropriate body would need the appropriate skills and resources to communicate to consumers on all energy costs (i.e. not just policy costs). In our view, this suggests that Ofgem would be best placed to carry out this role.

(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?

- 15.14 Yes. We believe that this role could not be undertaken by DECC if the process is to be politically independent.

(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?

- 15.15 Yes, Ofgem should publish analysis and projections of bill costs. We recommend that Ofgem should use its market monitoring powers to gather information where this is not in the public domain.

(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?

15.16 No. As discussed above, we believe that a truly independent Ofgem should be tasked with this role. We also consider that the Committee on Climate Change (“CCC”) could also have a role to play advising on the bill elements that fall within its area of competence, and note that it already does this through its “Energy prices and bills – impact of meeting carbon budgets” reports¹⁷.

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

16.1 We welcome the fact that Ofgem invited the CMA to consider the legislative framework within which it operates. The CMA has subsequently reached the provisional view that the statutory objectives may constrain Ofgem’s ability to promote effective competition. In particular, changes made to Ofgem’s statutory duties in the Energy Act 2010 may have led to Ofgem carrying out inefficient trade-offs between competing objectives, which in turn may have led to decisions that adversely affect competition. The AECs provisionally identified by the CMA that resulted from Ofgem’s decisions are:

- The absence of locational pricing for transmission losses;
- The decision to prohibit regional price discrimination; and
- The simpler choices element of the RMR.

16.2 However, we do not regard the AEC-related decisions above as being the result of the Energy Act 2010 changes on the basis that:

- Transmission losses are a long standing issue and decisions predate the Energy Act 2010;
- Banning regional price discrimination was introduced in September 2009 (also prior to the Energy Act 2010); and
- Simpler choices/RMR – this was introduced as an attempt to promote competition.

16.3 EDF Energy continues to support strong, independent and effective regulation of the energy market and a robust and independent regulator. We remain unconvinced of the CMA’s provisional finding that Ofgem’s statutory duties impose a constraint in practice on Ofgem’s ability to pursue competition-based policies (e.g. through placing a priority on approaches that do not promote competition). We note the different perspectives that were given by Ofgem and George Yarrow (then non-executive board member of Ofgem) with respect to the introduction of SLC 25A, in particular the latter’s views that no consideration was given to the impact on competition or consumer protection (Provisional Findings, paragraph 11.56).

16.4 Nevertheless, if the preponderance of the evidence - and the current thinking of Ofgem - is that there is some degree of confusion, we agree that this is problematic and needs to be addressed. We can see some aspects of the statutory wording could be misinterpreted and therefore, on balance, agree with the CMA’s interpretation as summarised in the Provisional Findings (paragraph 11.61).

16.5 Competition involves a process of discovery in order to deliver benefits to consumers which may not always be immediate. Regulators, particularly under short-term media/political pressure, may be inclined to use alternative approaches in the belief that results can be achieved more quickly and with greater certainty than relying on markets. However, such an approach risks unintended

¹⁷ For example, see Committee on Climate Change, Energy prices and bills – impact of meeting carbon budgets 2014, December 2014.

consequences that may turn out not to be in consumers' interests. We believe that the requirement for Ofgem to look at non-competitive options under the Energy Act 2010 changes should be withdrawn (either as a discrete change or as part of a wider review of Ofgem duties).

- 16.6 The specific changes to Ofgem's statutory objectives that we wish to see are (a) re-establishing the promotion of competition as the principal objective and (b) removing wording that dilutes the emphasis on competition (e.g. 16(3)(1C) of the Energy Act 2010).
- 16.7 We continue to believe that it is sensible that Ofgem treats reductions in greenhouse gas emissions and security of supply as being in the interests of existing and future customers. In any case, we would expect that these policy objectives would be reflected in any Strategy and Policy Statement ("SPS") issued by the Government and which Ofgem must have regard to.
- 16.8 Furthermore, we believe that Ofgem's accountability for its 'better regulation' objectives needs to be strengthened, either through a robust SPS, or through other means. Such strengthening would sit well alongside a clearer focus on competition within its statutory duties.

Specific questions

(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 existing before the introduction of the Energy Act 2010?

- 16.9 Yes. It would be possible to revert to Ofgem's primary duties before the Energy Act 2010. Best regulatory practice also suggests that the regulator's duties are not well served by superfluous, conflicting or ambiguous primary duties. EDF Energy shares the Department for Business Innovation and Skills' ("BIS") view that economic regulators should have clearly defined, articulated and prioritised statutory responsibilities that are focussed on outcomes¹⁸.
- 16.10 The specific changes to Ofgem's statutory objectives that we wish to see are (a) re-establishing the promotion of competition as the principal objective and (b) removing wording that dilutes the emphasis on competition (e.g. 16(3)(1C) of the Energy Act 2010).
- 16.11 In addition to these changes, EDF Energy also wishes to see a robust SPS put into force which sets out guidance regarding the trade-offs between competing policy priorities, and Ofgem's achievement of 'better regulation' objectives.

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

- 17.1 EDF Energy shares the CMA's concerns about the need for Ofgem to be seen to be acting independent from institutional (including political) pressure. As discussed above, we are particularly concerned that Ofgem is pressured to address concerns that are the result of an unchecked and distorted narrative of the energy market (e.g. the drivers behind price increases). In this regard, we see an important role for Ofgem in providing independent and robust information on the operation of markets (including prices, costs and profits and associated drivers and trends) in order to improve public trust in the energy market and to counter the development of false narratives that tend to limit the quality of public debate on these matters. For Ofgem to fully undertake such a role it is essential that it is able to act and express views independent of Government, including providing an independent view on the cost impacts of Government policies.

¹⁸ BIS, Principles for Economic Regulation, April 2011.

- 17.2 We note the examples given by the CMA with interest and the possible institutional pressure exercised by DECC on Ofgem. We agree that there is a need for clarity of roles.

Specific questions

(a) In which circumstances should Ofgem have the right or duty to express views on DECC's policies and DECC/Ofgem strategy for their implementation? What formats should such views take? Should DECC have a duty for formally respond?

- 17.3 Ofgem's right/duty to express views on DECC's policies and implementation strategy should be entirely driven by its requirement to carry out its statutory duties (including having regard to any SPS issued by the Government) and should, in that context, be without restraint.

- 17.4 It would be our preference for Ofgem's views to be made public as this would further increase the transparency of policy development and be consistent with the need for it to be seen that the doctrine of independent economic regulation is being upheld. We would like to see, for example, Ofgem publicly respond to DECC consultations in the same way as any other interested party would, and not via private bilateral discussions. This would then allow DECC to respond to Ofgem's views in the same manner as other parties' representations received in any subsequent published policy document.

(b) In what circumstances should Ofgem have the right to seek a formal direction from DECC¹⁹ to implement a certain policy?

- 17.5 It is inevitable, and desirable, that discussion about policy matters takes place between the regulator and DECC, and we agree with the CMA that this should take place in a transparent manner. However, we believe that at the end of such discussion, Ofgem should at all times be free to act independently within the confines of its statutory remit. On that basis, we do not support a process whereby Ofgem could seek formal direction from DECC as this would damage its independence and weaken the accountability of its regulatory decisions.

- 17.6 The Government can impose new regulatory requirements on both Ofgem and market participants through statutory means, including through revisions to Ofgem's statutory duties. However, we believe that it should avoid doing so where this has the effect of undermining Ofgem's regulatory independence.

- 17.7 Current legislation provides DECC the opportunity to provide clear guidance regarding the achievement of its policies through the SPS. Although a SPS has yet to be formally adopted by the Government, we are supportive of this regulatory measure. We consider that it provides the opportunity to promote regulatory certainty and increase alignment between the Government's energy policy objectives and the way in which Ofgem regulates the sector. It can also provide Ofgem with guidance on the trade-offs between competing priorities and its conduct on regulation (particularly, regarding the desirability of Ofgem achieving 'better regulation' objectives).

- 17.8 We share concerns about DECC exerting institutional pressure on Ofgem by adopting powers to address a specific issue in the event that Ofgem does not itself act. However, as explained in our response to proposed Remedy 15, we believe that such pressure should be seen as political pressure, in part driven by false, misleading or partial narratives (e.g. about costs and profits) and suggests that the CMA's focus should be on the provision of robust information to stakeholders. Giving DECC a new power to direct Ofgem would, in our view, not reduce these pressures by

¹⁹ We presume that the CMA meant to refer to Ofgem seeking a direction from DECC and not from itself as printed in the Notice of Remedies.

itself. Instead, it would simply formalise or facilitate the impact of political/institutional pressure, and is not something that EDF Energy would support.

(c) Would DECC's formal direction undermine (or appear to undermine) Ofgem's independence?

17.9 While we support the provision of guidance to Ofgem through an appropriate SPS, we believe any additional formal 'direction' to Ofgem could undermine both the independence of Ofgem and the strategic steer provided by the statement.

(d) Would other measures be effective in promoting the independence of regulation?

17.10 We see it as inevitable that there will be political pressure to intervene in energy markets, especially at times of rising prices. However, it is imperative that such intervention is made with full Parliamentary scrutiny. Parliament should, in reflecting its democratic mandate, always be able to exert its will through statute - though in doing so, we expect DECC to advise on the desirability of maintaining regulatory independence.

Remedy 18 - Industry-led system of code governance

18.1 EDF Energy agrees that there is merit in improving the governance of industry codes and agree that these documents are complicated. However, as the CMA notes, these documents are by and large necessary and a requirement of operating in a complex energy market.

18.2 We believe that there are reforms that can be made that will improve these arrangements for all but are not convinced that an AEC exists.

18.3 The CMA proposes three possible remedies and we believe that these are broadly alternative approaches to address the CMA's concerns. We support Remedy 18a (licensing Code administrators). EDF Energy's proposed reforms (shared with the CMA on 5 June 2015 and summarised below for reference) could be a useful stepping stone to this remedy.

18.4 We do not support Remedy 18b as it has the potential to introduce risk into the industry code change process. We are not aware of any evidence that demonstrates it will bring benefits or address the CMA's concerns.

18.5 Our understanding of Remedy 18c is that it would lead to the creation of a new body which would have an active and independent role in the development of codes. It would also take over the role that Ofgem currently performs within the code process. Further detail is needed on the CMA's thinking but we do not support this remedy at this time as it will bring additional cost and risks unintended consequences.

18.6 All three remedies proposed by the CMA are likely to take time to implement. As mentioned above, EDF Energy proposed its own package of remedies on 5 June 2015. We consider these to be pragmatic solutions that can be implemented immediately. High level descriptions²⁰ of our package of reforms are as follows:

Immediate reforms

- Further standardisation of the governance arrangements.
- Enhancement of industry code pages on Ofgem's website.
- Establishment of a single website that hosts all the relevant industry code information.
- Publication of the Code administrators' reports produced under Code Administration Code of Practice ("CACoP") Principle 12 and Ofgem's assessment of the Code administrators' performance.

²⁰ Full details are attached in the Annex of this response.

Medium term reforms

- Ofgem to make comparative assessment of Code Panels' performance against their duties and publish its assessment.
- Rationalise the registration elements of the Master Registration Agreement ("**MRA**"), Supply Point Administration Agreement ("**SPAA**"), Uniform Network Code ("**UNC**") and Independent Gas Transporter Uniform Network Code ("**IGT UNC**") into the Smart Energy Code ("**SEC**") to align with the Smart programme.

Longer term reforms

- Consideration of further rationalisation of the codes and code administration as part of the implementation of the EU Network Codes.
- 18.7 As end-users/customers of Code administrators, EDF Energy is confident that tangible benefits will follow quickly if our proposals are adopted and we would suggest that our package of reforms is implemented during the interim period.
- 18.8 With respect to Remedy 18a, we agree that Code administrators and the code governance process need to be more accountable. Code administrators have a key role to play in facilitating the modification process. Greater accountability will help to address the CMA's concerns that the current process stifles innovation and developments to the market arrangements. Our proposals require more accountability of Code administrators and the process through requiring Ofgem to publish annual reports on their performance. This would allow benchmarking and let Ofgem hold Code administrators to account and draw out best practice. Remedy 18a takes this a step further by requiring Code administrators to be licensed and could achieve similar outcomes.
- 18.9 We understand that Remedy 18a will require primary legislation which means that it may take time for it to be implemented. We would suggest that our package of reforms, which has some synergies with Remedy 18a, is implemented in the interim period to start making Code administrators and the governance processes more accountable. It is possible that with time, and subject to the licensing regime, Remedy 18a could lead to rationalisation of code administration, by identifying the more efficient administrators from the less capable ones, which may bring benefits to cross code issues.
- 18.10 Overall Remedy 18a leaves the code change process with industry and the central administrators but gives powers to Ofgem to generally make sure that the administration of the code process is effective. We believe that this is the right approach because the industry is responsible for developing and delivering the detailed specifications of the codes. The additional powers should give Ofgem more control over the change process without giving them the power to be overly prescriptive about the timetable or the drafting of specific modifications. If the administrator(s) fail to deliver or comply with its licence condition, then Ofgem would have backstop enforcement powers. Given the nature of these entities, such powers need careful consideration but in principle, we believe that Remedy 18a is likely to result in a positive change in the implementation of code changes.
- 18.11 We do not support Remedy 18b because giving Ofgem the ability to project manage or specify timetables on specific modifications will not necessarily improve the end-result of code changes. However, the provision of enhanced project management powers to the Code administrators could be beneficial both with respect to development and implementation processes. Experience of Ofgem's SCRs demonstrates that industry input to these processes is valuable and ensures that Ofgem's proposals can be turned into workable solutions. This requires industry expertise and takes time. We do not consider the CMA's case study of Project Nexus to be a representative

example. In our view, this is not an example of industry governance failure, rather a failure of governance of that particular central body. This is a known issue and is being addressed.

- 18.12 Overall, Remedy 18b provides no system of checks and balances on intervention by Ofgem and therefore creates regulatory risk for market participants. For example, under Electricity Balancing Significant Code Review (“**EBSCR**”), Ofgem directed National Grid to raise a modification that reduced the Price Average Reference (“**PAR**”) value used to calculate imbalance prices. However, through the BSC modification process, it became apparent that the modification would have a small but negative impact on competition. As a result, Ofgem rejected its own policy proposal which may not have happened if the existing BSC process had not been used. We consider that greater accountability to Ofgem on timescales for code change process may well be appropriate either through the Code panel or administrator as we have proposed and reflected in Remedy 18a. We believe that is a more proportionate solution.
- 18.13 While in principle, we see some merit in Remedy 18c, the full scope of this remedy is not clear from the text, and we believe Remedy 18a is likely to be a better option. Since it is not clear whether the adjudicator would be taking over Ofgem’s role relating to codes in its entirety (as suggested by the section entitled “How the remedy would work”) or whether Ofgem would continue to be involved in codes and the arbitrator only steps in when there is a disagreement (as suggested by the title), it is difficult to comment on the effectiveness and proportionality of this remedy.
- 18.14 We agree that there are benefits in terms of independence, impartiality and/or industry know-how of an independent code adjudicator that are not available within Ofgem, given its other statutory duties. However, we suspect that it would be costly to establish such a body and without a cost-benefit analysis, cannot determine whether setting up an independent adjudicator would be in the best interest of consumers since they would ultimately bear the costs.
- 18.15 If the remedy envisages that Ofgem’s role in industry codes is completely superseded, we believe that this could create a new interface that, in itself, will create risks and unintended consequences. There is already an existing interface between the Government and Ofgem in their respective roles around setting energy policy objectives and regulating the market. A further interface with a third body is likely to cause additional risk (owing to lack of consistency, lack of understanding and differences in objectives) in implementing large Government reforms or, for instance, addressing EU legislation e.g. EU Network Codes.

Specific questions

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

(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?

- 18.16 Yes. Licensing code administration will make Code administrators accountable to Ofgem. By giving Ofgem the power to monitor performance of these bodies and impose sanctions where appropriate, we expect (a) more consistency between governance and modification arrangements across codes that will help market participants and (b) the consistency to result in more efficient code modification development to ensure that changes are delivered in a timely and effective manner.
- 18.17 To address the challenges of cross codes changes, EDF Energy believes that there may be a need to consider whether the current governance design of having multiple codes and Code

administrators is the best approach in light of the scale of the changes²¹ that the industry is facing. The newly proposed CACoP Principle 13²² should help in this regard. However, it may be that for highly complex cross codes changes, it may be more efficient to have fewer, but more effective, Code administrators with good, streamlined processes.

(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?

18.18 We believe that a number of the more administrative activities could potentially transfer to the Code administrators. If this remedy were to be taken forward then the balance of responsibilities and role of the Code panels and network owners would need to be considered.

(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)?

18.19 This could be achieved through the design of the licensing regime. At the very least, we believe that the licensing regime should be designed in a way to allow for a) tender processes, b) requirements for independence and c) limited licence terms and termination provisions.

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

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

18.20 No. We do not consider that Ofgem needs more powers to project manage and/or control timetable of the process of developing and/or implementing code changes. There are other steps it can take to increase its effectiveness, for example, by being more vocal at working group meetings and by taking a more collegiate approach when working with the industry. Furthermore, the provision of enhanced project management powers to the Code administrators could be beneficial both with respect to development and implementation processes.

18.21 The SCR process itself (i.e. where Ofgem leads the first half of the process by developing policy and the industry leads the second half of the process by developing the detailed technical solutions) is working but could be improved to run more efficiently. Experience of Ofgem's SCRs demonstrates that industry input to these processes is valuable and ensures that Ofgem's proposals can be turned into workable solutions. This requires industry expertise and takes time.

18.22 Based on our experience of the Gas SCR, TransmiT and EBSCR, we found the end to end process long, but in the main, thorough and robust. The time taken may be longer than Ofgem's initial expectation but, as acknowledged by Ofgem, this is because the level of analysis necessary for delivering the type of complex reforms that are taken forward under a SCR are significant.

18.23 The Ofgem-led process was significantly longer than the anticipated 12 months for the Gas SCR and EBSCR. In our view, the longer timescales were necessary to ensure thorough and robust analysis. Without them, parties may have been inclined to appeal Ofgem's final implementation

²¹ For example, the roll-out of smart meters by 2020, the low carbon transition which will lead to the increasing levels of intermittent electricity generation and demand side response, and the implementation of the European Network Codes.

²² Principle 13: Code Administrators will ensure cross Code coordination to progress changes efficiently where modifications impact multiple Codes

decision. This would have been an undesirable outcome that would have caused uncertainty and further delay.

18.24 We note that the industry-led process was also longer for the EBSCR. This is because to implement Ofgem's decision(s) following an SCR, industry must develop detailed solutions. This includes the technical specifications of such solutions, and is the reason why the overall process takes time. With respect to the EBSCR, we would highlight that there were aspects of Ofgem's direction which required significant analysis and development (e.g. the Loss of Load Probability function and developing a method for estimating the total volume affected by a Voltage Reduction event for use in the 'bottom-up' estimate of the total Demand Control volume) which were not assessed in any detail during the policy development phase, and so had to be considered later in the process.

18.25 EDF Energy agrees that there is scope for reducing the timescale via steps such as the stronger chairing of meetings, better focussed working groups and more proactive participation from Ofgem. However, we do not believe granting Ofgem more powers would have resulted in a more effective and efficient outcome. That said, more accountability to Ofgem on timescales for this process may well be appropriate either through the Code panel or administrator (e.g. Remedy 18a).

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

18.26 Yes. We believe that the current approach and role of industry and administrators means that the risk of unintended consequences is minimised. As stated above, in the case of the EBSCR, it was only through the BSC modification process that it became apparent that one of Ofgem's policy decisions would have a small, but negative, impact on competition. As a result, Ofgem decided to reject its own policy decision during the industry-led process. Such a benefit should not be underestimated, and we would urge the CMA and Ofgem to continue with this approach.

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

18.27 As stated above, we do not see the need for increasing Ofgem's powers – it is already leading on the development phase for SCRs. We believe that the current process of Ofgem leading the policy phase and industry leading the implementation phase should be maintained.

18.28 Should Ofgem wish to be more involved in the implementation phase, then we would highlight that this is already possible without the need for more statutory powers. We believe more proactive participation from Ofgem during working group meetings would be welcomed by industry participants and Code administrators.

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

18.29 As stated above, we do not see the need for increasing Ofgem's powers.

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?

18.30 EDF Energy sees merit in Remedy 18c in principle but the full scope of the proposed remedy is not clear from the text. For example, the section on “how the remedy would work” suggests that the adjudicator would take over Ofgem’s role relating to codes in its entirety but the heading implies that the adjudicator would only become involved when there is a dispute.

18.31 We agree that there could be benefits from having a specialised code body with detailed knowledge of the code and specialist industry know-how that is not available to Ofgem, given its other statutory responsibilities. However, we suspect that it would be costly to establish such a body and without a cost-benefit analysis, cannot determine whether setting up an independent adjudicator would be in the best interest of consumers since they would ultimately bear the costs.

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

18.32 Yes. If the proposal is to establish the adjudicator who would take over Ofgem’s responsibilities relating to codes, the likelihood of unintended consequences will increase. There is already an existing interface between the Government and Ofgem in their respective roles around setting energy policy objectives and regulating the market. A further interface with a third body is likely to cause additional risk (owing to lack of consistency, lack of understanding and differences in objectives) in implementing large Government reforms or, for instance, addressing EU legislation e.g. EU Network Codes.

EDF Energy

August 2015

Annex 1 - EDF Energy's proposed package of Code Governance reforms

EDF Energy has packaged its solutions in such a way that code reform can take place in stages i.e. over the short, medium and long term. An evolutionary approach will also allow smaller parties to engage more effectively in reforms which affect them. We consider that these reforms will address Ofgem's concerns around timescales to deliver innovative change.

Immediate reforms (e.g. within 12 months)

1. **Further standardisation of the governance arrangements** for code changes across the codes would be a simple and beneficial step. As an immediate step, we recommend that the Code Governance Best Practice (e.g. having an Independent Chair), should become mandatory across all codes. This would help new entrants along with all existing parties.
2. We also suggest **enhancing Ofgem's website** which currently contains limited information on codes. In addition to the names of the various codes and links to the relevant administrators' websites, it would be useful if Ofgem could provide an easy to follow introductory guide providing an overview of codes including, for example, which codes parties need to sign up to, the code modification process, appeals process, collateral and compliance requirements, and the relevant objective(s). This would be particularly useful for new entrants.
3. From an end-user's perspective, it is much easier to have a **single website that hosts all the relevant industry code information** in one place, rather than having several sites hosted by different Code administrators and with completely different layouts. Navigating through complex sites, especially when the required information is sometimes unavailable, is a frustrating and unproductive experience shared by users, both large and small. We believe that Code administrators should be required to develop a single hosting website that is easy to navigate. This will reduce the complexity to market participants and would be particularly useful for new entrants.
4. The CACoP was established to facilitate convergence and transparency in code modification processes and to help protect the interests of small market participants and consumers through various means including increased use of plain English in modification reports. While we note that all of the Code administrators have signed up to the CACoP, the level of compliance appears variable. Under Principle 12, Code administrators should be reporting on a series of qualitative and quantitative metrics, including views of recipients of the service. In practice these reports are not easily accessible. We believe that **Ofgem should publish these reports, along with its assessment of performance**, to promote transparency and enable benchmarking of Code administrators' performance. By assessing how effectively the Code administrators are discharging the roles and responsibilities captured within the principles of the CACoP, the standards of service and, more generally, compliance against the code principles should improve.

Medium-term reforms (e.g. 12 months – 3 years)

5. Greater oversight of the performance of the Code Panels against their duties (as set out in the relevant codes) would be useful. Code Panels have a key role to play in the smooth running of the code modification process and in ensuring that this is managed in an independent and effective manner. As above, we believe that **Ofgem should make comparative assessment of Code Panels' performance against their duties and publish its assessment**.

As mentioned in the main body of our response, we believe that the SCR process is working well and the process itself is not broken. We recognise that the process may be longer than Ofgem's initial expectations but this is often because the level of analysis and resource necessary for delivering these types of complex reforms, and the detailed technical specifications ultimately needed to codify them into the industry codes, are significant for SCRs.

There is scope for reducing the timescale but we think this can be achieved by stronger chairing of meetings, better focussed work groups and more proactive participation from Ofgem (i.e. the sort of

reforms that should be implemented by making best practice mandatory, as per our first recommendation above). This, combined with the outcome of our recommendations 4 and 5 above, should lead to more efficient and timely implementation of change.

We believe the current approach and role of industry and administrators mean that the risk of unintended consequences is minimised. This approach should be continued. **We recommend that the SCR process is kept under review to allow our proposed reforms time to work.**

6. We also believe that the number of codes could be reduced by rationalising their content by identifying synergies. The Faster Switching initiative, part of Ofgem's Smarter Markets Programme, is already looking at centralised registration for electricity and gas. This means that the **registration elements of the MRA, SPAA, UNC and iGT UNC can be rationalised into the SEC by 2017/2018 to align with the Smart programme.** Consideration should also be given to moving the supplier metering aspects of the BSC into SEC by this date.

In tandem with the rationalisation of the above Codes, the number of Code administrators may also reduce as part of the natural evolution. The continued monitoring of the performance of Code administrators would therefore be useful.

Longer-term reforms (e.g. 3 years+)

7. Ideally, it would be better to have fewer codes – and, where possible, to rationalise their content and identify synergies. However, the challenge with this is that it would require a lot of work and resource to rationalise the codes. We therefore suggested that it would be more likely to be cost and resource-efficient if delivered alongside other change programmes that affect codes.

We believe that **the implementation of the EU Network Codes (“ENCs”) will provide an opportunity for change and this should be considered a longer term initiative.** The introduction of ENCs means that 12 new electricity codes and 9 gas codes need to be transposed into GB law. Whether this means transposing the requirements into GB codes or another code has yet to be determined. Although implementation of ENCs will commence within the next 18 months to three years, we suspect refinement will be necessary on an ongoing basis and it may take several years for the requirements to fully bed in. ENCs are a material change to the GB industry codes and therefore create a timely opportunity to reconsider the best structure, scope and number of industry codes.

We consider this an opportunity to rationalise the electricity codes in an efficient manner. We recommend that as the ENCs become law, industry, DECC and Ofgem should consider, as part of ENC implementation, the opportunity to rationalise the GB industry codes and this should form part of the industry working groups' terms of reference.

As an example, the Requirement for Generators Network Code (“RfG”) is being considered jointly by a Grid Code Review Panel and Distribution Code Review Panel as its scope covers both codes. It is currently anticipated that the RfG will be transposed into the Grid Code and the Distribution Code. However, there may be a case to argue that the Grid Code and the Distribution Code are merged together and align more directly with the RfG. This is something for the industry workgroups to consider.

COMPETITION AND MARKETS AUTHORITY ENERGY MARKET INVESTIGATION



Response to the Provisional Findings

5 August 2015

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1. Introduction

- 1.1 This submission is made by EDF Energy plc ("**EDF Energy**") on behalf of EDF Group companies. EDF Energy welcomes the opportunity to respond to the Competition and Markets Authority's ("**CMA**") Provisional Findings report dated 7 July 2015 as part of its market investigation in respect of the supply and acquisition of energy in Great Britain.
- 1.2 This response should be read in conjunction with EDF Energy's response to the CMA's Notice of possible remedies dated 7 July 2015 ("**Remedies Notice**"). We have made this response as full as possible given the time available. We note that it may be necessary and appropriate to make supplemental submissions, particularly with respect to our response to the Remedies Notice ("**Remedies Response**").
- 1.3 EDF Energy appreciates that the CMA has not yet made a final decision on the existence and form of any feature giving rise to an adverse effect on competition ("**AEC**"), and that the CMA's final decision on any AECs will take into account all evidence received and submissions made, including responses to the Remedies Notice and this response to the Provisional Findings (Provisional Findings, paragraph 1.17).
- 1.4 It is our strong contention that the retail markets overall are competitive with a number of established companies and new entrants competing for all customers with many products and tariffs available. EDF Energy wishes to see fully engaged and empowered customers making informed choices on their tariff and supplier, within a trusted and trustworthy market. Against this background, this response considers the Provisional Findings from two key perspectives: a) empowerment of the customer, which is rightly at the heart of much of the CMA's analysis; and b) the re-establishment of trust in the industry, a necessary step to better customer engagement.
- 1.5 As a challenger that has been seeking to increase customer engagement and advocate change, we largely agree with the CMA's Provisional Findings, including the scope of the AECs identified. However, we do have a number of comments with respect to the CMA's assessment of the degree of harm that arises. We hope our observations are considered fully, as the magnitude and incidence of harm is at the centre of developing remedies that are proportionate.
- 1.6 EDF Energy believes that transparency is a key enabler for restoring stakeholder and customer trust in the energy market, and we welcome the CMA's willingness to address this issue. Without transparency there is an increased risk that partial or incorrect narratives take hold, for example on the causes of rising bills. Such narratives can lead to poorly thought through political or regulatory interventions, which inevitably do not succeed in addressing the concern, and so create a demand for further such intervention. They can also put severe strain on the independence of regulators, as politicians feel they are required to act. We are pleased that the CMA recognises the issue with regard to the lack of robustness and transparency in regulatory decision making in particular. EDF Energy believes that addressing transparency is critical to the reestablishment of regulatory independence, and also to the establishment of customer trust and engagement.
- 1.7 It is crucial for re-establishing trust that material differences in competitive strategies between the Six Large Energy Firms are identified clearly by the CMA, where relevant. This will indicate to the market overall the behaviour or strategies that the CMA regards as positive, and is also likely to be highly relevant for the assessment of remedies.

- 1.8 The CMA's findings regarding the absence of AECs in a number of aspects of the energy market, long the subject of debate, should address much of the criticism faced by the industry. Such key findings include that:
- a. having generation and supply within one company does not have a detrimental impact on customers by foreclosing competition, and indeed has some benefits;
 - b. there is no tacit coordination between the Six Large Energy Firms in the domestic retail energy market;
 - c. there is sufficient liquidity in the wholesale market;
 - d. no market power issue arises at the generation level; and
 - e. Electricity Market Reform ("**EMR**") is, in large part, unproblematic (we welcome the comments with respect to the Contract for Difference ("**CfD**") for Hinkley Point C as well as on the capacity market generally).
- 1.9 In our consideration of the CMA's Provisional Findings, we are mindful of the critical importance of the analysis that has been undertaken to quantify the degree of harm resulting from the identified AECs, in particular the Gains from Switching and Profitability analyses. Clearly the conclusions of these analyses are vital to the design of remedies that are proportionate and it is therefore essential that the results are robust. Our advisors have separately commented on ways to materially improve the CMA's analysis through the Disclosure Room, and we also include an Annex to this response with further points on the methodology used by the CMA to assess and compare supplier profitability.
- 1.10 In terms of the level of excess revenues indicated by the CMA, we note that the CMA has produced retail profitability analysis based on a theoretical competitive benchmark for the industry which has required a number of substantial assumptions, and which does not take account of key differences between suppliers in its conclusions. It is our view that there are significant methodological weaknesses in the CMA's approach and therefore in the conclusions drawn. In particular, we reiterate that the use of a Return on Capital Employed ("**ROCE**") analysis is inappropriate for an asset-light segment. With respect to EDF Energy, we do not consider that we have received excess revenues in the domestic or Small and Medium Enterprise ("**SME**") markets, and have not made excess profits, even allowing for cost inefficiencies. This is an important distinction, both in the conclusions that can be drawn and on the definition of proportionate remedies.
- 1.11 We understand that the CMA has updated the gains from switching analysis to include more scenarios, and that the reported figures of the savings available have fallen. However, although the CMA notes that more than half of customers on fixed-rate tariffs have exit fees, they continue to be excluded from the analysis. EDF Energy observes therefore that the potential gains from switching will continue to be overstated.

2. Summary of EDF Energy's position on identified AECs

2.1 In terms of the nine features identified as giving rise to AECs, our position is summarised below.

Feature / AEC	EDF Energy position
<p>The absence of locational pricing for losses leads to higher costs in the short term, and inefficient investment decisions in the long term</p>	<p>EDF Energy agrees that the absence of locational pricing for losses could be a feature that constitutes an AEC, but the CMA's analysis in quantifying the size of detriment and the distributional impacts must be supported by up-to-date empirical evidence before a final conclusion is reached.</p> <p>EDF Energy supports the principle of cost reflective charging and we have previously stated that we agree that locational pricing for losses may theoretically result in lower costs for customers. However, it must be recognised that the technical efficiency modelled will in practice be harder to achieve. Hence, we have concerns as to the proportionality, design and implementation of any remedy.</p>
<p>The mechanisms for allocating CfDs in particular DECC powers to award CfDs directly through a non-competitive process, and to allocate budget between technology pots</p>	<p>EDF Energy agrees that there are aspects of the CfD allocation process that give rise to an AEC.</p> <p>We understand the proposal to be forward looking and that the CMA recognises that the contract with respect to Hinkley Point C has different considerations.</p> <p>The use of competitive processes generally should ensure an efficient outcome, where it is possible to run such a process. Absent this, transparency of valuation and a fully reasoned award process showing the value for money of the proposals by DECC is required.</p>
<p>A combination of the features of the markets for the domestic retail supply of gas and electricity in Great Britain give rise to an AEC through an overarching features of weak customer response, which gives suppliers, in turn, a position of unilateral market power ("UMP") concerning their inactive customer base</p>	<p>EDF Energy agrees that weak customer response in some areas of the domestic supply market gives rise to an AEC. It is <i>the</i> key feature of the domestic market that affects the competitive dynamic. It is very helpful that the CMA has identified certain characteristics of these inactive customers - both in terms of reaching its findings and also for the design of remedies.</p> <p>However, EDF Energy does not agree with the CMA's provisional finding of UMP for all suppliers over inactive customers. The analysis to substantiate such a conclusion must be robust for each supplier separately, and we do not believe this to be the case. Furthermore we consider that such an unsubstantiated finding may be counterproductive in that it carries the risk of the "blame" or responsibility being attributed to all suppliers, and in particular the Six Large Energy Firms, when the focus needs to be on increasing customer engagement and empowerment.</p> <p>It is clear from the Provisional Findings that supplier behaviour is not a factor that has dampened customer engagement given the strong competition between suppliers for customers; rather, pricing has in part reflected the lack of customer engagement. Other factors, such as regulation put forward by Ofgem, have</p>

	<p>also impacted adversely on the ability of customers to engage as well as on the benefits available to them of doing so.</p> <p>EDF Energy notes that the mere fact of weak customer engagement is insufficient to justify a finding of UMP over customers. The common conditions for such a finding, as set out in the CMA's guidelines¹, do not exist. Concentration in the market is not high (except, arguably, in the national market share of domestic gas for Centrica); there are no capacity constraints; product substitutability is high; and no supply-side constraints exist on new suppliers as demonstrated through their entry and growth.</p> <p>We note that our arguments and evidence, namely that (a) there is clear differentiation between ourselves and Our Five Largest Rivals² and (b) given our different customer base profile, we have different incentives from some if not all of Our Five Largest Rivals, has not been addressed. In order to draw accurate conclusions, as well as to send the right signals to the industry and customers, the CMA must assess the differing strategies and behaviour of the Six Large Energy Firms, rather than only present results and conclusions based on a block analysis. As well as impacting on the description of the AECs, this is an important consideration in the assessment of any possible remedies.</p>
<p>The 'simpler choices' component of the Retail Market Reform ("RMR") rules reduces suppliers' ability to innovate in designing tariff structures to meet customer demand, in particular, over the long term, and softens competition between Price Comparison Websites ("PCWs")</p>	<p>EDF Energy agrees that the 'simpler choices' component of the RMR rules has stifled innovation and weakened competition, and therefore constitutes an AEC. While we recognised the reason for introducing these rules at the time, they have not achieved the goal of increasing customer engagement in our view. In addition, they appear to dampen the potential positive effects of smart meters.</p> <p>Importantly, given the CMA's comments on the impact of the non-discrimination clause (SLC 25A), and the restrictions imposed by RMR, EDF Energy believes it would be inappropriate to reach a conclusion that UMP exists due to weak customer response. Other factors are highly relevant.</p> <p>Consideration must be given to the likely increase in complexity of offerings that may result from the removal of the rules. In terms of remedies, this will require ensuring customers have the right tools to make an informed choice and that regulation prevents misleading practices that are not in the best interests of customers.</p> <p>EDF Energy regards itself as competing with PCWs and will be able to do so directly once the number of tariffs limitation is removed. The CMA should ensure a level regulatory playing field in this regard.</p>

¹ CC 3 (Revised) (Guidelines for market investigations: Their role, procedures, assessment and remedies), April 2013, paragraphs 178-204.

² The other firms identified by the CMA as the Six Large Energy Firms, excluding EDF Energy.

<p>Current system of gas settlement leads to inefficient allocation of costs</p>	<p>We agree with the CMA that this constitutes an AEC. We note that the negative effects are likely to be alleviated by Project Nexus, the implementation of which we support.</p>
<p>Absence of a plan to move to half-hourly settlement for domestic customers distorts suppliers' incentives to encourage load shifting</p>	<p>We agree with the CMA that this constitutes an AEC. In our Remedies Response, we note that Smart Meters can be an enabler for half-hourly settlement providing appropriate rules and processes are also developed.</p>
<p>Weak customer response from microbusinesses, which gives suppliers UMP over inactive customers</p>	<p>EDF Energy agrees that weak customer response in some areas of the microbusiness supply market, particularly at the lower consumption levels, gives rise to an AEC. However, we consider the extrapolation of this to a finding of UMP for all suppliers over certain customers to be inappropriate. As with the parallel AEC in the domestic market, we believe that the analysis to substantiate such a conclusion must be robust for each supplier separately, and given our observation that EDF Energy does not make any excess profit, and also the grouping of suppliers together in the conclusions drawn, we do not currently believe this to be the case.</p> <p>Furthermore, such a conclusion is not in line with the CMA's own guidance given the absence of high concentration, the lack of capacity constraints, the strong substitutability of products and the lack of supply-side constraints on new entrants.</p> <p>We note that the CMA does not identify particular microbusinesses as having characteristics analogous to those identified by the CMA for vulnerable domestic customers. This fact, alongside the current absence of a workable definition of "microbusiness" more generally and the limited price transparency in the current market, is highly relevant to remedies design.</p> <p>We also note that we have had a different strategy to rivals in terms of customer engagement. As such, we encourage the CMA to distinguish EDF Energy from Our Five Largest Rivals in its Final Report.</p>
<p>Lack of robustness and transparency in regulatory decision making increases risks of policy decisions that have an adverse impact on competition.</p> <p>a) Lack of clear financial reporting of generation and retail profitability</p> <p>b) Lack of communication on forecast and actual impacts of policies on energy prices and bills</p>	<p>EDF Energy agrees that a lack of robustness and transparency in regulatory decisions gives rise to an AEC and we strongly support the CMA's willingness to tackle this issue in a robust manner. The Provisional Findings expose a number of fault lines in the way the sector has been regulated to date and the public narrative that has arisen. The Provisional Findings take a large step forward to address this issue.</p> <p>EDF Energy considers that the allocation of policy costs disproportionately to electricity over gas, as identified by the CMA (Provisional Findings, paragraph 13), is in itself a feature that gives rise to an AEC, not least because of Centrica's position in the domestic gas market. This is not characterised as such by the CMA, and it is our view that such policy costs should be</p>

<p>c) Ofgem's statutory objectives may constrain its ability to promote effective competition</p> <p>Lack of mechanism for DECC and Ofgem to address disagreements over policy decision making</p>	<p>distributed more appropriately between electricity and gas.</p> <p>EDF Energy supports measures to improve the regulatory framework which should in turn increase transparency and trust in the regulator and the wider industry in future.</p>
<p>Industry code governance limits innovation and slows progress, including Ofgem's insufficient ability to influence code modification development and implementation</p>	<p>EDF Energy acknowledges that the current system of industry codes is complicated, and we strongly agree that the arrangements would benefit from reform. However, we would not agree that the current system in and of itself constitutes an AEC, and do not agree that harm results from Ofgem's insufficient influence on code changes. Going forward, improved project management by Code administrators with increased clarity as to its objectives may help but it will remain vital for industry to have significant input. We have previously commented on opportunities to simplify the code governance arrangements (in particular: see our letter of 5 June 2015).</p>

3. Observations on the CMA's analysis of features not giving rise to an AEC

- 3.1 This section sets out some general observations on the CMA's analysis other than in relation to the features where the CMA has found an AEC arises.
- 3.2 EDF Energy welcomes the CMA's findings that the energy sector has performed well since its privatisation, in particular, the success in achieving greater degrees of liberalisation and overarching policy goals of reducing emissions, ensuring security of supply and improving the affordability of prices. Over the next five years, the energy industry is expected to provide around £100 billion of investment in new infrastructure. This is not just to renew generation, but also to take advantage of the digital revolution for customers through smart technology, while meeting ever more stringent requirements for greenhouse gas emission reductions and simultaneously ensuring security of supply³.
- 3.3 The important point now is how the energy industry can continue to provide these fundamental requirements while at the same time changing for the benefit of customers, including through rebuilding customer trust.

Wholesale electricity market

- 3.4 We believe that EMR, which introduced CfDs and the Capacity Market, provides the most appropriate set of measures to ensure security of supply and to achieve decarbonisation at the least cost to customers. We strongly agree with the CMA's general findings that the changes that have been introduced do not give rise to an AEC.
- 3.5 While the CMA goes on to identify lack of transparency and explanation of policy costs and the relevant trade-off as a feature giving rise to an AEC, EDF Energy considers that the allocation of costs disproportionately to electricity over gas, as identified by the CMA (Provisional Findings, paragraph 13), where the CMA notes that the costs of the social and environmental policies that energy suppliers are required to deliver on behalf of Government ('obligation costs') are higher for electricity (almost 15%) than gas (around 5%) in itself is a feature that gives rise to an AEC. This is not least because of the historic incumbency of Centrica in domestic gas. This subject is worthy of deeper investigation by the CMA.
- 3.6 The CMA is right to reach the view that the previous market arrangements on their own would not have brought forward the necessary investment in capacity, and in particular low carbon capacity, to maintain security of supply and decarbonise the power sector.

Self dispatch

- 3.7 In relation to the principle of self-dispatch, we agree that there is no AEC associated with the self-dispatch system in Great Britain.

Single imbalance price

- 3.8 EDF Energy agrees with the CMA that a move to a single imbalance price is positive and there is insufficient evidence to conclude that an AEC arises relating to Reserve Scarcity Pricing.
- 3.9 While we have expressed reservations about a move to PAR1, we note that the CMA emphasises that Ofgem should do a careful empirical analysis as to whether making such a move will in fact be problematic, with the opportunity to learn from the experience of PAR50 (Provisional Findings, paragraph 5.106). We consider that this is a sensible way of dealing with the possible problem.

³ The National Infrastructure Plan 2013 puts the pipeline of investment in energy at over £200 billion. Between 2014 and 2020, up to £100 billion may need to be invested in the electricity system alone: DECC, "Delivering UK Energy Investment", July 2014.

Capacity Market

- 3.10 EDF Energy welcomes the CMA's conclusions with respect to the introduction of a capacity market to help ensure that an adequate level of security of supply is maintained. We agree with the CMA that the recovery of costs and penalty mechanisms are unproblematic, and are not likely to give rise to AECs.
- 3.11 We note there were genuine concerns across the industry that the energy-only market would not bring forward the necessary investment in capacity. The challenge of ensuring adequate capacity is increasing as intermittent renewable generation expands its share of total generation. We believe that a well-designed capacity market, with technology-neutral auctions, is an effective and efficient way of delivering adequate capacity for customers.
- 3.12 Indications from the first auction are that the capacity market is working well. It is helpful for the CMA to have expressed the view that DECC's introduction of a capacity market is based on cogent arguments (Provisional Findings, paragraph 5.142) and will help ensure that an appropriate level of security of supply is maintained. We note that the design, contract length and treatment of Demand Side Response ("**DSR**") are already being considered by DECC and the General Court (in the context of the State aid challenge) and so we agree with the CMA's proposal not to consider it further (Provisional Findings, paragraph 5.155). Nevertheless, it is useful for the CMA to have stated that it would expect DECC to revise the rules around the contract length for DSR providers if it were to find that efficient DSR projects were being excluded by the current arrangements (Provisional Findings, paragraph 5.153). Such an approach is in line with our previous submissions.

Generation and vertical integration

- 3.13 EDF Energy welcomes the provisional findings that generation and vertical integration are considered to be unproblematic. EDF Energy agrees with the CMA that the model of a common ownership of generation and supply can be beneficial to customers. We note the work done by the CMA in constructing models to analyse whether any generating company can exercise market power to raise wholesale prices and the finding that, reviewing the periods 2012 and 2013, no single generator had the incentive to increase the wholesale price by a significant amount in a significant number of half-hour periods (Provisional Findings, paragraph 37). This is consistent with EDF Energy's experience and modelling, as previously disclosed to the CMA.
- 3.14 In addition, the CMA rightly acknowledges that other energy firms, in particular Drax (which owns Haven Power) and Ecotricity, operate models with ownership of both generation and supply, and that the degree of operational integration varies considerably between firms (Provisional Findings, paragraph 70). It is important that the market overall is of a nature where all kinds of structures and operational models have the opportunity to succeed.

Tacit coordination at the retail level

- 3.15 Although EDF Energy has consistently and confidently made the point that no tacit coordination exists in the industry, it is nevertheless beneficial for the CMA to have reached the provisional finding that there has been no tacit coordination. We have repeatedly pointed to strong evidence that it does not exist and hope that this will now be widely accepted.

4. Analysis of findings of features giving rise to an AEC

4.1 This section considers each of the features the CMA identifies as giving rise to an AEC.

The absence of locational pricing for losses leads to higher costs in the short term, and inefficient investment decisions in the long term

4.2 The Provisional Findings conclude that the absence of locational pricing for transmission losses is likely to create a system of cross-subsidisation that distorts competition between generators and is likely to have both short-run and long-run effects on generation and demand.

4.3 EDF Energy previously submitted, in our response to the Updated Issues Statement ("**Response to the UIS**"), that while we believe that a change to locational pricing for constraints and losses has some attraction in theory, we do not consider the theoretical gains could readily translate to practical benefits.

4.4 We note the CMA's scrutiny of Ofgem's previous analysis and the fact that the CMA found it difficult to reconcile the decision of Ofgem to rule against a prior proposal for zonal charging of transmission losses set out under code modification proposal P229 with the evidence and analysis Ofgem commissioned and summarised in its impact assessment (Provisional Findings, paragraphs 5.47 and 5.60-62).

4.5 EDF Energy supports cost reflective charging in principle, and we agree that the absence of locational pricing for losses could be a feature of the wholesale market rules that constitutes an AEC. However, the CMA's analysis in quantifying the size of detriment and distributional impacts would first need to be supported by up-to-date empirical evidence. In particular, EDF Energy questions the reliability of the research relied on by the CMA to estimate the short-run efficiency gains given that the P229 analysis by Ofgem is out of date, only considered data from 2009 to 2011 and did not attempt to quantify long-run impacts (Provisional Findings, paragraph 5.46). This is particularly important as the customer welfare benefit assessed at the time of P229 was sensitive to the scenarios and only needed a small change in wholesale price (c. £0.06/MWh) for there to be no benefit.

4.6 For instance, since the P229 assessment was undertaken we note that there has been a significant change in capacity of coal plant (nearly 6GW has already shut) driven by market economics and environmental legislation. This was envisaged at the time of P229, but the identified benefits from reductions in sulphur oxides ("**SOx**") and nitrogen oxides ("**NOx**") emissions from changes in coal plant dispatch decisions included adjustments made by those plants which have now retired. Therefore, part of the SOx and NOx benefit identified at the time of P229 has already been delivered and would not be repeated if assessed now.

4.7 The P229 scenarios assumed a range of generation scenarios. Notwithstanding the point above about coal plant, the range of credible generation scenarios, if assessed today, will be different. This is important as for instance different projections of wind and solar plant will affect the volume of plant that will respond to the locational loss factors and hence the benefits that will be derived. It is essential that the modelling is updated to establish the scale of the potential benefits.

4.8 Secondly, for the purposes of remedies, it must be recognised that the technical efficiency modelled will in practice be harder to achieve. This will depend on the exact design of the remedy but EDF Energy expects that due to the volume of intermittent plant now connected and the ongoing rate of connection expected in future, transmission losses will vary materially depending on whether the wind blows or the sun shines. Given the highly weather-dependent

generation patterns now emerging, the previous P229 proposal, which used seasonal history to set Transmission Loss Factors (“**TLFs**”) in advance, is unlikely to bring optimal benefits.

- 4.9 A move to a near real-time calculation of the loss factors is likely to give a much more accurate allocation of the actual transmission losses but will then be heavily dependent on market participants being able to respond to these signals by factoring them into their dispatch and trading decisions at short notice. Trading at short notice is generally more onerous for smaller market participants but will also impact parties’ decisions to sell ahead if these loss factors are volatile. It is also likely to create inconsistencies with the European Target Model.
- 4.10 Overall, we question whether it will be possible to implement a proportionate remedy, and we advocate further analysis to confirm whether the benefits are realisable in practice.

The mechanisms for allocating CfDs in particular DECC powers to award CfDs directly through a non-competitive process, and to allocate budget between technology pots

- 4.11 As stated above, EDF Energy considers that EMR, which introduced CfDs and the Capacity Market, provides the most appropriate set of measures to ensure security of supply and to achieve decarbonisation at the least cost to customers. However, there are certain aspects which the CMA rightly identifies as giving rise to an AEC.

a. CfD awards

- 4.12 EDF Energy agrees with the CMA's reasoning that CfDs provide more efficient support to low carbon generation than Renewables Obligation Certificates (“**ROCs**”) because of their competitive allocation.
- 4.13 EDF Energy also agrees with the CMA that without proper safeguard or consideration, the non-competitive allocation by DECC of a large amount of contracts could give rise to an AEC. We note the analysis undertaken by the CMA that shows that the Final Investment Decision Enabling for Renewables (“**FIDeR**”) contracts were more expensive than those awarded through the subsequent competitive auction, amounting to an additional cost to customers of £250 million to £310 million per year for 15 years. However, we recognise that there was a need to maintain the momentum of decarbonisation and that the projects supported through the FIDeR process will contribute to the supply chain development and learning benefits that are helping to bring about the lower costs of subsequent projects securing contracts through competitive auctions. Although it is difficult to quantify these benefits precisely, we believe that they may provide significant mitigation of the excess costs identified by the CMA.
- 4.14 Moreover, we note that the FIDeR process was specifically put in place as part of the initial introduction of EMR and we would not expect such a process to take place in future. It is our view that, wherever possible, competitive auctions are the best way of ensuring efficient allocation of CfDs and securing good value for money for customers.
- 4.15 That said, as we set out in our Response to the Working Paper on Capacity, we recognise that a competitive auction is not always possible and supported Parliament’s approval of specific powers in the Energy Act 2013 for the Secretary of State to direct the CfD counterparty to sign a CfD that has not been allocated through a competitive auction. In this regard, we agree with the CMA's assessment that for future allocations of CfDs outside a competitive process, DECC needs to consider the decision carefully, in full recognition of the likely costs, on the basis of a transparent process and clearly stating the rationale as to why a competitive process cannot be expected to deliver an efficient outcome, and why the alternative process being proposed is superior in this respect.

- 4.16 EDF Energy welcomes the CMA's recognition that projects such as Hinkley Point C have different characteristics and are potentially unsuitable for standard CfD auctions given they have asset lives considerably longer than those in the CfD auctions (Provisional Findings, paragraph 5.211) or there are potentially fewer competing projects.
- 4.17 We believe that the stringent scrutiny of the Hinkley Point C CfD by the Government and the European Commission clearly demonstrated that DECC's approach was justified in this instance. As such, EDF Energy understands that the proposed requirement for DECC to consult on an impact assessment will not apply to the Hinkley Point C CfD.
- 4.18 For the avoidance of doubt, EDF Energy continues to support DECC's approach of alternative methods where it leads to greater transparency and competition e.g. an open book process or bilateral negotiations where there are fewer participants can be a more transparent process than an auction.

b. Allocation of budget between separate pots

- 4.19 In the long term, in the view of EDF Energy, all low carbon technologies should compete directly with each other, underpinned by a robust carbon price. However, at present there are a number of "less established" technologies with higher costs, but with real potential to reduce costs substantially with time. This could be through supply chain improvements, economies of scale and technological innovations, among other factors.
- 4.20 We previously expressed our belief that the Government had struck a reasonable balance in deciding to split the CfD budget into different pots. This approach ensures that the less established technologies are able to receive support, which may not be possible without the protection of separate budgets. In the long term, this support for a diverse set of low carbon technologies should have the overall effect of increasing the level of innovation and enhancing competition. It is also of note that, even within the less established category, projects are exposed to competition for CfDs in that pot.
- 4.21 We also note that this approach avoids the possibility of excessive rewards to established technologies if they were to receive prices set by more expensive less established technologies in the auction process. EDF Energy therefore welcomes the recognition by the CMA that:
- 5.224: ...the long-run lowest cost path to meeting the government's decarbonisation targets may be to protect certain less developed technologies from competition in the short run, in order to enable them to reduce their costs over time.*
- 4.22 Nevertheless, EDF Energy agrees with the CMA that DECC needs to regularly monitor the division of technologies between different pots and to provide a clear justification when making budget allocations between the pots for each auctions. In addition, EDF Energy believes DECC should carry out a transparent assessment process in order to facilitate an open and competitive allocation to different technologies. We therefore agree that the absence of an obligation for DECC to do so constitutes a feature giving rise to an AEC (Provisional Findings, paragraph 5.248).
- 4.23 For the avoidance of doubt, EDF Energy agrees with the CMA that the following do not give rise to an AEC:
- a. the overlap of ROCs and CfDs;
 - b. the risk of CfD holders manipulating the reference price; and
 - c. the CfD Supplier Obligation.

An overarching feature of weak customer response from domestic customers, which, in turn, gives suppliers unilateral market power ("UMP") over their inactive customer base

- 4.24 EDF Energy strongly agrees with the first and main part of the CMA's Provisional Findings on this issue, namely that weak customer engagement exists in relation to domestic customers and that this is the key feature giving rise to an AEC. EDF Energy regards this as a key explanation for the competitive dynamics observed in the industry at the retail level.
- 4.25 For the reasons set out below, EDF Energy does not agree with the CMA's subsequent comments that there is, in turn, UMP on the part of all suppliers over inactive customers in the supply of domestic energy market as a natural consequence of weak customer engagement. We consider this to be both an unnecessary and inappropriate finding, at least with respect to EDF Energy. The analysis to substantiate such a conclusion must be robust for each supplier separately, and we do not believe this to be the case.
- 4.26 EDF Energy disagrees with any view that a finding of UMP necessarily follows from a finding of weak customer engagement. They are not simply two ways of saying the same thing.
- 4.27 We also note that the CMA's own guidelines⁴ do not support a finding of UMP. The guidelines, rightly, deal with weak customer response and UMP in different sections. Under the main heading of "potential Sources of Competitive Harm", the CMA lists "the five potential sources of competitive harm". The first is "Unilateral Market Power". The fifth is "Weak customer response". Paragraph 295 of the guidelines confirms that weak customer response may be caused by structural features of the market, but not necessarily so.
- 4.28 The common conditions for a finding of UMP, as set out in the CMA's guidelines, do not exist:
- a. Concentration in the market is not high (except, arguably, in the national market for domestic gas supply for Centrica) - there are six large energy firms with an increasing number of relatively new firms growing strongly in the retail markets;
 - b. There are no capacity constraints – the CMA's Provisional Findings support EDF Energy's view that the wholesale electricity market is competitive, and the ability to expand at the retail level has been demonstrated;
 - c. Substitutability is high - as the CMA notes, the underlying energy is homogenous; and
 - d. There are no supply-side constraints, as demonstrated by the entry and growth of new suppliers.
- 4.29 With respect to the overall analysis as to supplier behaviour, we would repeat our strong view that EDF Energy is fundamentally different from Our Five Largest Rivals. We have made customer engagement and gaining customer trust part of our central commercial strategy and our challenger role. To emphasise a point made previously, EDF Energy does not have a retail strategy with respect to Standard Variable Tariff ("**SVT**") that is entirely independent and divorced from its fixed-rate tariff strategy. EDF Energy has priced SVT at the lower end of the range of prices offered by the Six Large Energy Firms, and this is a reflection of our strategy to differentiate, and also our focus on increasing trust. This approach has an impact on our competitiveness in fixed price tariffs.
- 4.30 [X][X][X]

⁴ CC 3 (Revised) (Guidelines for market investigations: Their role, procedures, assessment and remedies), April 2013, paragraphs 178-204, especially 185 et seq.

- 4.31 The CMA's grouping of all Six Large Energy Firms together in a provisional finding of UMP, without differentiation, limits EDF Energy's ability to compete on a strategy of differentiation that is founded on building trust with customers, by grouping together all of the Six Large Energy Firms although they have taken significantly different approaches.
- 4.32 In our view, we have not been earning excessive profits in relation to domestic markets: see Annex (Profitability). We note, at various points, that the CMA has referenced the fact that EDF Energy is differentiated from Our Five Largest Rivals e.g. in terms of our consistently lower than average pricing, innovation and social initiatives such as Priority Service Register ("**PSR**"), but without placing great emphasis on this. Given that the CMA states it is considering the hypotheses that some suppliers have a position of UMP arising from the extent of customer lack of engagement in the market (Provisional Findings, paragraph 8.159(a)), it is important to assess the significant differences that exist.
- 4.33 EDF Energy has spent significant time and resource in increasing customer engagement. Our status as a challenger is built on it. The CMA's undifferentiated approach does not take account of this. We are of the view that the CMA should consider and clearly address this point in its Final Report. We again draw the CMA's attention to our Trust Agenda and "Trust Test", in which we ask the question as to how our customers will benefit with respect to every decision we make. These were outlined in our Response to the UIS and are not repeated here.
- 4.34 Overall, therefore, EDF Energy does not support the CMA's Provisional Findings that the mere differentiation of prices between SVT and fixed-rate tariffs for each of electricity and gas suggests that all suppliers may have UMP. In particular, we are concerned that such reasoning might divert attention from addressing the key issue of weak customer response and result in the focus of remedies being misdirected away from increasing customer empowerment and engagement. Most importantly, we urge the CMA to substantiate its case for each supplier separately, or to remove this element of the conclusion.
- 4.35 In terms of the main finding, we agree with the CMA's analysis that there is a combination of features that contribute to weak customer engagement. The CMA states (Provisional Findings, paragraph 8.81 et seq.) that these include:
- a. limited awareness of and interest in their ability to switch energy supplier;
 - b. actual and perceived barriers to accessing and assessing information, including difficulties that may be faced in understanding alternative tariffs, the complexity of bills and the potential role of Third Party Intermediaries ("**TPIs**");
 - c. actual and perceived barriers to switching, including concerns about the time taken to switch and the possibility of switching going wrong; and
 - d. technical constraints associated with prepayment meters.
- 4.36 While we broadly agree with the identification of these features, we would dispute the CMA's provisional finding that customers have limited awareness of their ability to switch energy supplier. For example, we note that the 2014 Ipsos MORI Tracking Survey report for Ofgem⁵ found that the awareness of the possibility of switching energy supplier among domestic customers that had never switched was 84% (as was also the case in 2013). Those customers who were not aware comprised just 9% of all energy customers surveyed.
- 4.37 Weak customer response manifests itself in a large cohort of inactive customers, some of whom face actual or perceived barriers to engaging. It is EDF Energy's view that these barriers to engagement are particularly pronounced for certain ethnicities, socio-economic and geographic

⁵ Ipsos MORI, Customer Engagement with the Energy Market: Tracking Survey 2014, Report prepared for Ofgem

groups. We therefore welcome the analysis summarised in Figure 8.1 of the Provisional Findings and the description given at paragraph 8.10 of relevant characteristics. (We do not consider the homogenous nature of the underlying energy to be relevant in the manner described as (a) this should drive price competition and (b) customers do value the services received from suppliers.)

- 4.38 In our view, a key paragraph of the CMA's Provisional Findings is paragraph 7.7. This identifies that the poorest 10% of the population spend almost 10% of their total expenditure on energy, the second highest expenditure item after housing. Also critical is paragraph 8.25, where the CMA states that, overall, it finds that:

excluding prepayment customers, those households who are: in rented accommodation; have incomes below £18,000; or in receipt of a Warm Home Discount rebate have higher gains from switching. By implication such customers are on average paying a somewhat higher price for their energy than those customers who do not fall into those categories.

- 4.39 These characteristics are, in our view, highly relevant to the scope and design of remedies. While we note the CMA's recognition that EDF Energy is proactive in engaging vulnerable customers through our PSR initiative (Provisional Findings, paragraph 8.16), in our view, remedies designed to assist these and the other groups of vulnerable customers identified by the CMA are critical.
- 4.40 EDF Energy notes that the CMA has refined the methodology used in the gains from switching analysis since the publication of the Updated Issues Statement, and that this analysis formed part of the recent Disclosure Room and has been further commented on by our advisors in their separate submission. We do not comment further on the subject in this response, but would like to emphasise that we do not recognise the accuracy of paragraph 8.41 of the Provisional Findings⁶. EDF Energy has never argued that there is not a problem relating to inactive customers. Any comments made previously on the gains from switching analysis were aimed at making the CMA's analysis more robust, and not at saying no issue exists. We request that the CMA corrects this in the Final Report should it include a similar paragraph.
- 4.41 EDF Energy has sought to address barriers to customer engagement through the implementation of our Trust Agenda and the consequential initiatives with customers whom we consider face stronger barriers than most.
- 4.42 In terms of underlying factors relating to weak customer response, EDF Energy agrees the barriers to engagement that exist are partly due to the role of traditional meters and bills. It is undoubtedly the case that they can be difficult to understand and certainly do not promote engagement. We agree that, for many, this will erode customer confidence by creating confusion as they try to understand the relationship between the energy they consume and the amount they ultimately pay. The fact that such fundamental characteristics may particularly affect certain categories of customer is a critical insight (Provisional Findings, paragraph 8.92).
- 4.43 Smart meters will be an enabler that can help address this. Hence, we agree that the rollout of smart meters will give the potential to address some of the problems associated with understanding bills (in particular by removing the need to rely on estimated meter reads), although the benefits of smart meters are only likely to arise in substantial part when the Data Communications Company ("**DCC**") is effective, due in August 2016 at the earliest. The reason the DCC is needed is that it is the best way to ensure accurate information on consumption is obtained, errors eliminated and interoperability assured on change of supply.

⁶ This states: "In the rest of this section, we assess the merit of the arguments *put to us by the Six Large Energy Firms* concerning other elements of the interpretation of the analysis, *namely, that the gains from switching evidence does not indicate that there is a problem relating to inactive customers* since it does not consider non-price characteristics (relating to tariff type, payment method or choice of supplier) that customers might be expected to take into account in deciding whether to switch or not. We consider first non-price characteristics relating to tariff type, then payment method and finally supplier." (emphasis added).

- 4.44 EDF Energy would highlight that the mere fact that smart meters exist will not guarantee customer engagement and empowerment. Other measures, including customer tools to enhance the ability to understand and compare the potential large variety of rates and pricing structures available, will be needed - not only for those that are digitally literate but potentially even more so for those customers identified by the CMA in the Provisional Findings at paragraph 8.25. Other measures are therefore needed to promote customer engagement, both in the period before full smart meter implementation under the second version of the Smart Metering Equipment Technical Specifications (“**SMETS2**”), and most likely on a continuing basis. We expand on this point in our Remedies Response. We do not consider it to be optimal for the earlier version of smart meters to be relied upon as the lack of interoperability between suppliers will create issues, not least in the form of potential barriers to switching, in the future.
- 4.45 We also agree with the CMA's comments on erroneous transfers and the impact of the technical constraints on customers with prepayment meters from engaging fully with the markets (Provisional Findings, paragraph 8.157).
- 4.46 The Provisional Findings also refer to PCWs. EDF Energy believes that there is a role for PCWs to reduce or remove barriers to engagement to the extent they reduce search and switch costs for customers. In addition, it is important for the CMA to recognise that, particularly after the removal of the ‘simpler choices’ component of RMR, EDF Energy (and other suppliers) will potentially be competing directly with PCWs for the customer relationship going forward, with suppliers able to offer direct-only products to customers. There should be a level regulated playing field in this regard. This is not the case at present given, for example, the onerous communication requirements imposed on suppliers by Ofgem but not on PCWs.
- 4.47 While we note that the Provisional Findings states that it is “too early to assess the impact of the change to the Confidence Code”, the absence of trust in PCWs may in part be explained by the lack of a standard requirement, through a strengthened Confidence Code or direct regulation, for any tariff comparison that is not a comprehensive view of the market to be clearly and prominently marked as such. We are firmly of the view that some PCWs are heavily incentivised by commission rates paid to them, rather than what is necessarily best for the customer.
- 4.48 Finally, we stress that it is particularly important for the profitability analysis with respect to domestic markets to be robust as the CMA may well face challenges to its decision on remedies based in particular on the proportionality. We hope our constructive comments found in the Annex (Profitability) will assist the CMA in this regard.

‘Simpler choices’ component of the RMR rules reduces suppliers’ ability to innovate and softens competition between PCWs thus giving rise to an AEC in the supply of energy to domestic customers

- 4.49 We agree with the CMA that the relevant parts of the RMR rules have failed to increase customer engagement and, indeed, have had the adverse effect of stifling innovation, weakening engagement and removing many customer benefits as a result of some of the actions taken by energy suppliers to be RMR-compliant. For instance, as the CMA recognises, the rules forced the suppliers to remove discounted variable tariffs (which means that all fixed-period tariffs also now fix the price for the term of the tariff) and green or low carbon specific tariffs. They also resulted in the cessation of two-tier pricing structures and bundled tariffs, and the withdrawal of prompt-pay discounts and of discretionary credits, rebates and cashback offers.
- 4.50 We therefore agree with the view expressed that the evidence available at this stage of the impact of RMR on engagement and competition is not particularly encouraging (Provisional Findings, paragraph 8.242). However, consideration must be given to the likely increase in complexity of offerings that may result from the removal of the rules. In terms of remedies, this

will require ensuring customers have the right tools to make an informed choice and that regulation prevents misleading practices that are not in the best interests of customers. The challenge is to have a framework within which innovation is encouraged, whilst creating clear guidance to suppliers on how to present prices and bills simply.

- 4.51 In relation to PCWs, we agree that RMR eliminated the ability for suppliers to have products or prices available via particular PCWs only, thus softening competition between them. We have referred above to the way that competition is likely to evolve going forward in the domestic markets between suppliers such as EDF Energy and PCWs. The regulatory framework should reflect the fact that both are competing for the same customer relationship, and this is likely to mean that TPIs (including PCWs) must be licensed in the future.
- 4.52 Finally, we note that given the CMA's comments on the non-discrimination clause, and the restrictions imposed by RMR, it is EDF Energy's view that it would be inappropriate to reach a conclusion that UMP exists due to weak customer response. Other factors are highly relevant.

Current system of gas settlement leads to inefficient allocation of costs and give rise to AEC in the domestic and SME retail gas markets

- 4.53 EDF Energy agrees that the current gas settlement process using the Annual Quantity ("AQ") process is flawed and inadequate. The CMA also correctly identifies that it is Xoserve that is responsible for ensuring that relevant charges are invoiced accurately (Provisional Findings, paragraph 8.263). We identified that the current system could result in shippers being faced with inaccurate charges and that there was potential for gaming the AQ system. However, EDF Energy considers that this is likely to be resolved by the proposals contained in Project Nexus.
- 4.54 It has been proposed that Project Nexus's scheduled implementation date of 1 October 2015 be deferred to 1 October 2016. We note that this is currently undergoing industry consultation and EDF Energy supports the deferred go live date as the initial date is no longer achievable for the whole industry. We agree with the CMA that this project has taken a long time to develop (Provisional Findings, paragraph 8.272). We therefore agree with the CMA that the current system of gas settlement is a feature of the market for domestic retail gas supply that gives rise to an AEC (Provisional Findings, paragraph 8.273) and that this is also the case for microbusiness gas customers (Provisional Findings, paragraph 8.274).

Absence of a plan to move to Half-Hourly ("HH") settlement distorts suppliers' incentives to encourage load shifting which gives rise to an AEC in the domestic retail electricity market and for the majority of microbusiness customers

- 4.55 EDF Energy's Response to the UIS stated that we agreed with the CMA's assessment that the lack of HH settlement means that suppliers' incentives to introduce time-of-use tariffs for some customers is reduced. That remains the case. The electricity market is inherently complex and changes need to be effectively planned and implemented in a coordinated way. We agree in principle that settlement of all customers on actual HH consumption is in their best interest although more research needs to be carried out on the size of this benefit. We also note that there is likely to be a significant IT cost in relation to any such move, which may ultimately impact on prices for customers. We note that the CMA has not quantified the level of customer harm that arises, which may be important for consideration of remedies.
- 4.56 EDF Energy previously recommended that a reduction in settlement costs can be facilitated by the roll out of smart meters together with other improvements to industry processes, and the implementation of HH settlement for all customers. We are committed to deliver the 'Smarter Market Programme' changes in a sustainable and cost effective way to remove any barriers to competition. Nevertheless, a number of logistical challenges remain. These include the need to have a critical mass of smart meters, a centralised registration system for both gas and electricity

and an availability of efficient and cost effective communication infrastructure. Thus, the DCC needs to be in place. The full benefits will therefore begin to be realised once SMETS2 technology is in place at the end of 2016, rather than being achievable with the current SMETS1 technology.

- 4.57 We agree that the CMA is right to be concerned at the lack of concrete plans for a move to HH settlement and the fact that no modification process has begun (Provisional Findings, paragraph 8.283) such that there is a feature giving rise to an AEC (Provisional Findings, paragraphs 8.285-6). However, EDF Energy and the rest of the industry have positively engaged with Ofgem on the issue and we note that Ofgem will be publishing its Flexibility Strategy Paper in the summer which will set out the next steps for settlement reform, in the context of Ofgem's wider strategy on demand-side flexibility.

Weak customer response from microbusiness, which gives suppliers UMP over inactive customers and leads to an AEC for both the supply of gas and electricity

- 4.58 Similar to the position with respect to the domestic retail markets, EDF Energy agrees with the CMA's finding that weak customer response from microbusiness exists and limits effective competition in this market. However, EDF Energy does not agree with the CMA's reasoning that this in turn leads to suppliers' UMP over inactive customers, for both the supply of gas and electricity to microbusinesses. The common conditions for such a finding, as set out in the CMA's guidelines⁷, do not exist:

- a. Concentration in the market is not high;
- b. There are no capacity constraints;
- c. Substitutability is high; and
- d. There are no supply-side constraints.

- 4.59 The CMA lists the various different versions of "microbusiness" definition used. It is not clear to us whether the CMA regards a particular version as definitive or whether there is a spectrum that it is considering at this stage, and it will be necessary to have clarity on this point in order that remedies can be designed and targeted appropriately. For instance, [%] of EDF Energy's total SME electricity customers (around [%] customers) consume less than the average domestic customer (3.2MWh/year) and pay less than £[%] per year for their electricity. We see much lower levels of engagement by these microbusiness customers compared with larger customers. However, competitors use different definitions and the current Ofgem definition is too broad and is based on information not readily available to suppliers (namely, turnover and number of employees). Therefore, it will be important for the CMA to clarify its position in this regard with respect to remedies and to enable further analysis to facilitate this part of its market investigation. We comment further on this point in our Remedies Response.

- 4.60 As is the case in relation to domestic customers, EDF Energy would like to see improved customer engagement to support our ability to attract customers as a challenger in the market. This is an important driver for our Trust Agenda. It is part of our commercial strategy, as well as our culture, to improve customer engagement and awareness in order to gain more customers.

- 4.61 In addition to the lack of customer engagement, we consider that the CMA rightly identifies the role of traditional meters⁸ and bills as an issue (Provisional Findings, paragraph 9.45).

⁷ CC 3 (Revised) (Guidelines for market investigations: Their role, procedures, assessment and remedies), April 2013, paragraphs 178-204, especially 185 et seq.

⁸ Moving away from traditional meters for this segment could help reduce the risks observed in some parts on bad debt and thus lowering the costs for all consumers in the segment.

- 4.62 In contrast to the analysis regarding the domestic retail markets, the CMA does not go on to identify the key characteristics of certain customers that are inactive. Rather, the key feature identified is the current lack of price transparency. This is important when considering remedies.
- 4.63 As set out in our Remedies Response, the absence of price transparency in microbusiness relative to domestic supply would indicate that a package of remedies focusing on this area has the potential to bring about significant improvements in competition and therefore in outcomes for customers. We agree with the CMA that transparency is important and customers with lower visibility of market prices are less likely to try to switch supplier or tariff (Provisional Findings, paragraph 9.47). This is in line with the views we expressed in our response to the UIS. In particular we expect that improving transparency will facilitate the role of PCWs by reducing their costs relative to current non-domestic TPI models, and will bring about increased levels of awareness of switching opportunities and customer engagement.
- 4.64 We also agree that there are a number of issues that relate to TPIs. A lack of trust in TPIs is a relevant factor, partly driven by longstanding concerns about behaviour (Provisional Findings, paragraph 9.55). This is not helped by the generally limited information available about them in the public domain. We believe the CMA should consider whether there would be benefits to customers in making more information on PCWs and other TPIs available, in particular on their costs, commissions and profitability. In EDF Energy's view, TPIs should be subject to the same direct principles based regulation as suppliers, requiring them to treat customers fairly and transparently. This would require TPIs (including PCWs) to be licensed by Ofgem in future in order that they can be made subject to equivalent Standards of Conduct expected of suppliers to act in customers' best interests.
- 4.65 Regarding the CMA's profitability analysis of suppliers to microbusiness customers, while we do not recognise the EBIT levels attributed to the sector as a whole (this may reflect the different strategies, cost allocations or sector definitions of our competitors), we do recognise the fact that there are materially different outcomes in terms of prices being paid by customers. Auto-rollovers, default tariffs, and Deemed/out of contract tariffs may all give rise to concerns. Further, the specific licence condition in relation to Deemed tariffs appears to allow some latitude for suppliers to interpret the requirements differently, and we believe that some of our competitors are setting high prices for these tariffs. The fact that there is no equivalent condition for out of contract scenarios (Provisional Findings, 9.95) is also a concern.
- 4.66 Previously, we stated that EDF Energy supports further investigation into the actual levels of profitability by sub-segment. Currently, however, the CMA's comparison of the profitability of SME suppliers is dependent on the differing definitions for SME taken by each of them, particularly in respect of the size of customers classified as either SME or Industrial & Commercial ("I&C"). Any assessment of EBIT margin is highly sensitive to the allocation of indirect costs between SME and I&C (which in turn may relate to the definition of SME used). [3<][3<][3<].
- 4.67 Finally, as with the domestic market we stress that it is particularly important for the profitability analysis with respect to microbusiness markets to be robust as the CMA may well face challenges to its decision on remedies based in particular on the proportionality. We hope our constructive comments found in the Annex (Profitability) will assist the CMA in this regard.

Lack of robustness and transparency in regulatory decision making increases risks of policy decisions that have an adverse impact on competition and gives rise to an AEC

- 4.68 EDF Energy welcomes the CMA's identification of a number of regulatory features that give rise to a lack of robustness and transparency and hence give rise to an AEC.
- 4.69 EDF Energy considers there is a need for a proportionate but effective set of institutional reforms that work in harmony with each other to achieve a common purpose.

4.70 In particular, the CMA identified the following features, which EDF Energy addresses in turn:

- a. *Lack of regulatory requirement for clear and relevant financial reporting concerning generation and retail profitability*

We wish to emphasise the importance of paragraph 11.10 of the Provisional Findings. This states that:

It is possible that, if the public debate is poorly informed about the factors driving price increases, and in particular the relative importance of factors that are outside of the control of firms (including exogenous wholesale costs and network costs) compared with those that are within their control (notably profits and indirect costs), this will increase the risk of poor policymaking. This might take the form of regulatory interventions that address perceived problems that do not exist in reality or that fail to address real problems that are not observed.

EDF Energy finds this is reflective of its experience over the last few years. We also agree with the specific issues that the CMA identifies. We agree that the absence of trusted and transparent information is a potentially material problem, undermining regulatory stability (Provisional Findings, paragraph 11.15). Thus, the CMA is correct to note the nature of the bodies that have expressed their dissatisfaction with the status quo concerning the transparency of financial reporting, including Ofgem, and that this is particularly troubling given the importance of these bodies in contributing to the general perception of the industry and policy relating to it. The CMA is also right to note that, while the current Market Investigation is addressing concerns over revenues, costs and profitability, these issues may resurface in a few years' time (Provisional Findings, paragraph 11.21) such that, overall, the current regulatory requirements imposed by Ofgem may not be sufficiently robust.

- b. *the lack of effective communication on the forecasted and actual impact of government and regulatory policies over energy prices and bills*

EDF Energy welcomes the CMA's recommendation of greater transparency in policy cost and trade offs. We note that there are already examples of such reports in the public domain such as DECC's "Estimated impacts of energy and climate change policies on energy prices and bills" (November 2014) and the Committee on Climate Change's "Energy prices and bills – impacts of meeting carbon budgets" (December 2014). We believe that it would be useful if such assessments were prepared on a consistent basis, stored in one place and easily accessible to interested parties. EDF Energy would welcome the opportunity to work with the CMA, Ofgem and DECC to discuss this in further detail.

- c. *Ofgem's statutory objectives and duties which, in certain circumstances, may constrain its ability to promote effective competition*

We welcome the fact that Ofgem has invited the CMA to consider the legislative framework within which it (Ofgem) operates. The CMA has subsequently reached the view that the statutory objectives may constrain Ofgem's ability to promote effective competition. EDF Energy continues to support strong, independent and effective regulation of the energy market and a robust and independent regulator, but remains unconvinced of the CMA's provisional finding that Ofgem's statutory duties as a matter of principle impose a constraint in practice on Ofgem's ability to pursue competition-based policies (for example, through placing a priority on approaches that do not promote competition). Nevertheless, if the evidence is that there is some degree of confusion, we agree that in practice this is problematic and needs to be addressed. We

can see some aspects of the statutory wording could be misinterpreted and therefore, on balance, agree with the CMA's interpretation as summarised at paragraph 11.61 of the Provisional Findings.

- d. *the absence of a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making and implementation can be addressed transparently*

We note the examples given by the CMA with interest and the possible institutional pressure exercised by DECC on Ofgem. We agree there is a need for clarity of roles.

The industry code governance limits innovation and slows progress, including Ofgem's insufficient ability to influence code modification development and implementation thus giving rise to an AEC

- 4.71 While we agree with the CMA that the current system of industry codes is complicated, and agree that the time taken on a number of proposals is such that there is a need to address code issues, we do not consider that the current system in and of itself distorts competition. Specifically, EDF Energy does not consider that the industry codes are in themselves, a barrier to entry although we recognise that there can be improvements made to the code modification processes that would benefit all market participants, particular the smaller ones.
- 4.72 While EDF Energy would not classify the current industry code governance as giving rise to an AEC through limiting innovation and causing the energy market to fail to keep pace with regulatory developments, we do strongly agree that the arrangements would benefit from reform as articulated in our Remedies Response and letter to the CMA dated 5 June 2015. We believe that the provision of enhanced project management powers to the Code administrators could be beneficial both with respect to development and implementation processes, but do not support additional powers being given to Ofgem beyond monitoring performance and holding administrators to account.
- 4.73 It will be important not to lose sight of the fact that there remains a strong need for industry experts to continue to have a role in code modification processes. EDF Energy is particularly concerned that an outcome which gives Ofgem increased powers to implement changes without due assessment by experts in the industry could further damage customer trust in this market.

EDF Energy

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5. Annex – Profitability

