

## SSE'S RESPONSE TO THE SUPPLEMENTAL NOTICE OF POSSIBLE REMEDIES

### 1. Introduction and Executive Summary

- 1.1 This paper provides the response (the *Response*) of SSE plc (*SSE*) to the Supplemental Notice of Provisional Remedies (*SNPR*) issued on 26 October 2015 by the Competition and Markets Authority (*CMA*). The Response is structured as follows: Section 2 briefly recaps the role of supplier-customer contacts in increasing engagement; Section 3 analyses the effectiveness and proportionality of the remedy proposed in the SNPR (the *Proposed Remedy*); Section 4 analyses the effectiveness and proportionality of alternative remedies available to the CMA to achieve the same objective; Section 5 explains why the CMA's "safeguard tariff" (Remedy 11 in the original Remedies Notice of 7 July 2015) would undermine the effectiveness of any remedy intended to prompt customer engagement; and Section 6 provides specific responses to the CMA's questions on the Proposed Remedy.
- 1.2 The Proposed Remedy is intended to "*increase domestic customer engagement in the retail market.*"<sup>1</sup> Having engaged and satisfied customers is critical to SSE's business model, and therefore SSE strongly supports well-targeted and effective measures that will increase customer engagement in the GB energy markets.<sup>2</sup>
- 1.3 The Proposed Remedy is based on the undisputed proposition that customer prompts can be an effective means of increasing engagement. To achieve this objective, the prompts must be properly targeted and the content of the prompts must be liable to successfully encourage a sufficient number of customers to take action. Any effective prompt must, however, also avoid unintended adverse consequences that risk turning customers off from engaging in the market or increasing the costs that they face.
- 1.4 The Proposed Remedy suggests that a mandatory system of fixed-term contracts (*FTCs*) would be the most effective means of increasing customer engagement. This position is apparently based solely on anecdotal evidence from Centrica and Scottish Power suggesting that end-of-fixed-term (*EOFT*) letters are, in their opinions, the most effective prompt to customers in the market today, which is then extrapolated to the market as a whole.
- 1.5 Under such a system, the prompt would only be a "bi-product" of a fundamental and invasive structural change to the market, namely the effective abolition of SVTs as a tariff. No evidence whatsoever has been advanced about the effect of this change, which leaves the CMA unable to perform an adequate cost benefit analysis on the measure. It is readily apparent however that the proposal is not an effective or proportionate measure to prompt customers to engage in the energy markets. In particular:

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<sup>1</sup> *SNPR*, para. 17.

<sup>2</sup> SSE makes this submission notwithstanding SSE's position that there is no adverse effect on competition resulting from an "overarching feature" of weak customer response in the domestic sector. Consequently no remedy at all is justified. *See SSE's Response to the Provisional Findings*, section 3.

- (a) The Proposed Remedy would be unjustifiably complex<sup>3</sup> and costly to implement, involving substantial (unnecessary) market upheaval and imposing material (unnecessary) costs on customers;
- (b) The Proposed Remedy is predicated on the elimination of SVTs which millions of customers actively choose to subscribe to each year, restricting suppliers' ability to innovate and compete. This is highly likely to have material unintended consequences not addressed at all in the CMA's paper or in those from Centrica and Scottish Power. Before any such intrusive and far-reaching step could be taken, the CMA would require a thoroughly convincing and considered evidential basis and cost benefit analysis. No such evidence or analysis has been presented;
- (c) There is no basis to suggest that EOFT letters are any more effective than other forms of customer communications at prompting the generality of energy customers to engage in the market;
- (d) The Proposed Remedy would take a significant period of time to implement, delaying the introduction of new prompts to aid consumers;
- (e) The Proposed Remedy is not well aligned with the wider package of measures currently under consideration and will greatly reduce the efficacy of Remedy 3 in particular;
- (f) Implementation would interfere with delivery of innovative market changes (e.g., smart meter roll-out and faster switching), potentially undermining the positive benefit for consumers that these changes will have; and
- (g) Alternative measures that are available to the CMA – in particular, the introduction of an enhanced annual statement – would achieve the same objective as the Proposed Remedy far more quickly, effectively, and proportionately.

1.6 On this basis, it is clear that the Proposed Remedy is not justified and would produce disadvantages disproportionate to any benefits that would be realised. The pursuit of the Proposed Remedy therefore cannot be privileged above more proportionate measures, such as the enhanced annual statement, which would be equally (and indeed more) effective in achieving the same aims without these adverse consequences.

**2. The CMA's customer survey underlines that customer contacts are one of several key factors that could effectively increase engagement**

2.1 As SSE has explained in its previous submissions, the CMA's customer survey indicates that there are four factors that appear to be particularly significant for customers who have previously been less likely to switch supplier: (1) a lack of internet access; (2) receipt of the Warm Home Discount (**WHD**); (3) being in rented accommodation; and (4) contact by suppliers.

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<sup>3</sup> See Centrica submission paras. 17-27.

- 2.2 A comprehensive approach to increasing customer engagement should, of course, address all four of these factors. To this end, SSE welcomes the additional work that the CMA is undertaking on these factors, such as the research on tenants (October 2015) and additional requests for information suppliers have received on the WHD. The SNPR provides an opportunity to consider and refine proposals which would address how suppliers can communicate as effectively as possible with customers.
- 2.3 The Proposed Remedy is intended to provide an additional prompt for customers to engage and switch tariff and/or supplier (where in their interests to do so). In this regard, the recent empirical and econometric work carried out on the drivers of customer engagement and switching should be the starting point for the CMA’s analysis of the Proposed Remedy.
- 2.4 This econometric analysis shows that contact from suppliers, including from a customer’s own supplier, can be effective in increasing engagement.<sup>4</sup> This evidence does not, however, indicate that EOFT letters are more effective than other forms of contact for this purpose. Indeed, EOFT letters alone could not have driven these results (given that such letters only account for a limited proportion of total customer contacts).
- 2.5 Furthermore, recent Ofgem research confirms that upon receipt of an annual statement, 34% of customers checked the features of the tariff they were on.<sup>5</sup> This is particularly pertinent since, as SSE explained in its response to the PFs, current regulations constrain suppliers’ ability to communicate effectively with consumers. SSE has described in detail how the current rules governing customer communications hinder engagement and contribute to a negative perception of suppliers.<sup>6</sup>
- 2.6 This evidence indicates that enabling suppliers to communicate more clearly and effectively with customers – irrespective of whether this is by an EOFT letter or by other means – should further improve customer engagement.
- 2.7 Remedies 3 and 9, which SSE strongly supports, would largely address these difficulties by ensuring suppliers can innovate in the types of products offered and can use effective and well-targeted prompts to improve consumer engagement further.<sup>7</sup> It is therefore critical (as explained below) to ensure that any further measures intended to facilitate customer engagement should result in customer-friendly and accessible prompts (and avoid unintended customer inconvenience, confusion or irritation).

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<sup>4</sup> See *SSE’s Response to the Provisional Findings*, para. 5.2.7.

<sup>5</sup> See *Ofgem’s “Retail Market Review 2015 Survey”*, section 3.3 (<https://www.ofgem.gov.uk/ofgem-publications/96565/rmrsurvey2015reportforpublication-pdf>).

<sup>6</sup> See *SSE’s Response to the Provisional Findings*, section 4.

<sup>7</sup> Initial findings of work on behalf of the European Commission’s working group “Consumers as Market Actors” found that the UK is in the upper quartile within the EU for energy supplier switching but close to the mean in terms of clarity of bills and suppliers’ delivery of innovations in technology and services that match customers’ needs. Data was presented in a joint update from Ipsos, London Economics and Deloitte at a meeting of the working group in Brussels on 19 October 2015 (further details of this working group can be found at <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3329>).

**3. The Proposed Remedy is not an effective and proportionate way to achieve the objective sought and risks several material unintended adverse consequences**

3.1 The SNPR suggests the Proposed Remedy is intended to be a type of customer “prompt” (within the meaning of Remedy 10). However, as explained below, the Proposed Remedy, which incorporates the effective prohibition of standard variable tariffs (SVTs), is a far more significant and invasive structural change to the market. This is not a proportionate way in which to set up an effective prompt and risks causing material unintended adverse consequences.

**The Proposed Remedy is not the most effective means of achieving the objective sought by the CMA**

3.2 The remedy proposals submitted by Centrica and Scottish Power are both based on providing customers with a powerful prompt to engage. However, in both cases, the prompt is effectively a “bi-product” to more significant changes to market arrangements (rather than the principal focus of the remedy proposal). As explained below, there is no basis to conclude that this would be an effective means of achieving the objective sought by the CMA. (Indeed, as Section 4 of this Response explains, there are more effective and immediate means of achieving the CMA’s stated aim of engaging all consumers.)

3.3 **There is no reliable basis to suggest that EOFT notices would be the most effective prompt for all customers.** The claimed effectiveness of the Proposed Remedy appears to rest on an inaccurate, and largely unsubstantiated, assumption that an EOFT letter provides the best possible prompt for *all* customers.

3.4 Centrica and Scottish Power (citing anecdotal internal company data) suggest that receipt of an EOFT notice is effective in prompting customers to engage. This is, however, not a robust and reliable approach upon which to assess customer behaviour, as it is based on a statistically biased sample which captures only the behaviour of the customers of those two suppliers who have already chosen to be on FTCs, many of whom will have made that choice within the previous year.

3.5 There is no basis to conclude that a similar pattern of response would be expected from the customer base as a whole (and particularly from customers who have previously demonstrated a preference for SVTs). Indeed, evidence from Ofgem indicates a lower response rate than Centrica suggests to the EOFT letter, reporting that 34% of customers looked into switching tariff with their own supplier following receipt compared to the 60% of customers reported by Centrica.<sup>8</sup> There is no available corroboration, therefore, for the position advanced by Centrica and Scottish Power. The CMA does not appear to have undertaken any first-hand forensic assessment on the basis of the advanced proposition, let alone addressed the complete absence in this assessment of a test of the proposition on customers on SVTs rather than FTCs. It was to avoid such ill-judged proposals that SSE strongly recommended in its response to the CMA’s Notice of Provisional Remedies, that the CMA should take time in the remedies process properly to field test the best proposals on customer engagement in the way it is currently doing elsewhere.

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<sup>8</sup> See Ofgem’s “Retail Market Review 2015 Survey”, section 3.3. <https://www.ofgem.gov.uk/ofgem-publications/96565/rmrsurvey2015reportforpublication-pdf>. See Centrica submission, para. 11.

- 3.6 As matters now stand, the CMA lacks a reasoned or adequate evidential basis to introduce such a significant change into the market. The Competition Appeals Tribunal has stated that: “[...] *the more important a particular factor seems likely to be in the overall proportionality assessment, or the more intrusive, uncertain in its effect, or wide-reaching a proposed remedy is likely to prove, the more detailed or deeper the investigation of the factor in question may need to be.*”<sup>9</sup> The CMA has not discharged this legal obligation which it is required to do in order to lawfully introduce the Proposed Remedy.
- 3.7 Having a well-established basis in evidence to support the intended measures is particularly critical given the history of well-intended interventions that have had adverse consequences in this market as the CMA has itself recognised in the Notice of Provisional Remedies and the SNPR.
- 3.8 **The car and home insurance markets are of limited relevance as workable models for customer relationships in the energy sector.** Both Centrica and Scottish Power appear to suggest that the car and home insurance markets provide workable models for customer relationships in the energy sector. As explained below, however, the relevance of such comparisons is limited because there are material structural differences between the two sectors.
- 3.9 In particular, the incentives for customer engagement in the energy sector are fundamentally different to those in the car insurance sector. Unlike energy, insurance consumers are required to engage in the market in order to be provided with services. The nature of the product is also fundamentally different, with insurance cover necessarily being fixed-term in nature. Uninsured customers would face criminal sanctions (*i.e.*, in the case of drivers without car insurance and landlords without home insurance) and significant costs (*i.e.*, if they cause damage to their own or others’ property while uninsured).
- 3.10 As Scottish Power recognises in its response to the Updated Issues Statement, there is a significantly higher degree of price dispersion in the car and home insurance markets compared to the energy sector.<sup>10</sup> This means, in practice, that insurance renewal notices effectively combine the features of EOFT letters with price increase notices. The impact of the insurance renewals notices should therefore not be overstated (because customers who shop around in the market can achieve savings of up to 60% on their annual premium).
- 3.11 Notwithstanding these material differences, the use of insurance renewals notices does provide one potentially useful lesson: the fewer communications customers receive, the more effective those communications are. In contrast to the energy sector, where customers receive numerous communications through the year,<sup>11</sup> car insurance customers generally receive only one communication a year (*i.e.*, their annual renewal letter). As SSE has previously explained, a high volume of

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<sup>9</sup> *Tesco plc v Competition Commission* [2009] CAT 6, para. 139.

<sup>10</sup> See *Scottish Power’s Response to the Updated Issues Statement*, paras. 5.4 – 5.8 which presented analysis by Oxera based upon data from the EU Consumer Market Monitoring Survey.

<sup>11</sup> Energy suppliers routinely send customers four quarterly bills and an annual statement every year. Suppliers may also send a price increase notification, an end of fixed term notification and tariff information relating to any change of tariff.

communications can dilute the effectiveness of the message being conveyed.<sup>12</sup> The Proposed Remedy therefore risks having no impact, or even a negative impact, on consumer engagement as it needlessly increases customer communications. A remedy which does not increase customer communications, like the enhanced annual statement explored in Section 4, would be a more effective and proportionate remedy.

### **The Proposed Remedy would have material unintended adverse consequences**

- 3.12 Centrica suggests that the Proposed Remedy would be “*a natural pro-competitive remedy.*”<sup>13</sup> This is, however, simply not the case. In fact, the Proposed Remedy would limit customer choice, stifle innovation, and undermine the pro-competitive package of measures contained in the CMA’s other proposed remedies.
- 3.13 **The Proposed Remedy would undermine effective competition by unduly restricting customer choice through the elimination of SVTs.** Customers actively choose SVTs for their flexibility and simplicity. ✂.<sup>14</sup> The Proposed Remedy would undermine effective competition by unduly restricting this key aspect of customer choice.
- 3.14 **The Proposed Remedy would restrict suppliers’ ability to innovate and compete.** Previous experience in the market shows that imposing restrictions on particular tariff types can have a negative impact on innovation (as the CMA has recognised in relation to the RMR). In particular, limiting product offerings would constrain suppliers’ ability to devise and trial tariffs tailored to consumers’ needs and preferences. The restrictive nature of the Proposed Remedy would likely have similar effects to the RMR reforms, which the CMA has recognised “*restrict the behaviour of suppliers and constrain the choices of consumers in a way that may have distorted competition and reduced consumer welfare.*”<sup>15</sup>
- 3.15 The Proposed Remedy therefore also risks undermining the effectiveness of other remedies which are under consideration by the CMA (and have gained support from a wide cross-section of market participants). For example, one of the principal benefits of Remedy 3 is that it would enable previously popular tariffs that are prohibited under the RMR reforms, such as tracker tariffs, to be reintroduced, engaging consumers and stimulating competition. If SVTs were forbidden, however, suppliers would not be able to offer these tracker tariffs.<sup>16</sup>

### **The Proposed Remedy would be unjustifiably complex and costly to implement**

- 3.16 As noted above, the prompt envisaged in the Proposed Remedy is based on a significant and invasive structural change to the market. Such a material and complicated market change would need a considerable period of time to implement.

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<sup>12</sup> See SSE’s response to the Notice of Provisional Remedies (5 August 2015), sections 3.14-3.15; and SSE Remedies 9 and 11\_alternative approaches (30 September 2015), p. 2.

<sup>13</sup> See Centrica submission, para. 6.

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<sup>15</sup> See the CMA’s Provisional Findings, para. 140.

<sup>16</sup> Scottish Power tacitly acknowledges this negative impact on the effectiveness of Remedy 3, suggesting that the reintroduction of tracker tariffs may be delayed until 2019 under the Proposed Remedy. See Scottish Power submission, para. 14.

Indeed, Centrica recognises that it would take at least two years for all of the required changes to be put in place and this is likely materially to underestimate the scale and extent of the migration and implementation process.<sup>17</sup>

- 3.17 The current market investigation presents a unique opportunity to increase customer awareness and stimulate further engagement. Measures to improve engagement that can be implemented quickly will be able to capitalise more effectively on the attention that has been generated by the investigation. As customers' experience of market engagement reduces the perception of barriers to engagement (as the CMA's survey highlights),<sup>18</sup> it is also critical that customers' early experiences of the energy market following the implementation of any remedies should be positive and constructive in order to encourage future engagement.
- 3.18 In order to implement the Proposed Remedy, all domestic suppliers would, in practice, be required to take the following steps:
- (a) A new hedging policy would have to be implemented for domestic retail supply;
  - (b) A wider communications campaign would be necessary to inform customers of the material changes to the market and to explain the objective this change is designed to meet (recognising, as explained above, that a large number of communications can crowd out and dilute the effect of more targeted communications that are specifically designed to prompt engagement);
  - (c) Groups of customers for each phase of tariff migration would have to be identified;
  - (d) The delivery of the appropriate information for customers would have to be designed and scheduled (Centrica has proposed that initial customer contacts for this purpose should take place twelve months prior to migration);
  - (e) A suite of new tariffs with twelve month duration and rolling end-dates would have to be created within each supplier's billing system;
  - (f) Affected customers would have to be notified before tariff migration; and
  - (g) Customers who failed to engage would have to be migrated to the new "default" tariff and issued with relevant contract information.
- 3.19 Experience from the implementation and delivery of the RMR rules suggests that this preparatory phase alone could take at least a year (*i.e.*, before migration from SVTs could even commence). The migration of all customers to the new tariffs would take a further 12-18 months, with the impact on customer call volumes being less intense, and therefore cheaper to manage, if migration is phased over a longer period. These steps do not take account of the changes that would be required to the regulatory

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<sup>17</sup> See *Centrica submission*, para. 9. SSE considers that it would be necessary to trial the process in order to properly assess the appropriate rate at which to migrate customers.

<sup>18</sup> *Energy Market Investigation: GfK NOP Customer Survey* (February 2015), paras. 13-15.

framework applicable to deemed contracts (for which changes to primary legislation would be required,<sup>19</sup> which could result in further delays).

- 3.20 The measures set out above would clearly take some time to implement. In this way, the Proposed Remedy would be less well-placed to capitalise on the attention that has been generated by the current market investigation than other measures (described in Section 4) which could be introduced more quickly.
- 3.21 A wide-scale customer communication exercise to explain the removal of SVTs, for example, is likely to coincide (and potentially conflict) with communications to promote smart metering and the benefits of smarter markets, including faster switching, to customers. Such conflicts could reduce the impact of both communications programmes by providing mixed messages (*e.g.*, more choices of smart tariff but *no* choice of evergreen tariff).
- 3.22 In addition, the significant back office investment that would be required to introduce the Proposed Remedy risks undermining the delivery of innovative market changes that will have a positive benefit for consumers. It could mean, for example, that vital resources and attention are diverted away from other parts of the business, such as product innovation, with no guaranteed consumer benefit.
- 3.23 The impact on market liquidity of moving all customers onto FTCs could also raise costs that would not be incurred under alternative proposals. (The limited period for the migration of all customers from SVTs to FTCs would result in certain periods of increased hedging activity;<sup>20</sup> such spikes in trading activity could lead to temporary price lifts in the wholesale market which would be absorbed by consumers.)
- 3.24 Accordingly, the cost and complexity surrounding the implementation of the Proposed Remedy could result in material customer harm. Consumers could face a reduced choice of products, increased costs and unnecessary disruption during transition (and, to some extent, over the longer-term), which is highly likely to discourage the very engagement the measure is claimed to promote.

#### **4. Alternative remedies available to the CMA to achieve the same objective are more effective and proportionate**

- 4.1 As explained above, mandating FTCs for the supply of energy would be an extremely heavy-handed, costly, and time-consuming way of seeking to achieve the CMA's objective. In particular, as explained in SSE's previous submissions, some approaches to Remedies 3 and 9 available to the CMA are less costly and can be introduced to the market more quickly and effectively than the Proposed Remedy.<sup>21</sup>

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<sup>19</sup> The evergreen nature of deemed contracts is a requirement of the Gas Act 1986 and Electricity Act 1989 (and this legislation is reflected in the drafting of SLC 7.6A (a) of the supply licences).

<sup>20</sup> With a frequency related to the monthly or quarterly nature of the fixed price default tariffs adopted by each supplier, if the remedy is adopted as per Scottish Power's proposal.

<sup>21</sup> *SSE's response to the Notice of Provisional Remedies* (5 August 2015), sections 3.9 and 3.14 respectively.

- 4.2 Many of the remedies already proposed by the CMA that will have a significant impact on customer engagement can be introduced comparatively quickly.<sup>22</sup> This is also the case for SSE's preferred approach to CMA's Remedies 9 and 10 which is described in this Section.
- 4.3 SSE's early-stage testing with customers indicates that the measures described below would be effective at increasing consumer engagement in the energy sector without needlessly altering the market structure (which would have the adverse effects described in detail in Section 3 above).
- 4.4 Customers need a targeted and useful prompt to encourage them to engage with the energy market. Ofgem was unable to fully achieve this aim when it introduced the current format of the annual statement as part of the RMR reforms.<sup>23</sup> This investigation offers an opportunity for the CMA to work with consumer groups and suppliers to devise a practical solution that would significantly improve upon (and better achieve the original aim) of the regulation-driven annual statement that is currently mandated.
- 4.5 The central features of a suitable remedy – referred to as the “*enhanced annual statement*” for the purposes of this Response – are described below. The enhanced annual statement would use a revised version of the existing annual statement as a springboard to prompt consumer engagement. As described below, this would have material benefits for customers and be capable of fast and effective implementation.<sup>24</sup>

**An enhanced annual statement would be highly effective in achieving the objectives sought by the CMA**

- 4.6 SSE has conducted a large volume of research with consumers and stakeholders to inform the redesign of its customer bills. Customers at SSE's regional forums have indicated that they would like to receive clear and simple information that minimises the time and effort required from them in order to assess the value of suppliers' offerings.
- 4.7 SSE has used behavioural economics techniques to improve its bill format based on these customer findings.<sup>25</sup> The same approach could be applied to the current annual statement to make the information provided engaging, simple and comprehensible, and an effective prompt in achieving the CMA's stated objective of encouraging consumer engagement.

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<sup>22</sup> See *SSE's Response to the Notice of Provisional Remedies* (5 August 2015), sections 3.5 and 3.14 respectively.

<sup>23</sup> Ofgem's original policy intention for the annual statement was to provide customers with an effective annual prompt to engage in the market, this purpose was greatly diluted by the addition of secondary goals. As the RMR proposals were progressed Ofgem sought partners to conduct field trials of the key elements of the information remedies, including the revised bill and annual statement. Unfortunately there was insufficient time for this to happen and, as a consequence, there was no opportunity to refine the presentation of information on these important documents to make them more customer friendly prior to implementation. The CMA has an opportunity to revisit this.

<sup>24</sup> SSE previously suggested a less advanced version of this alternative remedy in its submission to the CMA – *SSE Remedies 9 and 11 alternative approaches* (30 September 2015).

<sup>25</sup> SSE provided its prototype bills to the Panel at its Remedies Hearing on 26 August 2015 and in *Annex to Remedy 9 - SSE's Response to the CMA's Notice of Possible Remedies* (5 August 2015).

4.8 ✂.<sup>26</sup>

4.9 There need not be a prescribed format for the enhanced annual statement. The CMA - in collaboration with key industry stakeholders – could revise SLC 31A to provide a framework for the content of enhanced annual statement. The new licence condition would ensure that all suppliers provide comprehensive and consistent information to consumers. Suppliers would also be able to devise their own, customer-focused designs (within the bounds of SLC 31A), which could evolve iteratively to track market developments, such as the introduction of faster switching and the smart meter roll-out.

4.10 The enhanced annual statement would be a highly effective prompt in particular because:

- (a) The statement would be tailor-made for customers, which makes it highly accessible to the customer and increases the likelihood of customer response.
- (b) The statement would be able to evolve in tandem with the market (including major market developments such as the introduction of smart meters);
- (c) The statement would not limit consumer autonomy and choice (as the Proposed Remedy would);
- (d) The statement would ensure that customers would not face an additional mechanism of communication, given that the market is already saturated with customer communications).<sup>27</sup> (See para 3.11 above.)

**An enhanced annual statement could be implemented quickly and at significantly less cost than the Proposed Remedy**

4.11 Consumers would be able to benefit from the enhanced annual statement relatively quickly (and considerably more quickly than the measures envisaged in the Proposed Remedy, which would require some time to introduce). The enhanced annual statement would allow all suppliers to leverage pre-existing systems used to distribute the current annual statement (whilst significantly improving content in order to increase customer engagement). Full and effective implementation of the enhanced annual statement could be achieved through a discrete number of comparatively quick steps, including:

- (a) Roundtable discussions between the CMA, consumers, suppliers and other key stakeholders to identify the required changes to SLC 31A;
- (b) CMA/Ofgem consulting on the revised version of SLC 31A with supply licensees, the Secretary of State and consumer representatives (including

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<sup>26</sup> ✂.

<sup>27</sup> Customers at SSE's regional forums have also said that the more communications energy companies send out, the less likely they are to read them in any detail.

Citizens Advice and the Energy Ombudsman) and issuing a decision with an appropriate implementation date;<sup>28</sup>

- (c) Suppliers designing an enhanced annual statement (within the principles-based approach contained in the revised SLC 31A);
  - (d) Suppliers devising new processes to administer the customer contacts procedure to fit with the enhanced annual statement (this could occur concurrently with the design process); and
  - (e) Suppliers conducting field trials and customer testing on the new enhanced annual statements.
- 4.12 Executed efficiently, these changes could be achieved for all customer within a comparatively short timeframe. Customers would therefore be able to benefit from an improved prompt far quicker than they would under the Proposed Remedy (which would take at least twice as long to take effect). This would also offer a far better customer experience. Customers would not be forced to give up tariff types that they value and suppliers would be able to focus their efforts on improving customer experience rather than changing contractual models). The potential cost to consumers would also be significantly lower.

**An enhanced annual statement is a more proportionate and practicable way of achieving the CMA’s objective, avoiding the material unintended adverse consequences entailed by the Proposed Remedy**

- 4.13 The enhanced annual statement is a practical and proportionate means of encouraging customer engagement in the energy market. By building on existing supplier processes and with the capacity to evolve with the market, the enhanced annual statement would deliver relevant customer benefits with minimal (if any) adverse consequences. Furthermore, it would work to support (rather than undermine) the CMA’s other proposed remedies.
- 4.14 The enhanced annual statement would not be time-consuming to implement and unduly onerous (in contrast to the Proposed Remedy). Instead, this would deliver clear benefits for customers with minimal risk of consumer or market detriment. The enhanced annual statement is therefore a more appropriate and effective means of resolving the CMA’s concerns in the energy market.

**5. The CMA’s “safeguard tariff” would undermine the effectiveness of any remedy intended to prompt customer engagement**

- 5.1 The CMA notes that both Scottish Power and Centrica submitted the Proposed Remedy as an alternative to Remedy 11 (*i.e.*, the proposed “safeguard tariff”), but that the CMA’s view is that these measures should instead be considered “*within the context of Remedy 10.*”<sup>29</sup>

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<sup>28</sup> Electricity Act 1989, s. 11A. The CMA/Ofgem must consult on the licence modification for at least 28 days, while the effective date specified in the modification decision must be at least 56 days from the decision publication date.

<sup>29</sup> SNPR, para. 12.

- 5.2 SSE is concerned that the safeguard tariff would undermine the other remedies under consideration in the same manner as described above for the Proposed Remedy (see 3.15 above).
- 5.3 SSE has previously explained why Remedy 11, an extremely onerous remedy that would reintroduce price controls into the market, is not justified (in particular given the absence of a very real and serious AEC). SSE has also explained in detail why Remedy 11 is not proportionate, would not be effective in addressing the alleged harm, and would have significant adverse unintended consequences.<sup>30</sup> Since SSE's response to the Provisional Findings was submitted, the Council of European Energy Regulators (*CEER*) has further highlighted the highly anti-competitive impact that such regulated pricing schemes typically have.<sup>31</sup>
- 5.4 **There is no basis for the introduction of a safeguard regulated tariff.** For the avoidance of doubt, the introduction of the Proposed Remedy (and/or the more appropriate alternative described in Section 4) would not alter this position. In fact, Remedy 11 would risk undermining the benefits of any effective customer prompt by undermining trust in suppliers and reducing the incentive to shop around.

## 6. Specific Responses CMA's questions on the Proposed Remedy

- 6.1 As SSE has explained in its previous submissions, the CMA has not established any AEC that would justify the Proposed Remedy. SSE is, nevertheless, committed to improving customer engagement and therefore welcomes any well-targeted measures that would effectively achieve this aim. As explained above, the Proposed Remedy would not, however, achieve the CMA's objectives effectively (if at all) and would have material unintended adverse consequences.
- 6.2 The responses to the CMA's specific questions provided below should therefore be considered within this context.
- (a) **Would this remedy be effective in encouraging customers to engage more frequently in the market? Are there certain groups of customers who could not be covered by this remedy and, therefore, would not benefit, eg those on prepayment, DTS or other meters?**
- 6.3 As explained in Section 3, there is no clear basis to suggest that the Proposed Remedy would encourage consumers to engage with the market more effectively than the alternative measures available to the CMA. (The Proposed Remedy would, in addition, carry a very real risk of material unintended adverse consequences that would not be raised by alternative remedies.)

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<sup>30</sup> *SSE's response to the Notice of Provisional Remedies* (5 August 2015), section 3.16.

<sup>31</sup> *A report by the Council of European Energy Regulators (CEER)* (16 October 2015). The CEER report notes that the regulated retail prices that continue to apply in many European countries act as a major entry barrier and should be abolished: *As a general principle, regulated prices distort competition in the market and prevent a level playing field between competing suppliers. They should be abolished as soon as practicable, i.e. where retail competition exists and when it has reached a minimum level. Regulated prices set below cost remove the opportunity for supplier profits and create deficits which need to be recovered elsewhere. This prevents new actors from entering the market and acquiring customers and is therefore detrimental to the functioning of retail markets* (p.15).

- 6.4 Implementing a variable-priced fixed-term tariff for PPM customers under the Proposed Remedy would raise particular difficulties. As SSE has explained in its previous submissions,<sup>32</sup> there are fewer “slots” available to PPM customers because of technical constraints. Given this limited availability of tariff codes, any default tariff envisaged under the Proposed Remedy would come at the expense of other tariffs that would offer PPM customers cheaper fixed-term tariffs (or tariffs with other attractive features).
- 6.5 If mandatory fixed-price tariffs were introduced, the Proposed Remedy would become unfeasible for PPM customers. Under the legacy infrastructure, there are insufficient tariff codes to provide suppliers with the ability to update the default FTC frequently (as required by costs changes). The range of FTCs would take up more tariff codes than are currently available for PPMs.
- 6.6 SSE does not consider that DTS and restricted meters are a significant issue with regard to this proposal. SSE makes equivalent versions of all fixed price offerings available for restricted meters (e.g., THTC, SHC, E10 and Superdeal) and envisages that this would continue if the proposed regime were imposed.
- (i) **To what extent is the higher level of engagement observed in response to end of fixed-term contract notifications the result of the type of customer who has chosen those products, rather than a response to the notification itself?**
- 6.7 See para. 3.4 above. The response rate to EOFT notification letters is likely to be heavily influenced by the fact that those customers have already chosen an FTC. As described above, evidence from Ofgem indicates that other forms of customer communications (even in their current sub-optimal state) produce significant levels of engagement. Revision of the annual statement as described in Section 4 would greatly improve upon current response levels.
- (b) **Would this remedy be effective in protecting those customers who failed to engage in the market, even after receiving prompts, from paying high prices? Would the extension of SLC 7, in the manner proposed by Centrica, provide such protection?**
- 6.8 No. At present, the Deemed Contract for customers who do not subscribe to an FTC is the SVT contract, which is a tariff upon which suppliers compete. Under the Proposed Remedy, the Deemed Contract where customers did not re-subscribe to an FTC would not be marketed to customers on a competitive basis. This means that these tariffs would likely be subject to a lower level of competitive pressure than at present in relation to price and innovation.
- 6.9 Centrica’s proposed extension of SLC 7 is unnecessary. As noted above, a Deemed Contract (as defined by SLC 7) is essentially an SVT and therefore the terms of these contracts remain subject to competition. Effective and vigorous competition in relation to SVT tariffs means that the provisions of SLC 7 are not necessary for these tariffs. In addition, as a technical matter, if the proposed “default” tariffs were to become Deemed Contracts, SSE understands that SLC 7 would automatically apply to these tariffs without the need for the extension suggested by Centrica.

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<sup>32</sup> See SSE’s *Response to the Notice of Provisional Remedies*, section 3.3.16 *et seq.*

**(c) Should this remedy apply to domestic customers only, or should it also be extended to microbusiness customers?**

- 6.10 The concerns described in this Response, which explain why the Proposed Remedy is not appropriate, proportionate or practicable, apply equally to both domestic and microbusiness customers.
- 6.11 As SSE has previously explained,<sup>33</sup> the microbusiness segment has material differences to the domestic sector, with its own consumption patterns and customer requirements. The evidence adduced by the CMA clearly shows that microbusiness customers are highly engaged and that industry developments and supplier initiatives are working well to further increase engagement.
- 6.12 In light of recent market developments, the Proposed Remedy, as applied to the microbusiness segment would be particularly retrograde, as it would run counter to recent market developments that have been considered to improve engagement (such as the abolition by many suppliers of auto-rollover contracts).

**(d) The wording of the end of fixed-term notifications appears to be critical to the effective functioning of this remedy. Should Ofgem take responsibility for developing and testing appropriate wording, or should the energy suppliers retain responsibility for this?**

- 6.13 In order to be as effective as possible, customer preferences should drive the formulation of the wording used to prompt engagement (as compared to the present situation, where much of the sub-optimal wording in customer communications is driven by other regulatory requirements).
- 6.14 As the CMA recognises, market participants with sufficient consumer experience – such as the energy suppliers and consumer groups – should take the lead role in developing the most effective wording (within a principles-based framework).
- 6.15 This is discussed more fully in Section 4.

**(i) If suppliers design these prompts, how can they be incentivised to maximise their effectiveness?**

- 6.16 As explained in SSE's previous submissions, suppliers do not lack any incentive to engage effectively with customers because it impacts on customer satisfaction and ultimately on churn. On the other hand, suppliers can face difficulties in doing so because of the requirements imposed by existing legislation and regulation. Remedy 3 and Remedy 9 will address these difficulties (with further improvements also brought about by pre-existing market developments such as the introduction of smart meters). The proposed prompts will also help suppliers to engage more effectively with customers. In such circumstances, no additional incentive is necessary to ensure the effectiveness of customer prompts.

**(e) Should the default tariff be fixed price as well as fixed term, or should suppliers be allowed to roll customers onto a variable price tariff?**

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<sup>33</sup> See SSE's Response to the Provisional Findings (5 August 2015), section 8.

- 6.17 Consistent with the position described in detail above, neither version of the Proposed Remedy would be justified, effective, or proportionate.
- 6.18 The fixed-price version of the Proposed Remedy would have particularly adverse unintended consequences. Under the fixed-price option for the Proposed Remedy, a supplier would only offer one “live” fixed price tariff at any point in time. However, the supplier’s customers could be on one of a number of versions of the tariff (depending on how frequently suppliers could change the tariff price). This approach would result in a proliferation of tariffs which would confuse customers. It could also cause logistical difficulties for intermediaries (*e.g.*, PCWs) who would be obliged to track suppliers’ changing FTCs to provide customers with viable comparisons.
- (i) **If the default tariff were variable price, should energy suppliers be required to roll all customers who did not take action onto the same tariff, such that in effect there was only a single variable price default tariff per supplier?**
- 6.19 Yes. This approach is more pragmatic as it limits the number of default tariffs to one. It would be counterintuitive for there to be more than one ‘default’ tariff. The biggest adverse consequence arising from adopting a multiple tariff option is that it would be harder for customers to accurately identify the saving available to them of a specific choice; customers’ experience of PCWs in that case would be an apparent proliferation of default tariffs making it hard to identify their own.
- (ii) **If the default tariff were fixed price, should energy suppliers be required to roll all customers who did not take action within a given period, eg one month, onto the same default tariff? Is there a risk that the existence of multiple default tariffs (eg one for every month) would reduce the pressure on SVT pricing that currently results from media attention on changes to SVTs?**
- 6.20 Energy suppliers should be required to roll all customers who did not take action within a given period onto the same default tariff. However, suppliers should be able to update this tariff frequently to mirror changes in costs (whether upwards or downwards). An excessive restriction on the frequency of updates would result in a higher cost to customers, as prudent suppliers would need to include a risk premium in the price.
- 6.21 Downward pressure on SVT pricing derives from vigorous and effective supplier competition, rather than media attention. Under the Proposed Remedy, there would be no new SVTs, which would be phased out. For an interim period, before the SVTs had been completely phased out, downward pressure would come from the other SVTs and the FTCs available when SVTs had been prohibited. Multiple default tariffs, which are not part of an active, competitive marketplace, would not exert price pressure on other tariffs.<sup>34</sup>
- (f) **How should this remedy be implemented in order to ensure it is effective and proportionate?**

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<sup>34</sup> As SSE understands it, the proposed remedy would not allow for acquisitions on the ‘default’ tariff (other than presumably on a Deemed Contract basis).

6.22 Given the extreme nature of this remedy – changing the fundamental nature of the market to provide customers with an additional prompt – it would not be possible to implement it either effectively or proportionately.

**(i) How long should energy suppliers be given to phase existing customers off their SVTs?**

6.23 See para. 3.19 above. SSE considers that the phased migration would require 12-18 months. The migration exercise could not begin without significant preparatory work which would take at least 12 months from the decision to implement this.

**(ii) Should the remedy be phased in starting with customers who have been on the SVT longest? Alternatively, should it be organised geographically in order to facilitate marketing by competitors and support from consumer groups in later years? For example, energy suppliers might be required to move all SVT customers in a region to the default tariff in the same month, such that the following year energy suppliers, PCWs and other TPIs would know that a large number of customers in that region might be looking to move in that month.**

6.24 To minimise customer confusion, customer migration should be spread evenly over the transition period. Phasing criteria should focus on the outcome of delivering the smoothest possible process for customers rather than arbitrary parameters that could damage customer service. For example, basing customer migration on geography would be challenging because different regions have different population densities and customer concentrations for suppliers, so would result in peaks and troughs of supplier activity with adverse consequences for customers.

6.25 Migrating customers based on the length of time they have been on the SVT would be feasible but this approach would not be guaranteed to deliver the most even phasing of migration activity – indeed it is likely to result in similar peaks and troughs to the geographical basis above.

**(iii) Should energy suppliers be required to provide contact details for all SVT customers or a subset of SVT customers (eg those who have been on the default tariff for several years in a row, eg three or five years) to Ofgem, which could then seek to contact them with further prompts? Alternatively, should suppliers be required to place the contact details of these customers on a shared database, available to all licensed energy suppliers, in order to allow targeted marketing to these customers? We note that GDF has been required to share such information on those of its customers who remain on the regulated tariff in France.**

6.26 These approaches would breach the Data Protection Act and would be unworkable without a change in primary legislation.<sup>35</sup>

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<sup>35</sup> SSE cannot comment on data protection legislation in France or the arrangements applicable to GDF.

6.27 In the past, customers have reacted negatively to sales pitches from third parties in the energy market. Doorstep selling was stopped for precisely this reason. There is therefore no evidence that this kind of approach would be welcomed by customers (and, indeed, the SSE's recent experience in the market suggests that such an approach would not be welcome – customer have complained for example, when contacted for customer research purposes as part of Ofgem's duty to monitor the market; such contact was treated as marketing activity which they had not consented to receive). This kind of proposal would therefore risk dissuading customers from engaging in the energy market, undermining the CMA's stated aim.

(g) **What should the default tariff be called? Should it be the 'emergency' tariff to further prompt engagement or would some other wording be more appropriate? Is there a risk that certain customers will be concerned that their energy supply will be cut off if they do not engage following an end of contract prompt?**

6.28 The tariff's title should be clear and informative. Labels such as "emergency," "temporary," "transitional," and "default" should be avoided. All such terms have negative connotations which may confuse customers. The most effective approach would be to properly test the proposed terminology with customers.

6.29 As a general matter, the migration notification wording would need to be clearly drafted to ensure that consumers would not fear being cut off if they do not engage. This is a particularly significant concern in the case of the most vulnerable customers who may be less confident in their understanding of such notifications.

(i) **How should the CMA assess the costs of such potential distress to customers?**

6.30 Past industry changes which have prompted uncertainty – such as bill changes and RMR – have led to an uptick in customer calls related to customer migration. The Proposed Remedy would likely have the same impact, with suppliers requiring additional call centre staff to cope with the increase in call volumes. These additional resources would come at a tangible cost. However, there is no means of providing a precise costing estimate until a more detailed cost-benefit analysis has been carried out for the prohibition of SVTs.

6.31 Potential distress to customers also runs the risk of negatively impacting trust in the industry (which, as shown in the CMA's customer survey, can have a negative impact on customer engagement).<sup>36</sup> Any measures that reduce trust in the energy sector would risk undermining the beneficial effects of the other remedies proposed by the CMA (such as Remedy 3 and Remedy 9 in particular) and other industry developments (such as the introduction of smart meters).

(ii) **Are there means by which this distress could be avoided or mitigated?**

6.32 In general terms, potential customer confusion could be avoided or mitigated by:

- Identifying the most proportionate means of meeting the stated objective;

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<sup>36</sup> See *Energy Market Investigation: GfK NOP Customer Survey* (February 2015).

- Testing alternative options against clearly defined measures of success;
- Conducting field trials and quantitative and qualitative customer polls on the preferred option; and
- Key stakeholders in the energy market co-operating throughout.

(h) **Should Ofgem monitor the proportion of customers on default tariffs, their average tenure and/or the pricing of default tariffs (eg with a view to publishing summary information)?**

6.33 Ofgem and DECC already monitor some of this information, including proportion of customers on SVTs. Current pricing information is also easily available. Average tenure, however, can be more complicated to report. ✂<sup>37</sup>:

6.34 ✂.

6.35 ✂.

Subject to this consideration, however, average tenure could be monitored by Ofgem.

(i) **Should all energy suppliers be subject to the prohibition on evergreen tariffs?**

6.36 Yes. If there were exemptions to the prohibition, suppliers would not be competing on a level playing field; suppliers who had been granted an exemption would have a competitive advantage (both in terms of product offerings and cost) over the other suppliers.

(j) **Would any energy suppliers have the ability to circumvent the remedy? If so, how could they do this?**

6.37 No. As noted above, the Proposed Remedy should provide equally to all suppliers. Other than by specific exemption SSE does not consider, based on the information provided in the SNPR, that it would be possible for suppliers to circumvent the Proposed Remedy.

(k) **Could this remedy give rise to unintended consequences and, if so, what these might be and how they might be prevented or mitigated?**

6.38 The Proposed Remedy risks a number of serious adverse unintended effects which are described in detail in Section 3 of this Response. These unintended consequences could be prevented through the alternative prompt described in Section 4.

(l) **Are there any relevant customer benefits to which we should have regard as being affected by the proposed remedy?**

6.39 As explained in Section 3, the relevant customer benefits of many of the other remedies proposed by the CMA (in particular through Remedy 3 and Remedy 9) would be diminished by the Proposed Remedy. The Proposed Remedy does not generate any relevant customer benefits which could not be obtained through the alternative proposal described in Section 4.

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<sup>37</sup> ✂.

(m) **What are the relevant costs and benefits that we should take into account when considering the proportionality of this remedy?**

6.40 *See* Section 3.

(n) **Are there any alternative remedies that would be as effective as the proposed remedy in addressing the provisional AEC and that would be less costly and/or intrusive?**

6.41 Yes. SSE strongly advocates further consideration of the enhanced annual statement described in Section 4.

(o) **Should the CMA seek to implement this remedy itself via an order (eg to make a licence modification), or whether it should make a recommendation that another body, such as Ofgem or DECC, implement the remedy?**

6.42 Consistent with the position described in detail above, neither version of the Proposed Remedy would be justified, effective, or proportionate. However, if the Proposed Remedy is to be implemented then SSE considers that it would be preferable for Ofgem to implement the remedy as the necessary consultations would allow the maximum opportunity for suppliers to consider the most appropriate steps to mitigate to some extent the potential adverse consequences of this measure.