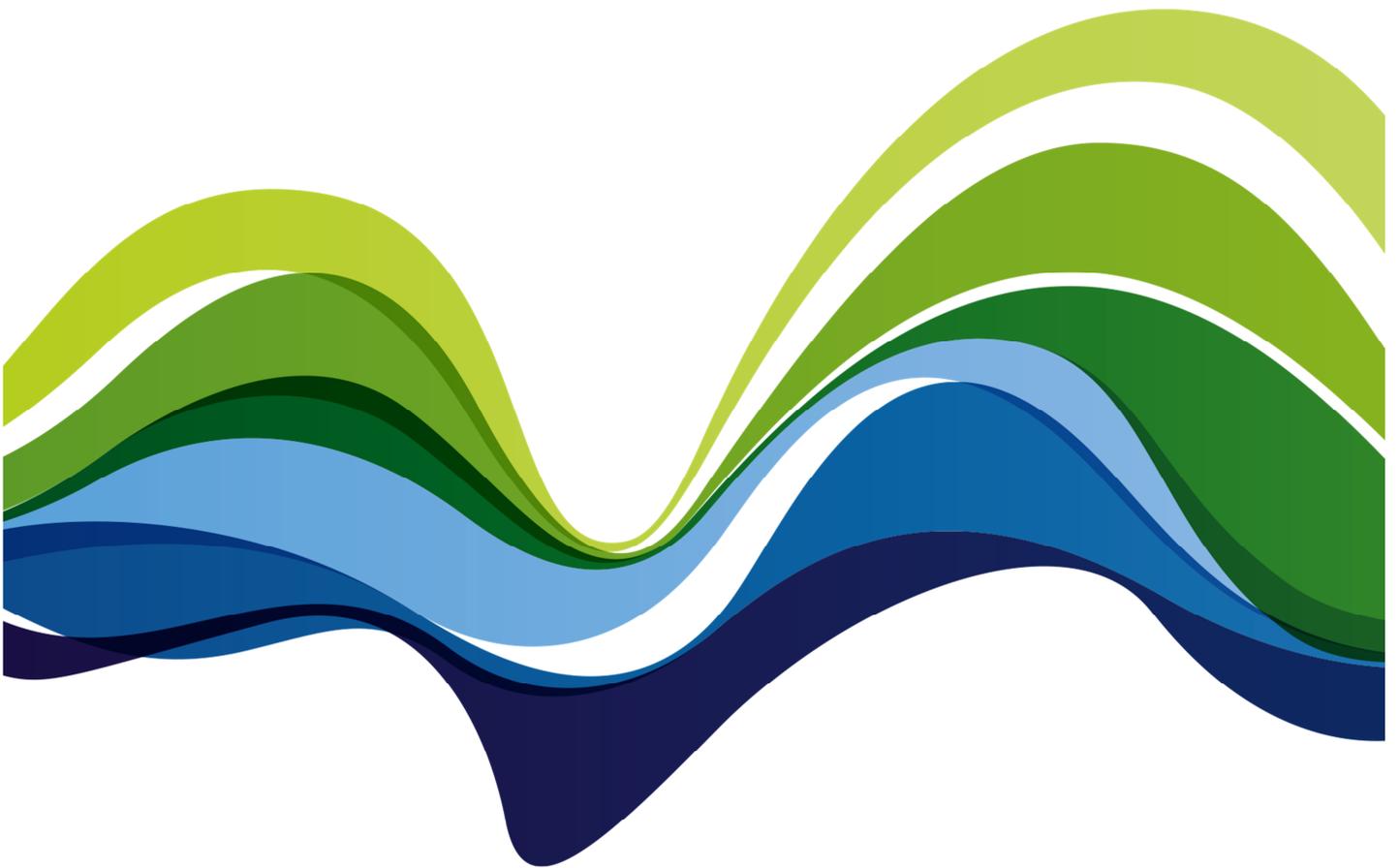


SSE: Response to Addendum to Provisional Findings and Second Supplemental Notice of Possible Remedies

13 January 2016



**SSE: RESPONSE TO ADDENDUM TO PROVISIONAL FINDINGS AND SECOND
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 Addendum to the Provisional Findings (*APFs*) and Second Supplemental Notice of Possible Remedies (*SSNPR*) issued on 16 December 2015 by the Competition and Markets Authority (*CMA*).
- 1.2 The analysis and evidence set out in the *APFs* does not support the alleged adverse effect on competition (*AEC*) in the prepayment meter (*PPM*) segment (*PPS*). The *APFs* make a number of material errors of fact and assessment. In particular, the *APFs* fail to give due weight to the totality of the evidence, instead relying heavily on Ofgem reports that fail to reflect recent (or imminent) market developments. The *CMA* has failed to discharge its responsibility to investigate these matters further itself and has instead relied on “snapshots” of the market taken by Ofgem (often in combination with a number of assumptions and judgments that are unreasonable). As a result, the assessment of the *PPS* set out in the *APFs* is outdated and, consequently, inaccurate.
- 1.3 Indeed, contrary to the *CMA*’s observation that “*competition in the PPS is significantly weaker than in the wider GB domestic retail energy markets,*”¹ the evidence shows that the *PPS* is well-functioning and competitive. In particular (as explained further in the remainder of this *Response*):
- (a) **Customers are engaged.** *PPM* customers are engaged with the energy market and motivated by increasing gains from switching. In *SSE*’s experience, levels of switching for *PPM* customers are higher than those for credit and *DD* customers. For example, while *PPM* customers make up approximately " of *SSE*’s domestic customers, they account for " of *SSE*’s customer losses since April 2015. The *CMA*’s customer survey (which is consistent with *SSE*’s experience) shows that *PPM* customers are typically engaged, with higher levels of switching than credit and *DD* customers. Since switching in the *PPS* is motivated by relatively lower savings this data indicates that *PPM* customers have a much higher propensity to switch supplier than credit or *DD* customers.
 - (b) **Customers are satisfied.** Satisfaction among *PPM* customers is high. For example, according to the *CMA*’s customer survey, 78% of *PPM* customers were satisfied with their supplier and 67% would recommend them (as compared to 74% and 56% respectively for *DD* customers).
 - (c) **Suppliers (including recent entrants) are competing hard for customers.** There are no material barriers to entry or expansion for suppliers, as evidenced by the significant number of suppliers that

¹ *APFs*, para. 77.

serve PPM customers (19) and the ever-increasing number of customers that new entrants and mid-tier suppliers continue to gain.² The innovative product offerings of these suppliers demonstrates the ability of newer entrants with agile business models to successfully target different market segments, including the PPS.

The potential gains from switching within the PPS (which are underestimated by the CMA) are commensurate with those that would be expected in any competitive market. For example, during 2015, SSE data shows that potential PPM gains from switching almost doubled to over £110. (In this regard, the CMA has again failed to take account of material developments during 2015.)

- (d) **PPS tariffs are competitively priced.** The CMA’s cost-to-serve assumptions are not reliable or robust and materially understate the additional costs faced by suppliers in serving PPM customers. The CMA’s comparison of DD acquisition tariffs and PPM tariffs is highly misleading. Such a comparison does not provide a reliable and robust basis on which to conclude that PPM tariffs are not competitively priced. The CMA therefore materially overstates the potential gains from switching available from PPM-to-credit switching.

1.4 At present, PPM customers typically have fewer tariff options than credit and DD customers (principally because of certain technical constraints incumbent in the existing prepayment infrastructure and the effect of existing regulation). However, there is no evidence that a lower number of tariff options gives rise to an AEC. This is particularly the case where developments that are already in train (including, in particular, the smart meter roll-out) will increase the options available to PPM customers and facilitate further switching, thereby making the PPS even more competitive.

1.5 The APFs identify a number of features of the market which the CMA considers to give rise to the alleged AEC. Again, the CMA’s analysis of these features is not supported by the evidence and undermined by material errors of fact and assessment. In particular:

- (a) **The suggested impact of the technical limitations of “dumb” PPMs is inconsistent with evidence of well-functioning and effective competition.** The APFs rightly recognise the significant role that smart meters will play in improving customer choice and promoting innovation (including in the PPS). It is not the case, however, that the technical limitations incumbent in “dumb” PPMs prevent customers without a smart meter from benefiting from well-functioning and effective competition. For example, evidence from Ofgem shows that (under current market conditions) “*more suppliers than ever before [19] are offering tariffs for prepayment customers,*” and that there has

² See Ofgem, *Prepayment review: understanding supplier charging practices and barriers to switching* (23 June 2015) (*Ofgem Prepayment Review*), p. 41. Extra Energy introduced PPM tariffs in May 2015. Other small suppliers, such as Green Star, state that they expect to be able to offer PPM tariffs in the future (<http://www.mygreenstarenergy.com/help-and-support/faqs>).

been “an increase in the proportion of independent suppliers’ customers using prepayment meters.”³ Ofgem has also noted the “growing number of innovative prepayment deals available, including social tariffs for customers in vulnerable situations and competitively-priced collective switching and smart offers.”⁴ The current cheapest dual fuel PPM tariff is a “dumb” PPM tariff (offered by Robin Hood Energy).⁵ In contrast to the CMA’s (unsubstantiated) allegations, this evidence shows that the market is well-functioning for all PPM customers (whether they have a smart meter or not).

(b) **The CMA’s suggestion that suppliers face “softened incentives” to compete for PPM customers is not supported by the evidence.** The vigorous competition and abundant new entrants that can be observed in the PPS, as described in detail in this Response, entirely dispel any suggestion that suppliers somehow face “softened incentives” to compete for these customers:

(i) There is no basis for the CMA’s theoretic suggestion that “actual and perceived higher costs to engage with, and acquire, PPM customers” give rise to an AEC. In particular, the levels of switching observed and the increasing number of suppliers active in the PPS clearly show that suppliers are engaging with and acquiring PPM customers.

(ii) The CMA’s suggestion that “a low prospect of completing the switch of indebted customers” gives rise to “softened incentives” is also not supported by the evidence. Indeed, the CMA acknowledges that possible difficulties relating to the relatively small proportion (15%) of PPS customers who are indebted and are unlikely to be capable of having a material impact on suppliers’ incentives to compete for PPS customers as a whole. The CMA’s analysis of the switching process for indebted customers is outdated, and fails to reflect recent steps taken by Ofgem and suppliers to simplify switching and stimulate competition in the PPS. This has resulted in the number of PPM customers with a debt of less than £500 successfully switching through the Debt Assignment Protocol (*DAP*) process increasing from just under 1% in 2013 to over 30% in the period 1 July 2015 to 30 September 2015.

1.6 The CMA’s provisional conclusion that these features of the PPS give rise to an AEC, pursuant to section 134 of the Enterprise Act 2002, is therefore not supported by the evidence and the standard of proof, *i.e.*, establishing an AEC to the balance of probabilities, is not discharged.

³ Ofgem, *Retail Energy Markets in 2015* (9 September 2015) (*Ofgem Report*), paras. 6.22-6.23.

⁴ *Ofgem Report*, para. 6.21.

⁵ As of 11 January 2015.

- 1.7 As the evidence does not establish an AEC in relation to the PPS, no remedies at all are justified. This is particularly the case where the APFs fail to establish any customer detriment relating to the alleged AEC.
- 1.8 Notwithstanding the absence of any AEC, SSE strongly supports measures that would further increase choice for PPS customers. In this regard, the removal of restrictive regulation would further increase competition within the PPS. As explained in SSE's response to the Provisional Findings (*PFs*) (the *PFs Response*), by lifting unnecessary and prohibitive regulations,⁶ suppliers would be able to communicate effectively with their PPM customers, while creating innovative products tailored to customers' needs. These measures would both encourage competition in the PPS and further consumer engagement.
- 1.9 On the other hand, in many cases, the remedies proposed by the CMA would be ineffective and disproportionate. In some cases, alternative remedies could achieve the same aims in a more efficient, less onerous manner (in particular, through the unwinding of over-burdensome and unnecessary regulation). The proposed remedies would also likely have material unintended adverse consequences (in particular by diminishing PPM customers' incentive to engage and suppliers' incentives to compete for PPM customers).
- 1.10 **Remedy 19 – facilitating the sharing of data relating to PPM customers.** This remedy is disproportionate and will be ineffective in practice. It needs to be borne in mind that PPM customers, unlike DD customers, are currently not obliged to supply any personal information to their supplier. It would be time-consuming and expensive to gather the customer data required and in practice impossible to ensure that the PPM database was consistently up-to-date. There is also a high likelihood of unintended adverse consequences, such as customer disengagement, increased distrust in the energy market due to unwanted privacy intrusions and a high likelihood of breaching existing data protection legislation. There is no evidence to show that this measure would be effective in achieving its stated aim and the desired outcome would be achieved more effectively and efficiently by focusing on clearer customer communications.
- 1.11 **Remedy 20a – prohibiting the charging of security deposits in certain circumstances where a customer is not currently in debt when a PPM customer switches to a credit meter.**⁷ This proposed remedy is disproportionate and unlikely to be effective. There is no clear, substantiated indication that removing security deposits would increase switching rates from PPMs to credit meters. Furthermore, the CMA has ignored alternative explanations for the PPM-credit switching rates *e.g.*, customer preference or simply awareness of options. The proposed remedy would also have serious unintended adverse consequences. Suppliers would be prevented from taking prudent steps to minimise the risk of bad debt, a vital element of controlling

⁶ SSE's response to the Notice of Possible Remedies (5 August 2015) (the *NPR Response*), Section 3.5.

⁷ SSE does not currently charge security deposits to customers moving from PPMs to credit meters.

avoidable costs. This approach would not only increase the cost-to-serve for PPM customers, it could also discourage new entrants from competing in the PPS, and current suppliers from expanding their operations.

- 1.12 **Remedy 20b – prohibiting upfront charges for the cost of a new meter when switching away from PPMs to credit meters.**⁸ There is no evidence that PPM customers face barriers to switching when switching to credit meters. The proposed remedy is thus disproportionate to the perceived consumer harm and instead, risks serious unintended consequences. As with Remedy 20a, Remedy 20b would inhibit suppliers’ ability to recover costs adequately. The measure would therefore negatively impact PPS competition by discouraging new entrants and competition between existing suppliers. Furthermore, there are no foreseeable relevant customer benefits, with a high likelihood that the base cost-to-serve for PPM customers would increase and competition for their custom would decrease.⁹
- 1.13 **Remedy 20c – providing annual notifications to PPM customers setting out their right to switch to credit meters and highlighting any potential restrictions or charges that may be payable.** Notwithstanding the absence of an AEC, SSE supports proportionate and effective measures that would lead to even higher engagement for PPM customers. Provided that this measure were implemented proportionately, based on the principles-based regulation agenda Ofgem is currently pursuing, SSE would support it.¹⁰ Given the wide drafting of previous remedies, which would capture the PPS, this proposed remedy should be considered within the wider framework of Remedy 9, and in combination with Remedy 10.
- 1.14 **Remedy 21 – reforming the DAP.** Despite the lack of an AEC, SSE is fully supportive of proportionate and effective changes to ensure the DAP works more effectively for PPM customers. SSE and 10 other suppliers have already adopted the Point of Acquisition (*POA*) model on a voluntary basis.¹¹ This approach has been taken pending the submission of industry code modifications (expected in February 2016) which will mandate that *all* suppliers adopt this model. The POA model has already transformed the switching process for indebted customers and will continue to do so as all suppliers become obliged to implement this approach. The proposed remedy is therefore unnecessary and disproportionate as it will be superseded by existing and imminent market developments or, worse, impede the delivery of positive changes already in train.

⁸ SSE no longer charges for such meter exchanges.

⁹ Under Remedy 20b, where a supplier opted to levy a fee for a meter exchange, the supplier would need to modify its billing systems to recover the cost from credit customers over an agreed period. Spreading such costs over time would introduce a new source of customer debt resulting in an increase in the cost of debt and hence higher costs to serve.

¹⁰ SSE and other suppliers currently provide PPM customers with relevant information of the type described under this proposal (in addition to the annual statement prescribed by SLC 31A).

¹¹ See para 5.1 below for further details of this process change.

- 1.15 **Remedy 22 – introducing a transitional ‘safeguard price cap’ for domestic prepayment customers.** Only a very real and serious AEC, resulting in considerable consumer harm, could justify such an onerous remedy. The CMA has not established such an AEC to the requisite standard in the APFs, failing to offer any evidence of significant consumer detriment in the PPS. The proposed remedy is thus excessively burdensome, unjustifiably complex and disproportionate to the alleged consumer detriment. There is also a significant risk of serious unintended adverse consequences including: a decrease in consumer engagement as consumers are dis-incentivised from engaging; a decrease in competition as suppliers are discouraged from acquiring customers; the deterrence of new suppliers from entering the PPS; and a high risk of a secondary effect on prices for standard credit customers.¹² Remedy 22 would also undermine other remedies intended to boost customer engagement in the PPS.¹³ Finally, Remedy 22 is a retrograde measure and its adoption would run contrary to Ofgem’s ambition to adopt principles-based regulation, and the views of the Council of European Energy Regulators.¹⁴ The alleged harm the remedy is designed to address would be better rectified via the proposed information remedies and the lifting of excessively restrictive regulation.
- 1.16 SSE is keen to support the CMA in its efforts to assist vulnerable customers. The proposed remedies would, however, be an inappropriate and ineffective means of providing support to this customer group. PPM customers are not an accurate proxy for vulnerable customers. Ofgem data suggest that vulnerable customers (as defined by Ofgem) strongly favour credit and DD payment methods, with only 25% of vulnerable customers paying by PPM.¹⁵ Remedies directed at PPS customers would therefore not support vulnerable customers (and would attach to large proportions of non-vulnerable customers).
- 1.17 The remainder of this Response is structured as follows: Section 2 explains why the existence of an AEC in the PPS is not supported by the evidence and why the analysis of consumer detriment provided in the APFs is seriously deficient and cannot provide a basis for the remedies contemplated by the CMA. This is followed by an analysis of each of the CMA’s proposed remedies in Sections 3-6.

¹² The SVT is the same tariff for PPM and standard credit customers and most suppliers currently equalise the prices charged to these two segments. Supply licences mandate that price differences between payment methods for each tariff must reflect differences in costs to serve (as noted in the APFs, para. 8). Consequently, Remedy 22 would act as an effective cap on SVT tariffs in the standard credit segment (*see* para. 6.26-6.27 below for further discussion).

¹³ In particular, Remedies 3, 9 and 10 (all of which SSE supports).

¹⁴ A report by the Council of European Energy Regulators (*CEER*) (16 October 2015), p. 15: *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.*

¹⁵ *See* Ofgem, *Energy: the debate, Ofgem Roundtable Report Payment Differentials* (27 March 2015), page 7.

2. The provisional finding that a combination of features relating to the PPS gives rise to an AEC is not supported by the evidence

The evidence shows that the PPS is well-functioning and competitive

- 2.1 The APFs suggest that competition in the PPS is “*significantly weaker*” than in the wider GB domestic retail energy markets.¹⁶ The CMA suggests, in particular that: PPM tariffs are not priced competitively; entry and expansion of non-Six Large Energy Firms’ (*SLEFs*) into PPS tariffs has been limited; and PPS customer engagement is low due to lower gains from switching and higher barriers to switching in particular for indebted PPM customers.
- 2.1 The APFs provide little cogent evidence to support this position. The CMA’s assessment of the market appears to rely heavily on Ofgem reports that fail to reflect recent (or imminent) market developments. The CMA has failed to discharge its responsibility to investigate these matters further itself and has instead relied on previous “snapshots” of the market taken by Ofgem in (often in combination with a number of assumptions and judgments that are unreasonable). Consistent with the established approach of the CAT, the CMA is required to found its decisions on relevant information of probative value.¹⁷ Outdated evidence, especially in a fast-moving market, would not meet this requirement.
- 2.2 In fact, as described below, the available evidence shows that the PPS is well-functioning and competitive.
- 2.3 **PPM customers are highly engaged and active.** The CMA has previously acknowledged that there is no material difference in the levels of engagement of PPM customers and other customers. The PFs state, for example, that “*prepayment customers are not more or less likely to have switched supplier in the last three years compared with all respondents.*”¹⁸ The CMA’s customer survey indicates that the difference in switching levels between the DD and PPM segments is “*not statistically significant.*”¹⁹
- 2.4 In fact, the churn rate for SSE’s PPM customers is higher than that for the SSE customer base as a whole.²⁰ PPM customers account for around “ ” of SSE’s domestic customer base, but have accounted for “ ” of SSE’s customer losses since April 2015. SSE’s experience is typical of the wider market. Ofgem data show that the monthly switching rate for PPM customers for both fuels

¹⁶ APFs, para. 77.

¹⁷ *BAA Ltd v Competition Commission* [2012] CAT 3, at para. 3: “*The CC, as decision-maker, must take reasonable steps to acquaint itself with the relevant information to enable it to answer each statutory question posed for it...*”; and para. 4: “*Similarly, it is a rationality test which is properly to be applied in judging whether the CC had a sufficient basis in light of the totality of the evidence available to it for making the assessments and in reaching the decisions it did. There must be evidence available to the CC of some probative value on the basis of which the CC could rationally reach the conclusion it did...*”

¹⁸ PFs, Appendix 8.1, para. 10.

¹⁹ PFs, Appendix 8.1, para. 10.

²⁰ “

since 2012 has generally been close to, or slightly above, that for non-PPM customers.²¹ These high levels of switching are also highlighted by DECC data which show that PPM customers are less likely to be with their former public electricity suppliers than standard credit customers.²²

2.5 PPS customers exhibit high levels of satisfaction. The CMA's customer survey provides further evidence that PPM customers are engaged and satisfied (with levels of satisfaction being higher than those of other customers). The survey shows, in particular, that:

- (a) 78% of PPM customers reported are satisfied with their supplier (compared with 74% for DD customers; and 73% of those who pay on receipt of bill); and
- (b) 67% of PPM customers would recommend their supplier (compared with 56% of those who pay by DD or on receipt of bill).²³

2.6 Non-SLEFs are competing hard and rapidly gaining customers. The APFs provide a misleading figure for the estimated combined share of the PPS of the non-SLEFs.²⁴ Non-SLEFs are gaining PPM customers at a fast (and ever-increasing) rate, and currently supply more than 8% of all customers in the PPS.²⁵ This estimate takes no account of the growth of small suppliers in Q4 2015 (" ") and therefore understates the non-SLEFs current share of the PPS. There are now a significant number of suppliers – 19 in total – that offer PPM tariffs.²⁶ New suppliers (such as Economy Energy) continue to enter the market and compete.

2.7 Over the last nine months, SSE has lost PPM customers to a variety of suppliers, " ". This shows that SSE faces strong competition from both non-SLEFs and SLEFs and, in addition, that suppliers are using a variety of business strategies to attract PPM customers. Economy Energy's product offering is, for example, heavily price-focused (and based on non-smart technology), whereas Utilita and British Gas focus their product offerings on smart meter solutions.

²¹ See *Ofgem Report*, para. 6.20.

²² See DECC, *Quarterly Energy Prices Tables* (22 December 2015), pp. 15 and 18. The statement is based on actual data covering all domestic meters supplied by the SLEFs.

²³ GfK NOP survey tables (https://assets.digital.cabinet-office.gov.uk/media/54ee3fade5274a1452000003/GfK_customer_survey_tables.xlsx): Table 336 (switches in the last three years), Table 86 (satisfaction of customers with dual fuel supplier) and Table 102 (likelihood to recommend of customers with dual fuel supplier).

²⁴ See *APFs*, para. 3. SSE believes that a more accurate and up to date figure could be acquired from data provided by suppliers to Ofgem as part of its routine market monitoring activity.

²⁵ Estimated market share of smaller suppliers is derived from payment method data published in *Ofgem Report* (para. 2.4) and a combined share of the (whole) domestic market of 10% for all non-SLEFs.

²⁶ See *Ofgem Prepayment Review*, p. 41. Extra Energy introduced prepayment in May 2015. Other small suppliers, such as Green Star, state that they expect to be able to offer PPM tariffs in the future (<http://www.mygreenstarenergy.com/help-and-support/faqs>).

- 2.8 Non-SLEF firms that initially focused on narrower customer segments (*e.g.*, online DD customers) are now increasingly targeting PPS customers. For example, OVO’s model on market entry focussed on online DD customers, but it has now evolved its strategy to include PPM customers as well. These new competitors joined the likes of Utilita, whose business model has always been to target PPM customers.
- 2.9 **PPM tariffs are competitively-priced and cost-reflective.** The APFs suggest that PPM customers are on tariffs that are “*not competitively priced compared with the tariffs available in the DD segment, adjusted for the cost-to-serve differential.*”²⁷
- 2.10 To reach this provisional conclusion, the CMA (in Figure 1 of the APFs) compares PPM tariffs against a “*comparative benchmark acquisition tariff.*” The CMA calculates this benchmark by identifying the cheapest DD “*acquisition tariff*” offered by any of the SLEFs in each period and then adding an £80 “*uplift*” to reflect what it considers to be the incremental cost-to-serve PPM customers. The CMA is comparing the highest possible gains from switching and not the average.²⁸ Using this comparison as a basis, the CMA also suggests that the gains from switching observed in the PPS are smaller compared to those available to credit customers.²⁹
- 2.11 As explained below, however, the CMA’s comparison of DD acquisition tariffs and PPM tariffs is highly misleading. Such a comparison does not provide a reliable and robust basis on which to conclude that PPM tariffs are not competitively priced. As a result, the CMA materially overstates the gains available to PPM customers switching to credit meters.
- 2.12 As a starting matter, it is inappropriate to use so-called “acquisition” tariffs as a basis for comparison with PPM tariffs without demonstrating that such tariffs are set at commercially sustainable levels.³⁰ The CMA suggests that it has “*seen no evidence*” to suggest these acquisition tariffs are unsustainable (but does not appear to have investigated this question).³¹ This position, however, ignores information provided to the CMA during the course of the investigation suggesting that some suppliers offer heavily discounted tariffs

²⁷ APFs, para. 24.

²⁸ See *Ofgem Prepayment Review*, p. 15. Ofgem noted that the average combined gas and electricity bill for a PPM customer in 2014 was £1,266, slightly less than the average credit customer bill and only £78 more than the average DD customer bill. The CMA cites Ofgem’s finding that a PPM customer could save up to £300 by switching to DD (APFs para. 20). However, that is calculated based not on the average annual DD cost but on the cheapest possible DD tariff available in the market (in all probability an acquisition tariff).

²⁹ APFs, para. 12(a).

³⁰ Rather than only being commercially viable as part of a strategy that assumes a proportion of newly acquired customers will migrate to higher tariffs over time.

³¹ Footnote 5 of the APFs refers to paragraph 10.92 of the PFs to support the proposition that the CMA has “*seen no evidence*” that acquisition tariffs are unsustainable as regards the DD segment. However, paragraph 10.92 simply repeats the same statement (“*we have seen no evidence to suggest that [these tariffs] are unsustainable*”), rather than explaining any active steps that the CMA has taken to investigate this question.

that would not be commercially sustainable unless they operate as introductory offers.³²

- 2.13 In addition, the CMA's analysis also understates the true incremental cost-to-serve PPM customers. The CMA oversimplifies Ofgem's assessment, which reported the differential between the price paid by DD customers and the equalised price paid by credit and PPM customers.³³ The £80 *price* differential reported by Ofgem is a consequence of the cross-subsidy from which PPM customers benefit in order to equalise prices between these two segments. In SSE's case, the additional cost-to-serve PPM customers is significantly higher (at around " excluding VAT).
- 2.14 More broadly, the APFs' analysis is undermined by many of the same flaws as the CMA's previous analyses in the PFs and UIS (which SSE has previously addressed in detail).³⁴ In particular, the CMA once again fails to take into account that there are non-price factors that are relevant to customers who actively choose PPMs.
- 2.15 The CMA also materially understates the gains from switching available to customers switching within the PPS, in particular by again failing to address the significant market developments in 2015.
- 2.16 The CMA appears to have analysed market data up to October 2015. For reasons that are not explained, however, the data presented in the chart upon which the CMA bases its conclusions (*i.e.*, Figure 1 of the APFs) has been truncated at Q2 2014. As a result, the chart does not capture more recent market developments, of which the CMA ought to be aware, such as the continued rapid expansion of new entrants and mid-tier suppliers, many of which are now actively competing in both the non-smart and smart PPS. SSE's assessment of tariffs available in the market demonstrates that the dynamics of the PPS segment have continued to evolve in recent months, with the savings available from switching from the average SVT PPM tariff to the cheapest PPM tariff nearly doubling over the course of 2015 from £65 in Q1 to over £110 in Q4.
- 2.17 On this basis, the gains available from switching within the PPS are clearly commensurate with those available in a competitive market.

The APFs' analysis of the market features considered to give rise to the alleged AEC is not supported by the evidence

- 2.18 The APFs identify certain features of the market that the CMA considers to give rise to the alleged AEC. Again, however, the CMA's analysis of these

³² See *PFs Response*, Section 2.1.1; SSE's Response to the CMA's Updated Issues Statement (*UIS*), para. 8.8.14; and the CMA's Notes of a hearing with SSE PLC, 26 August 2015, p. 77, lines 18-24.

³³ See Ofgem, *Roundtable report – payment differentials*, 26 March 2015. An assessment carried out in 2012 indicated a *cost* differential of around £80 but the update to this work considered *price* differentials in 2015, without analysis of the concomitant costs to serve.

³⁴ See, for example, the *PFs Response* at pp. 3.2.6-8 and 3.2.9-11.

features is not supported by the evidence and undermined by material errors of fact and assessment.

2.19 The suggested impact of the technical limitations of “dumb” PPMs is inconsistent with evidence of well-functioning and effective competition

The APFs reach the provisional finding that technical limitations incumbent in “dumb” PPMs make it impossible for suppliers to “*reproduce the current structure and type of acquisition tariffs available in the DD segment in the PPS on dumb meters.*”³⁵ On this basis, the CMA concludes that these technical constraints have “*the potential to reduce suppliers’ incentives to compete to acquire PPM customers, or the ease with which they can do so.*”³⁶

2.20 The APFs rightly acknowledge the significant impact that the role of smart meters will have, in particular in eliminating the technical limitations described above. Smart meter roll-out will be complete by 2020 and, in practice, the vast majority of customers are likely to have a smart meter installed before then. Market developments will completely alleviate the technical limitations incumbent in “dumb” smart meters within the near-term future.

2.21 Notwithstanding the impact that the roll-out of smart meters will have, the CMA’s theoretic assumption that “dumb” meters effectively preclude a well-functioning market is inconsistent with a strong body evidence showing that suppliers are competing effectively with both “dumb” and smart meters.

2.22 In particular:

- (a) All 19 PPM suppliers compete in the “dumb” PPM sub-segment and new suppliers continue to enter: for example, Economy Energy, one of the most successful new entrants, has expanded its operations rapidly in the PPS based on its ‘dumb’ PPM offering.
- (b) The cheapest PPM tariff currently available in the market, offered by Robin Hood Energy, is understood to be a “dumb” tariff.³⁷
- (c) As Ofgem recognises, there are a “*growing number of innovative prepayment deals available,*” many of which are unrelated to smart technology *e.g.*, “*social tariffs for customers in vulnerable situations and competitively-price collective switching.*”³⁸ Half of the 10 exemptions Ofgem granted from RMR rules between January 2014 and May 2015 were open to PPM customers (whether on smart or dumb meters) and offered tariffs marketed by suppliers on the basis of environmental or social benefits (*e.g.*, a rebate on standing charges for

³⁵ APFs, para. 33.

³⁶ APFs, para. 79.

³⁷ As of 8 January 2015.

³⁸ Ofgem Report, para. 6.21.

low energy users offered by British Gas, and a zero standing charge tariff offered by EDF) rather than on smart technology.³⁹

- 2.23 This evidence therefore shows that new entrants and mid-tier suppliers are clearly capable of competing with larger suppliers using existing metering technology. In contrast to the CMA's (unsubstantiated) allegations, the evidence shows that the market is well-functioning for all PPM customers (whether they have a smart meter or not).
- 2.24 **The CMA's suggestion that suppliers have "softened incentives" to compete for PPM customers is not supported by the evidence.** The CMA suggests that two factors, in particular, give rise to these alleged "*softened incentives*" to compete: the "*actual and perceived higher costs to engage with, and acquire, PPM customers*" and the "*low prospect of completing the switch of indebted customers.*" As explained below, however, neither suggestion can be supported by the available evidence.
- 2.25 First, the vigorous competition and abundant new entrants that can be observed in the PPS, as described in detail above, entirely dispel any theoretic suggestion that suppliers face "*softened incentives*" to compete for these customers. As the CMA recognises, existing suppliers are also offering new and innovative tariff options to retain current, and attract potential customers. E.ON's Smart PAYG tariff is one example which gained recent publicity.
- 2.26 In addition, SSE has explained in detail in its previous submissions, the roll-out of smart meters (in combination with the proposed removal of existing prescriptive regulations around product offerings and customer communication) will provide suppliers with increased scope for new and innovative product offerings.
- 2.27 In light of the evidence of well-functioning marketplace competition (as described extensively above), there is no basis for the CMA's theoretic suggestion that "*actual and perceived higher costs to engage with, and acquire, PPM customers*" give rise to an AEC. In particular, the levels of switching observed in the PPS clearly show that suppliers are engaging with and acquiring PPM customers.
- 2.28 The CMA's suggestion that "*a low prospect of completing the switch of indebted customers*" gives rise to "*softened incentives*" is also not supported by the evidence.
- 2.29 The CMA places considerable weight on certain difficulties in switching that have previously been encountered by a relatively small sub-set of customers (*i.e.*, indebted PPM customers accounting for around 15% of the total) from which it appears to draw segment-wide conclusions. These highly theoretic assumptions are, however, contradicted by the high (and increasing) switching rates and satisfaction levels described above. This evidence underlines that PPM customers do not face significant barriers to engagement or switching.

³⁹ *Ofgem Prepayment Review*, p.17-18.

- 2.30 Indeed, the CMA offers no evidence to support the suggestion that possible difficulties relating to a relatively small proportion of PPS customers is capable of having a material impact on suppliers' incentives to compete for PPS customers as a whole. Indeed, the APFs recognise that "*customer debt should not significantly reduce the general attractiveness of prospecting PPS customers because only 15% of the PPS has outstanding debt.*"⁴⁰
- 2.31 In any event, the CMA's analysis of the switching process for indebted customers is outdated, and fails to reflect recent steps taken by Ofgem and suppliers to facilitate switching and stimulate competition in the PPS.
- 2.32 11 suppliers adopted the voluntary POA model, a new model for switching indebted customers which came into force in April 2015. The POA model allows gaining suppliers to initiate DAP automatically where the indebted customer has agreed at point of sale that the gaining supplier may request debt information from the current supplier, if the current supplier raises a debt objection. SSE expects the POA model to be mandatory by November 2016.⁴¹ Since the introduction of the POA, the number of PPM customers with a debt of less than £500 successfully switching through the Debt Assignment Protocol (*DAP*) process increased from just under 1% in 2013 to over 30% in the period 1 July 2015 to 30 September 2015.⁴² Proposed changes to industry codes will mandate that all suppliers adopt the POA model, leading to further improvements for customers.
- 2.33 More generally, the APFs provide no evidence to suggest that "*impediments*" faced by PPM customers seeking to switch to a credit meter (*i.e.*, security deposits and charging for the removal of PPMs) gives rise to an AEC.
- 2.34 The CMA's analysis is outdated and fails to take into account the significant market developments in 2015 (as described elsewhere in this Response).
- 2.35 The CMA also provides no evidence to support its suggestion that such "*impediments*" are directly linked to the number of switches attempted, and completed, by indebted customers. The CMA's analysis appears to assume that these "*impediments*" are the only factor that drive customer decision-making. The CMA therefore ignores non-price factors and customer preferences (as evidenced in the CMA's customer survey and described in detail in SSE's previous submissions) that influence customer choice. For example, a quantitative survey of SSE customers reveals that 34% of its PPM customers actively choose PPM as the most suitable payment method for them.⁴³
- 2.36 In fact, the APFs selectively assesses the impact of the DAP on indebted customers, as well as on consumer engagement and the competitive dynamics

⁴⁰ APFs, para. 64.

⁴¹ 11 suppliers including SSE have voluntarily adopted the POA model. SSE's total customer gains and losses through the DAP have more than doubled in 2015 from 2014 levels.

⁴² Ofgem, *Debt Assignment Protocol Review: the process for prepayment meter customers switching with a debt*, Open Letter, 24 September 2014.

⁴³ "

in the segment as a whole. The APFs fail to note, for example, that the DAP actually results in a relative “advantage” for PPM customers compared to credit customers, who may be prevented, under Electricity Supply Standard Licence Conditions (SLC)¹⁴, from switching where there are outstanding charges (even where these are below £500).

The APFs’ analysis of competitive conditions in the PPS is based on selective use of outdated evidence, which fails to give current and imminent market developments sufficient weight, and does not establish an AEC

- 2.37 As described above, the position presented in the APFs is materially inaccurate and out of date. The provisional conclusions suggested rely heavily on Ofgem reports that fail to reflect recent (or imminent) market developments. The CMA has failed to discharge its responsibility to investigate these matters further itself and has instead relied on the static “snapshot” of the market taken by Ofgem in 2014. This analysis therefore fails to properly reflect the extensive evidence of a dynamic, competitive, well-functioning market in which an increasing number of suppliers offer innovative products to satisfied and engaged PPM customers.
- 2.38 As a result, the APFs’ analysis of the market features that are considered to give rise to the alleged AEC are also not supported by the evidence. The CMA seeks to apply highly theoretic assumptions suggesting that suppliers lack the ability or incentive to compete for PPS customers that lack a reliable and robust basis in evidence and are entirely contradicted by real-life market dynamics. Similarly, the APFs understate the impact of the RMR rules and technical constraints, which have a far more significant impact on suppliers’ ability to engage with customers and tailor commercially-attractive offerings than other features suggested by the CMA (such as the DAP).
- 2.39 The CMA’s provisional conclusion that these features of the PPS give rise to an AEC, pursuant to section 134 of the Enterprise Act 2002, is therefore not supported by the evidence and the standard of proof, *i.e.*, establishing an AEC to the balance of probabilities, is not discharged.

The analysis of consumer detriment provided in the APFs is seriously deficient

- 2.40 The analysis of consumer detriment provided in the APFs is seriously deficient and cannot provide a basis for the remedies contemplated by the CMA.
- 2.41 In the PFs, the CMA relied principally on its analysis of competitive benchmarking and profitability to establish consumer detriment. As explained in detail in SSE’s response to the PFs, that analysis is fundamentally flawed.⁴⁴ A fit-for-purpose analysis (addressing the flaws in the CMA’s approach) would show that SSE’s profits are not relevant by any relevant benchmark and that average consumer prices are consistent with the levels that would be expected in a well-functioning market.
- 2.42 The same is true in relation to the alleged AEC set out in the APFs. Indeed, the analysis of competitive benchmarking and profitability provided in the PFs

⁴⁴ See PFs Response, Section 3.5, Section 14, pp. 78-79 and Annex 1.

provides no specific evidence of detriment in relation to PPM customers (the CMA's ROCE analysis focused on the profitability of the SLEFs' supply businesses as a whole, rather than that of specific customer groups).

- 2.43 The APFs suggest that the differences in pricing between the tariffs offered to PPM customers and "*competitively priced acquisition tariffs in the DD segment*" gives rise to consumer detriment.⁴⁵ As explained above, the CMA's comparison of DD acquisition tariffs and PPM tariffs is highly misleading and does not form a reliable or robust basis to establish consumer detriment.
- 2.44 For all these reasons, the CMA's analysis of PPM consumer detriment is seriously deficient and therefore does not support the imposition of remedies (particularly where measures to control outcomes are envisaged).

⁴⁵ APFs, para. 77.

3. Remedy 19 – facilitating sharing of data relating to PPM customers

- 3.1 Remedy 19 would not be an effective or proportionate way in which to “*encourage existing suppliers and/or new entrants to compete more intensively for PPM customers.*”⁴⁶
- 3.2 **The proposed remedy would not be effective in achieving its stated aim.** As explained below, it is not clear that Remedy 19 could be implemented in compliance with existing data protection legislation.
- 3.3 Even leaving these concerns aside, the repeated process (the CMA suggests annually) of sending “opt-out” letters and collating responses would be expensive, as would funding and maintaining the relevant database (the detail of which is unclear in the SSNPR). On-going compliance with data protection requirements would also likely raise significant costs. Such costs would increase prices for customers and deter small and mid-tier suppliers from entering and/or expanding their operations in the PPS (wholly undermining the proposed remedy’s stated aim).
- 3.4 PPM customers, unlike DD customers, are currently not required to supply personal information to their supplier. On this basis, there would be no certainty that any information provided by suppliers to Ofgem would be up-to-date, accurate, or complete. This could undermine supplier confidence in the database (with suppliers with lower marketing budgets – typically mid-tier and small suppliers – likely to be particularly discouraged).
- 3.5 **The proposed remedy is disproportionate and unnecessary.** As described above, PPS customers are engaged and active, with high switching levels. If PPM customers wish to switch, they are able to access PPM tariffs on price comparison websites and/or via suppliers (either their own or third parties). There is no basis to suggest that these customers require an additional “prompt” to engage with the market or that the ever-increasing number of suppliers (currently 19) competing for PPS customers require an additional avenue to access customers.
- 3.6 Accordingly, introducing a remedy that risks serious unintended adverse consequences (and would entail unnecessary costs for consumers), with no guarantee of success, would therefore be an expensive and counter-productive experiment.
- 3.7 **The proposed remedy is likely to be superseded by market developments.** Establishing the database, designing the relevant customer communications, gathering all the necessary information and negotiating the agreements surrounding sharing customer data are time-consuming steps.
- 3.8 The CMA acknowledges that the roll-out of smart meters will have a material impact on interaction between customers and suppliers (and that Remedy 19 would be reviewed upon “*substantial completion*” of smart roll-out).⁴⁷ Given the timing of the roll-out of smart meters (which will be complete by 2020),

⁴⁶ SSNPR, para. 22.

⁴⁷ SSNPR, para. 26.

Remedy 19 would therefore likely be rendered obsolete almost as soon as it was implemented.

3.9 **The proposed remedy carries a high risk of unintended adverse consequences.** Remedy 19 risks several unintended adverse consequences. These include:

- (a) *A decrease in customer engagement and trust in the energy market.* SSE's PPM customers already receive at least two communications annually.⁴⁸ Experience with doorstep selling shows that customers react negatively to excessive communications by energy suppliers and unwanted privacy intrusions. Such measures therefore discourage consumer engagement and decrease trust in both suppliers and the energy market. There is a real risk that an increased volume of customers communications (*e.g.*, marketing materials from third party suppliers and requests from existing suppliers for current personal information and permission to share it) would deter customers rather than engage them. These risks are particularly acute where requests for a Data Controller to stop sending marketing materials are not implemented because of an outdated database (as described above). This would also undermine the improvements in consumer engagement that the CMA seeks to bring about through other proposed remedies, such as Remedies 3 and 20c.
- (b) *The creation of a barrier to entry and/or expansion.* As described above, the proposed remedy could have a negative impact on competition by raising barriers to entry and/or expansion.
- (c) *The undermining of effective competition in the PPS.* As described above, the proposed remedy could deter small and mid-tier suppliers from engaging with PPS customers. The proposed remedy also risks giving certain suppliers an unfair disadvantage, as members of the Direct Marketing Association (*DMA*) would be prevented from sending letters to certain individuals (whereas suppliers who are not members of the *DMA* would not be restricted in this way).⁴⁹ These unintended consequences would undermine the effective competition currently evident in the segment.
- (d) *Increased prices within the PPS.* Given the unduly onerous and costly nature of the proposed remedy, suppliers would be forced to pass these costs through to PPM and credit customers (due to price equalisation between these two segments), thereby increasing tariff prices. This effect would undermine the intensification of price competition which has developed in the course of 2015.

⁴⁸ SSE currently provides PPM customers with: (1) an annual information statement advising customers of the necessary steps to switch to a credit meter; and (2) an annual usage statement, as defined in SLC 31A, which provides cheapest tariff messaging and also advises customers of their right to change tariff or supplier (the licences do not permit the annual statement to include information other than that prescribed).

⁴⁹ Members of the *DMA* do not send marketing letters to individuals who are registered with the Mail Preference Service (*MPS*), as is required by the *DMA* Code of Conduct.

- 3.10 **There are more effective and proportionate options available to achieve the outcome sought by the CMA.** In particular, removing restrictive regulations, including the Four Tariff Rule (*see* Remedy 3) would increase suppliers' ability to innovate and tailor tariffs for PPM customers
- 3.11 In sum, it is clear that Remedy 19 would be ineffective and burdensome. The proposed remedy would produce adverse consequences that are wholly disproportionate to any relevant customer benefits that would be realised and therefore cannot be justified in the competitive and well-functioning PPS. Far more proportionate measures are available to attain the objectives sought by the CMA.
- a) *Would this remedy be effective and proportionate in increasing competition for non-smart prepayment meter customers?*
- 3.12 Please see paragraphs 3.2 to 3.11 above.
- b) *Are there additional legal considerations that are relevant to this remedy (e.g., under the Data Protection 1998 or the Privacy and Electronic Communications (EC Directive) Regulations 2003)?*
- 3.13 SSE expects that the CMA has explored this remedy directly with the Information Commissioner, although this is not explicitly stated in the SSNPR.
- 3.14 The European Union is due to finalise the General Data Protection Regulations (the **GDPR**) in January 2016. The GDPR will replace the Data Protection Act 1998 (the **DPA**) and will apply to all member states in the EU. The CMA would therefore need to ensure that Remedy 19 is consistent with the DPA (and, subsequently, the GDPR).
- 3.15 It is doubtful that the proposed remedy would meet the standards set by the DPA. There is currently no obligation for PPM customers to provide suppliers with personal information, or to inform them when this information changes. Consequently, it is likely that Remedy 19 would breach several principles of the DPA, at least including:⁵⁰
- (a) Principle 3 – data shall be adequate, relevant and not excessive;
- (b) Principle 4 – data shall be accurate and, where necessary, kept up-to-date; and
- (c) Principle 5 – data shall not be kept for longer than necessary.
- 3.16 Remedy 19 also risks breaching Principle 1 (data must be processed fairly), as the CMA has failed to prove that the proposed measure would result in sufficient benefits for PPM customers.

⁵⁰ This list is non-exhaustive. The CMA should also consider how Principles 6 (data shall be processed in accordance with the rights of individuals) and 7 (data shall be secure through adequate technical and organisational measures) affect the proposed remedy. This is particularly pertinent given that there are far more licensed domestic suppliers than are currently active; others may acquire a licence in future in order to access relevant customer data.

c) *Is Ofgem the right party to have oversight of this process?*

3.17 Ofgem should oversee the database, provided it has the requisite resources and technical ability. The CMA should consider whether Ofgem should be a Data Controller or Data Processor in this role.⁵¹

d) *What limitations would need to be imposed to ensure that the data was disclosed and used appropriately?*

3.18 A number of parameters would need to be fixed in order to ensure that the data collated were disclosed and used appropriately, including:

- (a) Cyber security standards for those providing data for, and using, the database, as well as the database itself;
- (b) An agreement by all suppliers and Ofgem not to breach the DPA and allocation of responsibility for any breach of the DPA resulting from Remedy 19;⁵²
- (c) A clear definition of activities for which the data could be used, including:
 - (i) The content of marketing material to be sent to customers; and
 - (ii) The frequency with which such content can be sent;
- (d) Appropriate penalties for the misuse of the database; and
- (e) Database management process including:
 - (i) The details and format of the shared data;
 - (ii) Suppliers required to share data;
 - (iii) Suppliers to be given access to the database; and
 - (iv) The frequency with which data should be updated.

e) *When should the continued need for this remedy be reviewed?*

3.19 The effectiveness of Remedy 19 should be reviewed annually, given its burdensome and intrusive nature. Further reviews should take place: (i) upon the GDPR becoming effective (to the extent not already taken into account by the CMA); and (ii) once the majority of PPM customers are on smart meters.

f) *What might be a suitable frequency with which to share customer data?*

3.20 As explained above, the process of gathering and updating customer data would be time-consuming, costly, and intrusive for customers. However, without regular updates the database would be redundant and suppliers risk

⁵¹ See the DPA.

⁵² For example, where Supplier A provides information to Ofgem which is inaccurate, and Supplier B then receives that data and sends a marketing letter based on inaccurate information (*i.e.*, to the wrong address), does Supplier A, Ofgem or Supplier B bear responsibility?

breaching the DPA.⁵³ The balance between these factors underlines the disproportionate and excessive nature of the proposed remedy, as well as its unworkability in practice.

- 3.21 A cost benefit analysis is required to determine a suitable frequency for sharing customer data. However, it is clear that high frequency of updates would be unduly onerous, whilst less frequent updates would increase the proportion of obsolete data in the database.

(g) *Should this remedy apply to PPM with smart meters?*

- 3.22 Yes, if implemented, the proposed remedy should include all PPM customers to prevent any information asymmetry between PPS customers with “smart” and “dumb” meters.

4. Remedy 20 – removing the barriers that PPM customers without a debt face when attempting to switch to a credit meter

- 4.1 Remedies 20a-c (***Remedy 20***) are all aimed at removing alleged barriers to switching from PPMs to credit meters for PPM customers without debt. As described above, the APFs do not establish that difficulties in switching have a material impact on the current volume of PPM-to-credit meter switches (for PPM customers without debt).⁵⁴ The APFs also do not establish any AEC in relation to the PPM-to-credit switching process (or identify or quantify any alleged customer detriment that could arise from such an AEC). Remedy 20 is therefore unjustified, unnecessary and disproportionate. In addition, Remedies 20a and 20b in particular are unlikely to be effective and may result in serious unintended adverse effects in the PPS.⁵⁵

- 4.2 **The proposed remedy is unnecessary.** The SSNPR imply that the aim of Remedy 20 is to expand “*the opportunity for customers to engage in the markets*” and “*expand the benefits available as a result of engaging.*”⁵⁶ However, as described in Section 2, PPM customers are already engaged and active. Remedy 20 is therefore unnecessary.

- 4.3 **Remedy 20 is unreasonable and disproportionate.** The APFs fail to present an evidenced case that there are difficulties in the PPM-to-credit switching process that give rise to an AEC (and no customer detriment that would arise from such an AEC). Accordingly, no remedy at all is justified. The proposed remedy is particularly disproportionate because:

- (a) Remedies 20a and 20b would require suppliers to make significant changes to their billing processes and PPM business models (imposing significant costs on suppliers), which would then be rendered redundant by the PPM smart meter roll-out shortly after their implementation;

⁵³ Principles 3, 4 and 5 DPA would likely be breached.

⁵⁴ See paragraph 2.30 above.

⁵⁵ “

⁵⁶ SSNPR, para. 29.

- (b) Remedies 20a and 20b would affect a very small number of PPM customers (*e.g.*, the CMA states that suppliers charged for only 5% of PPMs removed in 2014);⁵⁷ and
- (c) It is not clear to what extent the proposed remedy would benefit customers. The CMA itself concedes that it does “*not know how many PPM customers could benefit from a low cost switch to a credit meter.*”⁵⁸

4.4 **Remedies 20a and b are unlikely to be effective.** The CMA has conceded that security deposits and upfront payments affect a marginal proportion of PPM customers. Remedies 20a and b are consequently unlikely to have a significant impact on PPM-to-credit switching (and, more generally, to customer engagement in the PPS).

4.5 **Remedies 20a and b carry a high risk of unintended adverse consequences.** Remedy 20 risks several unintended adverse consequences. These include:

- (a) *Creating a barrier to entry and expansion for new and existing suppliers in the PPS.* Remedies 20a and 20b would decrease suppliers’ financial freedom and flexibility: Remedy 20a would prevent suppliers from taking prudent steps to minimise the risk of bad debt, a vital element of controlling avoidable costs; and Remedy 20b would inhibit suppliers’ ability to recover costs adequately. The lack of fiscal control and accompanying financial and operational risk would discourage new entrants from competing in the PPS (as well as discouraging existing suppliers from expanding their operations).
- (b) *Increasing tariff prices, reduced customer choice and decreasing customer engagement.* Due to the increased risk described above, the cost-to-serve for PPM customers would increase.⁵⁹ In light of the equalisation of prices between PPM and credit customers, recovery of these costs would lead to increased tariff prices for customers in both segments. Remedy 20b would also deprive customers of the choice to pay up-front for their meter change by instead forcing them to pay over a designated period. A perceived increase in prices risks decreasing trust in the energy market, negatively impacting customer engagement in the PPS.
- (c) *Undermining effective competition in the PPS.* As explained above, both Remedies 20a and b could result in barriers to entry and/or expansion for suppliers. These barriers could undermine the well-functioning and effective competition that PPM customers benefit from

⁵⁷ SSNPR, para. 21.

⁵⁸ SSNPR, para. 22.

⁵⁹ For example, for Remedy 20b, where a supplier opted to levy a fee for a meter exchange, the supplier would need to modify its billing systems to recover the cost from credit customers over an agreed period. Spreading such costs over time would introduce a new source of customer debt resulting in an increase in the cost of debt and hence higher costs to serve.

at present, with suppliers choosing not to enter, or expand within, the segment.

4.6 **There are more appropriate, effective and less onerous means of achieving the stated aim and mitigating the alleged customer detriment stemming from security deposits and upfront payments.** Alternative measures that would achieve the objectives sought by the CMA in a more proportionate manner include:

- (a) *Publicity campaigns.* As highlighted in the NPR Response, communication campaigns (e.g., DECC’s 2015 “*Power to switch*” campaign) have had a marked positive effect on customer engagement.⁶⁰ A similar campaign for PPM customers would be a less onerous, more cost-effective and more efficient method of achieving the stated aim of Remedy 20 than any of the proposed remedies.
- (b) *Regulations on customer communications.* Relaxing and/or removing burdensome and prescriptive regulations on customer communications would be a more effective and efficient means of achieving the aim of Remedy 20. Such a measure would facilitate tailored communications to which PPM customers would be more likely to react positively.

4.7 Notwithstanding the concerns expressed above, proportionate and effective measures leading to even higher customer engagement within the PPS are to be encouraged. Provided that Remedy 20c were implemented proportionately, based on the principles-based regulation agenda Ofgem is currently pursuing, SSE would support it.

Remedy 20a – prohibit the charging of a security deposit in circumstances when a customer is not in debt and has not incurred any fines, charges or interest for late payment in the last six months

a) *Would this remedy be effective and proportionate in removing the barrier to switching that security deposits can pose?*

4.8 Please see paragraphs 4.1 to 4.7 above.

b) *Are these the right criteria to apply in determining circumstances in which suppliers can charge a security deposit?*

4.9 In order to effectively protect suppliers’ commercial interest to manage the risk of customer debt, the relevant criteria would have to be more comprehensive than those proposed by the CMA. The circumstances in which suppliers may not charge a security deposit should be closely linked to a customer’s ability to pay. In addition to the criteria proposed by the CMA, relevant factors would also include (but not be limited to) a good credit score and willingness to set up DD payments. The time span for assessing whether a customer is debt free should also be lengthened to 12 (rather than six) months, to include at least one winter (during which energy costs are likely to be

⁶⁰ NPR Response, para. 3.5.12.

higher). This approach would minimise suppliers' financial risk and the unintended adverse consequences outlined above.⁶¹

- c) *What are the potential unintended consequences of being explicit about when customers can be charged a security deposit?*

4.10 Please see paragraph 4.5 above.

- d) *Is there a preferable alternative way of mitigating detriment arising from the impediments to switching posed by the potential need to pay a security deposit?*

4.11 Please see paragraph 4.6 above.

- e) *Should the CMA implement this remedy itself, or should the CMA make a recommendation to Ofgem to do so?*

4.12 Ofgem would be better placed than the CMA to implement this remedy.

Remedy 20b – Suppliers are prohibited from charging customers upfront for the cost of a new meter when switching away from prepayment

- a) *What length of time is reasonable and appropriate to allow the recovery of the cost of the meter and installation?*

4.13 A maximum recovery period of 12 months for the cost of the meter and installation is both reasonable and appropriate. This length of time would give suppliers sufficient time to recover costs at a reasonable rate but customers would benefit from the ability to choose a shorter period.⁶² However, a repayment period effectively creates debt on the customer account, inhibiting customers' freedom to switch supplier until the debt is repaid (as the DAP does not apply to standard credit or DD customers). This proposal therefore risks leading to either an increase in unrecovered costs or an increase in objections to switching due to outstanding charges.

- b) *Is this a proportionate remedy given the number of cases in which suppliers charge for removal of a PPM?*

4.14 This remedy is disproportionate. For the uncertain benefit of a minimal number of customers, it imposes significant constraints on how suppliers manage bad debt and financial risk, with serious unintended adverse effects on consumers, the PPS and potentially the energy supply market in general.

4.15 For further discussion, please see paragraphs 4.3 and 4.5 above.

- c) *Is there an equally or more effective alternative way to reduce the costs of prepayment meter removal and replacement?*

4.16 The cost of meter removal and replacement is a metering charge and should be cost-reflective. Remedy 20b would not reduce the costs of PPM removal or

⁶¹ Vulnerable customers should continue to be moved to credit meters without a security deposit.

⁶² "

replacement: instead, it would require suppliers to spread the recovery of these costs.

4.17 There are no short-term measures that would reduce the costs of PPM removal and replacement. In the medium term, the introduction of smart meters will remove this perceived impediment, as the meters will be dual purpose (*i.e.*, they will be able to operate as either PPM or credit meters).

d) *Should the CMA implement this remedy itself, or should the CMA make a recommendation to Ofgem to do so?*

4.18 Ofgem, with its sector-specific expertise and position as an industry regulator, would be better placed than the CMA to implement this remedy.

Remedy 20c – Require suppliers to provide annual notifications to prepayment meter customers setting out their right to switch and highlighting any potential restrictions or charges that may be payable

a) *Would this be an effective means of facilitating switches away from PPMs?*

4.19 SSE’s regional forums indicate that customers want clear and simple information that minimises the time and effort required to assess suppliers’ various offerings. Customers also report that the more communications they receive from suppliers, the less attention they pay to them. If other remedies (either 9, 10 or 11) result in changes being made to the annual statement then consideration could be given to the inclusion of information on removing PPM meters. Otherwise the process to design and implement a revised annual statement tailored to the needs of PPM customers and offering an “at a glance” summary of their switching options would be a comparatively slow and expensive means of implementing this remedy.⁶³

4.20 However, there is no evidence that the proposed remedy would better facilitate PPM-credit switches. SSE provides PPM customers with information statements which already contain the information referred to in Remedy 20c with further details available online; in addition to which, bills and annual statements include information about savings available to customers moving to their supplier’s cheapest tariff, noting that potential restrictions and charges may apply.

4.21 Rather than overwhelming customers with additional communications, relaxing or removing burdensome and prescriptive regulations on customer communications would be a more effective and efficient means of achieving the proposed remedy’s aim.⁶⁴ This approach would permit suppliers to send an appropriate number of simpler, more user-friendly communications, tailored to their customers’ particular needs, without introducing further prescriptive regulation.

b) *What would be the most effective means of communicating this information to customers?*

⁶³ See further SSE’s *Response to the Supplemental Notice of Provisional Remedies*, pp. 4.6-4.14.

⁶⁴ See *NPR Response*, Section 3.5.

- 4.22 The most effective approach would be to permit suppliers to provide relevant information on meter exchanges *alongside* the annual statement for PPM customers. This approach would minimise the additional costs of this remedy, avoiding the risk of creating an excessive number of different communications and the accompanying unintended adverse consequences (*see* paragraph 3.9(a) above).
- c) *What is a suitable frequency with which to contact customers? Would this messaging be more appropriately included alongside other messages or be triggered by particular events (such as outstanding debt being paid off)?*
- 4.23 Once a year, or at the end of term for fixed tariffs, is an appropriate frequency for contacting customers. This frequency reflects the feedback on customer communications gathered at SSE's customer forums.
- d) *Should a prompting remedy such as this be introduced directly by the CMA or should this be an area that Ofgem considers running randomised controlled trials to assess its effectiveness?*
- 4.24 Ofgem should introduce the proposed remedy, following trials. Trials are essential to ensure the measure's success and effectiveness and are consistent with regulatory best practice.

5. Remedy 21 – reform the protocol for the assignment of debt on prepayment meters

- 5.1 Despite the absence of an AEC, SSE is fully supportive of proportionate and effective changes to ensure the DAP works more effectively for PPM customers. However, the proposed remedy would be unnecessary and ineffective because it would be superseded by existing and imminent market developments. SSE and 10 other suppliers have already adopted the POA model voluntarily. This model effectively allows gaining suppliers to automatically initiate the DAP where the customer has a debt and has agreed, at the point of sale, that the gaining supplier can request debt information from the current supplier (should a debt objection be raised). This has simplified the switching process for customers where the DAP is required and has transformed the effectiveness of the switching process for indebted PPM customers. This trend will continue when, as currently planned, the POA is mandated for all suppliers later this year.
- 5.2 The procedure for universally adopting the POA model is already underway, with submission of an industry code modification expected in February 2016. The most efficient way to improve the DAP process would therefore be to support the process currently in train rather than introducing new, potentially conflicting measures, which risk undermining it.
- 5.3 Remedy 21 risks jeopardising and/or delaying the progress with the DAP already being made (as well as creating unnecessary costs from the duplication of existing work). The CMA and Ofgem should allow time for this model to be implemented before considering further changes.

- a) *Would a remedy recommending Ofgem to address the above-mentioned issues be effective in ensuring that adequate changes to the DAP are implemented promptly? Or should the CMA instead use its order-making power to support Ofgem’s ongoing work?*
- 5.4 No. These changes are already in progress and any additional measure (of whatever type) would hinder and delay the process.
- b) *What is the most efficient way for Ofgem and the industry to improve the DAP process in relation to the above-mentioned areas identified by Ofgem in order to increase the switching rates of indebted PPM customers?*
- 5.5 Customer switching decisions are dependent on numerous factors, including but not limited to: the availability of cheaper tariffs; customer service; access to the Warm Home Discount (*WHD*); payment method preference; and other benefits for vulnerable customers. No single measure can therefore guarantee increased engagement (and switching) on the part of indebted customers. However, based on recent data, the voluntary adoption of the POA model has made a significant change, increasing the successful switching of indebted customers (where the switching process was previously hindered by the number of steps required by the DAP).
- 5.6 According to Energy UK figures, for the period from 1 July 2015 to 30 September 2015, up to 34% of PPM accounts with a debt less than £500 for which a debt objection was raised, had switched supplier by 30 September 2015.⁶⁵ This figure contrasts with the position in 2013 when, according to Ofgem, less than 1% of the 95,000 account switches attempted by indebted PPM customers resulted in a customer switching successfully under the DAP.⁶⁶
- c) *How would this remedy interact with the other remedies to address the domestic AEC and/or detriment?*
- 5.7 SSE recommends that the CMA await the implementation of the POA model by all suppliers before implementing any other remedies in this sub-segment (indebted PPM customers).
- d) *Are there other impediments to switching for indebted PPM customers – other than those identified by Ofgem – that need to be addressed? If so, what are these and how should Ofgem or the industry address them?*
- 5.8 There are no impediments in addition to those already identified by Ofgem.⁶⁷

⁶⁵ 34.21% for electricity and 30.35% for gas.

⁶⁶ Ofgem, ‘Debt Assignment Protocol Review: the process for prepayment meter customers switching with a debt’, Open Letter, 24 September 2014.

⁶⁷ **Annex 1** provides SSE’s comments on Ofgem’s areas for improvement of the DAP.

6. **Remedy 22 – A transitional “safeguard price cap” for domestic prepayment customers**

6.1 Evidence demonstrates that PPM customers are engaged and active. There is therefore no justification for introducing an intrusive and retrograde measure, which would undermine a competitive and well-functioning PPS.

6.2 **Remedy 22 is unnecessary and disproportionate.** Only a very real and serious AEC, where there was considerable consumer harm, could justify such an onerous remedy. The CMA has not established such an AEC to the requisite standard in the APFs, failing to offer any evidence consumer detriment in the PPS. In particular, the CMA has not provided any evidence to show that non-smart PPM customers face “*the most severe and long-lasting barriers*” to engaging in the market.⁶⁸ To the contrary, the CMA’s survey illustrates that these customers are engaged and active (*see* paragraph 2.3 above). The proposed remedy is thus unnecessary and disproportionate to the alleged consumer detriment.

6.3 **The proposed remedy is unjustifiably complex and burdensome.** In addition to the difficulties of setting the correct headroom explored below and in the NPR Response,⁶⁹ the proposed remedy would require constant monitoring with high “*costs for monitoring and enforcement agencies, as well as the parties subject to them.*”⁷⁰ Such an imposition on both the regulating body and suppliers is unjustified given the uncertain relevant customer benefits and serious adverse consequences.

6.4 **The proposed remedy carries a serious risk of unintended adverse consequences.** Remedy 22 risks several unintended adverse consequences. These include:

(a) *The creation of a barrier to entry and/or expansion.* Suppliers in the PPS who could not afford to make losses on the regulated tariff may withdraw from the PPS altogether, while new entrants may decide against entering it. Both developments would undermine the increasingly fierce competition between suppliers seen in the PPS.

(b) *The undermining of effective competition in the PPS.* Remedy 22 could create significant uncertainty in the market and consequently reduce investment. The proposed remedy would also deter suppliers from competing for loss-making customers and may even reduce the number of suppliers in the PPS (*see* above). This outcome supports the CEER’s belief that, “*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.*”⁷¹ The CMA’s guidance reiterates that remedies which

⁶⁸ SSNPR, para. 55.

⁶⁹ NPR, Section 3.16.

⁷⁰ Competition Commission, *Guidelines for Market Investigations: Their role, procedures, assessment and remedies (CC3 Revised)* (April 2013), para. 378.

⁷¹ A report by the CEER (16 October 2015), p. 15.

control outcomes (such as Remedy 22) risk creating “*market distortions, particularly if they are kept in place over a long period.*”⁷²

- (c) *A reduction in PPM customer engagement.* Customers on the regulated tariff may see themselves as ‘protected’. Combined with the reduced choice in tariffs and gains from switching, this effect would discourage PPM customers from engaging in the market.
- (d) *The creation of confusion in the market by running contrary to past findings and current approaches.* The CMA has identified previous regulatory interventions as constituting an AEC or contributing to a softening of competition (in the case of SLC 25A). Ofgem has also implicitly recognised the negative effects of past regulation with its move to principles-based, rather than prescriptive, regulation. Remedy 22 contradicts both of these and therefore risks confusing both market players and customers with mixed messages.
- (e) *A de facto price cap on standard credit SVTs and accompanying serious unintended adverse consequences in the standard credit segment.* Remedy 22 would impose a *de facto* price cap on standard credit SVTs.⁷³ As a result, the serious unintended adverse consequences in the PPS (*see* above), would also be mirrored in the standard credit segment.

6.5 **Relevant customer benefits are too uncertain to justify such a disadvantageous remedy.** The CMA has not provided any evidence that the proposed remedy would result in relevant customer benefits substantial enough to outweigh the many negative effects of this measure.

6.6 **The proposed remedy will not be effective.** The proposed remedy is designed to increase PPM customer engagement. However, as explained above, the measure would likely have an adverse effect on customer engagement.

6.7 **There are more proportionate and effective means of remedying the alleged AEC.** The alleged harm the remedy is designed to address would be better rectified via the proposed information remedies and the lifting of excessively burdensome regulation, than the implementation of this onerous and retrograde remedy.

- a) *If the transitional safeguard price cap for PPM customers were set relative to other prices in the domestic retail energy markets, how should we identify an appropriate level of prices and how can we ensure the level of the cap remains appropriate for the duration of the period it is in effect?*

⁷² CC3 Revised, para. 378.

⁷³ The SVT for PPM and standard credit customers is the same tariff and most suppliers currently equalise the prices charged to these two segments. Price differences between payment methods for each tariffs must reflect differences in costs to serve. Consequently, Remedy 22 would act as an effective cap on SVT tariffs in the standard credit segment (*see* SLC 27.2A; Directive 2009/72/EC, Annex 1 para. 1(d); Directive 2009/73/EC, Annex 1 para. 1(d); and APFs, para. 8).

- 6.8 If the CMA implements this proposal, the most appropriate reference level should be standard variable tariffs (*SVTs*) and not heavily discounted “acquisition” tariffs. Acquisition tariffs are only commercially viable based on the modelled value over the lifetime of the customer, *i.e.*, over a period extending for several years beyond the term of the acquisition tariff.⁷⁴
- 6.9 A relative price control between different payment methods, rather than an absolute cap, logically flows from the CMA’s concern that PPM customers have a smaller range of discount fixed price offerings than other customers. The fact that CMA has not adopted this approach suggests that it realises that relative price control would be prone to unintended consequences (particularly in the context of the technical constraints limiting the number of different pricing points in the PPS). An absolute cap would also have this effect. Price regulation could choke the recent competitive developments set out in Section 2 above.
- 6.10 The SSNPR states that setting the price cap in relation to other tariffs in the domestic market would avoid the lengthy cost assessment process required for a cost-plus price cap. SSE has already presented detailed arguments as to why this cost assessment would likely arrive at the wrong answer and an alternative method would be less prone to error.⁷⁵
- b) *Could the imposition of a transitional safeguard price cap for PPM customers result in energy suppliers reducing the quality of service offered to customers on these tariffs? Is this risk reduced by prepayment customers’ ability to choose alternative, unregulated tariffs or changing to a smart prepayment meter?*
- 6.11 The price cap would not result in a reduced quality of service for PPM customers, with suppliers motivated to protect their quality of service and reputation. However, as PPM customers become commercially less attractive, recent expansion in the range of offers and the efforts of suppliers to gain PPM customers will reverse.
- c) *How should the headroom be calculated to provide the right level of customer protection while not unnecessarily reducing healthy competition?*
- 6.12 There is no method of calculating the headroom that would guarantee no serious adverse effects on the current healthy levels of competition in the PPS and PPM consumer engagement.

⁷⁴ A corollary of this is that newer market entrants have tended to report declining profits in years for which revenue has increased significantly: see Financial Times, *Energy challengers struggle to find profits spark*, 19 November 2015, (<http://www.ft.com/cms/s/0/c8efd62c-7bf0-11e5-98fb-5a6d4728f74e.html>).

⁷⁵ *NPR Response*, paras. 3.16.19 *et seq.*

- d) *What regulatory information would be required to set the transitional safeguard price cap?***
- 6.13 As set out in our response to Remedy 11,⁷⁶ the information requirements on costs required for the setting of a cost plus cap would be highly problematic. The setting of a cap based on price information would be less onerous.⁷⁷
- e) *How long should the transitional safeguard price cap be kept in place? Is it appropriate to include a specific sunset provision, or should there be a commitment to review the need for and level of the safeguard price cap after a certain period of time?***
- f) *Should the termination date of a transitional safeguard price cap remedy be linked to the roll-out of smart meters? If so then should this be done explicitly, in aggregate or on a customer-by-customer basis?***
- 6.14 Remedy 22 is onerous and risks serious adverse effects on the PPS including reducing competition and customer engagement. Prior to smart meter roll-out, it should be reviewed regularly and at specific points, such as when a range of indicators (*e.g.*, internal and external switching rates and customer satisfaction) fall below a certain threshold. In any event, Remedy 22 (if implemented) should be a short-term remedy, with a defined termination date aligned with the availability of SMETS2 PPMs.
- g) *How frequently – if at all – would the level of the cap need to be reassessed?***
- 6.15 Potential financial risks of a leaving long period between reviews have previously been set out in SSE’s response to Remedy 11.⁷⁸ A six month review period would be a practical solution to balancing the risks. However, such reviews would cause the market to synchronise tariff changes around a particular date. This synchronisation could lead to allegations of tacit coordination thereby damaging the reputation of the energy market and energy suppliers and reducing customer engagement.
- 6.16 The potential consequences of not reviewing the cap level periodically given the fluctuating costs experienced by the retail supply balance are detailed in SSE’s response to Remedy 11.⁷⁹ These consequences are so severe that Remedy 22 should not seriously be considered.
- h) *Which prepayment customers should this remedy apply to?***
- 6.17 Given the adverse consequences outlined about, Remedy 22 should apply only to the most vulnerable customers, if at all.
- 6.18 However, if the intent behind Remedy 22 is to target the most vulnerable customers, the PPS is an extremely poor proxy for this group. In the last complete year of the WHD for which data is available (year four), of the

⁷⁶ *NPR Response*, para. 3.16.32.

⁷⁷ *NPR Response*, para. 3.16.33.

⁷⁸ *NPR Response*, paras. 3.16.37-3.16.39.

⁷⁹ *NPR Response*, pp. 3.16.37-3.16.39.

353,500 SSE customers who received a rebate (across the Core and Broader Groups), just over 83,000 (23.4%) were PPM customers. This data is consistent with data published by Ofgem; the most common payment method for customers in England living in fuel poverty is DD (at 45%) followed by PPM (25%) and standard credit (22%).⁸⁰ As proposed therefore, Remedy 22 would not be effective in meeting the objective of providing a safeguard price cap for vulnerable customers.

- 6.19 Any remedy that applies to a particular group of vulnerable customers must be implemented in a manner which ensures that suppliers continue to have a commercial incentive to compete for that group's business.
- 6.20 It is also imperative that, in developing this remedy, the CMA takes full account of the ongoing development of policy on the WHD and the potential interaction with a price cap. The WHD is currently under review with details of the next phase of WHD to be clarified over the course of the summer.
- i) ***Which energy suppliers should be subject to the transitional safeguard price cap, and why? Should it be restricted to the Six Large Energy Firms, or should all retail energy suppliers be covered?***
- 6.21 Applying the cap to some suppliers and not others would accentuate the distortions that would be caused in the PPS by the introduction of a cap. SSE's previous work indicates that WHD recipients are less likely to switch, in all probability due to the non-universality of WHD. Consumer groups have also identified the non-universality of WHD as a disadvantage. A similar effect would likely result from the non-universal application of the cap.
- j) ***How should the transition from the current arrangements be managed? Should there be a period over which the transitional safeguard price cap is phased in? If so, how long should this period be and how should the transition work?***
- 6.22 If a cap is adopted, a transition would be required to establish reference levels for the cap and determine timeframe to minimise tariff administration costs. Monitoring should also be put in place as per paragraph 6.15 above.
- k) ***Would energy suppliers have the ability to circumvent the remedy, for example, by encouraging domestic prepayment customers to switch on to less favourable, unregulated tariffs, and how could such risks be mitigated?***
- 6.23 Current regulations mean that suppliers are already required to show each customer the lowest rates from which that customer could benefit. Those PPM customers would therefore be aware, if it were the case, that they were already benefiting from the lowest possible rate.
- l) ***Should the CMA set the level of the transitional safeguard price caps itself, or should the CMA make a recommendation to Ofgem to do so?***

⁸⁰ See Ofgem, *Energy: the debate, Ofgem Roundtable Report Payment Differentials*, 27 March 2015, page 7.

- 6.24 Mandating Ofgem to impose a cap that would have such adverse effects on competition could compromise the regulator’s duty to promote competition. Further, former regulators (in the context of Remedy 11) believed that a price cap, once imposed by Ofgem, would be extremely difficult to remove. The CMA however intends this cap, like Remedy 11, to be transitional. The CMA should therefore set the level of the cap.⁸¹
- m) *Are there any potential unintended consequences of setting a transitional safeguard price cap, for example, in terms of their potential impact on the level of other, unregulated tariffs?***
- 6.25 There are many potential consequences of the cap, as outlined in paragraph 6.4 above.⁸²
- 6.26 In particular, as described in paragraph 6.4(e) above, the proposal for a payment-method-specific price cap is conceptually difficult given the existing regulatory and legislative requirements that any differences in terms and conditions between payment methods must be cost-reflective.⁸³ A PPM price cap therefore imposes a cost-reflective price cap for all payment methods. Given that the cost-to-serve credit customers is generally lower than the cost-to-serve PPM customers, the price cap could not be set at a level below the current SVT without also affecting the level of SVTs and the competitive dynamic in the wider market.
- 6.27 The existing cap on tariff numbers, which requires that PPM is treated as a payment method and not as a meter type, would further complicate the proposed PPM price cap (although Remedy 3 could address this point).⁸⁴ The existing four-tariff cap means that competitive pressures in the wider market directly affect the price of all SVTs and therefore PPM tariffs. For this reason, and subject to the specific reforms the CMA may wish to introduce under Remedy 3, a PPM price cap would impose a *de facto* price cap on standard credit SVTs.

⁸¹ See *Submission on Summary of Provisional Findings Report and Notice of Possible Remedies*, Stephen Littlechild, Sir Callum McCarthy, Eileen Marshall CBE, Stephen Smith, and Clare Spottiswoode CBE, para. 45; Ofgem, *Responses to CMA Notice of Remedies*, p. 88.

⁸² *NPR Response*, Section 3.16. Remedy 11 was rejected consistently in responses from a wide range of stakeholders.

⁸³ See SLC 27.2A; Directive 2009/72/EC, Annex 1 para. 1(d); and Directive 2009/73/EC, Annex 1 para. 1(d).

⁸⁴ SLC 1 defines five different metering arrangements, each of which can have a limit of four live tariffs. Prepayment exists as a payment variant within each of these defined categories (and also within the bespoke heating arrangements covered by SLC 22F).

Annex 1

SSE's view of Ofgem's areas of improvement to the DAP

- a) **The 'objection letter' sent by an incumbent supplier should not confuse customers as to their right to switch, making clear that the switch will continue; further 'objection letters' should only be sent to customers whom it is established are not eligible to switch.**⁸⁵
1. The current objection letter may cause confusion due to the requirement to state that the gaining supplier may be following either the mandatory DAP process or the voluntary POA DAP. Mandatory introduction of the POA model will remove this confusion.
 2. Objection letters should be sent to all customers, regardless of whether they are eligible to switch. An objection letter is necessary to inform a customer of an objection, even if the customer need not act on it. The POA model objection letter explains that if the gaining supplier is signed up to the POA DAP, the switch will progress without further input from the customer.
- b) **The 'complex debt' aspect of the DAP should be revisited in order to diminish the instances in which the switch is disallowed.**
3. Complex debt is not a significant barrier to switching for PPM customers. SSE objection figures for 30 April 2015 to 30 June 2015 show that " supply point objections were raised for debt and the DAP was initiated by the gaining supplier for " switches. Of these, only " were stopped due to complex debt (" of DAP initiations and less than " of total potential switches). SSE believes that this percentage is reflective across the market, meaning that complex debt affects less than " of potential switches for which a debt objection was raised.⁸⁶
 4. Revisiting complex debt may increase successful switches. However, the supplier's ability to stop the DAP process must be maintained for certain complex debt scenarios, *e.g.*, an on-going fraud investigation.
- c) **Issues relating to multiple registrations should be addressed in order to avoid multiple objection letters being sent to customers with such metering arrangements, causing unnecessary confusion for them and adding cost.**
5. Given the small number of customers who may be affected by multiple objection letters, addressing any issue is likely to be disproportionate. Multiple letter scenarios occur rarely, generally when a customer resumes a transfer before the payment of any outstanding debt has been processed. SSE does not support the development of alternative objection rules for indebted

⁸⁵ Titles in bold refer to Ofgem's views.

⁸⁶ Based on Energy UK data from 1 July 2015 to 30 September 2015. Of 12,616 unique supply point objections/notices of objections that have been issued against indebted PPM accounts in the period, only 51 were marked as complex debt.

PPM customers. This approach would cause customer confusion and unnecessarily increase the regulatory burden on suppliers.

6. Some suppliers have previously sought to restrict the number of registrations through the electricity Master Registration Agreement.⁸⁷ While this would avoid the issue of multiple objection letters, it may also reduce switching and is a disproportionate response to the relatively rare problem of multiple objection letters. Suppliers must not be prevented from legitimately registering a customer where the current supplier is illegitimately objecting.

⁸⁷ NPower recently raised a formal proposal restricting the number of registration attempts to four and requiring the incoming supplier to have 'valid and demonstrable evidence' from the customer that the outgoing supplier does not have reasonable grounds to object.