Ofgem refers GB energy market to CMA for investigation

On 26 June 2014 the Office of Gas and Electricity Markets ("Ofgem") made a reference ("Reference") to the Competition and Markets Authority ("CMA") under section 131 of the Enterprise Act 2002 for a market investigation into the GB energy market. Following its State of the Market report, published on 27 March 2014, which identified reasons why the energy market was not working as effectively as it could, Ofgem consulted on its decision to make a Reference to the CMA. This consultation, which closed on 23 May 2014, elicited many consultees’ view that a Reference is needed in order to restore consumer confidence and, in particular, the industry’s view that it is needed to ‘clear the air’.

BACKGROUND

Ofgem’s Domestic Retail Market Report, published in 2005, concluded that the retail market for energy was competitive and was bringing benefits to consumers. The market was then reassessed in 2008 in Ofgem’s Energy Supply Probe, which concluded that there were features of the market that weakened competition. Despite this, the regulator stopped short of a reference to what was then the Competition Commission ("CC"). Finally Ofgem launched the Retail Market Review in 2010, which identified some persisting problems in the market. A number of further downstream remedies were progressively introduced over the ensuing years.

By 2013, however, continued and growing concern over the rising cost of energy, and criticism of the six largest suppliers in the UK (the "Big Six": British Gas, EDF, E.ON, npower, Scottish Power and SSE) prompted the government to instruct Ofgem to work with the Office of Fair Trading (and subsequently the CMA) to deliver a State of the Market review. In this review Ofgem identified five features of the energy market that may have an adverse effect on competition: (i) weak customer response; (ii) vertical integration; (iii) barriers to entry and expansion; (iv) incumbency advantage and market segmentation; and (v) evidence of possible tacit coordination.
Ofgem has decided to make the Reference due to the persistence of these factors in the market, and its belief that other reforms in the market, such as Electricity Market Reform ("EMR"), do not address all of the market features identified. Furthermore Ofgem has concluded that a Reference to the CMA is the most effective way to address the public’s concerns and the market features identified, rather than accepting undertakings in lieu of a reference. Ofgem argues that more investigation of the market is needed before remedies are decided upon, and that the wide range of remedies that are available to the CMA, including structural reforms in particular, are most likely to restore consumer confidence and investor confidence in the market. The terms of reference are intended to include review of the regulatory framework and how it is applied.

Ofgem’s decision to refer the GB energy market precedes the European Commission’s announcement (on 30 June) of an in-depth study focussing on the retail electricity market, which ranks fourth lowest among the services markets in its latest annual Consumer Markets Scoreboard.

MARKET FEATURES

After considering the responses it received to its consultation, Ofgem has recommended that the following main features of the energy market should be subject to investigation by the CMA:

**Weak consumer response.** Although Ofgem has acknowledged that the Retail Market Review has resulted in a slight improvement in consumers’ understanding of energy tariffs and how to compare them, there is still a long way to go. Additionally, satisfaction and trust in suppliers is still low and does not appear to be improving, and consumers continue to be concerned about the complications of switching suppliers.

**Vertical integration.** The Big Six directly own around 70% of generating capacity, and all but one (British Gas) own sufficient capacity to service their domestic supply needs. Although Ofgem accepts that this has benefits in the form of a natural hedge against wholesale price volatility and reduced cost of capital, it also creates barriers to entry since new entrants may find it difficult to access wholesale supply. Vertical integration also leads to weak competitive dynamics between the largest suppliers, according to the regulator.

**Barriers to entry and expansion.** Suppliers are obliged to sign up to various industry codes and comply with licence conditions, which, combined with the added requirements of the EMR, are burdensome for new market entrants. The poor reputation of the energy industry is also cited by Ofgem as a potential disincentive to market entry.

**Continuing incumbency advantage and market segmentation.** The Big Six continue to have a large number of customers who rarely if ever engage in the market, and tend to charge higher prices to those customers. At the same time, they supply the same product to other more active customers at lower prices.

**Possible tacit coordination.** Although Ofgem has not been able to point to actual tacit coordination, there is evidence for its possible existence in the market, according to the regulator. This includes in particular price announcement behaviour, the converging profitability of the Big Six and the fact that suppliers seem to take longer to reduce their prices after a drop in wholesale prices than they do to increase prices when wholesale prices rise.
OFGEM’S REASONS FOR MAKING THE REFERENCE

Despite the incremental improvements in consumer response that followed Ofgem’s Retail Market Review, the regulator expressed concern that these reforms were limited in scope to the downstream market. Many of the concerns underlying consumers’ lack of trust in the energy market, including in particular vertical integration, liquidity, incumbency and possible tacit coordination, lie further upstream. Ofgem considers that the CMA is best placed to lead a thorough investigation into these areas of concern, and that the wide range of remedies available to the CMA can address the issues comprehensively. Should it conclude from its investigation that there are any market features that have an adverse effect on competition, the remedies that are available to the CMA include: (i) the ordering of action by suppliers such as divestments; and (ii) recommendations to Ofgem.

For example, Ofgem has already identified certain features of the energy market that may facilitate tacit coordination. These include high concentration, similar product and cost structures across suppliers, observable pricing strategies and relatively stable demand conditions. Barriers to entry and expansion contribute to this stability, which is also evident in converging profitability among the Big Six. Commentators have drawn attention to the relative absence of the type of disruptive behaviour that marks a highly competitive market, such as brand and pricing initiatives, certain forms of the latter of which Ofgem has prohibited, and corporate activity such as takeovers. The relative equality and stability of market share among the Big Six serves to discourage such disruptive activity and is also partly responsible for the barriers to entry that have so far prevented smaller suppliers from gaining a foothold sufficient to disrupt the market structure, according to Ofgem. The remedies that are now available to the CMA include those designed to disrupt this market structure, which has persisted despite the other remedies that have been implemented since 2008.

Ofgem’s Reference has been welcomed by all of the Big Six, many of whom have been calling for a market investigation since as long ago as 2011, principally in preference to the continued unresolved regulatory scrutiny and criticism by politicians and consumer bodies. The Reference has also been welcomed by consumer bodies and the energy trade association Energy UK. Ofgem decided in its 2008 Energy Supply Probe against referring the market to what was then the CC, preferring instead to implement directly a range of remedies designed to improve transparency and fairness. There was, however, considerable debate within Ofgem at the time over the suitability of these remedies. The industry, and now Ofgem, is keen to ensure that the Reference will succeed at last in ‘clearing the air’.

NEXT STEPS

The CMA is obliged under the timetable provisions of the Enterprise and Regulatory Reform Act 2013 to complete its investigation by 25 December 2015, although this deadline can be extended by up to six months in exceptional circumstances. The CMA’s next steps are to appoint independent panel members to an investigation group and to publish an issues document setting out the scope of the investigation and inviting submissions in response. On 3 July 2014, the CMA published an administrative timetable for the investigation, anticipating the publication of provisional findings in May or June 2015, followed by a final report in December 2015 before the statutory deadline.

1 See for example http://www.bbc.co.uk/news/business-25018828
SOURCES

Centrica Reaction to the start of a CMA investigation into the UK energy sector, 26 June 2014.

CMA Energy Investigation Timetable published, 3 July 2014.

EDF Energy Response to Ofgem’s announcement on a Competition & Markets Authority investigation, 26 June 2014.

Energy UK Ofgem consultation on a proposal to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain – Energy UK response, 23 May 2014.

E.ON Response regarding Ofgem’s referral of the energy market to the Competition and Markets Authority, 26 June 2014.

Ofgem Decision to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain, 26 June 2014.

Ofgem Retail Market Review - Findings and Initial Proposals, 21 March 2011.

Ofgem Minutes of the Meeting of the Gas and Electricity Markets Authority, 5 March 2009.

Ofgem Minutes of the Meeting of the Gas and Electricity Markets Authority, 11 December 2008.


Ofgem Domestic Retail Market Report, 6 February 2006.

RWE npower Response to scope of CMA inquiry, 26 June 2014.


SSE Responds to Ofgem’s final decision to refer the GB energy market to the Competition and Markets Authority, 26 June 2014.
Mergers

CMA PUBLISHED DECISIONS

1. **CMA clears acquisition of Banner Homes Group plc by CALA 1 Limited** – On 27 June 2014 the CMA published the full text of its decision of the completed acquisition of Banner Homes Group plc (“Banner”) by CALA 1 Limited (“CALA”). The CMA did not reach a firm conclusion on product market definition but assessed the markets for (i) the supply of new and older residential homes, focusing on the construction and supply of new builds, and (ii) acquiring and developing land for residential homes. It examined the transaction at a national, regional and local level for both levels of the supply chain. It found that the parties had a low share of supply at both a national and regional level and would continue to face significant competition from homebuilders of similar or larger size. Although there were a few local areas where the parties had a more significant position in certain markets, the CMA considered that the merger did not give rise to significant competition concerns in these areas given (i) the low increment to the parties’ share and (ii) the competition the parties would continue to face in these areas. Therefore, the CMA concluded that there was no realistic prospect that the transaction would result in a substantial lessening of competition (“SLC”) (cma.gov.uk, 27 June 2014).

2. **CMA confirms decision on Eurotunnel / SeaFrance merger inquiry following CAT remittal** – The CMA has published its final decision, confirming the original findings of the CC, that the completed acquisition by Groupe Eurotunnel S.A. (“Eurotunnel”) of certain assets of former ferry operator, Sea France S.A. (“SeaFrance”) could be expected to result in a SLC. The decision addresses the question remitted to the CMA by the CAT in its judgment of 4 December 2013. This question concerned whether the CC had jurisdiction on the basis that two enterprises were ceasing to be distinct within the meaning of section 26(1) of the Enterprise Act 2002 (and that a relevant merger situation had therefore arisen). The CMA, supporting the original CC finding, concluded that the combination of acquired tangible and intangible assets met the legal definition of an ‘enterprise’ and two enterprises had therefore ceased to be distinct. It also found that there was no material change of circumstances that justified any change to the SLC finding and that the remedies remained consistent with the conclusion in the CC’s report of 6 June 2013 (cma.gov.uk, 27 June 2014).

3. **CMA clears acquisition by Graphic Packaging International of Benson Box Holdings** – The CMA has published the full text of its decision on the anticipated acquisition by Graphic Packaging International Limited (“Graphic”) of Benson Box Holdings Limited (“Benson”). The CMA decided not to refer the merger for an in-depth Phase 2 investigation even though the parties are the two largest suppliers of folding carton-board packaging to food manufacturers in the UK. The CMA was satisfied that the merged entity would be constrained by two relatively large competitors as well as a range of smaller suppliers. There was also evidence that, as a result of differences in the parties’ offering and customer bases, the parties were not closest competitors despite a large combined market share. As a result, the CMA declared that the acquisition would not result in an SLC (cma.gov.uk, 3 July 2014).

4. **CMA publishes decision on acquisition of Guardline Technology Limited by Micronclean Limited** – The CMA has published the full text of its clearance decision on the completed acquisition by Micronclean Limited (“Micronclean”) of Guardline Technology Limited (“Guardline”). The parties’ principal overlap was in the supply of cleanroom laundry services operating within environments that are controlled for contamination (e.g. NHS pharmacies). The CMA assessed the market at different ‘grades’ of laundry service and concluded that (i) Guardline and Micronclean were not closest competitors in the provision of full cleanroom...
laundry services; (ii) Micronclean would continue to face significant competitive constraints post-merger from Fishers in the supply of these services; and (iii) no competition concerns existed in the ‘lower grades’ of cleanroom laundry services and the supply of cleanroom consumables. On this basis, the CMA considered that the acquisition did not result in a realistic prospect of a SLC and therefore decided against referring the merger to Phase 2 (cma.gov.uk, 3 July 2014).

CAT

5. **CAT order quashing OFT decision in A.C. Nielsen appeal** – The CAT has published an order quashing the OFT’s decision not to refer the completed acquisition by Information Resources Inc (“IRi”) of Aztec Group (“Aztec”) to the Competition Commission (as it then was). A.C. Nielsen (“Nielsen”), another supplier of retail measurement services to suppliers of fast moving consumer goods, applied to the CAT on the basis that the OFT’s original decision contained a number of errors. The order states that since Nielsen applied to the CAT, IRi has provided new relevant information to the CMA and as a result the parties have agreed that the matter should be referred back to the CMA for a new decision to be taken. Specifically, IRi provided further details regarding the exclusivity arrangements between Litmus (a subsidiary of Aztec) and its customers. Therefore, the OFT’s original decision has been quashed and the CMA now requires the parties file a new Merger Notice (cattribunal.org.uk, 4 July 2014).

OTHER DEVELOPMENTS OF INTEREST

6. **CMA publishes speech by David Currie on health service merger regime** – The CMA has published the speech delivered by David Currie, Chairman of the CMA, on how the merger regime in the health service is working and how it can be improved. Mr Currie highlighted that the interests of patients should be at the very core of the competition regime and the merger review process in this sector. He also indicated that the CMA is working closely with Monitor, the regulator for health services in England, to understand how best to operate and improve the merger regime, e.g. by issuing joint statements and guidance. Mr Currie recognised that the CMA and Monitor have a clear responsibility to make the regime as smooth, efficient and comprehensible as possible, “so as to minimise the burden that it might otherwise represent” (cma.gov.uk, 25 June 2014).

Antitrust

CMA DECISIONS

7. **CMA accepts commitments to improve competition in road fuels market** – The CMA has accepted final commitments offered by Certas Energy UK Limited (“Certas”), a supplier of road fuel to filling stations, and its parent company, DCC plc (“DCC”). These commitments are designed to improve competition in the wholesale supply of road fuels to filling stations in the Western Isles of Scotland. Specifically, the commitments address the CMA’s concerns that Certas may have abused its dominant market position. The companies have agreed, amongst other things, to (i) terminate or amend long-term exclusive supply contracts in the region in order to allow filling stations to switch suppliers; and (ii) open up/extend access to its Loch Carnan and Shell Street terminals to potential competitors. According to the CMA, these measures should lower barriers to entry and allow rivals to gain market share which should ensure that a more competitive market exists when the commitments expire in five years. (cma.gov.uk, 24 June 2014).

OTHER DEVELOPMENTS OF INTEREST

8. **CMA opens new Competition Act investigation into conduct in the pharmaceutical sector** – The CMA has opened an investigation into a suspected infringement of competition law in
the pharmaceutical sector. The case concerns suspected breaches of Chapter II of the Competition Act 1998 and Article 102 of the Treaty on the Functioning of the European Union (“TFEU”). No further details are disclosed. The case is at an early stage with the administrative timetable estimating that a decision to proceed with or close the investigation will be made in October 2014 (cma.gov.uk, 24 June 2014).

9. **CMA issues note on lessons learnt from commercial vehicles case** – The CMA has issued a note on lessons learnt from the OFT infringement decision in relation to the distribution of Mercedes-Benz commercial vehicles. The participants in the cartel were fined over £2.8 million for market-sharing, price co-ordination and exchanging commercially sensitive information. The note highlights that it can be easy for competing businesses to cross the line between legitimate and illegitimate contact. It emphasises that competitors, including franchisees of the same manufacturer, must set their strategies independently and that discussions around future pricing intentions are especially problematic. The note also (i) indicates that a company may still commit an infringement even if its involvement is relatively limited (e.g. helping to organise and attend a single meeting where an anti-competitive arrangement was reached); and (ii) highlights the CMA’s willingness to take action against cartels regardless of the size of the companies and geographic scope of the potential infringement (cma.gov.uk, 30 June 2014).

10. **Small Business, Enterprise and Employment Bill published** – The Small Business, Enterprise and Employment Bill, introduced to Parliament on 25 June 2014, aims to make it easier to set up and grow a small business. In terms of competition measures, the Bill proposes to amend section 7 of the Enterprise Act 2002 to allow the CMA to make recommendations to the Minister in relation to the potential impact of legislation on competition within any UK market. It also (i) includes measures designed to encourage competition in the banking sector in order to improve the ability of small businesses to access finance; (ii) introduces a statutory Pubs Code and Adjudicator in order to govern the relationship between the pub owning companies and their tied tenants; and (iii) contains provisions to improve public procurement procedures (parliament.uk, 25 June 2014).

11. **Speech by CMA Chairman on the CMA as a UK-wide organisation** – On 26 June the CMA published a speech delivered by David Currie at the CMA board reception in Scotland about the CMA as a UK-wide organisation. Mr Currie explained that the CMA’s Devolved Nations Team had been expanded recently, which reflects the organisation’s commitment to the whole of the UK. Mr Currie took the audience through the CMA’s aims and mission, its on-going work and its commitment to be a UK-wide organisation. He discussed the CMA’s current heavy workload with 12 live competition enforcement cases, nearly 30 merger reviews and three Phase 2 market investigations. Mr Currie also set out the CMA’s target to launch at least four new Competition Act investigations, four new market investigations and three cases where endemic practices harm consumer decision-making or choice. It was emphasised that the Devolved Nations Team would play a role in these projects to ensure that the CMA’s work reflects the issues of most importance to the whole of the UK and each of the devolved nations (cma.gov.uk, 26 June 2014).

12. **High Court rules that loan by local authority to sports stadium does not constitute state aid** – On 30 June 2014 the High Court ruled that a loan granted by Coventry City Council to Arena Coventry Limited (“ACL”), the leaseholder of the Ricoh Arena, did not constitute state aid. The Council owned 50% of ACL. The court ruled that Coventry City Council acted as a “rational private
market investor” in granting the loan and that therefore it did not constitute state aid within the meaning of Article 107(1) TFEU. According to the court, a private market investor in the same position as the Council would have considered granting the loan, which was on terms that were commercially preferable to ACL, in order to remove the risk of ACL becoming insolvent and protect the company from the risk of a hostile takeover. The court also indicated that the transaction “fell within the wide ambit extended to public authorities in this area”. (bailii.org, 30 June 2014).

Regulatory

ENERGY

13. Ofgem publishes findings on treatment of low and zero consumers of gas – Ofgem has issued an open letter which sets out its findings following a request for information from gas suppliers on standing charges for customers who have little or no gas consumption. It highlights that good practices include (i) three of the larger suppliers removing a meter free of charge for zero use consumers and (ii) waiving the standing charge for vulnerable customers who have periods of zero usage. It also notes that the practice whereby suppliers apply a ‘deemed contract’ even when there has been no gas consumption at the premises runs counter to Ofgem’s existing guidance and the regulator is determined to stop this unfair practice. Ofgem’s next steps include tackling the application of deemed contracts and ensuring that suppliers are treating vulnerable customers fairly (ofgem.gov.uk, 20 June 2014).

14. DECC publishes policy document on implementing EMR – On 23 June 2014, the Department of Energy and Climate Change (“DECC”) published its finalised policy positions for the implementation of Electricity Market Reform (“EMR”). The EMR programme aims to increase investment in low carbon electricity, enhance security of electricity supply and improve affordability for consumers. The document provides a detailed explanation of the EMR’s two key incentive mechanisms, namely Contracts for Difference (“CFDs”) and the Capacity Market. CFDs are private law contracts between a low carbon electricity generator and the Government-owned “Low Carbon Contracts Company” (“LCCC”), whereby the generator is paid the difference between the “strike price” (the price for electricity reflecting the cost of investing in a particular low carbon technology) and the “reference price” (a measure of the average market price for electricity in the GB market). The Capacity Market provides regular retainer payment to reliable forms of capacity in return for such capacity being available when the system is tight. Both the CFDs and Capacity Market will be implemented by secondary legislation, which has been laid before Parliament. The policy document also discusses the Electricity Demand Reduction (“EDR”) Pilot and how the government plans to ensure effective and transparent delivery of the EMR programme (gov.uk, 23 June 2014).

15. Ofgem launches review into market for new connections to the electricity distribution system – Ofgem has responded to concerns about competition in the market for new connections to the electricity distribution system by launching a market review. The Competition Test Process, which completed in April 2014, concluded that competition has not developed as effectively in certain distribution network operator (“DNO”) areas and Relevant Market Segments (“RMSs”). The market review intends to establish why these differences exist across the market. As a first step in its review, Ofgem is calling for information from both customers and independent operators on the operation of the market by 31 July 2014. It then intends to make a decision on whether any further action is required by the end of 2014 (ofgem.gov.uk, 24 June 2014).
16. **Ofgem issues statutory consultation on licence modifications to enable the delivery of Government Electricity Rebate** – Ofgem has announced a statutory consultation on its proposed modifications to the electricity supply standard licence conditions to enable the delivery of the Government Electricity Rebate. This is a £12 rebate to be paid to domestic electricity customers in the autumns of 2014 and 2015. It reflects a partial refund of the cost of certain environmental schemes and charges, which are passed on to consumers through their electricity bills. The proposed condition requires suppliers to comply with a direction issued by the Secretary of State directing suppliers to pay the rebate. Ofgem originally consulted on these modifications in April 2014 and, on the basis of the responses received, has amended the condition to require licencees to provide information requested by either Ofgem or the Secretary of State. Ofgem is requesting responses to this consultation by 25 July 2014 and intends to decide whether to implement the changes by mid-August 2014 (ofgem.gov.uk, 24 June 2014).

17. **Ofgem imposes fine on npower for breach of reporting requirements** – On 27 June 2014 Ofgem published the statutory notice of a decision to impose a financial penalty on npower for breaching the reporting requirements of the Renewables Obligation and Feed-in Tariff scheme. The Authority found that in the periods 2010-2011 and 2011-2012, npower had underreported the amount of electricity it had supplied to its customers. The £125,000 fine takes into account that npower self-reported the error, took steps to address the harm suffered by other market players and cooperated with Ofgem’s investigation (ofgem.gov.uk, 27 June 2014).

18. **Ofgem publishes determination on applications received under System Operator Innovation Roll-Out Mechanism** – Ofgem has published its determination regarding the two applications received under the System Operator Innovation Roll-Out Mechanism (“SO-IRM”) for a funding total of £3,312,900. As system operator (“SO”), National Grid Electricity Transmission (“NGET”) has the opportunity to apply for funding in order to roll-out proven innovations. Ofgem must be satisfied that the innovation will deliver environmental benefits, provide long-term value for money for electricity consumers, will not lead to the licensee receiving commercial benefits and will not be used to fund ordinary SO activity. Ofgem rejected NGET’s applications on the basis that it did not sufficiently demonstrate the long term benefits for consumers (ofgem.gov.uk, 27 June 2014).

19. **DECC publishes response and further consultation on Offtaker of Last Resort** – DECC has published its response to the consultation on design features of the Offtaker of Last Resort (“OLR”) mechanism. It has also issued a further consultation on the implementation of the regime. The OLR mechanism aims to reduce the cost of investing in renewable energy, increase competition and reduce costs for consumers. This is achieved by providing eligible renewable electricity generators with a guaranteed ‘backstop’ route-to-market at a specified discount for the duration of their CFDs. The response sets out a number of conclusions on the specific operation of the mechanism such as pricing and contract terms. DECC is now inviting views until 24 July 2014 on how the OLR mechanism will be implemented (ofgem.gov.uk, 27 June 2014).

20. **Ofgem confirms fine on E.ON for breach of licence marketing obligations** – Ofgem has issued its decision to impose a fine on E.ON Energy Solutions Limited (“E.ON”) for breaching its obligations under Standard Conditions 23 and 25 of its electricity and gas supply licences. Standard Condition 23 requires the supplier to bring the key terms of the contract to the customer’s attention. Standard Condition 25 aims to ensure that all marketing information provided to consumers in the course of sales activities is accurate, complete and easy to understand. E.ON was found to have breached these obligations and failed to have
sufficient processes in place to prevent such infringements. A nominal fine of £1 was imposed reflecting E.ON’s offer of a fuel poverty package worth £12m, which directly benefits consumers, as well as its offer to compensate customers impacted by the breaches (ofgem.gov.uk, 2 July 2014).

21. Ofgem confirms fine on Scottish Power following investigation into price differentials – Ofgem has published its decision to impose a fine on Scottish Power Energy Retail Limited (“Scottish Power”) following the finding that it had breached condition 27.2A of both the electricity supply standard licence conditions and the gas supply standard licence conditions (“SLC 27.2A”). This condition states that any differences in terms and conditions between different payment methods must reflect the difference in costs to the supplier of those payment methods. This condition is particularly designed to protect vulnerable customers. Ofgem found that Scottish Power had breached the condition by not having sufficiently robust processes in place which ensured that price (and discount) differentials were compliant with SLC 27.2A. Ofgem imposed a nominal fine of £1 after Scottish Power agreed to make a payment of £750,000 to Energy Best Deal Extra which will benefit energy consumers (ofgem.gov.uk, 3 July 2014).

22. Ofgem agrees compensation package with British gas for mis-selling – Ofgem has secured a £1 million payment package from British Gas in compensation for mis-selling to customers in Sainsbury’s stores nationwide and the Westfield shopping centre. British Gas staff were found to have exaggerated the level of savings that prospective customers would receive by switching. Furthermore, it was not made clear in Sainsbury’s stores that British Gas was the supply partner for Sainsbury’s Energy. British Gas has agreed a package of £566,000 of direct compensation to customers identified as having potentially been subject to mis-selling. It has also agreed to make a £434,000 payment to benefit vulnerable customers via the British Gas Energy Trust (ofgem.gov.uk, 4 July 2014).

23. Ofgem publishes decision on licence modifications to enforce three week switching and prevent erroneous transfers – Ofgem has announced its decision to amend condition 14A of the gas and electricity supply licences (“SLC 14A”). Following its consultation on these modifications, Ofgem has announced its intention to introduce a direct licence obligation on suppliers to switch customers within three weeks of a request to switch. Furthermore, the regulator has strengthened the current rules to prevent a switch of electricity supplier against the customer’s wishes (an erroneous transfer). This includes introducing a new defined term of ‘Valid Contract’ and requiring suppliers to take all reasonable steps to ensure such a contract exists when applying to supply a new customer. These changes are intended to improve the speed and reliability of the switching process. Relevant parties have 20 working days to appeal the decision with the changes intended to have effect from 1 September 2014 (ofgem.gov.uk, 4 July 2014).

TELECOMMUNICATIONS/MEDIA/TECHNOLOGY

24. Ofcom publishes final statement on fixed access market reviews – On 26 June 2014 the Office of Communications (“Ofcom”) issued its final statement on its fixed access market reviews. The fixed access market covers the access connections used to supply telephone and broadband internet to residential and business customers. The statement includes the regulator’s conclusions on market definition and significant market power. It also sets out a series of remedies it intends to impose on BT and KCOM Group (“KCOM”). These are intended to counter the effects of market power and vertical integration in the fixed access market. The regulatory policies set out in the document are designed to promote competition.
and investment as the market moves from copper-based telecoms services to fibre-based superfast connections (ofcom.org.uk, 26 June 2014).

25. Ofcom issues final statement on its review of wholesale broadband access markets – Ofcom has published its conclusions on its review into the Wholesale Broadband Access market. This market includes the wholesale broadband products used by internet providers and therefore is an important market in ensuring competition among the provision of broadband services which are eventually bought by the consumer. The review assesses the level of competition in this market across the country and identifies areas where competition problems exist and remedies are required. This includes imposing general access, non-discrimination and transparency remedies on BT and KCOM in certain geographic markets (ofcom.org.uk, 26 June 2014).

Procurement

27. High Court judgment on claw back for failure to advertise procurement contracts – On 2 July 2014 the High Court ruled that the Secretary of State was entitled to claw back 25% of the payments awarded to Mansfield District Council (“MDC”) for two town centre improvement projects from the European Regional Development Fund. The two contracts awarded fell below the threshold of the Public Contracts Regulations 2006. However, MDC was ruled to have breached EU law by failing to advertise publicly the two contracts in accordance with the relevant general EU principles (i.e. the principles of equal treatment, non-discrimination on grounds of nationality and transparency). As a result, MDC had also breached its Deed of Grant with the Secretary of State and therefore the right to claw back had arisen. The High Court noted that the EU requirements were demanding but it was the responsibility of the recipient to ensure processes are in place to meet them (bailii.org, 2 July 2014).

Consultations

28. DfT consults on draft decision on High Speed 1 stations review – (gov.uk, 2 July 2014).


32. Ofgem consults on review of priority services – (ofgem.gov.uk, 30 June 2014).

33. Ofgem consults on licence modifications for Beauly Mossford reinforcement project – (ofgem.gov.uk, 4 July 2014).

Publications

34. BIS publishes guidance on new general state aid Block Exemption Regulation – (gov.uk, 1 July 2014).


38. DECC publishes government response to consultation on revisions to Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 – (gov.uk, 3 July 2014).

39. DEFRA issues note on retail exit reform – (gov.uk, 2 July 2014).


42. Ofcom publishes draft margin assessment model for Virtual Unbundled Local Access (VULA) – (ofcom.gov.uk, 4 July 2014).

43. Ofgem publishes guidance on payment methods under domestic supply contract – (ofgem.gov.uk, 26 June 2014).


