



To gas meter operators,
suppliers, consumers and their
representatives and other
interested parties.

*Promoting choice and value for
all gas and electricity customers*

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Dear Colleague

Open Letter – proposed terms of alternative contract between National Grid and Suppliers in respect of certain domestic gas meters

This letter relates to the implications of the finding of abuse of dominance against National Grid in respect of its "Legacy MSA" contracts and the consequences arising there from. Specifically, it relates to revised proposals from National Grid in respect of the contractual terms under which it provides the relevant meters.

By way of context, in February 2009 the Competition Appeal Tribunal upheld the Authority's findings of abuse of dominance contrary to the Chapter II prohibition in the Competition Act 1998 and Article 82 EC (now 102 TFEU), including its findings on market definition and dominance. It upheld the finding in the Authority's Decision that the early replacement provisions of contracts entered into between National Grid and gas suppliers in respect of meters rented as at 1 January 2004 ("the Legacy MSAs") constitute an abuse of a dominant position. The contracts were found to have a foreclosure effect in discouraging gas suppliers from moving more of their business to competing gas meter operators and hence are likely to delay the reduction of National Grid's market share in the market for the provision of domestic-sized meters. This ruling was subsequently substantially upheld in the Court of Appeal, and in the summer of 2010 the Supreme Court refused National Grid permission to further appeal the matter.

In accordance with the exhortation by the Competition Appeal Tribunal in *National Grid v Gema*¹ at paragraph 277, Ofgem has engaged with parties concerned in order to bring any future contracts in line with the competition rules. In particular, it has consulted on the revised terms proposed by National Grid and all parties with a sufficient interest have had the opportunity to comment on the proposals². Following Ofgem's detailed review of the arrangements over time and following consultation with affected parties, amendments to the proposals were made by National Grid at Ofgem's request in order to eliminate the risk of anticompetitive foreclosure. In light of those amendments, Ofgem is now of the view that the proposals accord with the competition rules, and specifically with the relevant judgments of the Competition Appeal Tribunal and the Court of Appeal. For the avoidance of doubt, it is open to parties to seek to negotiate alternative terms, to decide not to enter into the new proposed agreements, or to enter into arrangements with

¹ case [1099/1/2/08 National Grid PLC v The Gas and Electricity Markets Authority](#) [2009] CAT 14

² www.ofgem.gov.uk/About%20us/enforcement/NGmeters/Documents1/Ofgem%20Consultation%20%20-%20MSAs.pdf

National Grid's competitors in this market.

Should any interested party wish to seek further clarification in this matter, they are asked to contact Jane Corera.

Yours faithfully

Andrew Wright

Senior Partner, Markets