



2 Marylebone Road
London NW1 4DF
t 020 7770 7000
f 020 7770 7600
which.co.uk

Maxine Frerk
State of the market
9 Millbank
London
SW1P 3GE

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Dear Maxine

Energy is a top financial concern.¹ Most consumers neither trust the industry² nor do the majority of consumers have confidence that they are being charged a fair price.³ Contributing to this, as Which? has long argued, are market arrangements that are failing consumers.

As our report *The Imbalance of Power - The Retail Market*⁴ set out, effective competition in the retail market is hampered by a number of factors including complex pricing and entrenched disengagement. Our subsequent report *The Imbalance of Power - Wholesale Costs and Retail Prices*,⁵ described further issues that appear to inhibit the ability of the relationship between the wholesale and retail markets to deliver efficient prices that consumers can have confidence in. This report also presented evidence that within the large vertically integrated companies, the incentive to deliver for their shareholders appears to come at the expense of delivering low prices for their customers. These are significant issues that impact on the effectiveness of competition in these markets and ultimately on the price that consumers pay for these essential services.

The joint Ofgem, Office of Fair Trading and Competition and Markets Authority (CMA) market assessment⁶ provided further evidence that many of the factors impeding effective competition and undermining consumer confidence continue to be prevalent. This demonstrates the clear need for a market investigation reference (MIR). We support Ofgem's proposal to make a MIR in respect of the supply and acquisition of energy in Great Britain.⁷ Through the MIR, the CMA should conduct a comprehensive assessment of all the factors impeding competition and resulting in poor outcomes for consumers, and develop a set of reforms to transform the energy market arrangements so that they deliver for consumers as well as industry.

¹ 75% of consumers worry about the cost of energy, 2103 UK adults, conducted between 25th and 27th April 2014. Which? Consumer Insight tracker <http://consumerinsight.which.co.uk/>

² 20% of consumers trust gas and electricity suppliers, 2103 UK adults, conducted between 25th and 27th April 2014, Which? Consumer Insight tracker <http://consumerinsight.which.co.uk/>

³ Six in ten do not trust suppliers to charge a fair price for their energy, 1913 UK Adults, February 2014, Which? Energy Tracker

⁴ *The Imbalance of Power - The Retail Market*, Which?, December 2012, <http://www.staticwhich.co.uk/documents/pdf/the-imbalance-of-power---which-report-308858.pdf>

⁵ *The Imbalance of Power - Wholesale Costs and Retail Prices*, Which?, July 2013, <http://www.staticwhich.co.uk/documents/pdf/the-imbalance-of-power-wholesale-costs-and-retail-prices-2-330836.pdf>

⁶ State of the Market Assessment, Ofgem, Oft and CMA, March 2014

⁷ Consultation on a proposal to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain, Ofgem, March 2014

Which? supports Ofgem's proposed scope of the MIR terms of reference of '*the supply and acquisition of energy in Great Britain*'. This will give the CMA adequate scope to consider the factors that impact on the price consumers pay. This should include pricing strategies, the influence and power of incumbents, the comparability of tariffs, liquidity in the wholesale markets and robust wholesale price indexes. The extent to which regulation and the approach taken to date has been effective, should also be considered.

There are other factors that impact on the dynamics of the retail and wholesale markets and so consumer outcomes. It is important that these are also considered within the scope of the MIR. These include the impact of government obligations and levies may have, for example, on impeding the growth of small suppliers.

While we support the broad scope, it is important that the investigation remains focussed on competition in the energy markets and that it does not become a review of all aspects of the energy system. For example, beyond the impact on competition, we do not consider the wider decarbonisation and environmental policy landscape to fall within the scope because the focus of this investigation must be on effectiveness of competition in the energy markets. This is not the place to debate whether the Electricity Market Reform is the right policy programme to deliver necessary investment. Nor do we consider transmission and distribution network regulation to be within the scope, as these networks are subject to price controls and are not subject to competition.

As energy is an essential service it is crucial that in both the assessment of detriment and the development of remedies, the CMA gives full consideration to the outcomes for all consumers. The retail market arrangements must deliver all consumers efficient, fair prices and confidence in the price they pay, even for those who are unwilling or unable to engage with the market. Market arrangements so far have not delivered this. We believe that serious consideration should be given to hybrid models, such as that found in the State of Illinois,⁸ as well as what can be done to deliver clear, visible pricing, including single unit and national pricing, within the existing framework.

Finally, we regularly undertake investigations and market analysis, as well as consumer research and will continue to do so. We would happily share our research findings with CMA. More widely we would welcome the opportunity to engage with the CMA throughout the MIR and we would encourage the CMA to be open and transparent throughout the investigation.

Yours sincerely,

Fiona Cochrane

⁸ Chapter 5, The Imbalance of Power - The Retail Market, Which?, December 2012, <http://www.staticwhich.co.uk/documents/pdf/the-imbalance-of-power---which-report-308858.pdf>