

Modification proposal:	Supply Point Administration Agreement (SPAA) Change Proposal (CP): 17/382 'Amendments to Prepayment Tariff Pages – updated following legal review' and 17/378 'Amendments to Prepayment Tariff Pages (subject to CP 16/347 being rejected by the Authority)'		
Decision:	The Authority ¹ has decided to approve ² CP 17/382 and reject CP 17/378 ³		
Target audience:	SPAA Parties, SPAA Panel and other interested parties		
Date of publication:	15 May 2017	Implementation date:	22 May 2017

Background

Gas prepayment meter (PPM) customers are charged for their energy usage in accordance with a gas PPM tariff. Each tariff (excluding smart PPM tariffs) is either currently on offer to customers or was previously offered to them and has an associated gas tariff code under the gas prepayment system. The allocation of these codes to gas suppliers is managed by the Prepayment Meter Infrastructure Provider (PPMiP). Gas tariff codes are grouped into pages (gas tariff pages (GTPs)) - 11 tariff codes per GTP.

Currently, 1,969 tariff codes (a total of 179 GTPs) are available for allocation or are allocated across all gas suppliers offering PPM tariffs.⁴ Prior to a recent increase in the total number of GTPs, a large majority of the used GTPs were held by the six largest energy suppliers.⁵

The Competition and Markets Authority (CMA) published its Final Report on an investigation into the GB energy market on 24 June 2016.⁶ The investigation followed a referral by Ofgem in 2014. The CMA's Final Report set out a package of over 30 remedies to be implemented through action by Ofgem, government or through CMA Orders or Undertakings placed directly on industry.

The CMA found there was customer detriment due to lack of competition for gas PPM customers. One aspect of this detriment was the lack of available GTPs which was inhibiting new entry into the gas prepayment market. The lack of available GTPs for other suppliers and new entrants prior to the recent increase was seen as a technical constraint on competition. The mechanism for returning and reallocating gas tariff codes and GTPs through the PPMiP was not clearly visible to suppliers either, especially potential new entrants wishing to acquire tariff codes or GTPs. The CMA noted that Ofgem had insufficient ability to influence the development of code changes to deliver timely and efficient improvements to competition in this area. The remedies put forward by the CMA in this area were:

- a recommendation to Ofgem to take responsibility for the efficient allocation of GTPs and

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

³ 'Change' and 'modification' are used interchangeably in this document.

⁴ The total number of GTPs increased in March 2017 from 117 to 179. These figures include 14 'legacy' GTPs, each comprising 11 tariff codes allocated across various suppliers.

⁵ The six largest energy suppliers are Centrica, E.ON, EdF Energy, RWE Npower, Scottish Power and SSE.

⁶ The CMA's Final Report and related material on the CMA remedies is available on its website here: <https://www.gov.uk/cma-cases/energy-market-investigation>

- the acceptance of Undertakings⁷ given to the CMA by the six largest energy suppliers (or, in lieu of this, a recommendation to Ofgem to introduce a new standard supply licence condition) that would:
 - cap the number of GTPs any supplier can hold at 12;
 - oblige suppliers to provide relevant information so Ofgem can monitor the allocation of gas tariff codes; and
 - allow Ofgem to direct the transfer of one or more GTPs to another supplier.

The six largest energy suppliers may be released from the Undertakings by the CMA on its direction, following consultation between the CMA and Ofgem, where a code modification is implemented to achieve aims similar to provisions in the Undertakings.

In order to facilitate the CMA's remedies, a SPAA change proposal was raised seeking to incorporate, and align the SPAA with, the CMA's Undertakings.

The modification proposal

RWE Npower (the 'proposer') raised Change Proposal (CP) 16/347 on 8 August 2016. CP 16/347 sought to incorporate the Undertakings into the SPAA by providing for:

- a cap of 12 GTPs for each supplier at any one time;
- suppliers to return GTPs which have been unused for 12 months;
- suppliers requiring new GTPs to pay for them;
- suppliers to be reimbursed for returning a GTP if there is demand for them;
- suppliers to retain a GTP, even if held by them for more than 12 months, until the demand for GTPs required its return;
- a supplier which holds no GTPs and intends to supply PPM customers to get priority in obtaining a GTP where demand for GTPs is greater than supply;
- the control and allocation of tariff codes/GTPs to be managed by the SPAA Gas Prepayment Expert Group (GPEG) rather than by the PPMiP;
- Ofgem to be given 'step in' re-allocation rights/responsibilities for GTPs.

There would also be an obligation on suppliers to provide relevant information to allow Ofgem to monitor the allocation of gas tariff codes and GTPs to facilitate our role in reallocating GTPs. The proposer considered that CP 16/347 would align the SPAA with the Undertakings, eg by incorporating the 12-page GTP cap, and develops a reporting process around monitoring of allocation of GTPs to allow Ofgem to intervene if needed.

Following workgroup development of CP 16/347, the proposal was further refined, proposing amendments to Schedules 25 and 29 of the SPAA to:

- set out a reporting process to the SPAA Secretariat and the Authority breaking down the number of used and unused gas tariff codes and GTPs held by suppliers, including how many unused GTPs are available for allocation/re-allocation;
- provide for the 12-GTP cap per supplier;
- provide a notification process when GTPs are unused, and amend the process for suppliers to relinquish GTPs in line with any direction from the Authority, including timescales for doing so that align with those set out in the Undertakings;
- add new definitions ('Tariff Page', 'Unused Tariff Page' and 'Unused Tariff Code') and amend the existing definition of 'Tariff Code' to align with the Undertakings.

The proposer considered that CP 16/347 would facilitate the SPAA relevant objectives (furthering effective competition between gas suppliers and between relevant agents and

⁷ The CMA's Final Undertakings were accepted on 20 December 2016 (see the link in footnote 5 above).

promoting efficiency in the SPAA processes) by making the process of allocating GTPs robust and transparent, improving supplier competition as a result.

The SPAA Change Board⁸ met on 17 November 2016 and voted to recommend approval of CP 16/347. CP 16/347 was based on the CMA’s Draft Undertakings, under consultation at the time. The CP 16/347 Change Report was sent to us for decision on 12 December 2016.

On 27 January 2017, we sent back CP 16/347 for further work and re-submission by industry.⁹ Our send back letter highlighted two reasons for our direction:

- CP 16/347 was based on the Draft Undertakings rather than the Final Undertakings published on 20 December 2016. We noted the need for further work by industry to incorporate the Final Undertakings into the SPAA prior to re-submission; and
- we identified some deficiencies in the proposed legal text for CP 16/347 and asked industry to address these in a re-submitted Change Report.

Further steps taken by industry

RWE Npower raised change proposal CP 17/378 on 20 January 2017. CP 17/378 superceded CP 16/347. It is the same change proposal, except it seeks to update the SPAA to align it with the Final Undertakings and address the legal text deficiencies identified in our send back letter. However, the proposed legal text for CP 17/378 was not legally reviewed before a vote by the SPAA Change Board. The Change Board recommended approving CP 17/378 on 16 February 2017. An appeal to the SPAA Forum against this decision was made on the basis the legal text was not reviewed and highlighting inconsistencies with the Undertakings, questioning whether the legal text is robust. The SPAA Forum considered the appeal on 23 March 2017, but rejected it, with the weighted vote threshold required to overturn the original decision not met. The CP 17/378 Change Report, recommending approval, was submitted for decision on 27 April 2017.

On 3 March 2017, EDF Energy raised CP 17/382 as an urgent proposal. CP 17/382 is the same as CP 17/378, except the proposed legal text was legally reviewed and modified to seek to align SPAA with the Final Undertakings and address comments made during its assessment, including our comments. The Change Board voted on 14 March 2017 to recommend approval of CP 17/382. The CP 17/382 Change Report was submitted for decision on 7 April 2017.

Change Board recommendations

The outcome of the weighted votes¹⁰ for CP 17/378 and CP 17/382 are set out below:

CP 17/378	WEIGHTED VOTING (%)					
	Domestic Supplier		I&C ¹¹ Supplier		Gas Transporter	
	Accept	Reject	Accept	Reject	Accept	Reject
CHANGE SOLUTION	80%	20%	80%	20%	-	-
IMPLEMENTATION DATE	80%	20%	80%	20%	-	-
IMPLEMENTATION TECHNIQUE	80%	20%	80%	20%	-	-

⁸ The Change Board is established and constituted pursuant to, and in accordance with, the SPAA.

⁹ The CP 16/347 send back letter is on our website here: <https://www.ofgem.gov.uk/publications-and-updates/authority-decision-send-back-spaa-change-proposal-16347-amendments-prepayment-tariff-pages>

¹⁰ The threshold for a change proposal to be accepted by relevant SPAA parties is 65% (clause 9 of the SPAA).

¹¹ Industrial and commercial.

CP 17/382	WEIGHTED VOTING (%)					
	Domestic Supplier		I&C Supplier		Gas Transporter	
	Accept	Reject	Accept	Reject	Accept	Reject
CHANGE SOLUTION	100%	0%	100%	0%	-	-
IMPLEMENTATION DATE	100%	0%	100%	0%	-	-
IMPLEMENTATION TECHNIQUE	100%	0%	100%	0%	-	-

The Change Board considered that, individually, either CP 17/378 or CP 17/382 better facilitate the relevant objectives of the SPAA and recommended approval in each case.

Our decision

We have considered the views of the Change Board and the Change Reports dated 7 April 2017 (for CP 17/382) and 27 April 2017 (for CP 17/378) and have concluded that:

- implementation of CP 17/382, rather than CP 17/378, will better facilitate the achievement of the relevant objectives of the SPAA;¹² and
- consenting to CP 17/382 being made is consistent with our principal objective and statutory duties.¹³

Reasons for our decision

We consider that CP 17/382 better facilitates SPAA relevant objectives (b) and (c) when compared with the current arrangements and with CP 17/378, and has a neutral impact on the other relevant objectives. The Final Undertakings given by the six largest suppliers are in effect (from 1 April 2017) and our decision ensures the SPAA reflects these Undertakings instead of any earlier version which suppliers are not signed up to.

(b) the furtherance of effective competition between Gas Suppliers and between relevant agents

The CMA Final Undertakings clearly state the obligations on the six largest suppliers to address the consumer detriment it identified through its investigation regarding how gas tariff codes and GTPs are allocated. In particular, the CMA identified ways to promote further competition in the gas PPM market by:

- applying a cap of 12 GTPs held by each supplier at any one time;
- placing an obligation on the relevant suppliers to ensure information is provided to us that allows us to monitor the allocation of tariff codes and GTPs; and
- placing an obligation on relevant suppliers to follow directions from us to relinquish or transfer tariff codes and/or GTPs to other suppliers under certain circumstances.

The CMA's investigation highlighted an area of consumer detriment resulting from a lack of transparency and visibility around the existing allocation of tariff codes and GTPs. This potentially hinders new entrants and small suppliers from competing effectively with incumbents in the gas PPM market, as they cannot adequately identify their requirements for gas tariff codes and GTPs without proper reporting about the availability of codes and GTPs. They cannot, therefore, properly assess the state of the market when they may wish to launch new PPM tariffs for gas customers.

A fairer allocation of tariff codes and GTPs will result from implementing the Final Undertakings obligations within the SPAA. Implementing transparent reporting about the availability of tariff codes and GTPs, and providing a process for suppliers to relinquish

¹² As set out in Standard Licence Condition (SLC) 30.5 of the Gas Supplier Licence.

¹³ The Authority's statutory duties are wider than matters which the Change Board must take into consideration and are detailed mainly in the Gas Act 1986 as amended.

codes and GTPs based on this reported information, will assist all suppliers, particularly new entrants, to participate in the competitive market with increased confidence. PPM customers should then have an increased choice of tariffs from more suppliers.

Our comments on the proposed CP 17/382 legal text raised a concern that an existing SPAA provision (paragraph 2.17.3) defeats the incorporation of the Final Undertakings by prohibiting new entrants (suppliers with less than 50,000 meter points) from having their own tariff codes or GTPs. This could adversely affect supplier competition and frustrate implementation of the Undertakings in the SPAA. By removing this text through legal review, CP 17/382 ensures proper incorporation of the Undertakings. CP 17/378 retained this text due to a lack of a legal review and therefore has the opposite effect.

For these reasons, we consider that CP 17/382 better facilitates this relevant objective.

(c) the promotion of efficiency in the implementation and administration of the supply point administration arrangements

CP 17/382 incorporates the Final Undertakings obligations properly into the SPAA, in contrast to CP 17/378, creating a process for how those obligations operate in practice. Including reporting and monitoring requirements in the SPAA allows us to take responsibility for the efficient allocation of gas tariff codes and/or GTPs as appropriate, in line with the CMA's recommendation to us, and direct the transfer or reallocation of codes and/or GTPs in certain circumstances. The CP 17/382 legal text was legally reviewed to ensure existing and new SPAA provisions properly align with the Final Undertakings. CP 17/382 creates a robust and effective set of arrangements, implementing the Final Undertakings within the SPAA and amending inconsistent existing SPAA provisions, compared to CP 17/378.

For these reasons, we consider that CP 17/382 better facilitates this relevant objective, whereas CP 17/378 not only does not, but could in fact undermine its realisation.

Assessment against our statutory duties

Our principal statutory objective is to protect the interests of existing and future energy consumers and our general duties include protecting those consumer interests by promoting competition. Following a market investigation reference made by Ofgem, the CMA identified adverse effects on competition, including the lack of visibility around the allocation of gas tariff codes and GTPs, as an area where introducing robust monitoring and reporting requirements, backed by action by us to reallocate tariff codes and/or GTPs, will allow gas PPM customers to enjoy more fully the benefits of a competitive market. We therefore consider that implementation of CP 17/382 is consistent with our principal statutory objective and our general duty to promote competition.

Further comments

The PPMiP has developed reporting about the allocation of tariff codes and GTPs in time for implementation of the CMA Undertakings from 1 April 2017 and prior to our decisions on these SPAA changes. We welcome the work done by the PPMiP, which complements our approval of CP 17/382.

Decision notice

In accordance with Standard Licence Condition (SLC) 30 of the Gas Supplier licence, the Authority hereby approves modification proposal SPAA CP 17/382: *'Amendments to Prepayment Tariff Pages – Updated following legal review'*.

Anthony Pygram

Partner, Consumers and Competition Division

Signed on behalf of the Authority and authorised for that purpose