

Gavin O'Leary  
Second Clerk, Energy and Climate Change Committee  
House of Commons  
London  
SW1A 0AA

1 July 2016

Dear Mr O'Leary

**Submission to Energy and Climate Change Committee re Inquiry into CMA's energy market investigation, oral hearing 5 July 2016**

We write as economists, as concerned observers of UK regulatory and competition policy, and as former holders of positions at the highest level in the GB energy regulatory bodies Offer, Ofgas and Ofgem over the two decades 1989 to 2010.

We welcome the Committee's decision to examine the CMA's proposals to reform the energy market. We have followed the CMA's energy market investigation since the beginning, and have made numerous submissions to it.

This has been a particularly wide-ranging, intensive and time-consuming investigation, tackling many difficult and sometimes controversial issues. The CMA has reached several well-considered conclusions and remedies, particularly with respect to the wholesale market and vertical integration. We agree with the CMA's finding that Ofgem's "simple tariffs" regulation has had an Adverse Effect on Competition, and with its remedy that this aspect of regulation be withdrawn. We also agree with the Commission's (majority) decision not to impose a price cap on the Standard Variable Tariffs on which about 70 per cent of customers are presently supplied.

However, in our view the CMA's analysis and remedies with respect to several aspects of the retail market for domestic customers are seriously flawed. This part of its Report has not produced the hoped-for definitive resolution of the retail issues. It is therefore appropriate and timely that the Committee investigate these particular aspects.

This submission summarises some of our main concerns. To facilitate the Committee's inquiry, on each concern we indicate the nature of the issue, the CMA's position, and our critique. We then suggest questions that might be put to the CMA witnesses and, where appropriate, to the other witnesses too.

**From:**

Stephen Littlechild, Director General of Electricity Supply and Head of the Office of Electricity Regulation (Offer) 1989-1998

Sir Callum McCarthy, Chairman and Chief Executive of Ofgem and the Gas and Electricity Markets Authority (GEMA) 1998-2003

Eileen Marshall CBE, Director of Regulation and Business Affairs, Offer 1989-1994; Chief Economic Adviser and later Deputy Director General of Ofgas 1994-1999; Managing Director, Ofgem and Executive Director, GEMA 1999-2003

Stephen Smith, senior executive positions at Ofgem 1999-2002 and 2003–2010 including Managing Director, Markets, 2004-2007 and Executive Board Member, GEMA 2004- 2010

Clare Spottiswoode CBE, Director General of Gas Supply and Head of the Office of Gas Regulation (Ofgas) 1993–1998.

## **1. "Weak customer response" and lack of customer engagement**

1. *Issue: Is there weak customer response and a lack of customer engagement in the domestic energy market?*
2. *The CMA's position:* The CMA finds that there is "weak customer response" in the domestic market, and that this has an Adverse Effect on Competition. It says that "material potential savings that are persistent over time, available to a significant number of domestic customers and that go unexploited provides evidence of weak customer engagement". (*Final Report*, para 134) For example, it says that "the average gains [available] to all the dual fuel customers of the Six Large Energy Firms (SLEFs) over the entire period was £164". (para 128)
3. *Our critique:* The CMA's calculation (its Scenario 5x) assumes that all customers (other than those on Prepayment meter tariffs) would find online direct debit fixed-period tariffs as acceptable as their present tariff choice. But surely this is an implausible assumption. For various reasons customers are not indifferent with respect to tariff type. Not all customers find fixed-period tariffs managed online as acceptable as a Standard Variable tariff with conventional printed bills. A more realistic appraisal (such as the CMA's Scenario 3b) calculates the savings that would be available from switching supplier but remaining on the same tariff type. This shows potential average savings available of £65 a year. (para 8.249) This is about 6% of the average dual fuel energy bill of around £1200 a year.

**Question 1:** Is the CMA right to ignore customer preferences for different types of tariff in assessing customer engagement?

**Question 2:** Does a customer's preference not to devote time and effort to save little over one pound a week (while maintaining the same tariff type) really constitute credible evidence of weak customer engagement?

**Question 3:** What level of available but unexploited saving would be consistent with customers being sufficiently engaged in the market?

## **2. The CMA's calculation of customer detriment**

4. *Issue: If it is assumed that weak customer response constitutes an Adverse Effect on Competition, how should the consequent detriment to customers be calculated?*

5. The CMA proposes two approaches, what it calls the "direct approach" and the "indirect approach". The CMA's "direct approach" to calculating customer detriment is to compare the prices charged by the SLEFs with the prices charged for the same products by two mid-tier suppliers (Ovo and First Utility). The CMA's "indirect approach" comprises two calculations: an estimate of excess profits plus an estimate of inefficient costs. All these calculations are based on very hypothetical assumptions, and their methods and magnitudes have changed throughout the investigation. We take these two approaches in reverse order.

**(a) Excess profits**

6. *The CMA's position:* The CAA calculates the excess profit of the Six Large Energy Firms (SLEFs) in the domestic energy market. It defines excess profit as the amount by which these companies' Return on Capital Employed (ROCE) exceeds their cost of capital. Because the SLEFs are large integrated businesses, the amount of their capital employed in the retail business is not immediately obvious. So in order to determine the amount of capital employed, the CMA makes an assumption about what level of capital would be required by a notional large standalone supplier. On this basis, it calculates that the excess profit averaged £303m per year over the period 2007-2014. (para 10.96 and Table 10.6; also Appendix 9.10 Table 9)
7. *Our critique:* We accept that competition authorities often calculate the extent of profits in a market as a means of assessing the effectiveness of competition. However, they do not always attempt to quantify "excess profits". For example, the concurrent CMA investigation of personal banking has not done so.
8. We note that the CMA's calculation of excess profits, if accepted at face value, is a relatively large proportion of the total profit of the SLEFs (about £1 bn per year on average). Yet it amounts to about £6 per fuel account per year (dividing £303m by about 50 million fuel accounts). That is about £12 per dual fuel household per year.
9. We also note that the CMA's excess profit calculation is heavily disputed by the SLEFs. They argued that the ROCE measure was inappropriate for businesses like retail energy that used relatively little capital. They also argued that the CMA's assumption about the hypothetical amount of capital required was unreasonably low. One supplier (EdF) pointed out that the CMA's calculation was highly sensitive to this assumption. EdF calculated that ROCE would be halved with a more reasonable assumption, and suggested that it was misleading for the CMA to make assertions about what capital would be required without also presenting sensitivity analysis. The CMA argued that EdF's argument about capital required was inconsistent with the evidence and declined to present a sensitivity analysis. (Appendix 9.10 para 178)
10. It seems to us that the CMA's calculation of excess profit depends heavily on a hypothetical non-existent large standalone supplier, and that even slightly different assumptions could have indicated a zero or even negative excess profit.

**Question 4:** Why did the CMA energy panel choose to calculate excess profits when the CMA banking panel did not?

**Question 5:** Given that the CMA's calculation of excess profit is particularly conjectural, was the CMA right not to have indicated the sensitivity of its calculations to different assumptions?

## **(b) Inefficient costs**

11. *The CMA's position:* The CMA argues that, in calculating customer detriment, it is appropriate to add in also the extent of "inefficient costs" in the retail market. It defines these "inefficient costs" as the total costs of the SLEFs in excess of the costs of the lowest quartile SLEF. It calculates that this "inefficient cost" averaged £490m per year over the period 2007 – 14.
12. *Our critique:* We do not understand or accept the case for this calculation of inefficient costs as a measure of detriment to customers. The CMA Guidelines say that a well-functioning market is "not an idealized perfectly competitive market". Yet in our view, the CMA's present approach is based on precisely such a benchmark. The CMA's calculations compare actual costs against a hypothetical market in long run perfectly competitive equilibrium in which costs and profits are competed down to "efficient" levels. Such a hypothetical model is far from the model of competition as a continuous process of rivalry that is espoused in the CMA Guidelines and has traditionally been used by the Competition Commission before it. The CMA's recommended model of competition as a continuous process of rivalry recognizes that, in the real world, profits and costs vary at any point in time and also over time as some companies succeed and others fail, and some companies manage to reduce their costs faster than others. In other words, differences in cost are a perfectly normal feature of every competitive market and cannot be interpreted as a measure of customer detriment.

**Question 6:** Was the CMA right to have used a hypothetical and arbitrary benchmark for efficient costs that could never be attained in any real-world market?

**Question 7:** If so, does this not imply that every market in the UK is inefficient and imposes a detriment on customers?

## **(c) The CMA's "direct approach"**

13. *The CMA's position:* The CMA's "direct approach" to calculating customer detriment is to compare the prices charged by the SLEFs with the prices charged for the same products by two mid-tier suppliers (Ovo and First Utility). The CMA's Provisional Conclusions calculated that, on average, the SLEFs charged customers £1.7 bn per year more than the mid-tier suppliers over the period 2012 to second quarter 2015. In response to representations made by the SLEFs and others, the CMA's Final Report revised its calculation to an average overcharge of £1.4bn per year.
14. *Our critique:* The SLEFs challenged the CMA's calculations in many respects. They argued, in particular, that the CMA had failed to make adequate allowance for the fact that the mid-tier suppliers were to some extent exempt from environmental charges that the SLEFs had to pay; that the choice of mid-tier suppliers was too limited; that one of the mid-tier suppliers was operating at a loss, hence its prices were not sustainable over time; that there were inadequate adjustments for differences in wholesale cost and for differences in customer mix and numbers.
15. For example, the consulting firm Oxera, retained by Scottish Power, calculated that if the CMA's calculations were corrected for such errors, then the CMA's alleged customer overcharge of £1.7bn per year should be reduced by £2.4bn, rather than the £0.3bn reduction that the CMA subsequently made.

16. We understand that the CMA and any companies that it investigates are likely to take different views on particular issues and calculations. The Committee hearing is not the place to enter into discussion about the details of this particular calculation, and the merits of the contrasting views. However, we have two more general concerns.
17. First, we are concerned that, at such a late stage in the investigation (the Provisional Decision on Remedies in March 2016), there was such an overwhelming difference between the CMA and the main parties as to the size of the alleged customer detriment and even as to its sign. There was no meeting of minds on the extent of the difference between two sets of prices and the adjustments that needed to be made in order to make the two sets comparable. The CMA alleged that the overcharge was £1.7bn per year yet it was seriously argued that after correction of CMA errors this should be a *negative* overcharge of £0.7bn per year.
18. Second, we are concerned that it has been difficult if not impossible for interested observers to understand in any detail, or even in broad terms, what calculations the CMA has proposed, what errors, corrections and adjustments the various parties have proposed, and what adjustments the CMA has made. We appreciate that there are restrictions on what the CMA can publish (see next section), but we are concerned that the CMA has not provided as much information as clearly as it might have done, within the limitations obtaining.

**Question 8:** Why did it take the CMA so long to resolve the issues associated with its "direct approach" to calculating customer detriment, and why did such large differences of view remain until the very end of the investigation?

**Question 9:** In retrospect, was it appropriate to base an estimate of customer detriment on a calculation that involved so much judgement and controversial adjustments?

**Question 10:** Would it have been possible for the CMA to have explained more clearly and in more detail the nature of its calculations, the adjustments proposed by interested parties and the extent to which the CMA had or had not modified its calculations in response to the submissions of these parties?

### **3. Confidentiality and excisions of data, and the confidential data room**

19. *Issue: How far is the CMA constrained from explaining its analysis, calculations and decisions by considerations of data confidentiality?*
20. *The CMA's position:* The CMA explains at the beginning of its report that "The Competition and Markets Authority has excluded from this published version of the report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure)."
21. *Our critique:* Current CMA practice here is markedly different from previous practice by the Monopolies and Mergers Commission (MMC), for example, where typically no excisions at all were made.
22. Section 244 of the Enterprise Act 2002, to which the CMA refers, provides in subsection (3) that one of the three considerations to which the CMA must have regard is "the need to exclude from disclosure ... (a) commercial information whose disclosure the authority thinks might significantly harm the legitimate business interests of the undertaking to which it relates".

23. Subsection (4) provides that another consideration is "the extent to which the disclosure of the information ... is necessary for the purpose for which the authority is permitted to make the disclosure". This presumably refers to the CMA's duty under Section 136 to include in its report "(a) the decisions of the Commission on the questions which it is required to answer ...; (b) its reasons for its decisions; and (c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions."
24. We appreciate that companies would prefer that commercial data about their businesses should not be revealed. But we question how far the release of such data as the CMA collected – for example, about their profits in 2007, some 9 years ago - would "significantly harm" their present and future business interests. At the same time, the extent of the CMA's excisions make it difficult or impossible for those without access to the data room (see below) to understand those aspects of the energy sector to which the excisions relate, and to properly assess the CMA's calculations and the implications of its different assumptions.

**Question 11:** How far did the CMA challenge the companies as to what constituted significant harm to their business interests?

**Question 12:** Has the CMA drawn an appropriate balance between excluding commercial information from disclosure and facilitating a proper understanding of the issues and reasons for the CMA's decisions?

**Question 13:** Should the Government consider revising legislation to enable and indeed encourage the CMA to publish more data than it presently does?

25. *Issue: Should there be more access to the CMA's data room?*

26. *The CMA's position:* The CMA explains on its website that it decided to disclose certain confidential information that it took into account in preparing its Provisional Decision on Remedies (PDR) in March 2016. It did so by means of a confidentiality ring pursuant to Section 241 of the Enterprise Act 2002. "Access to the Post-PDR Confidentiality Ring is provided for the sole purpose of allowing a limited number of approved external legal and/or economic advisers of the relevant parties to review and understand the CMA's analyses and/or statements included in the PDR, to prepare submissions and make representations to the CMA in connection with the Investigation, and thus facilitating the exercise by the CMA of any of its statutory functions under section 241 of the Act." To that end, the CMA established a data room and granted temporary access to it on a strictly limited basis to the parties directly involved.

27. *Our critique:* The SLEFs appointed advisers to take advantage of this access, although we understand that the procedure involved was costly and inconvenient. Some of the SLEFs published reports from their advisers that shed considerable light on the CMA's calculations, and in many cases significantly challenged them. However, there was no provision for informed outside observers to access the data room, even had they been able to afford to do so.

28. Moreover, no confidentiality ring or data room has been set up with respect to information and calculations underlying the CMA's Final Report. Unless any party challenges the CMA's proposed remedies, it seems there will be no further detailed check on the calculations underlying the CMA's Final Report and Remedies, and on the extent to which, or the way in which, the CMA responded to arguments put to it

after the Provisional Decision on Remedies. This is despite the fact that the CMA's calculations are the basis of allegations of customer detriments amounting to billions of pounds per year, and used to justify far-reaching remedies including price caps and handing over confidential customer details to other suppliers.

**Question 14:** Given the importance and controversial nature of the CMA's calculations underlying its Final Report, is it appropriate that these calculations should remain confidential and not be fully subject to independent verification as its previous ones were?

**Question 15:** Would the CMA be prepared to allow advisers to independent observers to have access to its data room in order to assess more effectively the extent to which its Final Report has or has not responded to the concerns raised by those who had access to the data room at the Provisional stage of its investigation?

**Question 16:** Since the CMA's calculations of customer detriment are such controversial findings in a very sensitive investigation, should the Select Committee itself consider some further investigation and assessment of the CMA's calculations?

#### **4. Remedies**

29. *Issue: Has the CMA chosen appropriate remedies to remedy the detriments identified?*

##### **(a) Regulatory interventions**

30. *The CMA's position:* The CMA finds that several of Ofgem's regulatory interventions since 2008 have reduced retail competition. It concludes, in particular, that "the 'simpler choices' component of the RMR [Ofgem's Retail Market Review] rules, ... gives rise to an AEC [Adverse Effect on Competition] through reducing retail suppliers' ability to innovate in designing tariff structures to meet customer demand, in particular, over the long term". (para 12.2)

31. The CMA is particularly concerned about Standard Variable Tariffs increasingly above the price of non-standard fixed rate products. It attributes this to regulatory intervention. "With the introduction of the RMR rules, discounts on standard variable tariffs were banned and fixed products have taken their place as the cheap acquisition product. Over the last two years, the disparity between standard variable tariffs and the cheapest non-standard products has increased substantially." (para 113)

32. As one remedy, the CMA recommends that the 'simpler choices' component of the RMR rules be removed. The CMA explains (paras 11.138 - 11.139) that "[customer] switching rates in 2008 reached around 20% (compared to the current levels of 12%). ... Since then, a variety of regulatory interventions have served to soften competition – including SLC 25A, enforcement action by Ofgem leading to the abandonment of doorstep selling by most suppliers, and, more recently, RMR [Ofgem's Retail Market Review] – resulting in a fall in switching rates and an increase in the gap between the SVT [Standard Variable Tariff] and direct costs. Our recommendation to remove aspects of the simpler choices component of the RMR rules will help to reinvigorate competition, by giving suppliers the incentives and ability to introduce the sorts of discounts for new customers that will allow them to increase engagement."

33. The CMA also proposes other remedies, including (i) creating an Ofgem-controlled database of 'disengaged customers' who have been on the default tariff for three

years or more, to allow rival suppliers to prompt them to engage in the retail energy markets, and (ii) a price cap on prepayment meter tariffs.

34. *Our critique:* We agree with the CMA's analysis and recommendation concerning the adverse effect of Ofgem's regulatory interventions starting in 2008. Until then, the GB customer switching rate of around 20% per year was as high as anywhere else in the world. The UK was seen as a leading competitive retail market.
35. However, the CMA does not seem to have linked its analysis of "weak customer response" and its remedies for that alleged problem, to its diagnosis of the effects of Ofgem's regulatory interventions. For example, the CMA seems to have attached no weight to its own earlier evidence that the customer switching rate for energy products is higher than for many other products.<sup>1</sup> The CMA does not seem to have accepted that some price levels and price differentials in the market are attributable to regulatory interventions rather than to lack of competition or weak customer response. Hence removing the problematic aspects of the RMR remedies could obviate or reduce the need for its other remedies. The latter have some seriously problematic aspects. (see below)

**Question 17:** What customer switching rate would the CMA consider to be consistent with customers being sufficiently engaged in the market?

**Question 18:** If the CMA regards the 20% switching rate in 2008 as being consistent with customers being sufficiently engaged in the market, and also expects that removal of the 'simple tariffs' elements of the RMR rules will reinvigorate competition and switching to a similar extent as before, what is the case for additional remedies such as an Ofgem-controlled database of disengaged customers and a price cap on PPM tariffs?

**Question 19:** Alternatively, if the CMA does not regard a 20% switching rate as consistent with customers being engaged in the market, why does it believe that its remedial measures will be effective in raising customer engagement and switching to an even higher level – higher than in markets for other products or in other energy markets overseas?

#### **(b) The future role of Ofgem**

36. *The CMA's position:* The CMA has examined a number of other aspects of the regulatory framework and proposed a number of changes. It says "Ofgem will be at the heart of this new regulatory framework, with a simpler and clearer focus on the interests of customers, an additional role to scrutinise and comment on government policies, greater access to relevant financial information from industry and greater powers to drive through changes to industry codes when these are needed to meet broader policy objectives and are in the interests of customers and competition." (Summary of Final Report para 366)
37. *Our critique:* We have long been concerned that Ofgem's regulatory interventions in the retail market since 2008 have had serious adverse effects on competition and customers. The CMA now confirms this and recommends that central aspects of

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<sup>1</sup> GfK NOP, *Report for the CMA*, February 2015, Figure 10, p 15 shows that the proportion of customers who switched supplier in the last 3 years was 27% for energy, just over half the proportion for car insurance (54%) but greater than that for mobile phones (24%) and more than double that for mortgages and current accounts (both 12%). This shows a relatively high level of customer engagement in the energy market.



Ofgem's policy be removed. Yet it also now recommends that Ofgem be given an additional role and greater powers to drive through changes in the sector.

**Question 20:** Has the CMA adequately considered Ofgem's ability to assess and implement changes in policy that will indeed be in the interests of customers and competition?

**(c) Customer database**

38. *The CMA's position:* The CMA proposes to create an Ofgem-controlled database of 'disengaged customers' who have been on the default tariff for three years or more. This is to allow rival suppliers to prompt such customers to engage in the retail energy markets.
39. *Our critique:* This proposed customer database raises issues of customer confidentiality and nuisance calls, about which many customer bodies have expressed concern. It could also deter the building of long-term customer relationships.

**Question 21:** Should the proposed database be set up on an 'opt-in' rather than 'opt-out' basis?

**(d) Price caps**

40. *The CMA's position:* The CMA initially considered the possibility of a price cap on Standard Variable Tariffs, that would cover some 70 per cent of energy accounts. Its Provisional Decision on Remedies in March 2016 then rejected this possibility (by a majority decision), explaining that such a price cap "would likely be disproportionate" and "would even in a transitional period run excessive risks of undermining the competitive process, potentially resulting in worse outcomes for customers in the long run. This risk might occur through a combination of reducing the incentives of suppliers to compete and reducing the incentive of customers to engage".
41. The CMA's Final Report (again by a majority decision) maintained this view. Yet it now decided to set a price cap on Prepayment Meter (PPM) tariffs, that would cover some 16 per cent of energy accounts. One member of the panel (Professor Cave) was in favour of the price cap on Standard Variable Tariffs too.
42. *Our critique:* We agree with the CMA (majority opinion) about the harmful and disproportionate adverse effects that a price cap on Standard Variable Tariffs would have. We note that the CMA Banking investigation too has considered and firmly rejected price caps. At the same time we note that others, who agree with Professor Cave's minority view, see things differently.
43. What we do not understand is why the CMA majority view believes that there is a more serious problem in the PPM market, and that the serious adverse effects that it assumes would be caused by a price cap on Standard Variable Tariffs would not equally accompany its proposed price cap on PPM tariffs. For example, the PPM market has been characterised by active competition including innovative new entry, with other innovative products in the pipeline. The proposed price cap could deter both existing suppliers and new entrants from seeking to supply customers on

existing or better PPM tariffs. There are many fuel-poor customers on other tariffs. There would be other more effective ways of assisting fuel-poor customers if that were the main concern.

**Question 22:** How can the CMA (majority) explain the apparent inconsistency in its position on price caps?

**Question 23:** If the CMA has found that differences in prices and costs in the energy sector require remedies such as the introduction of price caps, does this imply that such remedies could well be introduced into other sectors of the UK economy?

**Question 24:** Does the CMA's approach to the retail energy sector mark a shift in UK competition policy towards a more interventionist approach?

## **5. Implications for CMA going forward**

44. The controversial – and in our view questionable - nature of the CMA's calculations and remedies in the retail market aspect of the energy market investigation raises questions about the origins and testing of its thinking. This could have implications for future arrangements concerning the CMA. We note here two particular aspects: the role of staff, panel members and external advisers, and the possible influence of the Government Steer to the CMA.

### **(a) Staff, panel members and external advisers**

45. The Government is currently considering whether it should take further action to improve the UK's competition regime. We have responded to that consultation. Amongst the questions it raises is the appropriate role of the panel of members viz a viz CMA staff and whether (inter alia) to coopt senior staff onto the panel. We have suggested that, in order to make such decisions, it would be helpful to know more about the relative roles of staff and panel members, including in the shaping of the approaches taken in market investigations.

46. For example, to our knowledge the concept of "inefficient cost" has never previously been used by any UK or other competition authority. We are not aware that the former Competition Commission or any other competition authority has previously used the CMA's present approach to calculating "weak customer response", or its "direct approach" to calculating customer detriment. Nor are these concepts used in this form in the CMA banking investigation.

47. The CMA has provided details of six external advisers that have assisted the CMA's investigation in an advisory capacity. They have advised on a wide range of topics. However, there is no indication that any of them have advised on the CMA's calculation of "inefficient costs" or "weak customer response" or the "direct approach" to calculating customer detriment.

**Question 25:** Have the CMA's concepts of "inefficient costs", "weak customer response" and its "direct approach" to customer detriment, and the CMA's methods of calculating them, ever been used by any other competition authority?

**Question 26:** Has the CMA taken external advice on any of these three issues, and if so from whom and what was the nature of that advice, and if it has not taken such advice, why not?

**Question 27:** What assurance can the CMA give that its treatment of these three issues has been soundly based and properly tested?

## **(b) The Government Steer to the CMA**

48. When the Coalition Government created the CMA in 2013, it gave it a Strategic Steer. This explained “how the work of the CMA should support the Government’s overarching priorities”. It said, inter alia, that the CMA should investigate sectors where there was scope to enhance competition, mentioning the energy sector. It directed the CMA to work with sector regulators, including by “actively supporting regulators’ analysis”. It said that “markets sometimes fail to work effectively ... because consumers struggle to compare products or face costs of switching”. And it considered that “these consumer behavioural issues should be central to the CMA’s analysis of whether markets are working well”.
49. In December 2015 the present Conservative Government issued a new Steer which seemed to mark a change of direction. It no longer told the CMA which sectors to investigate nor suggested that consumer behavioural issues should be central to the CMA’s analysis, and it now put great stress on deregulation.
50. The CMA energy market investigation has complied closely with the recommendations of the original Steer. The focus on consumer behavioural issues (“weak customer response”) and consequent proactive interventions (such as the price cap and the making available of confidential customer details) seem to be at the heart of the CMA’s problematic analysis and remedies in the retail energy market. Yet such interventions seem inconsistent with the present Steer.

**Question 28:** How far if at all has the CMA energy market intervention been influenced by the Steers issued by successive Governments?

**Question 29:** Is it helpful for the Government to issue a Steer to the CMA, or is this more likely to compromise the CMA's evaluation of whatever sector it investigates?