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Alex Chisholm  
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27 April 2015

*Dear Alex*

With the provisional findings of your energy market investigation due to be published next month, I am writing to set out the expectations of many consumers and of Which?.

No one is in any doubt about the opportunity that this inquiry presents to reform the energy market. Which? has been highlighting the failures of this market for many years and welcomed Ofgem's decision to refer it to the CMA. More than 200,000 people have now backed our Fair Energy Prices campaign pressing for reforms to the energy market, and there is a clear expectation among consumers that the CMA will make a bold intervention to significantly improve consumer outcomes and restore trust.

Which? is therefore setting out five public tests for any CMA remedies, against which we will judge them. We believe that, to be credible in the eyes of consumers, remedies must:

1. increase consumer engagement and reduce market complexity for consumers.
2. protect consumers who are unable or choose not to engage and as a result languish on poor value standard variable tariffs.
3. ensure a competitive level playing field and tackle the issues raised by the vertical integration of the biggest energy suppliers.
4. deliver greater transparency of the level of profitability across energy suppliers.
5. improve liquidity in the market.

We expect the CMA to set out clearly its findings and conclusions for consumers in response to each of these tests.

First, this should include the CMA's assessment of the extent to which consumers are driving a more competitive energy market and the extent to which products offered meet the needs of all consumers, including those who are least engaged. Which? believes that simple pricing would help to improve consumer engagement and increase the competitive pressure faced by suppliers. Consumers have also cited a lack of trust and a perception that the Big Six suppliers are 'all the same' as contributing reasons for disengagement. The CMA should clearly set out its view as to whether energy firms are displaying a culture of putting their customers' interests first, and whether the existing regulatory arrangements are sufficient to ensure that customers are treated fairly.



Second, although simple pricing will help ensure that consumers can become better engaged in the market, some consumers may not be able to, or may choose not to, engage. The CMA should explain how it proposes to protect vulnerable or disengaged consumers, for example through 'Price to Beat' options that we have submitted to the investigation.

Third, the CMA should make plain its view as to whether the current market conditions enable smaller suppliers genuinely to challenge the market share of the Big Six and enable competitive new entry in both the retail and wholesale sector. In particular, the CMA should set out its conclusions, in detail, of the impacts of vertical integration on competition and new entry, and the extent to which it has delivered benefits or harm to consumers. We also expect the CMA to have assessed thoroughly why there has been no material vertical divestment in the sector since the widespread consolidation of the early 2000s.

Fourth, we expect the CMA to explain its thinking in relation to the reporting of trading profits in a standardised way so that wholesale, trading and retail can be compared on a like-for-like basis. This is important given that Ofgem's, the CMA's and our own research provides evidence that suppliers' cost increases are passed on more rapidly to consumers than decreases and we expect the CMA to have considered remedies with this in mind.

Finally, we would expect any proposals to enhance liquidity and the information provided to the market on trading behaviour. Enhanced liquidity will help ensure that suppliers can enter the market more easily and hedge risk more effectively, resulting in more stable prices for consumers and greater competition. Better trading information will also help to enhance the reliability of price signals provided in the wholesale market.

This inquiry represents a rare opportunity for the CMA to put to bed the lengthy debate over the extent to which the energy market is performing competitively, efficiently and in the interests of all consumers. While it is right that the CMA takes the necessary time to get any remedies right, the level of public expectation is significant and credible reforms that address the fundamental failings of the market are clearly needed.

I hope that these tests provide a useful overview of how Which? will be scrutinising the investigation's progress and I look forward to discussing them in more detail when we next meet.

I am copying this letter to the chief executive of Ofgem, and to the chief executives of energy suppliers.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Richard Lloyd', written over a white background.

Richard Lloyd  
Executive Director