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Submitted via email: competitionreport@hmtreasury.gov.uk

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Dear John

Report on Competition Policy

I am writing to put forward Energy UK's views to help inform your considerations on competition policy for HM Treasury and BEIS.

As you will be aware, the GB energy system has undergone rapid transformation over the past 10 years. Looking ahead, the immediate future will see an equally unprecedented level of change as we transition to a net-zero future, coupled with a data and technological revolution - from decarbonising our electricity supply to embracing new data technologies, and from enhancing customer relationships to offering a wider range of heat and transport solutions.

Competitive markets that drive investment, innovation and good consumer outcomes will be crucial to this transition. The new, innovative products and service offerings required by the net-zero transition have the potential to enthuse and excite consumers, providing new avenues to market engagement that help achieve a low carbon energy system whilst also delivering excellent service, choice and value for money to all UK's homes and businesses.

It is, therefore, vital that the UK's competition regime not only keeps pace with developments but is able to support this transformation. This is not to say that we should attempt to second-guess what the future customer may want, or what future businesses or technologies may offer. Instead, any framework must be flexible enough to accommodate evolving consumer expectations and technological innovations, while ensuring the right market frameworks are in place to allow competition to flourish, driving the investment and innovation demanded by consumers and Net-Zero.

As a minimum this means the UK's competition regime must: deliver level playing fields for competition; provide regulatory certainty for industry; establish clear and robust consumer protections where needed; and embrace fully transparent markets and open data.

We have set out below further views on the specific topics the review has been asked to consider:

1. Play a central role in meeting the challenges of the post COVID-19 economy and in driving the recovery?

The COVID-19 emergency, and ongoing economic impacts, are of course of serious concern to business and customers alike. Overall, the energy system and market participants have coped well with the immediate shock, maintaining security of supply and protecting customers. With many of the long-term impacts on the energy system and the wider economy not fully known, it will be important to ensure that competition remains adaptive to the market environment to meet evolving customer needs.

However, as noted above it is also vitally important the competition framework focusses on facilitating speedy and cost-effective economy-wide decarbonisation. A recovery from COVID-19 should not just be any recovery, but must be a green recovery. Ensuring that a robust competition framework is in place to facilitate this is essential to meeting the Net Zero target that the Government has legislated, and building back better across the whole economy.

With any regulatory reform, there is also a fundamental need to ensure that the UK remains a safe and reliable place to invest in order for market competitors to continue to feel confident to innovate in the energy sector. An unreliable and opaque regulatory regime could risk the innovation and investment that is needed to realise the full benefits of the energy system transition that is currently underway.

To this end, it is important that the government ensure that plans are in place, and that regulatory authorities are appropriately resourced, to promptly provide a future subsidy control regime to replace EU State aid rules at the end of the current transition arrangements. Such a regime is vital if the UK is to continue providing appropriate support for low carbon technologies and not undermine investment and delay the economic recovery.

To attract the necessary investment that fully enables the development and implementation of innovation across the whole of the energy system it is also paramount that the Government remains committed to independent and authoritative regulation. In practice, this also means a commitment to merits-based appeals of all regulatory decisions to an expert body, as well as Judicial Review. It is widely recognised that good regulatory decisions are most likely to materialise where the regulator itself can be challenged, as regulators are not infallible and may not always have recognised the scale of the impact of their decisions on specific parties (including customers). For example, Ofgem's decision to impose a limit of four domestic tariffs on suppliers was later revoked by the CMA in its 2014-16 Energy Market Investigation, having been found to be detrimental to consumers.

2. Contribute to the government's aim of levelling up across all nations and regions of the UK?

We believe that the issue of geographical fairness will be best addressed by Government policies outside of the competition framework, which would incentivise activity in areas that the Government has identified as needing additional measures. While robust competition will improve outcomes for consumers across the country, we do not believe that it would necessarily be for the competition framework itself to take on this objective.

3. Increase consumer trust, including by meeting the 2019 Manifesto commitment to tackle consumer rip offs and bad business practices, and by ensuring the competition regime operates in a way which is strong, swift, flexible and proportionate?

Maintaining consumer trust in existing services, as well as new products and market offerings, will be vital in facilitating innovations across energy and other sectors to meet the Net Zero target. The focus of regulation and the competition framework should, therefore, be on protecting against poor practices, rather than putting up barriers to innovation or market offerings that are beneficial to customers and decarbonisation.

The competition framework, alongside the regulation of markets, must be proportionate and flexible in order to adapt to changing circumstances and maintain consumer trust. For example, in contrast to licensed energy market participants, we are seeing a growth in new services and market players that are outside of the current licensing regulatory model, such as price comparison websites, energy brokers and automated-switching services. With a majority of energy customers now making use of such services, there is a risk of customer detriment as the regulator is not set up to be adaptive to these evolving customer behaviours.

While we should not attempt to second-guess the nature of market offerings in the future, or their popularity with consumers, we can already see the potential for energy to become just one part of a bundled service as markets converge, especially for domestic customers. We risk undermining consumer confidence in such offerings if regulatory regimes are not aligned to reflect the way in which markets are engaged with by consumers, and how services are provided. The rise of smart home technology, the growing adoption of EVs, increasing volumes of micro-generation and the decarbonisation of heat could lead to a shift away from previous relationships based simply around "kilowatts" supplied. The information provided from connected home technology, such as appliance health, and heating system operation, may also lead to sector convergence. As one example, if a consumer purchased an EV bundled with financing, insurance, product guarantees, data analytics and energy supply, the regulatory system may not currently be designed to act in the most efficient manner to deal effectively and consistently with a failure on the provision of one or more of these services. Recognising that different sectors operate in markedly different ways, it will be important to ensure that

there is a clear understanding of the roles of different parts of the framework and minimising overlaps in regulatory responsibility which could cause detriment to customers and reduce their trust in innovative offerings.

4. Support UK disruptors taking risks on new ideas and challenging incumbents?

The competition framework and sector-specific regulation should ensure a level playing field between competitors, whilst also protecting customers. Distortions in the market can lead to poor outcomes for some customers, such as by paying a greater amount of policy costs through their energy bills, and stymie the introduction of new ideas.

It is also important to note that innovations do not just come from new disruptors, but can also come from those already in the market. Either way the key is to ensure that regulation is not unresponsive and inflexible, but is instead able to adapt at pace. In the retail energy market, for example, Energy UK has long called for Ofgem to move away from its historically rigid, prescription-based regulatory outlook and maintain a more principles-based approach to licensing that allows for new ideas to be implemented by market participants to benefit their customers quicker.

5. Make best use of data, technology and digital skills which are vital to the modern economy

The energy system is undergoing a transition, underpinned by digitalisation and transformative availability of data. Going forward, increasing volumes of analytical data will be generated across the sector, whether from customers via smart meters, or electric vehicles (EVs) and connected home appliances, or from elsewhere in the system such as generators, networks or third-party intermediaries. Such digitalisation may have more impact in electricity, partly due to the continuous need to balance supply and demand in real time, and the requirements placed on the system by the growth in renewables. However, it will take a whole-system approach (electricity and gas) to maximise the benefits of digitalisation and utilise progress to meet future challenges, such as decarbonisation.

There is a significant concern that much of this data is currently hidden from market participants, preventing its inherent value from being fully realised, although work has been undertaken via the Government's Energy Data Taskforce to start addressing some of these concerns. Energy UK believes that for both energy system and consumer data, the regulatory regime needs to facilitate and incentivise as much openness as is consistent with customer consent, data protection and other GDPR principles.

The importance of digitalisation and data within the energy system cannot be overstated. The innovations brought forward as a result will be driven by market participants, and to maximise its benefit there needs to be an appropriately flexible regulatory framework to enable this innovation.

I trust you find these comments useful. If you have any questions please feel free to contact me at Audrey.gallacher@energy-uk.org.uk. I would welcome the opportunity to discuss any of the points raised in further detail with you and relevant colleagues.

Yours sincerely,



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