

Competition and Markets Authority: Energy market investigation - Notice of possible remedies

Consultation response from the

Centre for Competition Policy

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Date: 5 August 2015

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This consultation response has been drafted by the named academic members of the Centre, who retain responsibility for its content.

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Responses to CMA Consultation Regarding Potential Remedies in the Energy Market Investigation

General Comments

We first make some general remarks about the framework used by the CMA in assessing remedies and on price comparison websites (PCWs) in the energy market, and then address some of the particular issues raised in the CMA's notice of possible remedies.

In addressing remedies to Weak Customer Response, which is identified as the main feature causing an Adverse Effect on Competition in the retail energy market, the CMA uses 3 principles, namely to

1. provide a framework for effective competition;
2. facilitate widespread customer engagement; and
3. provide transitional safeguards for disengaged customers in the SME and residential markets.

However these principles are likely to be mutually exclusive, as the history of the retail energy markets demonstrates all too clearly. In particular, safeguards, however transitional they are designed to be, are likely to affect the behaviour both of consumers and companies in ways which may be detrimental to the market, as the CMA concluded with both the non-discrimination clauses¹ and the Retail Market Review restrictions on the number of tariffs permitted. In particular, since the main driver of customer engagement is anticipated savings, any intervention which reduces the discounts which suppliers offer against their rivals' prices is likely to reduce both searching and switching. Moreover it is unclear both what nature and quantity of engagement is sufficient to discipline the market, and therefore the extent both of the problem and of necessary remedies.

In terms of conventional economic theory, the basic model to explain why consumers may not switch to cheaper products is that of 'switching costs': the switching process deters consumers from moving supplier. The savings available to consumers on standard variable tariffs when combined with the low switching rates in the energy market suggest that significant switching costs are present², i.e. consumers are choosing rationally not to switch. This implies that greater activity in itself may incur consumer detriment which should be taken into account; that substantial interventions may be necessary to improve the situation; and that it is crucial that all the costs incurred are properly accounted for, including those incurred by individuals. Any interventions which ameliorate search or switching costs would provide corresponding benefits.

We distinguish barriers to the 'search' and 'switching' processes (even when these are carried out simultaneously). Those disengaged consumers who form a focus of the CMA's investigation may well face barriers to 'search' even before they consider barriers to 'switching'. The considerable variation in the rates of search, and increasing understanding that consumers do not avail themselves of all the opportunities offered, poses a challenge to increasing customer engagement. Different policies are likely to stimulate activity in different groups, for example as defined by attitudes to general

¹ CCP research addressing non-discrimination clauses both in principle and in practice includes Morten Hviid and Catherine Waddams Price (2012), *Non-discrimination clauses in the retail energy sector*, The Economic Journal, 122, F236-252, 2012; and Catherine Waddams Price and Minyan Zhu (forthcoming 2016), *Non-discrimination clauses: their effect on GB Retail Energy Prices 2005-2013*, The Energy Journal

² The general direction of the CMA's provisional findings is to reject the notion that consumers on standard variable tariffs are satisfied with their existing deals.

purchasing³. The regulator, Ofgem, has devoted considerable effort to increasing consumer engagement, particularly since 2008, with patchy results, and the identification, as the CMA notes, of different types of consumers, who are likely to need a variety of approaches to stimulate their involvement. CCP's research on consumer switching in the energy and other markets⁴ confirms this view. We draw on this evidence and on our research in relevant areas in addressing the proposed remedies below. Analysis⁵ of a large collective switch, 'The Big Switch' (TBS), has enabled CCP to identify some of the issues surrounding the 'pure' switching process amongst an untypically engaged group of consumers which inform our responses.

General comments about energy and PCWs

The CMA Provisional Findings Report mentions Price Comparison Websites (PCW) on a number of occasions and considers a PCW as a possible remedy in the Notice of Possible Remedies. PCWs are considered more extensively in their appendix 8.3. We find it difficult to identify a clear CMA view about the nature of the commercial PCWs and their relationship with energy consumers. This creates a difficulty when it comes to evaluating the CMA's discussions both of possibilities for harm and of associated remedies.

As originally conceived, a comparison site did exactly that – compared prices and provided consumers with a ranking. Many privately run PCWs have traditionally also included a fairly standard direct 'click' to a company's website to complete the switch, where companies subscribed to the site. Since then enhanced switching capabilities and increasingly review features have been developed. While such features may be welcomed, they also blur the picture and motives of the PCWs considerably. Generally, a platform could offer comparison services, switching services and evaluation services or any combination of the above. The sixth proposed remedy is for the regulator, Ofgem, to set up an independent and comprehensive (in terms of coverage) comparison site. Whether or not such a site should also have a switching function is left open. From the CMA's analysis, it appears that the majority of consumers who use PCWs also multi-home, that is, they visit several PCWs. While this may be driven by a distrust of commercial PCWs, it clearly indicates that those consumers who use switching sites are not deterred by using a site solely for searching purposes.

A site which merely compares prices is clearly not two-sided. A site which offers switching actively connects suppliers and buyers and hence does have elements of a two-sided market. The switching function does appear to have an important impact on the finances of the private energy PCWs because this enables the PCWs to charge a fee per successful switch. This fee often differs across energy suppliers and can be used by the PCW to fund the development of further services, advertise, offer cashbacks or even cuddly toys to increase the traffic through their site. Increased traffic through a given PCW then means that this PCW is more valuable to energy suppliers, to whom the PCW can then charge a higher fee.⁶ But when PCWs offer switching services, is there a difference between a PCW and internet platforms such as Amazon Marketplace? Various comments in the Provisional Findings

³ Miguel Flores and Catherine Waddams Price (2013), *Consumer Behaviour in the British Retail Electricity Market*, [CCP Working Paper 13-10](#).

⁴ David Deller, Monica Giulietti, Joo Young Jeon, Graham Loomes, Ana Moniche and Catherine Waddams (2014), *Who Switched at 'The Big Switch' and Why?*, Report for Which?, Centre for Competition Policy, University of East Anglia. Available at:

<http://competitionpolicy.ac.uk/documents/8158338/8194340/Big+Switch+-+Results.pdf/2e01588d-6564-4e28-b06d-233eaad389c4>, Waddams Price and Zhu (forthcoming 2016), Flores and Waddams Price (2013)

⁵ Deller et al (2014)

⁶ Benjamin Edelman and Julian Wright (2014), *Price Restrictions in Multi-sided Platforms: Practices and Responses*, *Competition Policy International* 10(2), 889-101

Report would support a conclusion that the private PCWs are like a market places. For example when discussing the impact of the four-tariff rule imposed in the RMR, the CMA argues that this may have had an adverse effect on PCWs: “PCWs can no longer compete with each other to attract customers by reducing commission – either directly by way of passing on cashbacks, or indirectly by securing exclusive tariffs from suppliers – because of the four-tariff rule.” [Paragraph 144 in Summary]. This also sounds as if the PCWs are not merely to be viewed as agents for the energy firms, but more like retailers. This surely should have consequences for how consumers view PCWs and their services. The commercial interest in who switches to whom which flows from PCWs being market places with at least some power over the price paid by consumers who switch, has, at least if some commentators are to be believed, led to a decrease in the trust placed on PCWs and may explain the willingness to multi-home and visit several switching sites despite the corresponding increase in search costs. This concern was evident both in the inquiry by the House of Commons Energy and Climate Change Committee into energy price comparison websites and in Ofgem’s voluntary Confidence Code for PCWs. That trust is an issue is illustrated in the Provisional Findings Report [paragraph 125 of summary]. “Of those who are not confident using a PCW, 43% said they did not trust or believe PCWs”, although we acknowledge the difficulty in knowing exactly what trust means in this context.

There is a surprisingly large number of PCWs, but the market is still very concentrated. “Of the ten major PCWs for which we received switching data, two PCWs – uSwitch and MoneySuperMarket – accounted for around 70% of energy supplier switches in 2014.” [Provisional Findings Report, Paragraph 7.112] Without ever giving a full explanation for why this should be the case, the CMA appears to assume implicitly that competition between PCWs is good for consumers.⁷ This is far from obvious. In the case where the element of competition between PCWs is based solely on cashback offers to those who switch, one would be concerned that any PCW which has managed to achieve the majority of traffic will be able to extract the most in commission from suppliers⁸. In turn a powerful PCW can use some of this additional commission to offer greater cashback to those using their site, further enhancing their traffic, their value to suppliers and their ability to extract commissions. This virtuous circle ends logically with a single site with no need to pass on any commission which the suppliers in turn can [and if the energy market is well functioning will] add to the final price consumers pay.⁹ If the competition is over features of the platform, then the requirement of universal coverage¹⁰ would have the interesting effect that an energy firm could not offer a cheaper deal on their own website, where the deal is cheaper by the amount of commission paid to a PCW that can be avoided via a direct sale. In this situation, the cost of commissions paid to PCWs would have to be taken as a general cost of doing business by the energy supplier, i.e. a cost spread across all consumers, rather than being reflected solely in the pricing of the supplier’s PCW deals. Such a situation would seem to imply a cross-subsidy from non-PCW users to PCW users. This is concerning if we think that those who use PCWs are already relatively active/engaged: the unengaged (on worse deals and in a worse economic position) are partially financing a service to help the engaged get the best possible deal (and possibly a cuddly toy). It also raises concerns for a different reason. The competition will move from

⁷ “We note that the RMR rules effectively prevent suppliers from being able to offer tariffs exclusively available via a particular PCW, which limits the scope for commission negotiation and passing on savings to consumers.” [Provisional Findings Report, Paragraph 8.239]

⁸ This may have a relatively more detrimental effect on the entrants/smaller suppliers who in any case will have to offer lower prices to break into the market.

⁹ More generally, David Ronayne demonstrates that PCWs are bad for consumer welfare, see David Ronayne (2015), *Price Comparison Websites*, Warwick Economic Research Papers No 1056.

¹⁰ This is implied by Ofgem’s current Confidence Code and may well be a consequence of a publicly run universal comparison site. While the CMA seems to be sceptical about the Confidence Code, see paragraphs 151-154 of the summary of Provisional Findings Report, this is not the reason for their concern.

price to other features of the websites and in this case there will be an inefficiently high level of investment.¹¹

Finally, the anticipated move to supposedly smart metering raises additional concerns when it comes to PCWs. Even currently, a PCW collects a considerable amount of information, with a significant secondary value, from consumers. With smart metering and time of use tariffs, an accurate estimate of future savings might involve the transfer of, and then a calculation utilising, an entire year's worth of consumption data measured at half-hourly intervals. For a competitive consumer market to function in a world of smart meters, consumers would be totally reliant on a 'black box' estimation technology. While this information is necessary for a PCW to offer a relevant service, it also raises important privacy questions, including how consumers give consent, what they give consent to and, most fundamentally, who owns a consumer's consumption data. It would seem obvious that consumers should own their own consumption 'profile' and be able to demand it with reasonable detail from their current supplier. This will still provide a challenge for PCWs. Delegating data and its processing to a third party whose method of estimation cannot readily be assessed, and who may have a financial interest in the answer, would leave scope for abuse. A possible remedy would be the separation of search and switching,¹² i.e. a clear distinction between sites which compare prices and sites which help you switch. The CMA does address this somewhat, but the issue needs further development [Provisional Findings Report, Paragraph, 8.108]

Comments on individual proposed remedies (and one provisionally rejected remedy)

Below we comment only on those remedies and consultation questions where we can provide informed answers and academic evidence.

Remedy 3 - Remove from domestic retail energy suppliers' licenses the 'simpler choices' component of the RMR rules

Given that the reduced number of tariffs does not seem to have stimulated customer engagement, and may have had some harmful effects, we agree that this requirement should be removed. We respond to some of the issues with respect to PCWs under the discussion of remedy 6 below.

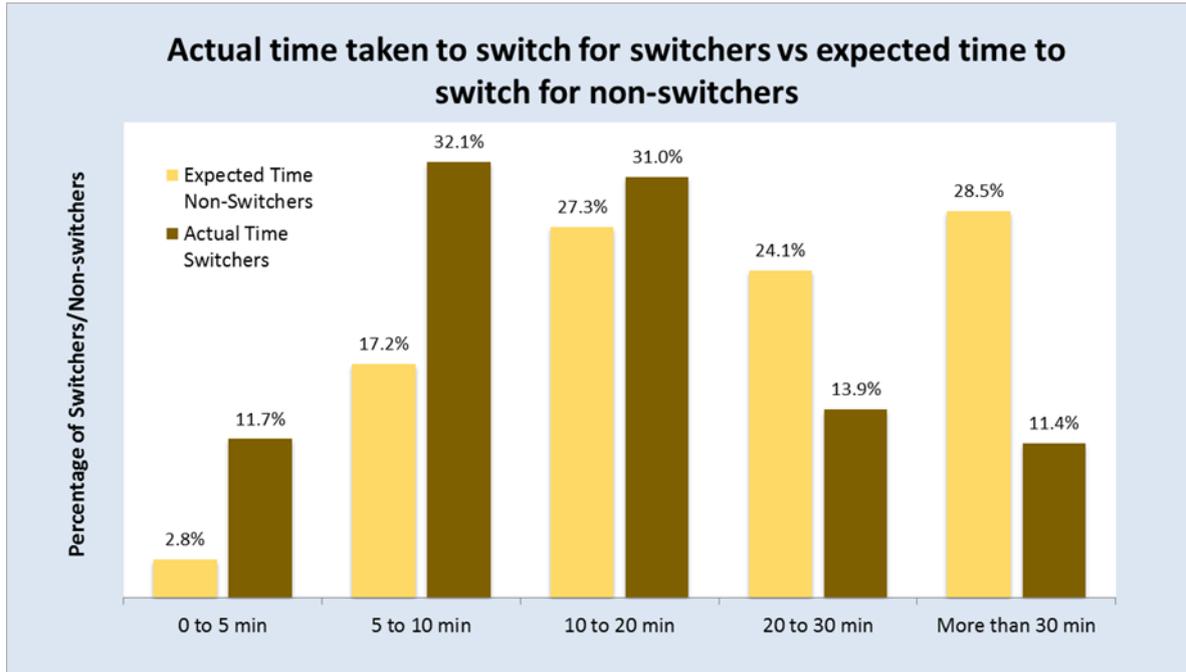
Remedy 4a - Measures to address barriers to switching by domestic customers

In a general discussion of barriers to switching it is important to note that 'time to switch' has two potential meanings: (i) the time between a consumer choosing to switch supplier and when supply from the new supplier begins, and (ii) the amount of time required from consumers in the process of requesting a switch. While policymakers may have a greater ability to intervene regarding (i), it seems likely that (ii) may be a more significant barrier to consumers switching as it implies that they incur an opportunity cost. Among participants in 'The Big Switch', those who did not switch over-estimated the length of time it would take to switch relative to the actual amount of time it took switchers to complete their switch. Effective policies need to reduce both consumers' time commitment to the switching process and their expectations of that commitment.

¹¹ This is discussed formally in Edelman and Wright (2014), see footnote 6.

¹² This is similar to a solution sometimes suggested to the problem of services that have the nature of a credence good where the need for an intervention is impossible to verify, namely the separation of diagnosis and intervention.

Chart 1



(c) Should PCWs be given access to the ECOES database (meter point reference numbers) in order to allow them to facilitate the switching process for customers?

Assuming away data protection issues, any mechanisms which reduce the time and/or complexity of a consumer’s involvement in the switching process, such as removing the need to find and read a meter, should help to increase switching rates. The impact of such a change is likely to be higher within consumer groups which are already active. Additional aspects are considered under our response to remedy 6 below.

(d) Should there be penalties for firms that fail to switch customers within the mandated period?

If a company fails to comply with regulatory requirements a financial penalty should be applied to increase incentives for compliance. Consumers who are harmed by erroneous transfers should be compensated both for any overpayment and for inconvenience and any other detriment.

(e) When next-day switching is introduced, will a ‘cooling-off’ period still be required? Could it be avoided by requiring that no exit fees are charged within two weeks of switching?

It is difficult to see why next-day switching would remove the perceived benefits of a ‘cooling off’ period. Next-day switching is about the speed of a process, while a ‘cooling off’ period is about allowing a consumer to correct mistakes without penalty if they wish. If a ‘cooling off’ period meant that no consumer would switch supplier until the end of the ‘cooling off’ period it would appear to offset any benefits from ‘next day’ switching.

In terms of detailed switching arrangements, it seems most logical to charge the new rate from the date of transfer, including exit costs, and revert to the old tariff (including reimbursement of the exit costs) should the consumer change their mind within the cooling off period.

(f) Are specific measures required to facilitate switching for customers living in rented accommodation (either social or private)?

Lower switching rates among those in rented accommodation is well established and confirmed by our own research, and the appropriate remedy depends on the reason. Some causes are inherently associated with the rental process, for example if energy costs are included in a tenant's overall rental payments. In this case, the landlord should have an incentive to minimise the energy bill. In rented properties with multiple occupancy 'free rider' problems may emerge regarding which tenant takes responsibility for switching energy supplier. The issue of 'free riding', or alternatively the need for agreement between householders, may explain why research consistently finds a lower rate of switching in households with more than 1 adult¹³. Thirdly, if a tenant is responsible for paying the energy bills the incentive to switch may be limited by the short time they anticipate spending in a particular property. Effective remedies to these issues may require substantial changes to the nature of the private rental market.

However, there may be opportunities to improve the welfare, if not necessarily the switching rates, of tenants in social housing, if the landlord can organise 'opt out' collective switching schemes where the social housing landlord negotiates the purchase of energy on behalf of the tenants (see response to provisional rejected Remedy C below). While such a system may not increase social housing tenants' engagement with the energy market, it could reduce the cost of energy.

Remedy 6 – Ofgem to provide an independent price comparison service for domestic (and microbusiness) customers

(a) Would this remedy be effective in increasing customers' trust in PCWs and thereby encourage engagement in the markets and switching?

The first stage is to establish clearly that there is a problem here and hence that an intervention is required. Do we know that this lack of trust is damaging for the market? In this respect, while a third (Appendix 8.3, paragraph 48) do not trust that they were confident that using PCWs would get them the right deal, the majority of users of PCWs also multi-home – presumably exactly because they do not trust a single specific website. So at least in some cases consumers appear themselves to know how to deal with their lack of trust.

Moreover, if there is a problematic lack of trust, it is important to understand both the exact nature of the distrust and the true underlying reason for it: is it in the honesty of the PCWs in providing savings estimates? Whether the consumer gets a good deal with one PCW rather than another? Other vagaries of the energy market, such as unpredictable demand because of weather which mean consumers are uncertain of savings? Appropriate remedies will depend on the answers to these and related questions.

(b) Should this service be online-only, or should it also operate over the telephone?

If the service is online-only it risks excluding a particular group of individuals, those without internet access, who are likely to have low existing switching rates and therefore of particular concern to the CMA. Individuals without internet access may also contain a disproportionate number of individuals deemed to be 'vulnerable'. However, if the service is to be provided via the telephone, appropriate thought needs to be given as to whether the 'most relevant', as opposed to simply the cheapest, tariff can be easily identified and communicated in an effective fashion over the phone. Hence any attempt

¹³ Deller et al (2014)

to provide this service should be piloted carefully. An alternative would be to provide financial support for selected charities to provide this service face-to-face.

(c) Is there a risk that such an independent service could undermine the development of other PCWs in the energy sector? How could this risk be mitigated?

If the main use of a PCW is to compare prices rather than to switch - and the high degree of multi-homing is at least suggestive that this may be the case – then it will be difficult for private PCWs to be viable solely based on the energy market. At the same time, given the surprisingly large number of PCWs, most of whom have a negligible market share in the energy market, the number of exits may be very small.

The CMA seems to work on the premise that PCWs are a good thing, while literature suggests that competition between PCWs may be detrimental to consumer welfare; current research at least suggests that a healthy dose of scepticism would be beneficial. Will Ofgem’s voluntary code, which also requires universal coverage, be abandoned¹⁴, thus encouraging private PCWs to choose not to have complete coverage?

(d) Should the Ofgem website quote the energy suppliers’ list prices only?

Is the platform *setting* the final price someone pays? If so, it is not an agent but a retailer. That has consequences for the platform and the market. Consumers are presumably searching for the price they will pay, rather than for a part of the price. Misleading price quotations are a well-known source of consumer detriment

(e) How could we ensure that an Ofgem price comparison service was robust in terms of offering all tariffs available on the market? Should there be an obligation on retail energy suppliers and/or PCWs to provide information to Ofgem on their tariffs?

As a regulator, does Ofgem not have considerable powers to ensure that this happens in respect of its current policies? Although there is no formal price regulation in the retail market, the regulator’s current functions involve extensive (if not exhaustive) knowledge of prices offered in the market.

(f) Should any price comparison service operated by Ofgem be transactional, ie be able to carry out switches for consumers, or should it provide information only?

The site should be solely for searching – if the CMA thought that the switching capability was essential, then it is rather difficult to understand the proposed remedy. It seems that making it mandatory for a comparison site to carry all prices would be the less costly option.

(g) What would be the likely costs to Ofgem of offering this type of price comparison service? Would Ofgem need additional funding and/or statutory powers in order to provide this type of service? If so, where should this funding come from?

The cost would depend on the functions of the website. It is important that Ofgem employs an appropriate mechanism to procure the necessary expertise/software to avoid some recent high cost public IT procurement experiences. Costs would inevitably fall on consumers, and should be recovered in as progressive a way as possible.

¹⁴ If the code is not abandoned, then the motivation for a public PCW is rather hard to discern.

(h) How should customers be made aware of the existence of this service? Should information be provided by energy suppliers on bills/during telephone calls? Should PCWs be required to provide links to the Ofgem website during the search process to allow customers to cross-check prices?

The answer to this depends on the powers of the regulator, and the solution to issue e) above. Then the issue of using powers arises, and the most cost effective way of doing so.

(i) Is there any additional information that Ofgem should provide on its website relating to energy suppliers and/or tariffs to facilitate the customer search and switching process?

The response to this depends on the view of the consumer. Are they sophisticated or not? For an analysis which can be taken seriously, it is essential that the CMA forms a coherent view about consumer behaviour (or behaviours) to inform the analysis and ensure its consistency.

Remedy 9 – Measures to provide either domestic and/or microbusiness customers with different or additional information to reduce actual or perceived barriers to accessing and assessing information

(a) Does the current format and content of energy bills facilitate engagement by customers? Is there additional information that should be included on bills? Should the quantity of information on bills be reduced to enhance clarity?

Energy bills are an important opportunity for communicating with customers. CCP evidence¹⁵ shows that individuals with a bill in front of them when providing information to a switching service subsequently had a higher rate of switching than individuals who had to rely on an estimation of their existing bill, suggesting that existing bills are a valuable source of information. That energy consumers often rely on estimation methods to receive savings quotes suggests that, rather than changing the bill consumers receive, it may be more valuable to understand why many consumers do not use their bills when switching. The promotion to consumers of a standardised system to obtain this information might be a useful step forward.

(b) When customers seek to switch tariffs, are they given enough/too much information on the terms and conditions of their new contract?

Given the differences between consumers it is difficult to generalise about whether they receive too much or too little information.

(c) Should customers be prompted to read their meters (quarterly or annually), either by information on their bill or by a phone call from their energy supplier? Would this increase engagement by improving the accuracy of billing?

When considering the encouragement of consumers to look at their energy meters more often the costs of requiring this from consumers should not be forgotten, particularly since the information displayed by existing meters in itself is of little or no direct value to consumers.

(d) Once customers reach the end of a contract period, should subsequent bills highlight that they have now been moved onto the standard variable tariff and/or other default tariff and encourage them to check whether they are on the most appropriate tariff for them?

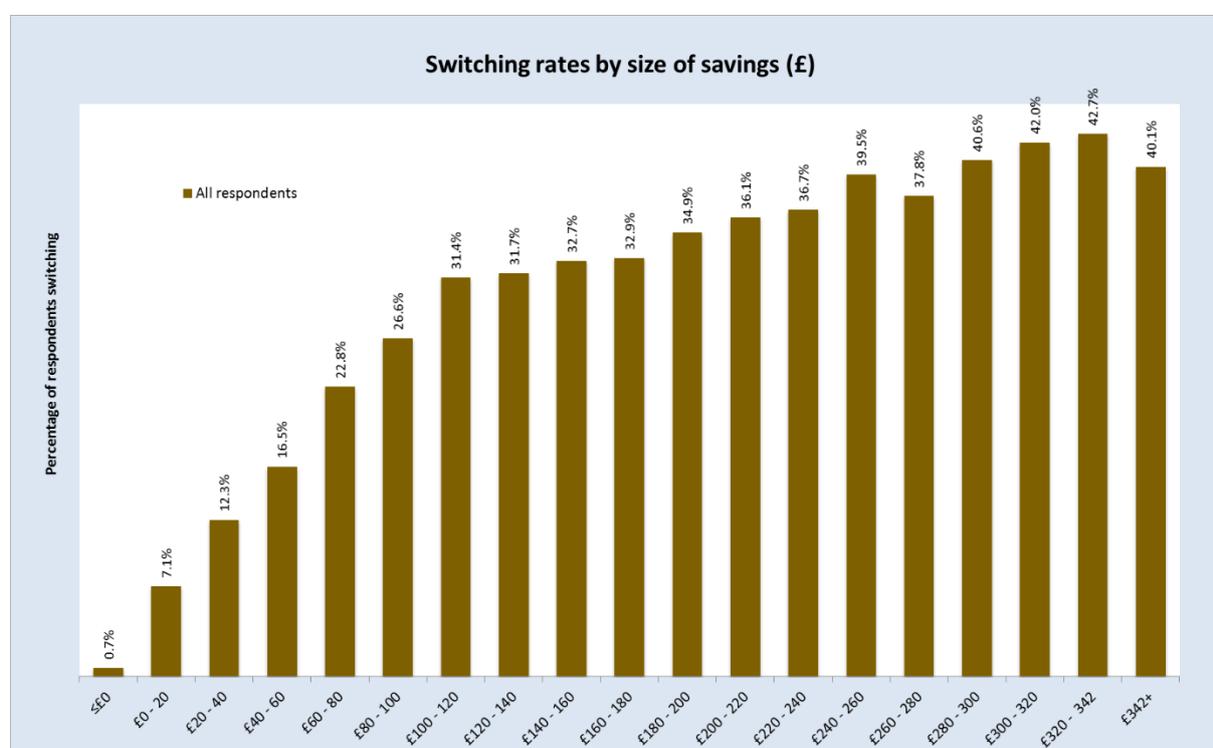
¹⁵ Deller et al (2014)

Having a clear message telling consumers that they are reverting to a standard variable/default tariff which is more expensive than their fixed term deal seems beneficial, though we doubt whether it would be sufficient to markedly change the behaviour of the unengaged.

Remedy 10 – Measures to prompt customers on default tariffs to engage in the market

Based on the response of those in a collective switching exercise¹⁶ we doubt that introducing prompts will be effective in engaging consumers in the market. Among participants in TBS the switching rate did not exceed 40% even when consumers were offered savings of £300+.¹⁷ Unlike unengaged consumers, those receiving an offer in TBS had already expended some effort to provide their full energy details, and were expecting to receive to an offer which required little further action to accept. In contrast, those on default tariffs who receive prompts are likely to be unengaged and will still need to put in considerable effort to complete a switch.

Chart 2



(a) What information should be included in the prompts to customers on default tariffs in order to maximise the chances that they are acted upon?

CCP research consistently shows that the size of savings offered to consumers is an important determinant of switching behaviour, and so potential savings should be a key message, though we agree that it should not extend to remedy b, identifying the cheapest tariff on the market. Since consumers have different expectations about potential gains, and this affects how active they are in

¹⁶ Deller et al, 2014

¹⁷ It is possible some additional switching took place where TBS prompted consumers to consider switching, but the consumer completed their switch outside TBS systems.

the market, information about how consumers can identify potential savings specific to their situation is likely to stimulate activity. Nevertheless it would be an unusual intervention to require a company to encourage switching to its competitors, and the incentives suggest that it will be difficult to ensure that such a message is presented effectively.

Providing evidence about the ease of switching and the limited time it takes in the proposed messages also seems desirable given the results shown in Chart 1.

Information should be given to assist consumers to switch once they have been prompted. Newly engaged consumers are likely to require additional support in the process of searching/switching, compared to those who regularly engage in the market.

(d) Who should provide the prompts: customers' energy suppliers, Ofgem or another party?

From a simple perspective of who has the most information about consumers, it would seem easiest for energy suppliers to provide prompts, if these are to be provided on an individualised basis. However, Ofgem may have a role to play if there are serious concerns either that suppliers may manipulate the prompts/messages to make them ineffective, that unengaged consumers respond in a dramatically more positive way if the prompts come from an 'official' body such as Ofgem, or that the intended prompts contain information about other offers in the market place which should not be exchanged between competing suppliers.

(e) Are there particular groups of customers who should receive prompts at specific points? For example, should house-buyers be prompted to engage with the market on completion of their purchase?

Since research shows that consumers vary considerably in their responsiveness according to both demographic and individual circumstances, prompts should be designed around further information about these groups and the incentives which motivate them. In terms of prompts at times of home purchase, these may be less successful since research¹⁸ shows that people are less likely to switch when they are very busy.

(f) Is there benefit in others in the markets, such as rival energy providers or TPIs, being aware of which customers remain on default tariffs (or have been rolled on to the safeguard tariff)?

The potential for the sharing of customers details with rival energy suppliers or TPIs seems to have major downside risks, even if formal data protection issues could be overcome. In particular, providing contact details to competitors and agents would risk consumers being deluged with marketing material. Given the presence of vulnerable individuals, those with limited experience of the energy market and the history of mis-selling in this sector, such engagement could be seriously detrimental.

Remedy 11 - A transitional 'safeguard regulated tariff' for disengaged domestic and microbusiness customers

We do not support the imposition of a safeguard regulated tariff, for reasons explained at (m) below. Nevertheless if such a remedy were to be imposed, we comment on the issues as follows:

(a) Should the safeguard tariffs be set on a cost-plus basis?

¹⁸ Deller et al (2014)

Yes. There seems to be less risk of distortions in the market if the tariff is cost based.

(c) Could a transitional safeguard price cap result in energy suppliers reducing the quality of service?

It may result both in lower quality and higher costs.

(f) What regulatory information would be required to set the safeguard tariffs?

Considerable regulatory knowledge would be needed to set these tariffs, as for example in the major reviews which set other price caps within the regulated sectors.

(l) Should the CMA set the level of the caps or should it make a recommendation to Ofgem?

Given the detailed knowledge necessary, Ofgem would seem to be better placed to set the level

(m) Are there any unintended consequences of setting safeguard price caps?

The CMA is correct to recognise the risks in imposing a transitional safeguard tariff, and that there needs to be headroom for such a tariff, to encourage companies to continue to offer good deals to those who are active; the protection therefore needs to be somewhat above the best deal on the market, so protection is, in a sense, partial. But there is a real danger that it may disengage even more consumers, who will feel that the authorities are looking after them, and so there is even less reason for them to follow what can seem a boring and tedious road to switching suppliers. Given these considerations we believe that such a tariff is likely to do more harm than good, particularly since there remains considerable doubt about what would motivate the disengaged, and therefore how 'transitional' this tariff would be. It is not clear that this would necessarily protect the vulnerable or disadvantaged, since while many are disengaged, many others are active in the market.

Moreover such a tariff is likely to become a focal point within the market, and may facilitate co-ordination in the prices offered to the more active part of the market. The number and detail of the issues for consultation underline the complexities which would arise in re-introducing regulation to part of the market.

Remedy 15 – More effective assessment of trade-offs between policy objectives and communication of impact of policies on prices and bills

(a) Are such assessments of the impacts of policies on prices, bills and on the trilemma trade-offs carried out to a sufficient extent currently?

The lack of transparency in decision making makes it difficult to assess the current practice, but any policy intervention should already be subject to a clear regulatory impact assessment based on cost benefit analysis. The process and outcome of such a procedure should inform whether or not the policy is implemented, and it should be clear to actors and commentators in the market what are the basis and the consequences of such policy interventions. Without such information, informed debate is stifled, and independent assessment may be hampered, thus leading to worse outcomes for consumers. In general the principle that DECC should determine policy, based on information from and implementation by Ofgem, follows the principles of good economic regulation, and again requires clarity of roles and transparency in decision making.

Remedy 16 - Revision of Ofgem's statutory objectives and duties in order to increase its ability to promote effective competition

The changes in the Energy Act 2010 do seem to have confused matters, and a return to the pre 2010 situation would probably improve them. However the implementation of the Act is as relevant as the exact wording, as the next proposed remedy shows.

Remedy 17 - Introduction of a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making can be addressed transparently

Greater transparency is key to better debate and decision making by DECC and Ofgem, and to constructive participation by informed outsiders; if a formal mechanism assists this, it should be introduced. Given their greater information about the market, it is normally appropriate for Ofgem to challenge DECC policies in terms of their likely effects. In response to question (c), formal directions do not necessarily undermine Ofgem's independence, rather they define the proper boundaries of that independence, particularly in a climate which fosters the positive effect of challenge and direction.

In terms of those remedies which the CMA is not minded to pursue we comment on:

Remedy C - Opt-out collective switching of disengaged customers

The remedies document identifies the real and potentially significant benefit of Opt-Out collective switching, in placing suppliers under greater pricing pressure, and in providing a default for consumers who do not engage with the energy market. Given the CMA emphasis on such unengaged consumers, there is obvious attraction in removing the need for such engagement. An Opt-Out collective switching scheme¹⁹ offers a mechanism with the potential to address the implicitly high switching costs addressed in our opening discussion.

We recognise that Opt-Out collective switches are a relative unknown and have not been tried in the UK context. This clearly reduces their attractiveness as the 'main' solution to energy market's issues. We agree with point (a) in the discussion of Remedy c that a single national switch would be very complex to organise and therefore presents real risks concerning its implementation. However, we disagree with point (b) regarding innovation as it does not seem to be an inherent problem of Opt-Out collective switches. Those consumers who Opt-Out may provide a market where innovation can take place, although there might be some concern about the long-term viability of a market solely involving Opt-Out consumers.

Opt-Out collective switches might therefore provide a valuable solution to current concerns about the lack of consumer engagement; however there is limited understanding of how to implement such schemes within the UK, so some experimentation, drawing on experience overseas, may be fruitful. While Opt-Out collective switches may represent a radical departure for the UK, considering the experience of the Italian 'single buyer' for electricity and Opt-Out collective switches in certain US states may prove valuable.

One obvious starting point for such an approach would be for housing associations/local authorities to conduct Opt-Out collective switches for their tenants. Social landlords already have an ongoing relationship with their tenants which should mitigate the risk of customer service problems, and social housing might be an attractive starting point due to its role as a crude proxy indicator of

¹⁹ We agree that only an Opt-Out collective switch, as opposed to an Opt-In scheme, can effectively tackle consumer disengagement.

disengagement and vulnerability²⁰. Consultancy/brokerage services may have a positive role to play in overcoming housing associations'/councils' lack of expertise and experience with the energy market.

²⁰ The one concern is that while 'vulnerability' may limit an individual's capacity to actively engage with the energy market, it may equally limit an individual's capacity to make a fully informed decision regarding whether to opt out or not.