

**RWE**  
**Response to the CMA's Addendum to provisional findings**  
**Response dated 14 January 2016**

1. This document responds to the CMA's Addendum to provisional findings ("Addendum") and should be read in conjunction with our responses to the CMA's Provisional Findings ("PFs") and Notice, Supplemental notice and Second supplemental notice of possible remedies ("RN", "SRN" and "SSRN" respectively).
2. The CMA provisionally finds that competition in the PPS is "significantly weaker" than in the wider GB domestic retail energy markets. The CMA provisionally finds the following outcomes in the prepayment segments ("PPS"):
  - 2.1 Entry and expansion by the non-Six Large Energy Firms has been substantially slower than in the credit meter segments;
  - 2.2 The range of tariffs available to PPM customers is significantly more limited than those available in the credit meter segments;
  - 2.3 PPS customers do not appear to be offered the same acquisition tariffs as are available to non-PPM customers; and
  - 2.4 The lowest tariffs that are offered by suppliers to PPM customers are significantly higher compared with the "*competitively priced acquisition tariffs in the DD segment*".
3. The CMA identifies the following possible constraints on competition in the prepayment segment which it considers might account for the outcomes the CMA has found:
  - 3.1 Technical constraints arising from the dumb prepayment meters infrastructure;
  - 3.2 Softer incentives to compete to acquire prepayment customers, being high acquisition costs and barriers to acquiring indebted customers; and
  - 3.3 Regulatory barriers to competition arising from the RMR 'simpler choices' rules.
4. The CMA considers that the technical constraints and softer incentives to compete to acquire prepayment customers (but not the RMR simpler choices rules) are features of the market that give rise to an AEC in the PPS.
5. Overall, we agree with aspects of the CMA's provisional findings in relation to the PPS. However:
  - 5.1 We do not consider that the fact that PPM prices are higher than discounted tariffs in the DD segment can be taken as evidence that PPM prices are

uncompetitive. In comparing PPM prices only with discounted DD fixed term acquisition products, the CMA has used an inappropriate benchmark.

5.1.1. We acknowledge that discounted acquisition tariffs are generally not available to PPM customers, which results in the main from the constraints described in paragraph 7. However, even if discounted acquisition tariffs similar to those available in the DD segment were more readily available in the PPS, there would still be a need for normal non-discounted prices.

5.1.2. We have explained at length in our response to PFs and at our response hearing (and in previous submissions) the interrelated nature of pricing of acquisition tariffs and our SVT and why it is not appropriate to consider either in isolation. In short, the see-saw pricing that operates in the retail energy markets means that it is wrong to look at the prices at one end of the see-saw without at the same time considering the prices at the other end; they are interrelated. A supplier can only afford to offer a discounted acquisition tariff alongside a normally priced tariff to which a certain proportion of customers will revert for a certain period. A discounted acquisition tariff cannot exist on its own.

5.1.3. Additionally, as also discussed at length in our response to PFs, we do not consider that it is appropriate simply to regard the 'cheapest' tariff as the 'most competitive' without having proper regard to all relevant product characteristics. A customer on a fixed term tariff clearly needs to accept the risk of greater volatility in pricing over a given time period than would be the case for a customer on SVT; for this reason, some customers will actively choose an SVT. As in the PFs, the CMA fails to take this into account.

5.2 We disagree with the CMA's provisional finding that the RMR simpler choices rules do not give rise to a constraint specific in the PPS. The four-tariff rule drives suppliers towards products that will appeal to the mass market rather than to niche customer groups such as the PPS; therefore we consider that this does give rise to a particular constraint in the PPS.

5.3 The CMA places too great an emphasis on switching from prepayment to credit meters and does not have proper regard to the reasons why customers may be on prepayment meters. In paragraph 22 of the Addendum, the CMA seems to acknowledge that "*Some customers may be ineligible for creditworthiness reasons, and some customers may prefer a PPM for their own budgeting reasons.*" But the CMA goes on to speculate that switching to a credit meter "*might*" make financial sense to "*a significant number of PPM customers*". The CMA has done nothing to provide an evidential base for this speculation. We address this further in our response to the SSRN.

6. The CMA finds that technical limitations contribute to the paucity of tariff offerings with the PPS. However, the CMA finds that the technical limitations are not the sole explanation for the differences between competition in the PPS and credit meter segments, because the dumb prepayment infrastructure is not being operated at its technical limits, and the technical limitations may be circumvented through smart meters.
7. In broad terms, we agree with the CMA's provisional findings in relation to the technical limitations of the dumb prepayment meters infrastructure. However, we consider that the CMA has underestimated the extent to which the technical constraints account for the differences in competition in the PPS and credit meter segments, i.e. the extent to which they account for the lack of discounted fixed term acquisition tariffs available to PPM customers. As the CMA is aware, since the introduction of SLC 25C (non-discrimination), across the credit segments there has been a significant move towards using discounted fixed term acquisition tariffs to acquire and retain customers. However, within the technical limitations of the dumb prepayment meter infrastructure, it is simply not practicable for the SLEFs to roll out fixed term acquisition tariffs to PPM customers: each new fixed term tariff (we have introduced around 50 electricity tariffs during 2015 – taking into account both unrestricted and E7 variants but not including regional variants) would require a new set of PPM tariff slots. In our response to the SSRN, we describe the package of remedies that we consider would effectively and proportionately address these constraints.
8. The CMA also finds that there are softer incentives to compete to acquire prepayment customers. In particular:
  - 8.1 The CMA finds that there are higher capital costs associated with acquiring PPM customers, which the CMA considers will decrease as the proportion of customers having a smart meter increases.
  - 8.2 The CMA also finds that debt may operate as a barrier to PPM customers switching suppliers, in particular that the Debt Assignment Protocol might make it particularly burdensome for an indebted customer to switch suppliers, which in turn might contribute to the higher costs for suppliers of acquiring prepayment customers.
9. In our view, whilst there may be higher costs associated with acquiring PPM customers, the key constraints on suppliers competing to do so are the technical and regulatory constraints (discussed above and below respectively) which make it very difficult for suppliers to offer a wider range of prepayment tariffs including discounted fixed term acquisition tariffs. We agree also that any actual or perceived higher acquisition costs will reduce in time as more prepayment customers are moved onto smart meters.

10. As regards the Debt Assignment Protocol, whilst there may be improvements that can be made that would facilitate switching by indebted customers (including allowing customers to transfer a debt of more than £500), in our view the key constraint is not the protocol itself but the fact that it is not currently mandated for all suppliers. As set out in our response to the SSRN, we consider that Ofgem should mandate that all suppliers follow the same DAP and this, together with an increase in the amount of debt that can be transferred, would reduce any barriers to switching suppliers that may exist.
11. The CMA finds that the RMR 'simpler choices' rules introduce additional costs of prospecting in particular niches and that innovation in the PPS may be restricted by the choice of suppliers not to dedicate a tariff slot specifically to this segment. The CMA finds however that the simpler choices rules do not constitute an absolute barrier to competition in the PPS.
12. As set out above, we do not agree with this. We consider that the CMA has underestimated the extent to which the RMR simpler choices rules impact specifically on the PPS.
13. Overall therefore, we consider that the technical constraints which make it impracticable for suppliers to offer successive discounted fixed term acquisition tariffs, together with the RMR simpler choices rules which make it less attractive for suppliers to target niche customer groups, constitute the primary reasons for the limited choice of tariffs available in the PPM market. In our response to the SSRN, we propose a package of remedies that would effectively and proportionately address these issues.

**RWE**  
**Response to the CMA's Second Supplemental notice of possible remedies**  
**Response dated 14 January 2016**

*Introduction*

1. This document is a response to the CMA's Second supplemental notice of possible remedies ("SSRN") and should be read in conjunction with our responses to the CMA's Provisional Findings and Addendum to provisional findings ("PFs" and "Addendum" respectively), and Notice and Supplemental notice of possible remedies ("RN" and "SRN" respectively).
2. As set out in our response to the Addendum, we accept that there are certain features of the prepayment segment, in particular, the technical constraints, that may constrain the choice of products available to prepayment customers; and we acknowledge that as a result of these constraints the discounted fixed term acquisition tariffs available to direct debit customers are generally not available to customers with prepayment meters. However, we do not consider that the CMA has properly assessed the extent of any AEC and the CMA's provisional finding that competition in the PPS is "*significantly weaker*" than in the wider GB domestic retail energy is based on an inappropriate benchmark.
3. Therefore, whilst we are broadly supportive of a number of the PPM remedies under consideration by the CMA in the SSRN which are aimed at increasing the choice of products available to PPM customers (together with certain broader remedies already set out in the CMA's RN and a further remedy we propose in the Appendix to this response), we consider there is no credible basis on which the CMA can justify remedies such as a safeguard price cap or sharing of customer data.
4. RWE believes that more effective competition within the prepayment segment can be achieved through increasing the range of prepayment tariffs available in the market. This will encourage switches between suppliers as well as enabling prepayment customers to switch tariffs with their existing supplier. It will therefore drive competition between suppliers on prepayment tariffs. This can be achieved through some of the remedies set out in the SSRN, supported by:
  - (a) the removal of the four core tariff limit;
  - (b) the introduction of common tariff slots (please refer to Appendix A for more details); and
  - (c) the requirement for all suppliers to make all fixed term tariffs available to all payment types, which would ensure that prepayment customers enjoyed the same potential benefits of competition as DD customers. (Suppliers would

be permitted to maintain appropriate cost differentials between the different payment types.)

5. However, we remain strongly opposed to the imposition of a safeguard price cap, even on a transitional basis.
  - 5.1 In our response to the RN, we explained in detail our serious concerns about the possible imposition of a safeguard tariff. In particular, the likelihood that a safeguard tariff will decrease customer engagement; that it would produce disadvantages which are disproportionate to its aim; and that, considered in the context of a prospective package of other remedies that go to the root cause of the AEC, a safeguard tariff would be more onerous than is required to achieve its legitimate aim.
  - 5.2 In our RN response, we also agreed with the concerns identified in paragraph 136 of the RN in respect of price-controls where the CMA acknowledges (emphasis added) that: *"... price controls can create significant distortions in markets if the level of the controls are set inappropriately. If the regulated price is set too high, it will be less effective in constraining the regulated firm(s)' market power than it should be. In contrast, if the regulated price is set too low, the regulated firm will not have an incentive to invest in maintaining levels of quality. **For these reasons, price controls are usually only implemented where there is no reasonable prospect of competition, and it is exceptional for them to be put in place where the supply structures enable choice.**"*
6. In addition to the concerns set out in detail in our RN response, which we do not repeat here, we wish to highlight the following:
  - 6.1 As set out in our response to Remedy 11 of the RN, we consider that a safeguard tariff would not be effective in achieving the CMA's aims because it does not address the cause of any AEC in the prepayment segment.
  - 6.2 In fact, as referred to above and explained in more detail below, we consider that there is a package of remedies – most of which are already under consideration by the CMA and additional ones which we would add to that – that would effectively address the root cause of any AEC in the prepayment segment. Specifically, there is a package of remedies that would address the technical and regulatory constraints and any barriers to switching identified by the CMA; and the CMA itself acknowledges that any higher acquisition costs of acquiring PPM customers will reduce as the prevalence of smart meters increases. Therefore, in addition to our concerns about its effectiveness, we do not believe it is necessary and believe it is more onerous than other effective remedies.
  - 6.3 Even if these concerns could be overcome, there are extreme difficulties in appropriately setting the level of a safeguard tariff. The CMA suggests that a

cap could be set in terms of a maximum annual bill for a specified level of consumption. RWE would have concerns that irrespective of the level of headroom applied, a one-size-fits-all style cap may lead to unintended consequences.

- 6.4 These include that some prepayment customers could receive a bill increase once the safeguard price cap takes effect. (In order to ensure its pricing is below the cap, a supplier would need to set a daily standing charge and a unit rate which would apply to all prepayment customers regardless of consumption. It is possible that one or other will be set at a level that is higher than the supplier's current charges – e.g. the supplier might reduce the daily standing charge and increase the unit rate, or vice versa, or reduce both. If the supplier reduces both, then clearly all prepayment customers would receive a price decrease, but in any other circumstances there would be winners and losers depending upon a consumer's level of consumption).
- 6.5 Additionally, a prepayment safeguard price cap could create perverse price signals for credit customers to switch to prepayment. This is because there is the potential (on an annual bill basis) for a supplier's prepayment SVT price to be cheaper than its SC SVT – given that RWE's prepayment and SC SVT prices are currently set at the same level, and we believe that other suppliers adopt a similar approach to pricing their prepayment tariffs. Clearly, an SC customer who switches to prepayment would have to pay upfront for their energy use, which could give rise to budgeting difficulties or even disconnection. Whereas an SC customer typically receives a bill up to three months after consumption and can delay settling their bill for some considerable time without fear of disconnection, if a prepayment meter is not topped up with credit on a "as required" basis (which is more costly in winter) the energy supply will be automatically and immediately disconnected until the meter is fed.
- 6.6 In any event, given the interrelated nature of a supplier's prices, it is likely that a price cap for prepayment tariffs is likely to lead to increases in some non-price regulated tariffs to maintain reasonable supplier returns.
- 6.7 There is the further difficulty in correctly setting (and maintaining over time) the relative levels of different variants of the safeguard tariff for single and multi-registers, so that customers do not receive inappropriate/inconsistent cost signals to change tariffs.
7. Our final introductory comment is that the CMA in its SSRN wishes to "*inform all customers of their right to request a non-prepayment meter*". The CMA notes in the Addendum that "*Some customers may be ineligible for creditworthiness reasons, and some customers may prefer a PPM for their own budgeting*

*reasons.*"<sup>1</sup> However, certain of the remedies under consideration by the CMA do not properly reflect this. RWE is concerned that the CMA is seeking to encourage prepayment customers to switch to credit meters rather than encourage switching to alternative prepayment tariffs. Many customers will be on prepayment for specific reasons and if a customer's circumstances have not changed there may be valid reasons why those customers should remain on the same payment type. For some customers the most appropriate tariff may be a prepayment tariff to enable them to manage their energy expenditure. The remedy therefore should ensure it facilitates switching between prepayment tariffs with a customer's existing supplier or a new supplier.

### ***Specific questions***

#### ***Remedy 19 – facilitating sharing of data relating to prepayment meter customers***

*(a) Would this remedy be effective and proportionate in increasing competition for non-smart prepayment meter customers?*

8. RWE considers that making a wider choice of tariffs available to customers through the removal of the four core tariff rule, the introduction of common tariff slots and mandating that suppliers make all fixed term contracts available for all payment methods (albeit allowing suppliers to maintain appropriate cost differentials between the different payment methods), together with additional prompts to engage, would constitute an effective package of remedies, such that there is no need for suppliers to share data relating to individual prepayment customers. As such RWE does not consider this remedy would form part of the least intrusive effective package of remedies that the CMA could impose.
9. In terms of effectiveness, RWE notes that the CMA has not offered evidence suggesting that decisions to opt-in (or not opt-out) would be made by sufficient numbers of customers to suggest this remedy might be effective. There is clearly a risk that significant numbers of customers would not agree to the sharing of their data and, if so, the remedy would not be effective.
10. In sharing data, there is a real risk that prepayment customers are bombarded with sales messages from suppliers which acts to disengage both active and inactive prepayment customers. RWE is also concerned that by including consumption data, suppliers could effectively 'cherry pick' e.g. high consuming PPM customers who may be viewed as potentially more profitable.
11. In any event, RWE considers that data sharing of this kind would require an industry PIA (privacy impact assessment) looking into the impact on customers in having data shared in this way.

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<sup>1</sup> Addendum, paragraph 22

12. We acknowledge however that there are steps that can be taken to encourage engagement by PPM customers. A recent Ofgem survey<sup>2</sup> highlighted that prepayment customers are not as informed as DD customers on their right to switch supplier or tariffs. This is despite the fact that prepayment customers can access personalised quotes via PCWs in the same way that credit customers can. As such, RWE would suggest an information campaign funded by all suppliers and similar to the DECC 'power to switch' campaign would be a more effective way to stimulate PPM competition. This would also be a less onerous remedy than the data sharing under consideration by the CMA.

*(b) Are there additional legal considerations that are relevant to this remedy (eg under the Data Protection Act 1998 or the Privacy and Electronic Communications (EC Directive) Regulations 2003)?*

13. In order to share customer data with other suppliers, individual suppliers would need to gain the consent of their customers. In seeking that consent suppliers would need to set out clearly in their communications with their customers both the purposes for which the data was being shared and the organisations it was sharing it with. RWE normally obtains a customer's consent to use their personal data by incorporating the required purposes for which it will use data and with whom it will be shared within the fair processing notice of its terms and conditions. In terms of RWE's own processes therefore, the customer consents to those purposes either by continuing with the change of supplier process or by continuing to be supplied by us if we have notified them of changes to those purposes.
14. RWE is concerned that the CMA's proposed remedy of assumed consent if the customer does not respond to the communication (whether electronic or postal) does not fit with the Information Commissioner's Office (ICO) best practice guidance on direct marketing (and almost certainly does not fit in with the tenor of the new EU Regulation where explicit consent is a founding principle).
15. The ICO guidance on direct marketing<sup>3</sup> (i.e. where named individuals are being targeted) says that: "*But organisations cannot assume consent from a failure to opt out unless this is part of a positive step such as signing up to a service or completing a transaction. For example, they cannot assume consent from non-response to an email, as this would not be a positive indication of agreement.*"<sup>4</sup>
16. Whilst it acknowledges that "*Implied consent can also be valid consent in some situations – in other words, if it is reasonable from the context to conclude that*

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<sup>2</sup> IPSOS MORI survey for OFGEM (Customer Engagement With The Energy Market: Tracking survey 2015) reports that 63% of PPM customers knew it was possible to switch to a different gas or electricity supply, compared to 80% of DD customers.

<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1555/direct-marketing-guidance.pdf>

<sup>4</sup> ICO Direct Marketing Guidance – paragraph 53, page 15

*the person consents, even if they have not said so in as many words”<sup>5</sup> it also says “However, organisations cannot rely on ‘implied consent’ as a euphemism for ignoring the need for consent, or assuming everyone consents unless they complain. Even implied consent must still be freely given, specific and informed, and must still involve a positive action indicating agreement (eg clicking on a button, or subscribing to a service). The person must have understood that they were consenting, and exactly what they were consenting to, and must have had a genuine choice – consent cannot be a condition of subscribing to a service.”<sup>6</sup>*

17. Organisations sending marketing mail to named individuals must comply with the Data Protection Act (DPA) (even if they do not have to comply with the Privacy and Electronic Communications Regulations (PECR)). The DPA requires that an individual is aware that an organisation has their contact details, and intends to use them for marketing purposes. The organisation must have obtained the address fairly and lawfully. It cannot send marketing mail if the address was originally collected for an entirely different purpose. Additionally organisations must not send marketing mail to anyone who objects or opts out. They must comply with any written objections promptly under section 11 of the DPA.
18. If the CMA wishes to proceed with this remedy then RWE would at a minimum need to ensure all the above requirements were met in relation to any notice sent to customers. It is RWE’s view that a non-response to that mailing is not a carte blanche right to assume that it has the customer’s consent to proceed (especially as we have gained their details to supply them with energy and RWE specifically states in its fair processing notice that it will only use customer data to market to them where RWE has their consent). Any future correspondence sent by another supplier should in our opinion contain details of how the customer can object and have their details removed from the shared database (as those who are not happy may well react after they have received their first burst of marketing from a different supplier even if they did not respond to our initial mailing).
19. RWE believes that proceeding without a positive indication of consent (even to a postal mailing) comes with a risk of complaints and action by the ICO. RWE would therefore want to ensure that any measures adopted by the CMA comply with ICO guidance and would urge the CMA to consult with the ICO to ensure the remedy is compliant and does not come with a risk to suppliers of being fined by another regulatory body (which in two years’ time will have the ability to fine up to 4/5% of global turnover).

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<sup>5</sup> ICO Direct Marketing Guidance – paragraph 57, page 16

<sup>6</sup> ICO Direct Marketing Guidance – paragraph 58, page 16

20. RWE also assumes that where customers have already opted out of their supplier's marketing material they would be excluded from the data sharing exercise. In addition, that if the customer has registered with MPS<sup>7</sup> (indicating they do not want to receive marketing by white mail) their data would not be shared.
21. We would emphasise that even if this remedy can be implemented in a way that removes the legal risks it currently poses to suppliers (e.g. by legally mandating that suppliers supply the information in question and explicitly permitting them to use it in the manner envisaged), we would remain strongly opposed to any remedy that does not follow the data protection safeguards set out above, given the serious risk of damage to customer relations and disengaging customers.

*(c) Is Ofgem the right party to have oversight of this process?*

22. Without prejudice to our view that this remedy is not needed, should the CMA proceed with it, RWE considers Ofgem would be best placed to oversee this process after consultation with the ICO.

*(d) What limitations would need to be imposed to ensure that the data was disclosed and used appropriately?*

23. RWE believes there would need to be licence conditions supporting the appropriate agreements in place with third parties to ensure compliant regulatory processes, including oversight of running the database and determining who can have access and ensuring that the appropriate technical and organisational processes and procedures are in place.
24. The use of the data should also be time limited to ensure its currency. Once shared the data quality will deteriorate over time as customer contact details change. The CMA would therefore need to ensure clear guidelines are established which recognise this.

*(e) When should the continued need for this remedy be reviewed?*

25. RWE considers a sunset clause should be applied to this remedy including an automatic review after 18 months, at which point suppliers will be able to report the results of any campaigns they have run using the shared data.

*(f) What might be a suitable frequency with which to share customer data?*

26. RWE considers that a suitable frequency for sharing data would be six monthly. To ensure data currency suppliers will want to use the most accurate data, i.e. as soon as it has been shared. This gives rise to a risk that customers will be

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<sup>7</sup> The DPA does not specifically require organisations to screen against the MPS, but it is good practice to do so. It is, however, a requirement under the DMA code (RWE is a member) and the CAP code, and the DMA considers it is also a legal requirement under the Consumer Protection from Unfair Trading Regulations 2008

contacted by multiple suppliers over a very short period of time which may cause disengagement. There would therefore need to be clear rules and monitoring regarding the frequency and number of times a customer's data can be used within the six month period.

27. In addition, if indirect consent has been assumed, in sharing the data RWE would suggest following a similar time frame to the ICO guidance for indirect consent to ensure consumers are contacted within a reasonable time (the ICO rule of thumb being no more than six months)<sup>8</sup> after receiving the initial communication telling the customer what is going to happen (i.e. that their data will be shared for other organisations to contact them to see if they can offer a better deal).

*(g) Should this remedy apply to prepayment meter customers with smart meters?*

28. If the CMA considers the remedy to be needed, then RWE does not consider it is appropriate to exclude smart meter prepayment customers; these customers can subscribe to the same prepayment offers as customers with traditional meters and suppliers would not be able to identify these customers within the dataset. In any event the large scale smart meter rollout programme will mean that if meter type were included within the shared data the currency of this information will be short-lived. RWE considers it is likely the suppliers will need to confirm if a customer has a smart meter when they contact them directly. As discussed above, RWE considers if this remedy is imposed it should be subject to an 18 month sunset clause.

***Remedy 20 – removing the barriers that prepayment meter customers without a debt face when attempting to switch to a credit meter***

29. As noted above, we are concerned that the CMA is focused too heavily on encouraging prepayment customers to switch to SC tariffs, rather than on increasing the choice of prepayment tariffs available in the market. RWE believes that the low number of alternative prepayment tariffs acts as a barrier to switching for all prepayment customers, not just those without a debt. The CMA has not properly taken into account that for many prepayment customers (with or without debt) it may be appropriate that they remain on a prepayment tariff. In light of this, RWE would query the need for and the likely effectiveness of any of the elements of Remedy 20.

***Remedy 20a – prohibit the charging of a security deposit in circumstances when a customer is not in debt and has not incurred any fines, charges or interest for late payment in the last six months***

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<sup>8</sup> "As a general rule of thumb, if an organisation is making contact by phone, text or email for the first time, we would advise it not to rely on any indirect consent given more than six months ago – even if the consent did clearly cover that organisation."

*(a) Would this remedy be effective and proportionate in removing the barrier to switching that security deposits can pose?*

30. RWE's current policy does not require a security deposit when a customer requests to change from a prepayment meter to credit meter. However, as noted in response to (c) below, different suppliers have different approaches to managing risk and we would be concerned about the unintended consequences of a remedy that prohibits the charging of security deposits in a prescriptive manner.
31. Additionally, whilst we do not charge a security deposit, where the prepayment meter is force fitted for reasons of debt, RWE's policy does not allow meter changes from prepayment to a credit meter within a 12 month period in any event. We consider it is important that suppliers can continue to prevent meter changes within a reasonable period (in our view, 12 months) after a PPM is force fitted. If not, this could risk customer exposure levels, i.e. could lead to a customer being on an inappropriate payment method and may also be inconsistent with Ofgem's "ability to pay" considerations.

*(b) Are these the right criteria to apply in determining circumstances in which suppliers can charge a security deposit?*

32. RWE agrees that suppliers should be able to charge a security deposit (or prevent a customer from switching to a credit meter) where a customer is in debt. However, a six month period debt free is not long enough; it does not consider seasonality, i.e. in this scenario a customer could have a low gas use in the summer and accumulate no debt and under the CMA's criteria could receive a meter exchange without being required to pay a security deposit. However in the winter the customer's gas consumption is likely to increase and having switched to a credit meter they could start accumulating debt. RWE would therefore suggest a 12 month period would be more appropriate.

*(c) What are the potential unintended consequences of being explicit about when customers can be charged a security deposit?*

33. The circumstances defined above by the CMA may be too narrow; there may be other circumstances in which it is reasonable for a supplier to charge a security deposit (or otherwise to prevent a switch to a credit meter) that would be prohibited by virtue of this remedy, for example in student properties with a high turn over of tenants with no previous supply history.
34. Suppliers have different attitudes to risk. If there are explicit rules about when a security deposit can be charged this removes a supplier's ability to manage their own risk, an unintended consequence of which could be to reduce supplier differentiation – to the detriment of customers.

35. Also, if suppliers are prohibited from imposing a security deposit in circumstances where they reasonably might wish to, this will need to be reflected in pricing, and this will be borne by all/a wider category of customers rather than just the customers presenting increased debt risk.

*(d) Is there a preferable alternative way of mitigating detriment arising from the impediments to switching posed by the potential need to pay a security deposit?*

36. As noted above, suppliers have different risk appetites and where a supplier manages their risk via security deposits, any prohibition of those, or prescriptive criteria around them, will result in the additional costs (of risk) being passed through to customers via higher tariff prices. This will be to the detriment of those customers that are not a debt risk.

37. We would not propose any specific alternative way of mitigating the detriment posed by the potential need to pay a security deposit inferred by the CMA. We would suggest instead that suppliers should be able to manage their own risks and charge security deposits where they feel necessary. In addition by increasing the choice of alternative prepayment tariffs available customers will have the option to change tariff with their existing supplier where an objection for debt does not arise.

*(e) Should the CMA implement this remedy itself, or should the CMA make a recommendation to Ofgem to do so?*

38. Without prejudice to our comments above, should the CMA be minded to proceed with this remedy, in order to fully capture interactions with existing guidance and regulation on Standard Licence Condition 27.3, RWE feels it would be more appropriate for Ofgem to implement directly.

***Remedy 20b – Suppliers are prohibited from charging customers upfront for the cost of a new meter when switching away from prepayment***

*(a) What length of time is reasonable and appropriate to allow the recovery of the cost of the meter and installation?*

39. RWE has already made a commitment to Ofgem to remove customer charges for changing a prepayment meter to a credit meter (except in warrant and theft scenarios where a prepayment meter has been fitted due to non-payment under a court warrant) during Q1 2016. In the warrant and theft scenarios RWE believes that a period of six months to recover the costs is reasonable.

40. In instances where suppliers charge for a meter exchange, if suppliers were only able to recover the cost of a meter exchange over an extended period, RWE would suggest a target recovery period of six to twelve months. To allow longer adds to the risk of non-recovery, as customers may move properties

(particularly in circumstances where tenancy agreements are for a minimum length of six months) or may switch suppliers at the end of a fixed term contract.

*(b) Is this a proportionate remedy given the number of cases in which suppliers charge for removal of a prepayment meter?*

41. RWE considers this remedy would be proportionate assuming that costs can be recovered over a reasonable and appropriate timescale.

*(c) Is there an equally or more effective alternative way to reduce the costs of prepayment meter removal and replacement?*

42. Prior to the introduction of smart meters RWE is not aware of such an alternative.

*(d) Should the CMA implement this remedy itself, or should the CMA make a recommendation to Ofgem to do so?*

43. As discussed previously, in order to fully capture interactions with existing guidance and regulation, RWE feels it would be more appropriate for Ofgem to implement any such remedy.

***Remedy 20c – Require suppliers to provide annual notifications to prepayment meter customers setting out their right to switch and highlighting any potential restrictions or charges that may be payable***

*(a) Would this be an effective means of facilitating switches away from prepayment meters?*

44. See our comments above setting out our concerns about the CMA’s emphasis on encouraging “switches away from prepayment meters”.

45. RWE considers that increased customer engagement will ultimately be achieved by ensuring more prepayment tariffs are available to customers, enabling customers to switch tariffs with their existing supplier or move to another supplier. This can be achieved through certain of the remedies set out in the SSRN, supported by:

(a) the removal of the four core tariff limit;

(b) the introduction of common tariff slots (please refer to Appendix A for more details); and

(c) the requirement for all suppliers to make all fixed term contracts available to all payment methods. Suppliers would still be permitted to maintain appropriate cost differentials between the different payment types.

46. An annual prompt could be an effective means of encouraging switches away from prepayment meters. However, RWE believes existing customer communications such as the supplier 'cheapest tariff' messaging on prepayment customers' bills and statements (together with the introduction of more prepayment tariffs) would also be an effective means of explaining the customer's right to switch tariffs and meters and highlight any potential restrictions or charges that may be payable.

*(b) What would be the most effective means of communicating this information to customers?*

47. In addition to including this information within existing customer communications RWE considers a targeted national campaign (funded by all suppliers) similar to DECC's 'power to switch' campaign may also increase prepayment customers' awareness of their right to switch tariffs, meters and/or suppliers.

*(c) What is a suitable frequency with which to contact customers? Would this messaging be more appropriately included alongside other messages or be triggered by particular events (such as outstanding debt being paid off)?*

48. RWE considers it may be more appropriate for the information to be included as part of the cheapest tariff messaging as prepayment customers would be reminded of their rights to switch at least three times a year (with two six monthly bill statements and within their RMR Annual Statement). Prepayment customers who have selected online billing will receive quarterly bills in line with the European Commission's Energy Efficiency Directive.

49. In addition, as noted previously<sup>9</sup> RWE is trialling an annual 'energy saving review' which would incorporate both a discussion on taking the right steps to save energy, along with a discussion on ensuring the customer is on the right tariff for their needs.

50. However, if the CMA is still minded to introduce an additional prompt to customers RWE considers that an annual prompt may strike the balance between effectively encouraging engagement against the cost and potential irritation that might arise from repeated prompts over and above those they already receive.

*(d) Should a prompting remedy such as this be introduced directly by the CMA or should this be an area that Ofgem considers running randomised controlled trials to assess its effectiveness?*

51. RWE would favour that Ofgem run trials to assess and demonstrate the effectiveness of this remedy.

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<sup>9</sup> RWE's response to Notice of Possible Remedies - page 80, paragraph 2.16

## **Remedy 21 – reform the protocol for assignment of debt on prepayment meters**

*(a) Would a remedy recommending Ofgem to address the above-mentioned issues be effective in ensuring that adequate changes to the DAP are implemented promptly? Or should the CMA instead use its order-making power to support Ofgem’s ongoing work?*

52. RWE considers that the issues identified by the CMA are in part a result of the DAP not being mandated for all suppliers. There are currently two debt transfer processes operating within the industry as not all suppliers signed up to DAP. RWE believes that in order to effectively address the issues Ofgem should mandate DAP for all suppliers. RWE considers that the CMA should recommend this change to Ofgem, since Ofgem is already working together with suppliers to improve the DAP process.

*(b) What is the most efficient way for Ofgem and the industry to improve the DAP process in relation to the above-mentioned areas identified by Ofgem in order to increase the switching rates of indebted PPM customers?*

53. As mentioned above, there are currently two debt transfer processes operating within the industry as not all suppliers signed up to DAP. Ofgem, via its Social Obligations Reporting (SOR), has been collecting data on the impact of the POA DAP model since Q2 2015. Based on data from seven suppliers operating the POA DAP model, EUK finds that approximately 33% of accounts with a debt under £500 that attempted to switch during Q3 2015 successfully switched supplier by the end of the quarter<sup>10</sup> – a significant increase on the 1% highlighted in Ofgem’s 2014 open letter<sup>11</sup>.

54. RWE is committed to working with Ofgem to continue developing the DAP process with a view to facilitating switching for indebted prepayment customers.

55. RWE believes that in order to further increase switching rates of indebted prepayment customers the DAP process should be mandated so that all suppliers follow the same process to ensure that the customer experience is the same regardless of which supplier they choose. This could be supported with a national campaign (funded by all suppliers) to explain that customers can switch supplier and transfer their debt to any new supplier once all suppliers are using DAP.

*(c) How would this remedy interact with the other remedies to address the Domestic AEC and/or detriment?*

56. We are unclear which particular other remedies the CMA has in mind and whether the CMA has any specific concern about the interaction between

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<sup>10</sup> Either via the DAP or by clearing the debt with the Old Supplier and removing the objection.

<sup>11</sup> Ofgem, 'Debt Assignment Protocol Review: the process for prepayment meter customers switching with a debt', Open Letter, 24 September 2014.

remedies. Without prejudice to our submissions in relation to all other remedies under consideration by the CMA, we do not immediately see any obvious conflict between this remedy and the other remedies set out within the RN, SRN and SSRN. Clearly the CMA will need to craft an effective and proportionate remedies package as a whole and, to the extent that other remedies reduce the scale of the AEC, it is appropriate to take that into account when deciding whether to adopt this remedy as a part of a remedies package.

*(d) Are there other impediments to switching for indebted PPM customers – other than those identified by Ofgem – that need to be addressed? If so, what are these and how should Ofgem or the industry address them?*

57. As discussed above, RWE believes that in order to further increase switching rates of indebted prepayment customers the DAP process should be mandated so that all suppliers follow the same process to ensure that the customer experience is the same regardless of which supplier they choose.
58. Customers with a debt in excess of £500 are currently unable to use the DAP. RWE considers increasing this limit could potentially allow more customers to use DAP.
59. The low number of alternative prepayment tariffs currently available for customers to switch to also acts as an impediment to switching for all prepayment customers, not just those with debt. Please see the proposals RWE has outlined in Appendix A to address this issue.
60. In addition to reminding prepayment customers of their right to switch supplier the remedy should also seek to encourage customers to consider switching tariffs with their existing supplier. An objection for debt does not arise where a customer wishes to change tariff with their existing supplier and, if they move to a lower-priced product (as one would usually expect), there should be the possibility of repaying the debt more quickly.

***Remedy 22 – A transitional ‘safeguard price cap’ for domestic prepayment customers***

*(a) If the transitional safeguard price cap for PPM customers were set relative to other prices in the domestic retail energy markets, how should we identify an appropriate level of prices and how can we ensure the level of the cap remains appropriate for the duration of the period it is in effect?*

61. We remain strongly opposed to the imposition of a safeguard price cap, even on a transitional basis.
62. For the reasons set out in more detail in our response to the RN, we consider there is no satisfactory basis for setting an “appropriate” safeguard tariff.

Furthermore, in our response to the RN, we explained why we consider setting a safeguard tariff “relative to other prices” involves the potential for distortions and that setting the safeguard tariff on a cost plus basis (whilst extraordinarily complicated) would be preferable. Whilst we recognise that a price cap that references other prices in the domestic retail energy markets would avoid the need for the lengthy cost assessment process that a cost-based price cap would require, we would nonetheless reiterate the concerns with this approach set out in our response to the RN.

63. The following response is made without prejudice to our strong opposition to the introduction of a safeguard tariff and our concerns about setting a safeguard tariff relative to other prices.
64. If a transitional safeguard price cap tariff for PPM customers were set relative to other prices in the domestic retail energy markets, we consider that in identifying an appropriate level of prices, the CMA should disregard tariff offers from small suppliers. This is because, for the most part, they have a cost advantage versus the Six Large Energy Firms driven mainly by their exemption from ECO costs. Failure of the CMA to do this would result in a safeguard price cap set at a level that does not reflect non-exempt suppliers costs (i.e. if it were based on an average direct debit annual bill value). Since prepayment customers are largely supplied by the Six Large Energy Firms the CMA should use only their direct debit bills.
65. We agree with the CMA that any safeguard tariff would need to allow for some headroom. As the CMA acknowledges this would “*provide opportunity for suppliers to offer profitable tariffs below the level of the cap*”<sup>12</sup>.
66. We would note however that the CMA’s proposal that the safeguard price cap should be set “*somewhere in excess of the prices of competitively priced tariffs...*” would lead to the prepayment safeguard price cap effectively tracking discounted acquisition tariffs (see further our response to (m) below). A supplier can only afford to offer a discounted acquisition tariff alongside a normally priced tariff on the basis that a certain proportion of customers on the discounted tariff will revert to the normally priced tariff after a certain period of time. A discounted acquisition tariff cannot exist on its own. The CMA would need to assess very carefully the level of headroom to ensure that the risk of unintended consequences such as not allowing for recovery of efficient costs is mitigated.

*(b) Could the imposition of a transitional safeguard price cap for PPM customers result in energy suppliers reducing the quality of service offered to customers on these tariffs? Is this risk reduced by prepayment customers’ ability to choose alternative, unregulated tariffs or changing to a smart prepayment meter?*

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<sup>12</sup> Second supplemental notice of possible remedies - page 16, paragraph 51

67. As discussed in RWE's response to Remedy 11 we consider that the imposition of a safeguard price cap tariff may result in a deterioration of service towards levels that are of a minimum acceptable standard to regulators/consumers, as suppliers seek to protect squeezed margins. This could clearly be the case if the safeguard tariff, as an unintended consequence, fails to allow for efficient recovery of costs.

*(c) How should the headroom be calculated to provide the right level of customer protection while not unnecessarily reducing healthy competition?*

68. The CMA should consider the impact of linking prepayment prices to 'acquisition tariffs' as this may lead to perverse commercial signals if headroom is too small. If the prepayment safeguard price cap is too low, or below a supplier's standard credit SVT price, SC customers (and possibly SVT DD customers) will get supplier 'cheapest tariff' messages advising them that prepayment offers lower bills, which could result in more customers opting to switch to prepayment. This consumer behaviour could be compounded with the rollout of smart meters.

69. Without prejudice to our strong opposition to the imposition of a safeguard tariff, if the CMA is minded to proceed with this, we would suggest that the CMA models the possible safeguard price cap levels and range of possible headroom values that could have been employed over a suitably representative period of time which captures varying market conditions (i.e. rising and falling wholesale costs). RWE believes that such modelling would be informative for the CMA and other stakeholders in assessing the feasibility of any prepayment safeguard tariff; it will allow interested parties to comment on the methodology based on a real example rather than in the abstract.

70. In particular, the relative price differential between the modelled prepayment safeguard and other tariff prices during the relevant period will help to identify potential unintended consequences.

*(d) What regulatory information would be required to set the transitional safeguard price cap?*

71. The CMA would need to clearly define what it means by 'competitive tariffs' and the rules around which types of tariffs are included or excluded within the formula used to calculate the price cap. RWE is not clear on the criteria the CMA envisages would be used to identify eligible offers. For example: whether the tariff offer would need to be available for a certain period of time, through all channels or a subset of channels; whether collective switches would be included; how the value added packages/bundles would be included (as a 'saving' or 'cost' apportioned to the total annual bill value); whether premium priced longer term offers would be included particularly when wholesale prices are rising and suppliers may not offer any tariffs which are cheaper than its SVT price; and, if

sale incentives are permissible, whether the value of this would be included within the annual bill value and how non-monetary incentives would be regarded.

72. The CMA would require the prices of all the 'competitive tariffs' of all suppliers listed in the formula and the cost to serve of both customers on these 'competitive tariffs' and prepayment customers in order to determine the appropriate cost differential.
73. The CMA would also need to be aware of, and properly take into account, any changes in these tariffs and the relative timings of changes versus the timing of resetting the safeguard tariff itself. The frequency of resetting the safeguard tariff resulting from variations in the information inputs (i.e. as tariffs are launched or withdrawn from the market) will clearly impact the process for providing a transparent notification to customers of the impact on them of any change in the safeguard tariff, as may be required under SLC 23 – see further our response to (j) below.

*(e) How long should the transitional safeguard price cap be kept in place? Is it appropriate to include a specific sunset provision, or should there be a commitment to review the need for and level of the safeguard price cap after a certain period of time?*

74. As set out in RWE's response to Remedy 11 and above, a safeguard tariff is likely to exacerbate any lack of engagement and competition which has prompted the CMA to consider its introduction. The longer it remains in place the greater the problem of residual customer disengagement is likely to be. Consequently, RWE considers that if the CMA is minded to implement such a remedy, it is essential for any remedy of this nature to be clearly defined in terms of its duration, with no potential for the remedy to become open-ended – i.e. it should include a specific sunset provision rather than only an obligation to review it.
75. Additionally, we would comment that if the CMA adopts the package of remedies supported by RWE, which would increase the choice and competitiveness of tariffs available to prepayment customers, we would expect this package of remedies to produce positive effects within a short timescale. Given that this period is likely to be very short, and given the costs and burden associated in implementing a safeguard tariff, RWE is firmly of the view that a transitional safeguard tariff would be entirely disproportionate.

*(f) Should the termination date of a transitional safeguard price cap remedy be linked to the roll-out of smart meters? If so then should this be done explicitly, in aggregate or on a customer-by-customer basis?*

76. We do not consider that the termination date of a transitional safeguard tariff should be linked to the roll out of smart meters. We have set out in this

response and in our response to the RN our support for a package of other remedies that will address the technical and regulatory constraints in the PPS and reduce any barriers to switching, as well as promote customer engagement. This package of remedies is capable of producing positive impacts within a short timescale. Given the serious risk of a safeguard tariff producing adverse consequences that are disproportionate to its aim, we consider it is essential that any such tariff be maintained for the shortest possible duration.

77. Additionally, the termination date should be universal and apply to all prepayment customers regardless of whether they have a traditional or smart meter.
78. Excluding smart prepayment customers from the safeguard tariff would lead to unintended consequences – e.g. a prepayment customer on the safeguard tariff with a traditional meter may face a price increase as a consequence of installing a smart meter as they would no longer be eligible for the safeguard tariff. This may increase the number of prepayment customers who refuse smart meter installation.
79. RWE’s proposal to mandate suppliers to make all fixed term tariffs available to all payment types would ensure that prepayment customers enjoyed the same potential benefits of competition as DD customers. Suppliers could use a common set of tariff codes (as outlined in Appendix A) to facilitate competitive offers for prepayment customers.

*(g) How frequently – if at all – would the level of the cap need to be reassessed?*

80. RWE considers the level of any cap would need to be reassessed at least annually to keep the prepayment safeguard tariff cap aligned to prevailing costs, but not much more frequently than annually because:
  - 80.1 Suppliers will incur multiple regular menu costs, and other operating costs associated with price changes (for example updates to literature (electronic/paper), system and website updates, increases in customer handling, service calls and queries, staff briefings, etc.). Costs of this nature can be expected to be incurred each time there is a change to prices triggered by a change in the safeguard price cap where either pre-notification of the change to customers is required pursuant to SLC 23 or where it is otherwise considered important by the business to write to customers in connection with a pricing change.
  - 80.2 Similarly, if the safeguard cap is reassessed too frequently, PPM customers will potentially suffer from increased volatility in price movements as compared to the relative stability of SVT prices. This may create budgeting difficulties for prepayment customers. The CMA should consider a tolerance level whereby only price changes of a material level result in a change to the safeguard tariff cap, to

prevent suppliers incurring significant menu costs for an immaterial price change.

*(h) Which prepayment customers should this remedy apply to?*

81. If imposed, RWE believes this remedy should apply to all SVT prepayment customers supplied by all suppliers.

*(i) Which energy suppliers should be subject to the transitional safeguard price cap, and why? Should it be restricted to the Six Large Energy Firms, or should all retail energy suppliers be covered?*

82. If the CMA considers that a safeguard price cap is required, i.e. that there is no reasonable prospect of competition within the prepayment segment despite the introduction of the other remedies under consideration, and that a safeguard tariff is an effective and proportionate remedy, then in RWE's view it would be appropriate to protect all customers irrespective of which supplier they buy their energy from. Failure to do this would risk creating a distortion in the market (over and above any distortion that might anyway result from a safeguard tariff).

83. All suppliers should be subject to any prepayment safeguard price cap otherwise customers of exempt suppliers may believe that a widespread cap affords them protection and yet find that their supplier sets their prepayment charges above the cap.

*(j) How should the transition from the current arrangements be managed? Should there be a period over which the transitional safeguard price cap is phased in? If so, how long should this period be and how should the transition work?*

84. In principle any safeguard tariff should be phased in over a period of time to smooth out operational constraints that suppliers may face if a 'big bang' approach was adopted. RWE considers that a period of three months from the date on which the transitional safeguard price cap tariff rate is published would allow suppliers sufficient time to determine their safeguard tariff rates and notify consumers of price increases and/or decreases (in the case of an increase, this would need to be 30 days prior to the increase as required under SLC 23).

85. It is also worth noting that suppliers will currently have hedged some commodity positions to meet the needs of their PPM customers, both fixed (where applicable) and standard. Suppliers could potentially be left with a significant variance in cost versus those assumed under a safeguard tariff calculation which may result in excessive costs or windfall profits. The CMA should consider some lead time for the implementation of a safeguard tariff so as to enable suppliers to adjust their hedging positions to properly reflect the cost base mandated by the safeguard tariff.

86. Given the CMA's own concern that setting a regulated tariff at the right level is very difficult, the CMA might also usefully give consideration to a staged approach to establishing the appropriate headroom within any safeguard price cap tariff, so that the headroom might be set at a cautious (higher) level at the outset, and then reducing subsequently. This could help manage the potentially harmful impact to customers of stifling competition where customers perceive that there is little benefit in seeking competitive offers given the protection afforded by the safeguard tariff – although clearly as competitive conditions can change quickly such an approach remains far from providing a simple solution.

*(k) Would energy suppliers have the ability to circumvent the remedy, for example, by encouraging domestic prepayment customers to switch on to less favourable, unregulated tariffs, and how could such risks be mitigated?*

87. The CMA should explain clearly what it means by a less favourable tariff. It is not clear whether a premium priced long term prepayment fixed price tariff is a more or less favourable product compared to a safeguard price cap tariff which is subject to regular price reviews and market volatility.

88. As discussed in RWE's response to Remedy 11, RWE considers that the scope for circumvention would be limited. RWE would only encourage customers to switch to the most appropriate tariff for them. There are existing marketing rules (SLC 25 and the associated principles) and Standards of Conduct, as well as Trading Standards, Advertising Standards etc., which should prevent misleading practices.

89. Nevertheless, there is a risk that faced with a prepayment safeguard price cap, suppliers will re-evaluate the commercial viability of a prepayment customer versus a credit customer. A supplier may be tempted to reconsider their decisions to enforce prepayment meter installations and swap more prepayment meters for credit meters – there is a risk therefore that this will mean customers are not on the most appropriate meter for their circumstances.

*(l) Should the CMA set the level of the transitional safeguard price caps itself, or should the CMA make a recommendation to Ofgem to do so?*

90. Without prejudice to our strong opposition to this remedy, should the CMA be minded to proceed with it, RWE considers that Ofgem should set any transitional safeguard price cap tariff. However the mechanism for setting the safeguard price cap must be clear, detailed, and fully transparent and any decisions in relation to the setting of the safeguard price cap levels should be subject to a fair process including rights of appeal.

*(m) Are there any potential unintended consequences of setting a transitional safeguard price cap, for example, in terms of their potential impact on the level of other, unregulated tariffs?*

91. If the prepayment safeguard price cap is set too low, or below a supplier's receipt of bill (referred to as 'standard credit' or 'SC') SVT price, an unintended consequence could be that suppliers avoid installing prepayment meters to assist indebted SC customers and are discouraged from seeking to acquire new prepayment customers.
92. A further consequence of this scenario will be that SC customers (and possibly SVT DD customers) will get supplier 'cheapest tariff' messages advising them that prepayment offers lower bills. This may result in more customers transferring to prepayment.
93. Linking prepayment to competitively priced DD tariffs effectively introduces a prepayment tariff that tracks other tariffs – this will reduce switching as customer's potential savings are reduced and customers know that they are getting a deal linked to the best in the market. Customers on DD or SC may consider a prepayment 'tracker' an attractive offering and opt to switch to prepayment.
94. Setting the safeguard tariff relative to other energy products in the market may increase the volatility of the price of the safeguard tariff to the detriment of risk averse consumers if it is set too frequently. This methodology risks linking the price of a default variable priced product with energy products that currently have very different characteristics (e.g. fixed term, fixed price). Rules governing how the calculation of the benchmark retail price is performed would require frequent review and strong governance to keep pace with evolving product structures and regulatory risks. The CMA would need to exercise great care when considering which products would be appropriate to include when defining any safeguarding tariff. Behavioural change by suppliers on the advent of a safeguard tariff would be very difficult to anticipate.
95. An alternative option would be to mandate all suppliers to make their fixed term contract offers available to all payment methods, including prepayment. The current differential between DD and SC could remain (providing it reflects the respective cost to serve and is common across all the supplier's products), with suppliers prevented from charging any differential pricing between SC and prepayment prices. This would require the use of common prepayment tariff slots as described in Appendix A.

## **Appendix A RWE alternative proposal**

1. RWE believes an alternative package of remedies could stimulate competition within the prepayment segment and achieve increased customer engagement by ensuring more alternative prepayment tariffs are available within the market. This will not only facilitate switches between suppliers but it will also enable prepayment customers to switch tariffs with their existing supplier. As the CMA has already proposed certain measures to increase customer engagement this could be supported by :
  - (a) the removal of the four core tariff limit;
  - (b) the introduction of common tariff slots; and
  - (c) the requirement for all suppliers to make all fixed term contracts available to all payment methods. Suppliers would still be permitted to maintain appropriate cost differentials between the different payment types.

### **Removal of the four core tariff limit**

2. RWE believes that increasing the number of tariffs allowed by implementing Remedy 3 (Removal of the simpler choices elements of RMR) will enable suppliers to design a diverse range of offers to meet customer demand, thereby increasing customer choice and stimulating competition between suppliers and PCWs alike. It will also stimulate price competition by allowing cash and non-cash discounts on SVT, and encourage product innovation by allowing suppliers to target offers at certain customer groups. When combined with RWE's proposal that all tariffs must be offered to all payment types and the use of common prepayment tariff slots, explained below, this would ensure that prepayment customers enjoyed the same potential benefits of competition as DD customers.

### **Introduction of common tariff slots**

3. As highlighted in RWE's response to the CMA's Request for Information on prepayment meters<sup>13</sup> RWE believes that a way of addressing the technical constraints on prepayment tariffs could be to use supplier-shared gas (and potentially electricity) prepayment tariff codes. With a greater use of common tariff 'slots' more suppliers would be able to offer prepayment tariffs – and they could each offer more tariffs. This could be done by designating a number of tariff slots for common use. A range of daily standing charges (DSC) and kWh values could be agreed and set up on the slots which would then be available for all suppliers to use.

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<sup>13</sup> Submitted 16 November 2015 – paragraph 1.14

4. For example, for gas, DSC could be available in 1p increments from 10p/day to 30 p/day; kWh could be set in 0.05p/kWh increments from 3.50p/kWh to 4.50p/kWh. At present the standard gas prepayment tariffs of the Six Large Energy Firms all fit within such a range. Electricity tariffs would require a larger range of slots to cover Economy 7 day and night unit rates but the same concept could work in both fuels.
  
5. In setting their prices in preparation for a new product launch suppliers would first determine where they would wish to set their standing charge and unit rate(s) in order to produce an annual bill for their target customer at a given annual kWh level. Then they would review the available range of tariff slots for each element. They would select the nearest DSC and kWh rates to their preferred settings. The supplier would then double check that the selected slots would provide the target revenue and fine tune selection/s accordingly. For example, if the supplier was obliged to select a kWh rate slightly lower than their preferred rate and found that the kWh rate immediately above their selection raised their target bill level to an unacceptably high they could instead select a higher DSC.

**Table1: Illustrative daily standing charge values**

Slot	DSC (p)
1	10.0
2	11.0
3	12.0
4	13.0
5	14.0
6	15.0
7	16.0
8	17.0
9	18.0
10	19.0
11	20.0
12	21.0
13	22.0
14	23.0
15	24.0
16	25.0
17	26.0
18	27.0
19	28.0
20	29.0
21	30.0

**Table2: Illustrative unit rate values**

Slot	p/kWh
22	3.50
23	3.55
24	3.60

25	3.65
26	3.70
27	3.75
28	3.80
29	3.85
30	3.90
31	3.95
32	4.00
33	4.05
34	4.10
35	4.15
36	4.20
37	4.25
38	4.30
39	4.35
40	4.40
41	4.45
42	4.50

6. The values suggested are merely illustrative; the actual value range could be agreed by supplier representatives in the Gas Prepayment Expert Group Forum. If wholesale costs shifted downwards and slots at the upper end of the range fell out of use it could be agreed to reuse those slots with lower values and so extend the range at the lower end. If more slots could be designated for common use the range of DSC values and/or kWh values could be extended; alternatively the size of the increments between values could be reduced to allow suppliers greater opportunity to 'fine tune' their price position.
7. If there are insufficient spare slots to facilitate such a range of common slots at present the Six Large Energy Firms could be asked to contribute a relatively small number of their presently unused slots; they would then have access to the shared slots.
8. For the avoidance of doubt, we would not envisage that the use of common slots would give rise to common pricing or the convergence of pricing between suppliers. Suppliers would remain completely free to determine which slots they use and would not know which slots were being used by other suppliers. The only technical constraint on pricing resulting from this would be that suppliers would need to devise their tariffs using the available DSC and kWh slots and would therefore be slightly limited in their ability to increase or decrease their DSC or kWh values incrementally. However, we consider that this would represent a significant improvement on the technical constraints under the current system.

**All suppliers to make all fixed term contracts available to all payment methods**

9. RWE is concerned that the CMA's proposed prepayment remedies seek to encourage prepayment customers to switch to credit meters rather than facilitating switching by increasing the number of alternative prepayment tariffs available to customers. For some customers the most appropriate tariff may be a prepayment tariff to enable them to manage their energy expenditure. RWE's proposal on the use of common slots would facilitate our further proposal that all fixed term tariffs should be made available to all payment methods. Under these combined proposals, PPM customers will have a greater choice of tariffs and RWE suggests that more customers will choose to switch supplier or to transfer to an alternative prepayment tariff with their current supplier.