



uSwitch response to the CMA's energy market investigation provisional decision on remedies

Non-confidential version

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1 Executive summary

1.1 About uSwitch

uSwitch is an online and telephone price comparison and switching service, helping consumers get a better deal on gas, electricity, home phone, broadband, digital television, mobile phones and personal finance products including mortgages, credit cards, current accounts and insurance.

uSwitch is part of Zoopla Property Group plc, a digital media business that owns and operates some of the UK's most widely recognised and trusted online brands including Zoopla, uSwitch and PrimeLocation.

uSwitch welcomes the progress that the CMA has made to date. We believe the focus now needs to shift to translating the remedies package into action helping more consumers engage, making the energy market more competitive over time.

1.2 Market competition

uSwitch firmly believes that strong, competitive markets deliver the best consumer outcomes. As such we remain convinced that effective competition is the answer to fixing the UK's energy market. The evidence is clear to us that consumers who engage today are creating a competitive market, as witnessed by the growing number of new entrants and falling cost of market leading fixed price deals. But the fact remains that there are far too many disengaged consumers in the energy market, languishing on expensive standard tariffs and unnecessarily overpaying for their energy as a result.

We therefore agree with the CMA's analysis of the problems in the energy market. We also agree it is right to focus on remedies to help more consumers to engage in the market, together with measures to enable suppliers, price comparison websites (PCWs) and other third party intermediaries (TPIs) to offer more innovative products and services to ultimately improve consumer's experience in the energy industry.

1.3 Proposed remedies package

uSwitch believes the CMA's suggested remedies are a step in the right direction. Opening up a more active retail market and providing greater scope for innovation will allow increased targeting of more niche customer groups that may not have engaged in the market previously.

In our response we have set out comments in relation to specific remedies that the CMA is proposing, including areas where we believe remedies could be refined to be more effective, for example on the implementation of The Database remedy.

Many consumers are today struggling with the cost of energy. Therefore, it is imperative that the final proposals are implemented by the Government, regulators and the industry as quickly as possible.

1.4 Measuring success

Overall success of the remedies package will be in a large part down to the finalised detail and how Ofgem develops and implements these changes. As part of ensuring the public has confidence in the final reforms, and to help rebuild trust in the energy market, it is vital targets are set for measuring the success of these remedies.

We believe setting KPIs and targets, for example on switching levels, would focus policymakers on ensuring the regulatory environment delivers a competitive market with the right consumer outcomes. These targets should be set and agreed as the CMA concludes its formal investigation process by June 2016.

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3 Reforms to retail market regulation

Whilst it is important to get the details right in implementing changes to the 'simpler choices' component of the Retail Market Review (RMR), we believe that Ofgem should be able to progress these reforms swiftly to ensure consumers quickly experience the benefits of increased competition. In order to support this process, Ofgem's review of the 'simpler choices' component of the RMR and its Confidence Code need to happen simultaneously, and as quickly as possible, following the CMA's final ruling in June.

3.1 Opening up innovation

We agree that removing the four-tariff rule will benefit consumers by boosting innovation, choice and competition across the wider market. It will enable new products and services to be developed, for example products targeting niche customer groups or deals offering energy saving measures alongside energy plans.

The CMA should be mindful that the market has changed significantly since the RMR simpler choices reforms were first implemented in 2013. With more than ten new supplier entrants to the market in the past year alone, the total number of tariffs available when the cap is removed will be vastly higher, with the potential for large variations in tariff structure. As we have previously highlighted to the CMA, this raises new risks with respect to a consumer's ability to compare options on the market. As such we are pleased the CMA has also considered remedies to mitigate this.

3.2 Comparability

As part of enabling the industry to increase consumer choice, we are pleased that the CMA has recognised that maintaining the principle of comparability among tariffs is an important part of enabling consumers to make informed decisions about the right deal for them. However we believe there is a need for wider comparability requirements to be placed on suppliers.

We also welcome that the CMA has placed specific emphasis on the role of PCWs, such as uSwitch, as a crucial part of making the energy market work effectively. In particular the more choice available in the market, the greater need for consumers to have access to PCWs to reduce search costs and aid informed decision making.

3.2.1 Standard of conduct remedy

We note the CMA's suggestion in paragraph 6.93 of its provisional decision document regarding a standard of conduct for suppliers *"to have regard in the design of tariffs to the ease with which customers can compare value for money with other tariffs they offer"*.

However, we highlight that there is a risk in such a standard being constrained to comparability within the supplier's own tariff-set. We are concerned that tariffs across suppliers will become more difficult for consumers to compare as suppliers naturally diverge tariff structures. Further, increased complexity in tariff design may also result in more complicated bills, which could also prove an increased barrier to consumer engagement.

We suggest that this standard should go beyond comparability within the supplier's own tariff-set to include a requirement that suppliers must not construct tariffs in a way that unreasonably restricts consumers' ability to compare it with tariffs on the wider market. We believe this would enable Ofgem to take action in situations where suppliers needlessly complicate tariff structure.

PCWs provide a tool allowing consumers to quickly and easily access a wide market comparison, however these tools are currently largely reliant on the quality of information entered by the customer. The expected increase in the number of available tariffs due to the removal of the four-tariff rule may make a customer's initial plan selection on a PCW more difficult. Therefore, there also needs to be requirements within tariff design for consistent and unique tariff naming conventions.

3.2.2 Bills and annual statements

We note that customer communications play a key role in engagement, providing an opportunity to prompt consumers to compare other options available to them. We welcome further work by Ofgem on overhauling regulations relating to confusing energy bills and annual statements. The focus of this project needs to be on giving consumers the information they need, in a format that they can understand, so they have both the ability and confidence to shop around.

We believe this will be an increasingly important piece of work to allow competition to function in the more complicated product market envisaged by the removal of the 'simpler choices' regulations. Ofgem and the industry must get it right to ensure consumers can continue to quickly extract the information they need to run an accurate market comparison.

3.3 Incentives for exclusive tariffs

Following implementation of the remedies package, we expect PCWs will compete to bring competitive exclusive deals to the market. We also expect that with enhanced incentives for PCWs to participate in the market there will be investments in service improvement, including the development of more targeted offerings appealing to different consumer demographics.

Supported by increased marketing activity, this will likely raise consumer awareness of the ease of switching energy supplier, in turn increasing competition in the energy retail market. Ultimately this competitive pressure should result in a reduction in tariff prices with more attractive offers for customers.

3.4 Temporary prepayment price control

We welcome the CMA's proposal to introduce a prepayment price control, as a temporary solution only, to help protect consumers from the current barriers to more effective competition in the prepayment energy market. This should be viewed ultimately as a competition remedy rather than a long term move towards greater retail price regulatory intervention. The CMA's remedy in this area should be a stop-gap while key barriers to competition to be removed, and for the rollout of smart meters which should make it easier for prepayment customers to access the wider market.

We would also like to highlight recent increased supplier focus and innovation in the prepayment market, with initiatives around smart PAYG meters and greater diversity in tariff types. It is important that whilst the temporary prepayment price control reduces consumer harm resulting from a lack of competition in the prepayment market, it should not stifle emerging innovation in this area.

3.5 Timescales for implementation

We would welcome Ofgem conducting preparatory work now on the CMA's proposals to ensure the remedies can be implemented as soon as possible. In addition, the timings of implementation should also be coordinated to ensure the collective benefits of the package are realised and no unintended consequences detrimental to competition are (even temporarily) introduced.

4 Customer database remedy

4.1 Information overload

We are concerned that proposals to share customer data between providers, while well intentioned, could actually lead to consumers being inundated with unsolicited marketing material from multiple suppliers. This risks further confusion - particularly among the most vulnerable - and could in fact further entrench already high levels of apathy.

4.2 Alternative approach

We believe a much more effective solution would be for DECC and Ofgem to build on the successful *Power to Switch* campaign and target customers who have been on standard variable tariffs for a long time directly, instead of providing access to rival suppliers. We believe that *Power to Switch* branded communications, which clearly and impartially explain the benefits and process of switching to the customer would be much more effective in driving engagement.

We note that Ofgem's 'Be An Energy Shopper' website directs visitors to Confidence Code accredited price comparison websites. However, millions of unengaged customers lack the ability and confidence to use the internet for energy switching.

If the CMA was to amend its database remedy to focus on impartial communications, we suggest the CMA also considers expanding the scope of its recommendation to Ofgem to include extending the Confidence Code to cover other TPIs. In the spirit of more principle-based regulation, the Code in future could also be applied to telephone comparison services and collective switching schemes, in addition to core price comparison websites. Once this has been completed, accredited comparison contact centres could have their telephone numbers included as part of a rolling *Power to Switch* marketing campaign.

We believe this version of the database remedy could be less intrusive and limit any data protection risk. For example, suppliers could be required to send the set *Power to Switch* communication themselves to their own customers in the target group, albeit without their branding or any other promotional material.

5 Data access for price comparison websites

We welcome the CMA's remedies to enable PCWs to offer improved services. Better industry data integration recognises the key role that PCWs play in continuing to increase engagement levels and will encourage further competitive service innovation from TPIs. We expect a positive outcome for consumers with the development of more useful and timely personalised prompts, an increase in the number of successful switches and reduced hassle factors for consumers when switching.

In particular we welcome these remedies as initial steps in the industry movement towards smart meters - both enhancing industry and consumer confidence in the value that better insight and data can bring. Early innovation in this space will also encourage a Test and Learn approach so that the additional consumer value created by smart meters can be realised quicker.

Smart meters will offer significant and potentially transformational opportunities to improve the comparison and switching process. Intermediary access to smart meter data, when consented to by the consumer, could ensure that customers do not have to interpret bills to discover their usage or what tariff they are on and opens the opportunity of comparing more complex Time of Use tariffs.

5.1 ECOES and SCOGES

We remain fully supportive of proposals to grant PCWs access to ECOES and SCOGES and believe this will reduce the number of consumers experiencing problematic switches due to the different data points used by PCWs and suppliers. Even minor improvements in the rate of erroneous transfers, failed switches and the aggravation caused by delays and problems in the switching process will reduce ongoing consumer apprehension around switching.

We also encourage the development of replacement systems to overcome the errors and legacy issues prevalent in ECOES to further improve the switching experience for all customers.

5.1.1 Reasonable terms

We note the CMA has proposed to include a reasonable terms condition in its order on Gemserv and Xoserve, but without defining in detail the access conditions or charges that could be levied on PCWs. For this remedy to be useful the terms offered to PCWs will need to be fair, and the cost must not be prohibitive.

5.1.2 Link to the smart meter programme

We note that the CMA intends the ECOES and SCOGES access remedies to be in place until 2020, to align with the completion of the rollout of smart meters. We suggest that the relevant order to implement this remedy is drafted to ensure that if the smart meter rollout programme was to be delayed beyond 2020, the order remains in place.

5.2 APIs

Recent developments in the market has highlighted a further area where improved TPI data access is becoming increasingly important - the transfer of tariff data between suppliers and TPIs.

Current Confidence Code obligations on attaining tariff information sit firmly with TPIs but there needs to be more emphasis on supplier requirements to provide comprehensive and structured tariff information. Without this, there is little incentive for suppliers to support improvements in this area.

We advocate requirements for suppliers' to provide tariff data via standardised APIs.

5.3 Midata programme

We will continue to develop our service so that consumers can easily access the market - both through our website and our call centre, especially as more tariffs, products and suppliers are launched. As part of this, we remain supportive of increased frequency of access to data that the CMA has suggested for the DECC Midata programme.

6 Switching by tenants

6.1 High levels of disengagement

The CMA had previously identified the UK's rental population as a significant – and growing – group of consumers which are particularly disengaged from the energy market. Therefore, it is disappointing to see the absence of proposed specific remedies aimed at helping more tenants get in control of their energy use and spend.

Our own research, published as part of uSwitch's 'Right to Switch' campaign last year, reveals high levels of confusion about tenants' right to switch supplier among landlords and tenants alike.¹ More than one in five (23%) tenants mistakenly believe renters who are responsible for their energy bills cannot choose their own supplier. One in ten (13%) of the landlords questioned admitted unfairly preventing a tenant from switching energy supplier – rising to a fifth (19%) among those letting out three or more properties. The use of 'preferred supplier' clauses in tenancy agreements appears to result in confusion among tenants, with almost four in ten (39%) incorrectly believing these means they have to remain with the named supplier.

6.2 Use of consumer enforcement

We believe that the absence of remedies designed to tackle some of the many issues affecting the rental sector is a real missed opportunity. We would urge the CMA to look again at tackling confusing contract terms relating to energy switching in tenancy agreements. For example, reviewing the preferred supplier clauses that many landlords are using unfairly to prevent tenants from exercising their right to switch. We also believe the CMA should mandate the inclusion of a simple, standard clause in tenancy agreements that states that tenants who pay for their energy directly have the right to switch energy supplier. We believe that this work could be taken forward by one of the CMA's consumer protection teams.

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<http://www.uswitch.com/media-centre/2015/09/uk-landlords-add-over-161-million-to-tenants-energy-bills-by-denying-their-right-to-switch/>

7 Moving forward

We welcome the CMA's consideration of how to ensure that both Ofgem and the Government are best equipped to ensure the energy market remains geared towards competition as a means of improving consumer outcomes, after the CMA's intervention is concluded. We suggest the CMA's final report sets out key performance indicators that will allow future monitoring of whether the proposed remedies are successful. By doing this the CMA would engender further trust in the market investigation process, but also create an incentive on industry and policymakers to ensure the remedies are successful should they wish to avoid potential future regulatory intervention.

7.1 Role of Ofgem

We agree with the CMA that the focus of Ofgem should be that of an empowered economic regulator. We would like to see, in all its decision making, a clear economic analysis on whether policy options are likely to increase the level of active competition in market and for this premise to be firmly at the heart of all its decisions.

With information remedies, Ofgem should not shy away from a 'test and learn' approach where appropriate in the future, to build its understanding of what works for consumers, before implementation across the market. With other actions that could unlock greater market competition, Ofgem should have a more agile approach, moving swiftly to ensure consumers reap the benefits as quickly as possible.

7.2 Social policies to complement market policies

We feel the Government has helped make a clearer case for regulators, such as the CMA and Ofgem, to focus on ensuring the economics of the market are correctly geared towards effective competition. For the Government itself, however, we think this presents a greater onus to ensure that social policies on energy help the most vulnerable. In particular, we believe the Warm Home Discount should apply to all suppliers in the market so those who qualify have confidence they will not lose the discount if they choose to switch. In addition, we think the Government should look to deploy winter fuel payments in a more targeted way to help more of society's most vulnerable.

7.3 Market switching targets

Finally, we believe that clear targets must be established for industry and regulators to evaluate the success of the CMA's proposed reforms. Switching

rates are one such indicator of engagement and so targets should be set to monitor the number of consumers changing supplier, tariff and comparing deals as reforms are put in place.

Last November uSwitch called for a inter-supplier switching target of 20% by 2018 and 25% by 2020. In comparison to historic energy switching rates we believe these targets would be achievable and would allow the benefits of improved competition to be felt by many more consumers. In fact this increased level of engagement could be transformational, putting huge pressure on the Big 6 to offer better deals, better service and improve the efficiency of their processes.

We urges the CMA to include switching targets in its final report, as a recommendation for Ofgem and the Government to accept. We suggest the CMA's proposed Ofgem State of Market report would be the ideal vehicle to track progress towards such a target.