



Monday 20th October 2014

Open letter from consumer campaign The Big Deal (www.thisisthebigdeal.com) to the major price comparison websites: Douw Steyn of Compare the Market, Simon Nixon of Money Supermarket, Hayley Parsons of Go Compare, Henry Englehardt of Confused and Chris Hurley of Lloyds Development Capital, private equity arm of Lloyds bank that owns uSwitch

Dear Sir / Madam,

Since 2005 the five biggest price comparison websites' post tax profits have more than quadrupled to £170million a year. These sites claim to be fair and impartial. Over a 13 week period we analysed the results given by price comparison websites when identical user information is inputted. We found:

- All the major price comparison websites hid the cheapest deal from customers. Many for weeks on end.
- uSwitch, the largest energy switching website, never showed the cheapest deal. It regularly hid three out of the top five cheapest deals.
- Every site uses a mechanism to hide deals where they ask users if they want to see deals they can switch to "today" or "now".
- Clicking "Yes" filters out all deals which do not earn the price comparison site a commission from the energy company. Often these deals are the cheapest.
- Money Supermarket and Confused pre-fill this question "Yes".
- Compare the Market and Go Compare automatically show users the results without even asking this question. You have to go through several screens to "filter your results" to see the cheapest deals.
- Overall price comparison sites hid almost a third of deals from customers via this method.

This research shows that these sites are hiding from customers the cheapest deals. If they don't get paid by an energy company for a deal then they will hide it from people even if it's the best deal in the country.

We believe this research raises major concerns about the activity of these sites and whether they are behaving dishonestly and unethically.

The full findings of our research including over 200 screenshots of price comparison websites going back to July 2014 are available on our website www.thisisthebigdeal.com.

Number of tariffs shown when the Today button is clicked yes and no

(Results taken from 15 October 2014, for Merseyside and North Wales region)

Website	Today button yes	Today button no	Steps needed to reveal all deals
Compare the Market	106	157	Four-step process (click on 'Refine your results', select tab 'Other options', tick box 'Show tariffs I can't switch to now', click 'Update results')
Gocompare.com	98	154	Two-step process (Go to 'Filter results' box, select 'All tariffs' under the 'Show me' section, click 'Update Prices')
uSwitch	26	47	Asks: 'Show plans we can switch you to today?'. Select 'No'.
MoneySuperMarket	49	74	Asks: 'Show energy deals we can switch you to today?' with 'Yes' pre-selected. Select 'No'.
Confused.com	60	102	Asks customers: "Show me tariffs I can switch to today", with 'Yes' pre-selected. Select 'No'.

Breaking EU and English law

We believe that this behaviour is a clear breach of EU and English law. The commercial practices uncovered by our evidence are "unfair" and "misleading" as set out in the Unfair Commercial Practices Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 and The Consumer Protection from Unfair Trading Regulations 2008.

EU law states that a commercial practice is "unfair" if "it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer".

It also states that a commercial practice is "misleading" if it "deceives or is likely to deceive the average consumer, even if the information is factually correct" and "causes or is likely to cause him to take a transactional decision that he would not have taken otherwise".

Most damningly for these websites, EU law states that a commercial practice is "misleading" if "it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise".

The articles of EU and English law which we believe price comparison websites are in breach of are set out in the appendix at the end of this letter.

Price comparison websites must stop this behaviour

Price comparison sites are worth hundreds of millions of pounds, make huge profits and with over 5 million people switching a year are a major part of the energy market. Yet there is no transparency to how they make their money or how much they charge. Polling by Populus found that 43% of people did not even realise that the sites charge energy companies a commission.

But these sites spend tens of millions of pounds on advertising campaigns, prize draws and fluffy toys which make them household names. These are all costs that ultimately the customer bears. Energy companies pass on the costs of commissions in higher gas and electricity bills.

Therefore we ask that you and all price comparison sites take immediate action to stop misleading the public by:

(a) removing the “today” button from your website so that the cheapest energy tariffs are not hidden from the consumer

(b) publishing the amount of commission you receive from each energy company so that users can see how much money is being put on to their bill by your activity and there can be healthy competition between price comparison sites. Transparency will ensure users can make informed choices about which site to use and therefore drive down commissions and energy bills.

Polling from Populus shows that the public strongly agrees with our suggestions:

- 79% think energy switching sites should automatically ensure every user sees the lowest priced tariff whether the site receives a commission or not. Just 7% disagree.
- 74% think switching sites should publish in full the commissions they receive. Just 5% think it is a bad idea.
- Half of people (47%) don't trust switching sites. Just 3% think they are very trustworthy.

Politicians must act

Politicians regularly claim that they protect customers from this kind of behaviour in the energy sector.

- Energy Secretary Ed Davey said at the recent Liberal Democrat Conference that his party is “on the side of the consumer”.
- Prime Minister David Cameron said last year that his energy policy is about “putting people before profits”.
- When announcing his energy price freeze last year, Ed Miliband said it shows that Labour will be “a government that fights for you”.

We copy this letter to the David Cameron, Ed Miliband, Ed Davey and Shadow Energy Secretary Caroline Flint and say that if they are serious about protecting the public then they need to act immediately to stop this

behaviour from the price comparison websites.

This letter is also copied to the Competition and Markets Authority and we ask that they expand their investigation of the energy market to include the activities of price comparison websites.

We also copy this letter to the EU Competition Commission and formally request that they investigate these possible breaches of EU law under the Unfair Commercial Practices Directive.

This letter has also been copied to the Chair and members of the Energy and Climate Change Select Committee and we request that their committee should formally investigate the behaviour of price comparison websites.

Your sincerely

Henry de Zoete
Co-founder of The Big Deal

Will Hodson
Co-founder of The Big Deal

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Letter copied to: Prime Minister David Cameron, Opposition leader Ed Miliband, Energy Secretary Ed Davey, Shadow Energy Secretary Caroline Flint, EU Competition Commission, Competition and Markets Authority and the Energy and Climate Change Select Committee Chair and members, and Ofgem

APPENDIX

Articles from the Unfair Commercial Practices Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005

Article 5 - Prohibition of unfair commercial practices

1. Unfair commercial practices shall be prohibited.
2. A commercial practice shall be unfair if:
 - (a) it is contrary to the requirements of professional diligence,
and
 - (c) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

Article 6 - Misleading actions

1. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:
 - (a) the existence or nature of the product;
 - (b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;
 - (c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;
 - (d) the price or the manner in which the price is calculated, or the existence of a specific price advantage

Article 7 – Misleading omissions

1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.
2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional

decision that he would not have taken otherwise.

Articles from The Consumer Protection from Unfair Trading Regulations 2008

Prohibition of unfair commercial practices

(3) A commercial practice is unfair if –

- (a) it contravenes the requirements of professional diligence; and
- (b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product

Misleading actions

5.-- (1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).

2. A commercial practice satisfies the conditions of this paragraph—

- (a) if it contains false information and is therefore untruthful in relation to any of the matters in paragraph (4) or if it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that paragraph, even if the information is factually correct; and
- (b) it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

(4) The matters referred to in paragraph (2)(a) are—

- (a) the existence or nature of the product;
- (b) the main characteristics of the product (as defined in paragraph 5);
- (c) the extent of the trader's commitments;
- (d) the motives for the commercial practice;
- (e) the nature of the sales process;
- (f) any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product;
- (g) the price or the manner in which the price is calculated;
- (h) the existence of a specific price advantage;

Misleading omissions

6. (1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in paragraph (2)—

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
- (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context,

and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.