

Introduction

Clearly the CMA has not applied the same diligence on their investigation into the micro-business sector as they have in regard to the domestic market. This is borne out by the lack of input from Tpis and their Trade Organisation and the lateness in the process of the enquiries made to those who were approached. The proposals made by the investigation show a shallow knowledge of the Tpi market and indeed the complexities of the micro business sector as a whole.

The report promotes the role of PCW and switching sites even though there is no enforceable regulation of that market and reduces the voluntary commitment. This despite the very wide criticisms made of this part of the market by the Energy Select Committee.

Clearly the suppliers have; once again, used their vast resources to convince the Authority that there is little wrong in the market in order to persuade them to largely leave suppliers alone. In addition, should the greatest impact be to reduce the role of Tpis as an independent customer representative, then the "Big Six" with their sales teams will be very happy but it will be to the detriment of customers and those suppliers who do not have sales teams.

The report also recommends at least two measures that are well in train of being resolved by the industry and Ofgem. There are on-going belated investigations by Ofgem and Trading Standards into the behaviour of a supplier and a group of associated organisations that could have an impact on the Tpi Market. Complaints are already falling dramatically now that these investigations have commenced.

UIA agrees with the declaration of fees so long as there is a fail safe way of declaring them. Over the past eight years we have been unable to find one. Suppliers will inevitably demand that Tpis declare their fees when they themselves have spent the last twenty years "hiding" their financials from the Regulator and some, even now, share in the exorbitant fees charged by some Tpis. Aggregators seem to escape comment despite there being serious questions about data protection issues and breach of same, together with the fact that they are opaque to the customer. Straight declaration of fees will encourage even more lies and opportunities for rogue Tpis to defraud customers, without the circle is completed by suppliers confirming that fee on their bills. Even then, as could be shown from current investigations, where a supplier owns an aggregator or is too close to a Tpi this may not be tight enough. The monies paid to a Tpi are not only for the letting of a contract but the ongoing support to that contract. Suppliers frequently compare their **profit** on a contract; having taken out their running expenses, with the gross margin charged by a Tpi.

The Tpi not only has the effect of reducing prices but it acts as an introducer to the supplier and receives a commission from THE CUSTOMER, factored by the supplier. i.e. any commission paid is added to the price. To the supplier it is a virtual “free” sales force, and a free query resolution organisation. For the customer it can be “the knowledge” between them and the supplier which delivers benefits such as lower prices, bill-checking, energy monitoring etc.

The thoughts of just one Tpi in the market:

TPI's in the main have been very good for Micro (and Non Micro) businesses being they have consistently interfered with the cosy relationship between the big 6 supplier renewal prices and customer lack of interest. TPI's break this relationship where suppliers put customers on inflated renewal or out of contract prices and hope the customer does not notice or does not get contacted by another competing supplier.

Most of the big 6 have significantly reduced their direct sales teams, most of the smaller suppliers do not have direct sales teams and depend on TPI's to gain market share. The proposed changes are in the big 6 energy supplier's interest being they could reduce the number of TPI's in the market.

If TPI's are encouraged to leave the micro business market then this will actually reduce switching and leave even more customers paying higher prices.

It seems like the big 6 would like to shoot the messengers (TPI's in this case), by reducing the number of active TPI's and hence the ability of introducing lower prices to customers and encouraging switching - giving the advantage back to the big 6 – surely that's not a good move

General Comments - Missed Opportunities

1. The background to the mistrust of the Tpi market goes back 8/9 years when we first highlighted the issue with Ofgem, suppliers and MPs. This resulted in the UIA being threatened with defamation action by a supplier outside the Big Six. The Company involved is still in business and over those 8 years has developed a very efficient network of Tpis, and an Aggregator whose sole aim appears to be to miss-sell to the consumer. Successive official bodies; including the now dissolved energywatch, have tried to get Ofgem to act over this period finally culminating with an investigation being launched following representation by UIA which was supported by others some twenty months ago centred around breach of licence conditions but still the matter has not been concluded. Midway through the Ofgem investigation Trading Standards has commenced its own investigation into this group of organisations. Early action would have done much to preserve trust in Tpis as well as protecting many vulnerable businesses. An urgent resolution may even now help this situation.

2. UIA has long campaigned in regard to verbal contracts where possibly the majority of this mis-trust has been and continues to be created. We believe that all telephone approaches to customers should be recorded in entirety to be provided if a dispute arises and so creating protection for the Tpi, the supplier and the customer.
3. The biggest problem in the industry is not any lack of rules to cover misdemeanours but that there are no quick and efficient enforcements of those rules, especially where the “non Big 6” companies are concerned. The Regulator can take several years from receiving the complaint to commencing and resolving issues and even the Ombudsman takes months for a resolution.
4. UIA has been in being nearly ten years now during which time Ofgem has refused to promote the organisation which has a CoP and an independent Redress Scheme. This was consulted on industry wide twice and amended by Trading Standards who wrote to Ofgem (see attached).
5. UIA believes that there is a low cost effective solution to the problem of Tpis, which fits with the regulator’s declared intention of “Principles” Regulation. The Regulator has no direct powers over the Tpi Sector and seems not to have the appetite to take those powers in the form of direct licencing over Tpis. This would be a very expensive action and probably not cost effective. However Ofgem have gone as far as issuing some Principles, all of which have been contained within the UIA code for several years. The UIA CoP contains additional items which the Ofgem Code does not

A. Honesty: You should identify yourself, the services being offered and any organisations you represent (directly and indirectly) clearly at the start of any interaction with a customer and obtain their consent before any marketing

B. Respect: You must at all times respect the consumer’s wishes and should cease the current contact and avoid future contact if the customer requests

C. Accuracy: You should make the customer aware of how much of the market you searched to obtain the offers you propose to them and ensure all offers are accurately presented

D. Transparency: Before obtaining their agreement to the contract, you should make the customer aware of all principal terms of the energy contract, including the services you provide and how the customer will pay (directly or indirectly) for those services.

E. Customer-focused: You should record and investigate all complaints fully and act quickly to put things right when you make a mistake

F. Professionalism: You should ensure staff are adequately trained for dealing with customers and adhere to these principles.

These are the basis for the proposed Ofgem code and could be for others. Codes of Practice are traditionally the province of Trade Associations. UIA is a trade association and has a Code of Practice with a redress scheme (enforcement) No official body is prepared to endorse this code and redress scheme. It would be appropriate for Ofgem to endorse the code of the UIA (and any others that wish to apply the principal based regulation criteria). The enforcement would be by the holders of the code at the cost of their respective members. Should the CMA introduce other criteria for Tpis then the UIA would readily build them into its CoP and redress scheme.

UIA already publishes an electronic register of all members under the title "*Tpi Register*" which suppliers could access to see if a Tpi was registered with the UIA code and a similar principle could be adopted by any approved code.

There would be potential for competition between codes which would lead to an upgrading of the principles to the benefit of customers but the UIA should certainly not be penalised as it has been to date for being custodian of the only completely independent industry code.

6. The CMA report uses the terms Microbusiness and SME market throughout the document and often links the two together because some suppliers choose to link the markets. It should be noted that there are regulatory requirements in the microbusiness sector that are not in the SME sector and therefore it should be made clear what recommendations are being made for each market as it could mean that the SME customers who enjoy protection now may not do so in the future. A complication in the market is the definition used for micro business. This was introduced to capture the broadest number of businesses. However, it has brought with it its own problems and maybe the time has come to look at a consumption definition for micro business. This will stop the blurring of the market but may have unintended consequences in that a) there would be winners and losers" and those who treat SME as Micro may find it advantageous to cease to do so.

The other way to resolve this issue is in fact to broaden the domestic market with all its regulation by using a volume related or financial related criteria that captured those micro businesses that spend £1000 to £2000 on energy

7. The energy Markets are such that because everyone is a captive audience, thus a guaranteed market for the product. It should be recognised that there is not enough differential between quality, service and price to attract people to change supplier. Some of the suggestions will actually have the effect of closing the price differential thus exacerbating this issue. Everyone has to have the product and therefore there is not a big enough price differential for the majority of customers to have the perceived hassle of engaging with such market

8. The industry tends to promulgate the idea that suppliers pay Tpis commission. In the majority of cases this is not so. It is very clear in supplier's contracts with Tpis that the Tpi acts as an introducer to the supplier and the supplier collects the customer's commission and pays it to the Tpi. It is not clear in the report that this is understood by the CMA. If this were made clear then more consumers would ask what their commission is and the Tpi would tell them or probably not have the business. At the moment the customer thinks they have to ask the supplier, who usually will refer them to the Tpi. If the customer asks the Tpi direct you would be a foolish Tpi not to answer because they would go elsewhere.
9. Switching numbers, although a guide, is not sufficient to conclude that switching is not working. Many people do not switch because they choose not to after first enquiring of the market. There is no evidence of this number but it could be significant. Equally there are those who look for quality of service and are perfectly happy with their incumbent supplier and simply "switch" to a different product offering within that suppliers tariffs. The question is should they be encouraged to switch simply for the sake of doing so and competition justification? If quality and integrity is to be promoted throughout this industry then encouraging a satisfied customer to switch appears to be somewhat of a contradiction.

Requested comments

Remedy 3

The background to this Remedy seems to be to open PCW to unfettered competition. A position that they were in when they first started. All the regulation that has come in over the years has had the intention of controlling the information given to the customer and making it fair. What benefits accrue from going back to the PCW origins without effective control? An example is to recognise that there could be "favoured nation clauses" but this is not sufficient to stop them. There are many issues that are covered by law i.e. unfair contracts, miss-selling etc which are not dealt with in the energy industry. This would add another one to the list.

51(a) This appears to be a complete about-turn and against all logic and counter to other arguments about reducing confusion. Time has not been given for the 4 tariff rules to take effect. More tariffs will add to an already confusing market. The market prior to the reduction to 4 tariffs will give a good picture of what tariffs may be introduced and then add to that the extra PCW specific tariffs.

(b) This remedy should not be implemented without stringent controls

(c) It should not be removed. The Confidence Code has always had this requirement and PCW's managed the situation. The Confidence code is not mandatory. There is only limited relevance to knowing which suppliers a PCW works with. The most relevant information is probably the number a PCW works with

(d) We believe this would be a better option for both the customer. and the PCW

(e) This could lose the cost relativity of tariffs and there are issues where supplies are not taken through a meter and de-minimis in the microbusiness sector

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

59. As has already been mentioned during this investigation we find the level of switching to be a crude measure of customer engagement and consideration should be given to the numbers of people who access web sites and then decide to stay where they are; those who contact companies for prices and then stay where they are. Survey of this should be done

(a) Many micro businesses already have AMR's. A study of the effect of the implementation of these should give an indication of the impact on this question. If current data is used to identify meters then if not registered it will not be identified.

(b) No Comment

(c) PCW's already have ECOES data (and more) some gained from ECOES by arrangement with suppliers and it is available from other sources. If it is only the limited information of Meter Point Reference number and it is used electronically there should be no problem.

(i) No Comment

(ii) The Information Commissioner should be consulted on this and we believe there are significant issues should any other information from ECOES be given

(iii) Until all systems in the AMR market are linked it will be required.

(d) Penalties for firms which fail to switch sites within mandated period should be made up of the customer being reimbursed by the supplier at fault and compensation on top. This should be done between suppliers with as little input as possible from the customer and be cost effective. However, it ceases to be a punishment if such compensation losses are allowed to be clawed back through consumer product and the UIA believe that it should certainly come from the bottom line so that offending companies are held to account by shareholders.

(e) There is no cooling off period in the micro business sector and one day switching maybe more complex here because of the suppliers objection process which will need reviewing

(f) With the new Heat Network Regulations that ensure clients have meters then there should not be an issue

60. No Comment

Remedy 4b – Removal of exemption for Centrica on two-year inspection of gas meters

61. This seems to have been superseded by the recent Ofgem consultation

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

68. Unfortunately it is impossible to comment on this site because without specific information the sight cannot be accessed.

To set up, what would be a large database continually changing just to check if information from another data base was correct seems a complete overkill. Surely this is what competition does in that you might as well check two PCWs

69. The competitive market never envisaged tariffs in the micro business market and bespoke pricing was a feature of the competitive market for those who wanted it. There is no requirement to issue a tariff for micro businesses.

Maybe the time has come to redefine the Domestic Market to include those parts of the microbusiness which claim to be at a disadvantage and issue a mandatory tariff for sites that consume around £1000 to £2000 worth of gas or electricity per annum irrespective of what it is used for. The whole micro business is more complex in that there is no requirement for a supplier to actually supply; debt issues; all types of risks would have to be built into a tariff and in fact those businesses that have a good profile would lose the benefits of that profile. If you want to buy a suit you go to various shops and compare prices; we seem to be losing the idea that it should be a requirement for the business customers to do some form of research to get what they want!

70. All PCW should cover the whole of market

71. The idea of a regulator running the ultimate PCW in a competitive market seems to be counterproductive. Each PCW should exert enough competitive pressure to provide the customer with his needs within the rules of the Confidence Code It could be so confusing that it would in fact decrease the trust in PCW

If tariffs were introduced it could make those who seek a bespoke price worse off even though they have the most efficient profile

(a) It should not be introduced on the grounds of cost, confusion and the controlling of competition

(c) Yes it would. Perhaps some designated tariffs could be published.

(d) When assessing the practicalities this remedy should not be proceeded with. It will not increase confidence in PCW because of the discrepancies that will arise between Ofgem site and PCWs

It should not be attempted for microbusiness as there is no “requirement to supply” on suppliers; no tariff structure and debt complications.

(e) How do you monitor and enforce because without that the whole thing is a nonsense.

(f) It should not be implemented

(g) It should not be implemented

Remedy 7 – Measures to reduce actual and perceived barriers to accessing and assessing information in the SME retail energy markets

72. It was never intended that businesses should have published tariffs and it has always been a possibility for SME to gain bespoke prices geared to profiles. The possibility of HH settlement being used for all sites in the future makes it even more important that a customer should be able to benefit by implementing energy saving measures to attract a better price. This advantage should not be forfeited because some businesses choose not to engage.

73. There is one supplier connected to one aggregator who in turn is connected to many Tpis that have resulted in this lack of trust (see note at the beginning). We can't emphasise this too much and it highlights the fact that Ofgem and Trading Standards cannot act quick and decisively as this fact has been known by various parts of both bodies for in excess of six years and the now defunct energywatch worked with Ofgem on this when they were in being.

The last survey done by Ofgem showed an increase of confidence in the Tpi.

Remedy 7a – Introduction of a new requirement in the licences of retail energy suppliers to provide price lists for microbusinesses on their own websites and to make this information available to PCWs

75. There is no requirement to supply an individual site; Large debt issues; Sites ranging from a single office to large consumers of energy under the present definition. See suggestion of expanding domestic to take in the smaller micro businesses.

76. (a) This would work if suggestions to redefine the domestic market to include the smaller end of the micro business market. It would not if the definition retained such a wide range of businesses

(b) They have access but don't realise where it is

(c) They already do on bills

(d) This would be the most accurate and ultimately satisfactory way of doing it for the customer although he would need to put effort into it

Remedy 7b – Introduction of rules governing the information that TPis are required to provide to microbusiness customers

77. The UIA has variations of all these elements within its CoP

(a) This assumes that a Tpi has agreements with all the suppliers he deals with and does not take into account that aggregators may be used for part of a Tpis business. Although the Tpi has agreements they may choose not to use some suppliers for some business so this suggestion is not robust

(b) As mentioned before Tpis are not paid commission by the supplier but by the customer and we insist on members telling a customer the sources of **all** remuneration if requested.

(c) response to (a) applies

78. We know of commissions being banned in the “domestic” sector in other industries but are not aware of this being the case in the business sector.

79. One assumes from “more stringent disclosure requirements” and it would be good if CMA had elaborated on this, that the thinking is for declaration of the amount of commission. UIA has for many years discussed how this could be introduced but have always come to the conclusion that the only way it can is for the customer to be told and then confirmed when they receive the bill. Anything short of this would be subject to abuse for the rogues in the market.

80. (a) Every problem over the past 2 years around this issue seems to have fallen when reaching the enforcement question. Please refer to our suggestion at the beginning of this paper. The alternative that Ofgem is suggesting would involve dis-proportionate expense, resources and again fails in regard to enforcement.

We believe Ofgem have moved part way to the resolution of this issue by publishing some principal based enforcement criteria that it wishes Tpis to adhere to.

Codes of Practice are traditionally the province of Trade Associations. UIA is a trade association and has a Code of Practice with a redress scheme (enforcement) The membership has not expanded as we would have liked because no official body is prepared to endorse the principle of this code and redress scheme. The answer to this is for Ofgem to endorse our code (and any others that wish to apply the principal based regulation criteria) The enforcement would be by the membership. Should the CMA introduce other criteria for Tpis then the UIA would readily build them in to their CoP and redress scheme.

(b)The UIA code contains this information and can be found at http://www.uia.org.uk/full_code_of_practice_booklet.pdf

(d) With verbal contracts where the majority of mistrust is cultivated it has to be given orally but already the legal script given by a caller can be several minutes long. Other than verbal some information can only be given once a quotation is obtained.

(e) See suggestion at front of submission

(f) See suggestion at front of submission

Remedy 8 – Introduction of a new requirement into the licences of retail energy suppliers that prohibits the inclusion of terms that permit the auto-rollover of microbusiness customers on to new contracts with a narrow window for switching supplier and/or tariff

83. (a) This seems to have been pre-empted by the industry and the idea of being placed on a contract with the ability to switch in a short time frame seems to be common and should be adopted by all

(b) Some consumer groups are advocating “evergreen contracts” UIA believes this is a wrong move and following privatisation customer groups argued for the abolition of such contracts. The danger is for the customer just to ignore that they are on the contract. This change would impact switching rates.

(c) The switching time plus 7days

(d) The use of coloured paper or ink for the last two bills

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

84. (a) Reduced after careful review

(b) It needs reviewing as to what is most important

(c) This would be a short term action as Smart Meters will do this

(d) Use a different coloured paper or coloured type

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

89. Customers who are on tariffs that they have not actively chosen would receive ‘prompts’ to engage in the markets. We observe that previous interventions in retail energy markets appear to have had limited success in engaging inactive customers. Therefore, our current view is that any new remedies to prompt engagement may need to stretch beyond the provision of information in order to achieve their goal. We are interested to receive views on the forms these measures might take.

90. We invite parties to provide submissions on the following issues:

(a) Colour as suggested above

(i) What is the basis for not switching maybe they don’t want to and the price is so insignificant. Does this then become a nuisance?

(b) No more unsolicited texts!

(d) Suppliers

(e) No Comment

(f) Definitely not. Tpis buy data which gives information on new tenants, change of phone number etc and they can receive 30 cold calls a day which has been a large contributor to the reputation of Tpis

Remedy 11 – A transitional ‘safeguard regulated tariff’ for disengaged domestic and microbusiness customers

91. Domestic - maybe; Microbusiness - Not the best way to encourage engagement with business; remembering that micro can still be relatively large businesses and HMRC will make no special dispensation for same, which causes them to act.

Yours sincerely

For and on behalf of the Utilities Intermediaries Association

R Sinden

Operations Director