

Responses to CMA Notice of Remedies

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Overview:

This document contains the detailed responses that Ofgem submitted to the CMA in response to the "Notice of Remedies" published on 7th July 2015. Some confidential information has been removed.

Context

This document contains the technical, detailed responses that Ofgem submitted to the CMA in response to the “Notice of Remedies” published on 7th July 2015.

Associated documents

Response to the CMA’s Provisional Findings and Notice of Possible Remedies

<https://www.ofgem.gov.uk/ofgem-publications/96151/ofgemresponsetotheppsandnoticeofremedies-pdf>

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Response to the CMA's Provisional Findings and Notice of Possible Remedies

We referred the energy market to the CMA because we have long been concerned that competition is not working as well as it could for consumers. We welcome the CMA's Provisional Findings and Notice of Possible Remedies, and the thorough analysis the CMA has conducted on the market. The adverse effects on competition (AECs) you have identified largely reflect our own concerns about the problems in the market. We will provide you with our full support in developing an effective, coherent, achievable and forward-looking package of remedies for the benefit of consumers.

The CMA's findings are provisional and you will obviously need to consider the views of stakeholders. Nevertheless, on the basis of the information published by the CMA, we consider that the evidence would support confirmation of these findings in due course. This letter sets out our initial thoughts on some of the possible remedies being considered by the CMA.

Addressing the problems in the retail market

We strongly agree with the CMA's analysis on weak customer response and the presence of unilateral market power over inactive customers in the domestic retail market. The domestic retail market features a large number of inactive customers, an uneven distribution of such customers across suppliers, with the majority remaining with legacy suppliers, and the ability of suppliers to easily segment the market between sticky and active customers. The combination of these factors weakens competitive pressure between incumbent suppliers and creates barriers to entry and expansion for independent suppliers.¹ The CMA's analysis confirms that this effect is a significant impediment to competition. We agree that addressing the issues you have identified in the retail market should be the central focus of the final remedies package.

To protect the interests of disengaged consumers, the CMA proposes the introduction of a transitional safeguard tariff. We understand the rationale behind this proposal. If the CMA decides to proceed with this remedy, we will provide all the support we can in the development of its detailed design. In general, our view is that consumers' interests are best protected by effective competition. For this reason, we would like to explore with the CMA how to ensure that any safeguard tariff is tightly targeted, and is accompanied by effective measures to encourage consumers to engage in the competitive market. It is also important that any safeguard tariff is transitional: a key element of its design will be a plan for exiting from the tariff at the appropriate time.

¹ Ofgem (2015): Incumbency in the retail energy market, Submission to the CMA

Your notice of possible remedies considers whether a safeguard tariff should apply to the microbusiness market, as well as the domestic market. There are important differences between the domestic and microbusiness markets which add complexity to the safeguard tariff design. For example, setting an appropriate level for the safeguard tariff in the microbusiness market is likely to be particularly challenging, bearing in mind the wide range of costs associated with serving different types of microbusiness consumers. We are keen to work with the CMA to consider these challenges further.

Promoting engagement in the retail market

As part of the package of retail market remedies, the CMA proposes to remove the 'simpler choices' rules introduced by Ofgem as part of the Retail Market Review (RMR). We respect the CMA's view that these rules have limited the products available to consumers and competition, including competition between price comparison websites. We will work with the CMA to support the detailed consideration of how supply licences should be amended.

We agree with the CMA that price comparison websites (PCWs) can play a key role in helping consumers to engage in the market. The CMA envisages a market in which part or all of the 'simpler choices' component of the RMR has been removed, where there is no whole-of-market requirement on PCWs, and in which PCWs compete with each other by securing exclusive tariffs from suppliers. In this context, trusted sources of information will become even more important. There are a number of possible ways to achieve this, including an Ofgem-run price comparison service, and we are keen to work with you to explore these options. The PCW market is dynamic and is likely to evolve over time, especially with the roll-out of smart meters. It is important that the regulatory regime does not constrain innovation and competition in this market.

We have been concerned that complexity can be a barrier to accessing and assessing information in the market. We would therefore like to support the CMA's consideration of how such barriers can be overcome. As well as exploring how PCWs and other intermediaries can help consumers navigate the market, it may be worth considering whether there is a role for rules based on principles in addressing complexity. Furthermore, it is important to consider how to promote engagement among harder to reach consumer groups, such as those without internet access or who do not have the confidence they will get the right deal from using a PCW.

We agree with the CMA that once they are rolled out, smart meters could be central to promoting engagement in the market. We share the objectives of maximising the benefits of smart meters as quickly as possible, and aim to ensure all consumers are settled on a half-hourly basis soon after the roll-out of smart meters. To meet this timetable, we will work with DECC in the coming months to develop a plan for the implementation of half-hourly settlement. This plan will need to take into account the other significant changes in train in the industry, including the smart meter roll-out and the move to next day switching.

Microbusinesses

The CMA's analysis of the microbusiness market provides evidence of significant detriment to these consumers. The profitability analysis is particularly informative and reinforces some of the concerns we have had. We are very supportive of the CMA's proposed remedies in this area. In particular, we welcome the CMA's proposal to introduce further price transparency for microbusiness consumers. We believe an initiative of this type has the potential to have a transformative impact on engagement and could support the development of services such as price comparison websites for microbusinesses.

In developing the final remedies package in relation to microbusinesses, it would be helpful for the CMA to consider how some of the proposed remedies will interact with the current objections processes and rules in this market, which can form a barrier to switching. More generally, the microbusinesses market has some unique characteristics that must be borne in mind in the design of potential remedies: for example, unlike domestic consumers, there is no duty to supply microbusinesses and there is significant scope for contract negotiations between customers and suppliers. We will be happy to discuss these issues with you in more detail.

Industry governance and the regulatory framework

We strongly agree with the CMA's conclusion that the current code governance regime, including the limited incentives that incumbent players have to promote and deliver change that could benefit consumers, gives rise to an AEC. We believe there are changes to the industry governance regime that can address these issues, building on the options you set out in your notice of possible remedies. A reformed set of institutions would be central to ensuring that the regulatory regime is able to respond to the innovation and change the industry is going to see in the coming years. We look forward to discussing these changes with you in more detail.

In a similar vein, we welcome the CMA's analysis on the place of competition in our statutory duties and on the respective roles of Ofgem and DECC in energy policy making. We see the Strategic Policy Statement (SPS) as one important route for providing more clarity over our respective roles. We look forward to exploring this area further with the CMA and DECC.

Wholesale markets

We agree with the CMA's assessment that there are no features in the wholesale gas market that give rise to an AEC, and there are no significant issues associated with market power in the wholesale electricity market. These conclusions echo our own analysis on these issues. We will continue to monitor the wholesale markets closely for signs of competition problems and will take action where necessary.

We also agree that the current system of self-dispatch in the wholesale electricity market is fit for purpose and that other models of market design do not provide clear advantages in terms of fostering a more effective competitive environment.

The CMA's analysis finds that the absence of locational pricing for transmission losses gives rise to an AEC. We agree in principle that locational losses could improve price

signals and the efficiency of investment in generation. Further analysis would be needed to fully understand the costs and benefits of such a change. We would like to support the CMA's consideration of these issues.

Vertical integration and transparency

Vertical integration has been the focus of much attention in the energy market, and gaining a greater understanding of its impacts on competition was a key rationale for our referral of the market. We welcome the CMA's analysis of wholesale market liquidity and foreclosure and note your overall conclusion that vertical integration is unlikely to be detrimental to competition in the energy market, and may give rise to efficiencies that could be passed on to consumers.

We agree with the CMA that transparency in this aspect of the market is important, and note the CMA's suggestion that a new 'market-orientated' regulatory accounting framework could be introduced for the large vertically-integrated energy suppliers. Ofgem has taken steps in this direction through requiring the large vertically integrated firms to produce Consolidated Segmental Statements (CSS). We are keen to work with the CMA on the best ways to provide more information about the large vertically-integrated suppliers, including providing greater visibility of trading activities, as well as how we could overcome some of the practical challenges and potential burdens we have encountered when we have considered extending the CSS rules. It may be that the CMA's additional legal powers provide a route to overcoming these barriers. In any event, the potential benefits of developing a new set of transparency rules need to be balanced against the potential costs and burdens on industry.

Concluding remarks

The CMA's Provisional Findings conclude that there is a range of features in the energy market which give rise to adverse effects on competition and that change is needed to deliver effective competition for consumers. As you finalise the design of the remedies in the coming months, it will be important to consider the most effective implementation routes in each case – for example, whether the remedies should be delivered directly by the CMA or through a recommendation to Ofgem or other parties. Furthermore, it will be important to develop an effective plan for monitoring and evaluating the impact of remedies once they are in place. Ofgem's ongoing role in monitoring the market – for example the annual survey we conduct as part of our RMR evaluation and our regular collection of market data – means we are well-placed to help you devise this plan.

I would like to end by reiterating that we welcome the CMA's Provisional Findings and we are fully committed to supporting you in developing remedies that can improve market outcomes for energy consumers.

Yours sincerely,

Rachel Fletcher
Senior Partner, Markets

Remedy 1 – Locational losses

1. Summary

- 1.1 In principle, we support the case for locational charging for transmission losses. We agree with the CMA that it has the potential to improve the efficiency of system operation and signals for investment.
- 1.2 In order to ensure that there is a robust process, including updated analysis (see next paragraph), we consider that the industry codes process would be the most appropriate route for progressing this remedy. We note that we and industry have spent a considerable amount of time and money progressing various losses proposals to date, including legal costs following judicial reviews of earlier decisions. Some industry parties will not be in favour of locational losses. We recognise that the CMA prefers remedies which are effective within a relatively short time – we would welcome the chance to discuss with the CMA how this modification process could be moved forward in a timely manner, within the context of the current code governance system.
- 1.3 We also note that the context in which we made our last decision has changed. The modelling analysis was originally done in 2009 with some updates in 2010. Given changes such as the introduction of EMR, basing a decision on this analysis would not be appropriate. In our view, at a minimum, the modelling analysis would need to be updated to include the current market conditions such as EMR, and the conclusions from that analysis would need to be used in making any decision. The previous analysis also did not consider any change to the 45:55 split between generators and suppliers.
- 1.4 Any decision taken on locational losses would be assessed against the current code objectives and the Authority's principal objective and statutory duties.

Remedy 3 – Remove ‘simpler choices’ component of the RMR rules

1. Summary

- 1.1. Remedy 3 aims to enhance competition between suppliers and between PCWs. We fully support this objective and understand that the CMA considers that some of the RMR tariff rules have not struck the correct balance between making the market simpler for consumers and providing room for suppliers to innovate. We are also keen to engage with the CMA to explore in more detail which parts of the rules are problematic to competition between PCWs, and between PCWs and suppliers.
- 1.2. We note that suppliers’ statements to the CMA may not have accurately reflected the reasons for the removal of certain tariffs and some tariffs were removed for commercial reasons not as a result of RMR. Nevertheless, we have always been concerned about the trade-off between simplicity and innovation and envisaged that the restrictive rules would be part of a transitional market “reset” and would likely be removed over time.
- 1.3. We agree that the RMR has not been in place long enough for us to be able to make any conclusive statements about the overall impact on consumer engagement. We share the CMA’s view that the early results of our RMR evaluation do not suggest that making the market simpler has led to significant increases in engagement. We do not expect the RMR to have a substantial immediate effect, though we hope that changes in engagement would be more pronounced year on year. Nevertheless, we have seen some evidence of a positive impact of the tariff rules in delivering their intended outcome. For instance there has been an improvement in consumers’ confidence in their switching decisions (in 2015 83% of those who switched in the last 12 months felt that they are paying less either in the short or long term having switched, compared to 77% in 2014).²
- 1.4. Ease of comparison remains an important objective when considering remedies to help address the issue of weak consumer response. We would not want to see a return to the “confusopoly” that existed in the domestic energy market prior to the RMR and risk reversing the positive impacts we have seen. In particular we are concerned that removing the ban on “multi-tier” tariffs may reintroduce a significant amount of complexity and make it difficult for consumers to compare, and allowing a wider range of discounts may provide the opportunity for suppliers to “game” PCWs in order to be presented at the top of the results table.³
- 1.5. Although greater competition between PCWs may to some extent help to protect some of the positive developments, there is likely to be a period of

² TNS BMRB/Ofgem, Retail Market Review 2015 Survey, unpublished.

³ [Consumer Focus response to Ofgem Retail Market Review](#), February 2012, p.34

transition before competition encourages greater PCW use, and at present only a minority of consumers switch using comparison sites – 44% of switches within the last 12 months were made through a PCW.⁴ Furthermore, only 78% of consumers use the internet at least weekly, while 16% have no internet access.⁵ We would like to explore with the CMA whether some of the tariff rules could be redesigned in such a way as to ensure that we do not see a return to the level of complexity observed prior to the RMR. For instance, it may be possible to design these rules in a principles-based way. In the absence of this, we think that additional measures to those proposed by the CMA may be necessary to ensure that consumers, particularly those that are unable or unwilling to engage online, are able to effectively engage and compare tariffs.

- 1.6. As this remedy is refined, detailed thinking about the links between the “simpler” and “clearer” elements of the RMR is required to ensure that the knock-on effects of any changes are properly accounted for. For instance, should the rules around tariff structures be changed, this would have implications for some of the information remedies introduced through RMR that can help consumers engage in the market to the benefit of competition, such as the cheapest tariff messaging. We are also keen to work with the CMA to explore the impact of this remedy on other aspects of the regulatory framework, including links and dependencies with the Confidence Code.
- 1.7. We understand the CMA’s view that PCWs should compete against each other in providing discounted tariffs rather than just competing for supplier commission, and note the concerns that the RMR tariff rules may limit this from happening. For instance, at present PCWs are able to offer cashback, though this cannot be offered on a tariff-specific basis.⁶ However, we note that the conditions for PCWs and suppliers negotiating bespoke arrangements existed prior to the RMR but this was uncommon in practice. We suggest that it may be worth exploring whether there are other blocks to this type of competition separate from the RMR.

2. Responses to questions

Question number / para ref	Ofgem’s comments
51(b)	<i>Removing the four-tariff rule is likely to increase the range of tariffs on offer and result in different tariffs being offered on different PCWs. Are there, therefore, any remedies that the CMA should consider alongside this remedy, to encourage domestic customers to use more than one PCW in order to</i>

⁴ TNS BMRB/Ofgem, Retail Market Review 2015 Survey, unpublished. In 2015 44% of those that had switched in the last 12 months did so through a PCW, and 46% of those that compared found out about different offers through PCWs.

⁵ TNS BMRB/Ofgem, [Retail Market Review Baseline Survey – Annexes to the main report](#), July 2014.

⁶ Ofgem, [Retail Market Review: application of the rules in the TPI sector](#), December 2013.

	<p><i>facilitate effective competition between PCWs and domestic energy suppliers?</i></p> <p>We consider there may be a market solution to some of these issues. In the travel industry, for instance, there are meta search engines which act as comparers of the comparison sites. There may be differences in the energy industry that make a similar market-delivered solution more difficult to achieve, however, such as each site using its own energy consumption patterns leading to slightly different annual cost figures. An independent price comparison service, as suggested by the CMA, could also potentially have a role to play. We discuss this in greater detail in our response on remedy 6.</p> <p>Additionally, as noted above, we recommend that the CMA considers whether, beyond remedy 3, more needs to be done to encourage the competition between PCWs envisaged by the CMA. We note that the conditions for PCWs and suppliers negotiating bespoke arrangements existed prior to the introduction of the RMR, though this was uncommon in practice.</p> <p>We also think it is important to consider whether this and other remedies meet the needs of all consumers. Although greater competition between PCWs may have benefits for those that engage online, more may need to be done for those who are unwilling or unable to do so. One measure we would like to explore with the CMA is whether, should some of the tariff rules be removed, it would be appropriate to introduce principles-based regulations, so as to avoid a return to the levels of complexity observed prior to the RMR, which may make it particularly difficult for offline consumers to effectively compare.</p> <p>In our responses to remedy 4 and 10 we also note that facilitation of data sharing between suppliers and PCWs, and restrictions suppliers place on PCWs contacting consumers, should be explored in more detail.</p>
51(c)	<p><i>We note that if this remedy were to be imposed, Ofgem's Confidence Code requirement for PCWs to provide coverage of the whole of market appears likely to become impractical as the number of tariffs offered increases and PCWs agree different tariff levels and commissions with energy suppliers. Should this element of the Confidence Code be removed, therefore, as part of this remedy? If so, are alternative measures to increase confidence in PCWs required? For example, in order to maintain transparency and trust, should PCWs be required to provide information to customers on the suppliers with which they have agreements and those with which they do not?</i></p> <p>We agree with the CMA that if this remedy is pursued, certain requirements of the Confidence Code ought to be revisited to establish whether they remain relevant and fit for purpose. However, we note that in late 2014 there was significant negative media coverage of PCWs that did not show consumers the whole of the market. There may, therefore, be an expectation among consumers that PCWs will be able to provide them with information about the overall best deal. As such, we share the CMA's view that should the requirement to take all reasonable steps to cover the whole of the market be removed, alternative measures to maintain transparency and trust ought to</p>

	<p>be considered. We note that there is an existing requirement in the Code, which was strengthened in March 2015, for PCWs to provide information to customers on the suppliers with which they have agreements.</p>
51(d)	<p><i>Rather than removing all limits on tariff numbers and structures, would it be more effective and/or proportionate to increase the number of permitted tariffs/structures? If so, how many should be permitted and which tariff structures should be allowed?</i></p> <p>Relaxing some of the rules, for instance by extending the number of tariffs permitted, may have the effect of reintroducing complexity for consumers without providing freedom for suppliers to innovate, so we do not consider there is substantial added value in pursuing this option alone. We would, however, welcome engagement with the CMA to explore whether there would be value in retaining elements of the tariff rules, eg the ban on “multi-tier” tariffs, at least on an interim basis in advance of the rollout of smart. We note that in order to deliver the competition between PCWs envisaged by the CMA, the key element of the tariff rules requiring reform is the rules around discounts. We are happy to explore this further should the CMA proceed with this proposal.</p>
51(d)(i)	<p><i>For example, would requiring domestic energy suppliers to structure all tariffs as a single unit rate in pence per kWh, rather than as a combination of a standing charge and a unit rate, reduce complexity for customers, while avoiding restricting competition between PCWs? Alternatively, would such a restriction on tariff structures have a detrimental impact on innovation in the domestic retail energy markets?</i></p> <p>This proposal could be worth exploring further depending on the direction taken by the CMA on other remedies to help consumers compare, for example providing consumers with additional prompts.</p> <p>We discounted this option during our RMR policy development as a result of concerns that this may have a detrimental impact on those with high consumption – in particular we were concerned that it may have a negative impact on vulnerable consumers, who may live in poor quality, badly insulated housing, and whose consumption may therefore be higher than others’. We also recognised that suppliers incur certain fixed costs regardless of consumption level, for example for meter readings. A single unit rate may make it difficult for some suppliers, in particular the smaller suppliers, to recoup these fixed costs. Furthermore, we note that a single unit rate may not remove all complexity – discounts, bespoke offers, bundled products may all contribute to this. Additionally, as smart meters are rolled out, a single unit rate may not allow room for innovation by suppliers to deliver new and beneficial time-of-use tariffs or provide the correct framework for consumers to engage in the longer term.</p>

Remedy 4a – Possible measures to address barriers to switching

1. Summary

- 1.1. We welcome the CMA's recognition of work to deliver faster, more reliable switching and how this will improve consumer engagement in the market.
- 1.2. As noted in the CMA consumer survey and Ofgem's survey the perceived hassle of switching is a barrier. Energy UK is currently developing a switching guarantee which could reduce this perceived barrier. This will be along the lines of the current account switching guarantee used in banking. A strong recommendation from the CMA that this would be a useful tool may encourage the Energy UK-led group to develop a far reaching guarantee. We provide more detail below on what we think the guarantee should include.
- 1.3. We agree it is important to explore the extent to which greater data sharing between suppliers and PCWs could reduce barriers to switching. We also understand that the commercial terms between suppliers and TPIs restrict the latter from contacting the customer again for a defined period. We have concerns that this could limit the effectiveness of Midata and reduces the ability of PCWs to prompt consumers.
- 1.4. We do not see making changes to the cooling off period as a priority as this obligation is provided for in the EU Consumer Rights Directive which the government is bound to transpose. We also do not see a gap in terms of the information consumers will receive on smart meters.
- 1.5. We set out more detail on the proposed remedies below.

2. Responses to questions

Question number / para ref	Ofgem's comments
59(b)	<p><i>Will the roll-out of smart meters address the barriers to switching faced by customers with Dynamic Teleswitched (DTS) meters?</i></p> <p>We agree that smart should address the many of the barriers faced by customers with DTS meters. Useful to note that as of 31 Dec 2014 there are 160,000 DTS households because the DTS functionality has been switched off in the East Midlands (down from 350,000 before that point).</p> <p>Although we agree that smart should address many of the barriers there are still some risks to raise:</p>

	<p>DTS homes will likely need to have a “variant smart meter” which will be different to a normal meter. These variant meters will be required to operate the separate electrical heating circuit. These do not exist yet, but it will be important that these are compatible with the wider smart metering system and with other suppliers should consumers wish to change tariff/supplier to non DTS.</p> <p>The functionality of the DTS systems will change, the DNO will no longer have permission to remotely switch the meter as is currently the case, instead the switching will need to be performed by suppliers instead which may have implications for distribution management. However the cases where the DNO has intervened to change switching times for network management are very rare. DNOs do take some comfort that they have oversight of switching times and fear what might happen if half hourly settlement was introduced on the back of smart metering.</p> <p>The licence requires suppliers to take “all reasonable steps” to ensure all meters in their portfolio are smart meters. This provides some flexibility for suppliers to not install smart meters where to do so would require them to take steps that are unreasonable. This could include some DTS customers. For example, there may be some situations where it is not possible to install a smart meter, eg because of communication problems in high rise flats.</p>
59(c)	<p><i>Should PCWs be given access to the ECOES database (meter point reference numbers) in order to allow them to facilitate the switching process for customers?</i></p> <p>There are potential benefits in PCWs and TPIs having access to ECOES to support switching. Where a customer’s representative is able to view and check data to ensure that everything is correct there could be a reduction in failed switches.</p> <p>In the longer term, there are plans to make operational changes to support this as part of the next-day switching programme. In the short term, there is the possibility for TPIs to gain access to ECOES using suppliers’ logins (though the supplier remains responsible for the usage). There is also a gas on-line enquiry (called DES – the Data Enquiry Service) and similar principles would apply.</p> <p><i>To what extent would this reduce the rate of failed switches and/or erroneous transfers?</i></p> <p>Failed switches and erroneous transfers are two separate issues.</p> <p>If a company working for the customer can verify data held on the central ECOES system before transfer, this may reduce failures. Errors can be corrected and the supplier and TPI would be working with the same set of data.</p> <p>There is a risk that, by giving access to ECOES data, there could be an increase in erroneous transfers, if there were fraud on the part of TPIs. This</p>

	<p>could include improperly presenting themselves as customers' representatives to switch them or selling the data to other companies.</p> <p><i>Are there any data protection issues we should consider in this respect?</i></p> <p>A supplier reported to us an incident of misuse of data where a TPI made a large-scale download of ECOES data using a password given to it by a supplier. The TPI's access was removed.</p> <p>There have been incidents where a TPI cold-called using data, believed to be from ECOES, presented themselves as a representative of the customer's existing support or an official body, in order to get agreement to a contract.</p> <p>There is also the potential for nuisance calling if the data is used for marketing purposes.</p> <p><i>Will access to this database still be relevant once smart meters have been introduced?</i></p> <p>Smart meters will be introduced before the next-day switching arrangements, meaning there will still be a need for a central database. As part of our work on moving to reliable next-day switching, we decided that a centralised registration system for meter details across gas and electricity would be needed but have not specified how this will be set up.</p>
59(d)	<p><i>Should there be penalties for firms that fail to switch customers within the mandated period?</i></p> <p>At the request of Ofgem and DECC, Energy UK are developing a switching guarantee for consumers. This will be along the lines of the current account switching guarantee used in banking. The CMA's proposed remedy may encourage the Energy UK-led group to develop an ambitious guarantee that includes redress for consumers if a switch goes wrong. We think the guarantee needs to be ambitious and allay concerns:</p> <ul style="list-style-type: none"> • on the length of the switch (making reference to the ambition for switches to be completed 17 days after consumer agrees the contract with their new supplier) • that switching is a hassle (research shows that consumers are concerned with some fairly fundamental things, eg that they will be cut off, that someone will visit their house, double billing – the guarantee needs to allay these concerns) • that if anything goes wrong and the switch is delayed their new supplier will take steps to fix the problem and compensate the consumer • on length of time it takes for a consumer to get a final bill <p>As such, the switching guarantee could include provisions for both a</p>

	<p>mandated period and penalties/compensation for consumers, along the lines of the proposed remedy. A strong recommendation from the CMA that a guarantee would be a useful tool may encourage the Energy UK-led group to develop a far reaching guarantee.</p> <p>Mandated period: The mandatory commitment specified in condition 14A of the supply licence is 21 calendar days after the “relevant date”. The relevant date could be the end of the 14-day cooling off period so that customer is not required to be switched for five weeks. We monitor suppliers’ performance against the 21-day switching commitment in the licence and have found that suppliers are broadly conforming to this timescale.</p> <p>Suppliers are using new arrangements, introduced at the end of 2014 that allow them to switch customers within 17 days⁷. The current 17-day period for switching is a voluntary, rather than a mandatory commitment and not all suppliers are signed up to this.</p> <p>The CMA asks whether 17-day (and in future, next-day) switching should be mandatory. Our initial thoughts are that, subject to the customer being able to choose their preferred date for a switch, there is a case for a mandatory 17-day minimum period. Appropriate exceptions to this rule would need to be thought through and specified in advance, for example if the customer has requested a later date, or if circumstances out of the control of the licensee prevent the switch, which it has taken all reasonably practicable steps to resolve. A common, enforced 17-day standard could be used as the basis for a switching guarantee, with the potential for this timescale to be shortened with the introduction of faster switching.</p> <p>Penalties and compensation: We think that a reasonable starting principle for a switching guarantee is that a customer should not be adversely affected if a switch takes longer than the expected or mandated period. Our initial view is that if compensation for delayed switches is part of the guarantee, it should be a flat rate per week⁸. This is easier to understand and implement compared to the alternative of using a rate determined by the difference between the consumer’s old and new tariffs. There may be a case for different approaches for delayed switches and erroneous transfers, given the latter results in more consumer detriment than the former.</p> <p>Delayed switches: There is some practice among suppliers to offer compensation for delayed switches but this is not well publicised.</p> <p>Setting penalties could require work to determine which party was at fault for the delayed switch. There could be a risk that this complicates, or elongates, the switching process with extensive checks being undertaken before a switch is affected.</p> <p>Nevertheless, redress for consumers in the event of a delayed switch is</p>
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⁷ As above this is technically 14 calendar days plus 3 working days

⁸ For instance if a switch is delayed between 1-7 days the consumer gets a fixed amount (eg £5, £10 or £15) and if it is delayed between 7-14 days the consumer receives a further payment.

	<p>something that could be included in a switching guarantee and we have asked the Energy UK group to consider this.</p> <p><i>Erroneous transfers</i></p> <p>Erroneous transfers account for around 1% of switches. Again, penalties would require work to determine which party was at fault. In some instances, the customer could be at fault if they provided incorrect address data when requesting a switch.</p> <p>Since 2002 an Erroneous Transfer Customer Charter has been in place, which specifies obligations on suppliers in relation to customer communications in the event of an erroneous transfer. Some suppliers have voluntarily agreed to provide £20 compensation to customers if, following an erroneous transfer, they are not able to write to the customer within 20 days to confirm that the issue has been resolved and they will switch back to their old supplier.</p> <p>We have asked industry to establish a dual-fuel address data workgroup to consider how address data could be improved as part of the move to faster switching. This will include tackling the causes of a poor customer switching experience due to poor quality address data. The group will report to Ofgem by the end of 2015⁹.</p>
59(e)	<p><i>When next-day switching is introduced, will a 'cooling-off' period still be required?</i></p> <p>The obligation to provide a 14-day cooling off period is provided for in the EU Consumer Rights Directive which the government is bound to transpose. The 14-day cooling off period is transposed into UK law via the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. These Regulations (and the Directive) also provide that a customer should not suffer any "liability" for exercising their cooling off rights, which includes a prohibition on termination charges. The current rules therefore already provide for the proposal that no exit fees are charged within two weeks of switching.</p>
59(f)	<p><i>Are specific measures required to facilitate switching for customers living in rented accommodation (either social or private)?</i></p> <p>We agree with the CMA that more should be done to facilitate switching for consumers living in rented accommodation. Tenants, both private and social, tend to be among the most disengaged consumers. There are a number of issues that contribute to this.</p> <p>Tenants may be uncertain what rights and responsibilities they have in relation to changing tariff or supplier. Most tenants have the ability to change</p>

⁹ <https://www.ofgem.gov.uk/publications-and-updates/open-letter-industry-data-quality-ownership-and-governance>

	<p>their supplier should they choose. Some tenancy agreements, however, restrict tenants' ability to switch, either without the landlord's consent or at all. There are also restrictions in cases of debt, as applies in the case of other consumers, though the issue may be more significant in the case of tenants as the debt in question may have been accumulated by previous tenants. Additionally, many landlords install prepayment meters in rented properties. These meters can be costly to replace and would likely require the landlord's permission to do so. Furthermore, the respective lengths of tenancy agreements and energy supply contracts may often not coincide. This may mean tenants are uncertain about whether they will remain in the property for the duration of a fixed term tariff, or long enough to justify a change of supplier. These factors may increase the perceived search costs for tenants, who may see the additional steps required to obtain their landlord's permission as not being worth the hassle.</p> <p>Through our "Be an Energy Shopper" campaign we have previously attempted to raise awareness among tenants of their rights and responsibilities in relation to their energy supply. Should the CMA seek to do more in this area it may be worth considering the respective roles of the landlord and the tenant in determining the energy supply contract for the property to determine whether rules ought to be put in place to provide greater certainty for tenants and reduce the perceived hassle of switching. However such reforms are likely to have implications beyond energy.</p>
60(a)	<p><i>Does the 'Midata' programme provide sufficient access to customer data by PCWs to facilitate ongoing engagement in the market?</i></p> <p>The Midata programme should increase consumer engagement with the market, but as currently envisioned there is a risk that it will not facilitate ongoing engagement. With the roll out of Midata consumers will be able to give permission to PCWs and other TPIs to access their consumption and tariff data which will enable quicker and more accurate personalised comparisons. This is important because consumers may estimate their consumption or guess at tariff names when entering these in themselves, and may struggle to identify these even if they have a bill or annual summary to hand, or they may make errors when entering data manually.</p> <p>The current Midata programme envisages consumers giving TPIs one off access to their data, but does not provide a mechanism for ongoing permission. Ongoing access is an important factor in the facilitation of next generation intermediaries which prompt and engage consumers in a way we expect to be more effective than at present. This is because whereas at present the emphasis is on consumers having to actively engage in the first instance, TPI prompts consumers are intended to address behavioural barriers around scarcity of time and hassle evidenced by reports by Consumer Futures, and our work on Changing Landscape of Consumer Empowerment.</p> <p>There are two reasons why ongoing permission is prevented. Firstly there are sometime contractual restrictions that suppliers place on PCWs contacting customers for a period of time after a switch has occurred. However, this would not be relevant if no switch has taken place (a next gen PCW may</p>

	<p>monitor the market until the ideal conditions for a switch take place). Suppliers have cited practical issues around privacy that make ongoing access challenging from their perspective as it is easier when a consumer is present during a transaction (as when using a PCW) and can verify permission to access the data.</p> <p>Further it will be important to explore the extent to which contractual or any other restrictions suppliers place on PCWs contacting consumers can act as barrier to switching and engagement and whether some form of regulation could be required in this area – ie Midata would not help TPIs in giving prompts to consumers if they are prohibited from contacting consumers at key points such as around the end of fixed term contracts.</p> <p>Therefore our view is that TPIs should be able to access consumer data at a later date provided that consumers have given permission, and that this will increase consumers' engagement with the market. There are considerations and risks here about data protection, and how consumers can manage and control who continues to have access to their data. These were given early consideration in the report produced for government in Autumn 2014.</p> <p>Another important consideration is that ongoing access may facilitate the growth of TPIs which operate beyond switching, for example offering energy efficiency or energy management services. The early development of these around Midata could also pave the way and facilitate the market we expect to develop around the availability of smart data.</p>
60(b)	<p><i>Do customers need more or better information or guidance on how their new smart meters will work?</i></p> <p>Suppliers are required to comply with the smart meter installation code of practice (SMICOP), which places a wide range of obligations on suppliers to provide supporting information and demonstrate upon installation how the smart metering system works. We monitor compliance with the SMICOP.</p> <p>Following a government mandate, Smart Energy GB was set up by suppliers with specific objectives relating to raising awareness of and building confidence and support for the smart meter rollout. Their consumer engagement activity will ramp up significantly with planned roll-out activity.</p> <p>We are, at present, unaware of any concerns that beyond SMICoP implementation, Smart Energy GB activities and ongoing supplier communications there remains a need for more or better information or guidance on how their new smart meters will actually work. Through their Early Learning Project however, DECC identified the potential to deliver further benefits through optimising the provision of energy efficiency advice and are taking forward a project to support this.</p>

Remedy 5 – Prioritisation of smart roll-out for PPM consumers

1. Summary

- 1.1. We are supportive of PPM consumers receiving smart meters as soon as feasible. We note that various smart PPM offerings are emerging in the market, and there are signs that some suppliers plan to prioritise traditional PPM customers as they see a commercial incentive in doing so. However the proposed remedies pose risks to consumers and may increase supplier (and ultimately consumer) costs, so they need to be considered in detail.
- 1.2. It will also be helpful to consider the extent to which other remedies in this area such as increased prompts to engage increasing competitive pressure on suppliers and Ofgem's planned next steps following publication of the PPM¹⁰ report will be effective in ensuring prepayment consumers achieve a better deal.
- 1.3. If the CMA decided to pursue this remedy we would recommend also exploring the alternative model that we have suggested which would be partial prioritisation.

2. Responses to questions

Question number / para ref	Ofgem's comments
65(a)	<p><i>Would this remedy be effective in allowing prepayment customers to engage fully in the market and benefit from a wider range of tariffs? Would it be effective in reducing the costs of supply to prepayment customers?</i></p> <p>Smart prepayment will primarily be about convenience and cost. First and foremost, it will transform the consumer experience eg in terms of availability of multiple and online top-up methods and reduced need to access the meter.</p> <p>Smart prepayment meters should also reduce the cost to serve, and we are already seeing cheaper smart PPM (vs. traditional PPM) deals in the market. However, mandating a specific approach to rollout could make the rollout less efficient and (temporarily) drive up costs. A key reason for having a supplier-led rollout model is that suppliers have an incentive to find the most cost effective approach to completing the rollout. Mandating that certain segments of suppliers' customer bases must receive smart meters at a certain time could reduce the</p>

¹⁰https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/prepayment_report_june_2015_finalforpublication.pdf

	<p>potential for suppliers to rollout in the most efficient manner.</p> <p>Regarding tariffs specifically, in our recent PPM report we noted that we were investigating further whether a potential shortage of PPM tariff codes was limiting tariff choice. Tariff codes are a function of the traditional prepayment infrastructure, and some suppliers suggested that there are technical limitations to the number of 'tariff codes' which the prepayment infrastructure can accommodate. This technical constraint was therefore cited as a key reason by suppliers for the limited number of PPM tariffs available. Smart PPM would mitigate this issue as there is no such reliance on the traditional PPM infrastructure.</p>
65(b)	<p><i>Which version of this remedy would be more effective and/or proportionate?</i></p> <p>It is important to note that through our monitoring work we have observed that:</p> <ul style="list-style-type: none"> • Smart prepayment services are increasingly offered in the market • Some suppliers are already replacing traditional prepayment meters with smart meters (the nine largest suppliers installed at least 7,500 in 2014) • There are signs that some suppliers plan to prioritise traditional PPM customers as they see a commercial incentive in doing so. <p>In addition, it is possible that for some suppliers option a would not lead to prepayment meters being replaced with smart meters earlier than they are already planning. To complete the rollout by the end of 2020, the majority of large suppliers, post DCC-Live (ie once DCC is operational and able to provide enrolment and communication services), may choose to replace prepayment meters with smart meters, unless there were legitimate technical and operational issues that prevented them from installing smart meters.</p> <p>Option b (do PPM rollout before starting main rollout) would therefore be more <u>effective</u> in ensuring the replacement of prepayment meters is prioritised. However, in practice it is likely to be very difficult to fully complete the rollout of prepayment meters in a timely manner, which would most likely delay the wider rollout of smart meters. It could also result in additional supplier (and ultimately consumer) costs as described below. As such, option a (stop installing traditional PPM – all PPM installs must be smart) would be more proportionate.</p> <p>We also note that DECC have consulted on when they should activate the "new and replacement" licence requirement. Once activated, suppliers would have to take all reasonable steps to ensure that all meters installed for the purposes of meeting their smart meter rollout obligation are smart meters (subject to exceptions relating to current transformer meters and advanced meters). This is a similar mechanism to the proposed option a, although it currently applies to all smart meters, not just PPM.</p> <p>Alternative remedy: An alternative approach to remedy b could involve partial prioritisation of smart PPM (as opposed to full prioritisation). This would still carry several of the significant risks we have outlined, but these would be mitigated to some extent by virtue of not mandating full prioritisation. Partial prioritisation could, for example, take the form of mandating that a minimum % of (yearly) roll-out is targeted at traditional PPM customers or setting year-on-year PPM roll-out targets in terms of % of PPM customer base.</p>

65(c)	<p><i>Would any additional or alternative measures be required to ensure that this remedy comprehensively addressed the overarching feature of weak customer response arising in particular from those with prepayment meters?</i></p> <p>The great cost and convenience benefits of smart PPM will not inevitably lead to greater engagement from a switching perspective. Our work has suggested that customers who are more vulnerable could need more support to engage in the market – this is why we have Energy Best Deal and Energy Best Deal Extra. Alongside their wider consumer engagement focused activities, the CMA could also look at additional remedies which provide more support such as further injection of funds into such mechanisms, including looking at PPM-specific support.</p> <p>We recently published our report on PPM¹¹, where we identified several areas of ongoing work for prepayment consumers, which we are taking forward.</p> <ul style="list-style-type: none"> • There appears to be a lot of good practice by suppliers in relation to charging practices. We will consult on further identifying good practice and take steps to strengthen protections in this area. In particular, we will seek views on ending charges for installing and removing prepayment meters and ending use of security deposits in all or some cases. • We will follow up with the suppliers who have given us cause for concern about the appropriateness of types of charges, levels of charges, and how they are applied. This includes examining their compliance with existing rules. • We want to see more competitively priced tariff options available for prepayment consumers. We have started a review to further understand the potential shortage of prepayment tariff codes and whether this is limiting competition. We have noted the interactions with the CMA investigation and will take its findings into consideration in the next stage of this work. • We will continue to work with government and energy companies to ensure smart metering delivers benefits to all consumers including those on prepayment. This includes our work on faster switching and consumer empowerment and protection. <p>We are very keen to explore the interactions between our work programme, your findings and proposed remedies in this area.</p> <p>Our response to remedy 10 (prompts to engage) also provides further thoughts on addressing weak customer response in general.</p>
65(d)	<p><i>What issues may arise as a result of prioritising the installation of smart meters in the homes of customers who currently have prepayment meters?</i></p> <p>Cost: It could lead to a less efficient and more costly rollout if an element of a supplier's rollout strategy is mandated.</p>

¹¹https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/prepayment_report_june_2015_finalforpublication.pdf

	<p>Teething issues: If DCC's and suppliers' systems and processes have teething issues, prepayment consumers could end up being disproportionately affected – noting that technically and operationally PPM is a particularly complex element also for smart meters. This consequence should not be underestimated. PPM consumers can be disproportionately vulnerable and it is imperative that systems and processes work effectively.</p> <p>For example, a short term disruption of DCC services is not expected to adversely impact the majority of domestic energy consumers. However, any disruption to the transfer of customer payment confirmations could have adverse impacts to consumers on prepayment. Back-up solutions are being put in place to ensure that top-ups and security of supply can be maintained in such a scenario, but these are manual and consumer-led. The initial experience of smart PPM consumers would therefore be negatively affected. In addition, it would immediately stress-test on a large scale the full breadth of PPM processes, which are inherently more complex already. Therefore it is important that DCC's systems are stable at the point smart prepayment meters are prioritised.</p> <p>Suppliers have different strategies for introducing smart PPM. This includes differences in timing and technology (eg using SMETS 1 vs. waiting for SMETS 2). Those waiting for SMETS 2 will likely be less developed and advanced in their thinking on smart PPM. These suppliers will therefore be the ones at greatest risk of incurring teething issues. Smart PPM is complex, and all suppliers to-date have gone through extensive piloting. The ability to do so could also be jeopardised by a hard prioritisation.</p> <p>In addition, it may not be technically or operationally feasible to prioritise all prepayment customers.</p> <ul style="list-style-type: none"> • Technical feasibility: eg having wide area network coverage and having a meter and communications hub that operates at 868MHZ • Operational feasibility: eg some customers may not engage with the supplier such that the supplier can get an appointment and get access to the property <p>Interoperability issues for SMETS 1 meters: There are existing regulations and ongoing policy work that would need to be considered if any of CMA's proposals are implemented. Ofgem's interoperability Licence Conditions for Advanced Domestic Meters (which covers smart meters as well as smart-type meters) are designed to remove any barriers that could prevent the new supplier from operating the meter with smart functionalities if they wish to do so. They state that large installing suppliers have to offer services that enable a new supplier to offer the smart functionalities, but it is ultimately the new supplier's right not to take this up (with obligations around clearly communicating this to consumers). No commercial arrangements are thereby 'forced' onto the new suppliers for early smart meters. Prioritising PPM for all smart meters would therefore fundamentally alter the existing framework of arrangements for early smart meters (pre-SMETS 2)</p>
65(e)	<p><i>Would it be more effective and/or proportionate to require energy suppliers to accelerate the roll-out of smart meters across the retail markets as a whole, in order to facilitate engagement more broadly, rather than focusing on customers</i></p>

on prepayment meters?

The smart meter rollout needs to balance time, cost and quality objectives. We want consumers to enjoy the benefits of smart meters as early as possible, and it's important to push the industry to deliver. However, we are also keenly focused on cost and quality. There are technical complexities and risks that impose constraints on rollout profiles and it may not be technically feasible to accelerate the rollout without compromising the consumer experience. Because consumers are ultimately footing the bill, we do not want costs to escalate, or the consumer experience to suffer.

Throughout 2015 we are scrutinising suppliers' draft rollout plans closely to ensure that they have a robust plan in place to meet the 2020 target. Monitoring the supplier rollout is a key priority for Ofgem because we want to ensure customers get the benefits as early as possible, but also that the consumer experience is a good one. In our view, positive consumer engagement will be key to the success of the rollout.

We have directed suppliers from January 2016 to set themselves binding annual targets to meet that 2020 target and we will closely monitor their progress towards those targets. We have made clear to suppliers that their plans must be credible and robust. Where suppliers are failing to meet their obligations, Ofgem may take enforcement action against them.

Remedy 6 – Ofgem price comparison service

1. Summary

- 1.1. Remedy six proposes that Ofgem would operate an independent price comparison service for domestic consumers with whole-of-market coverage. The CMA also suggests that this remedy could be extended to microbusinesses.

Price comparison service for domestic consumers

- 1.2. The Ofgem price comparison service must be considered alongside the other remedies the CMA has set out. In a market where part of or all of the 'simpler choices' component of the RMR has been removed and PCWs compete with each other by securing exclusive tariffs from suppliers¹², we recognise the rationale for measures that support price comparison and build consumer trust in the information they receive about their options. This could become increasingly important with the roll-out of smart metering given the opportunity this creates for tariff innovation.
- 1.3. There are a number of ways in which this could be achieved. One option, as identified by the CMA, is for Ofgem to operate an independent price comparison service. However, there are alternative options that could also achieve the CMA's objective of helping to facilitate widespread engagement by domestic consumers including through PCWs. We identify such alternatives in our responses to other remedies. For example, in our response to remedy 10 we note that potential for consumer awareness campaigns, such as the government's "Power to Switch" and Ofgem's Be An Energy Shopper campaign, may be an effective way of encouraging engagement.
- 1.4. Focusing specifically on the CMA's aim of improving trust in PCWs, alternatives to an Ofgem price comparison service could include the following:
- Ofgem operates a tool similar to the mortgage calculator offered by the Money Advice Service. This would show a consumer what she could expect to pay based on the average price available in the market taking into account relevant factors such as consumption.¹³

¹² Our understanding is that PCWs did not generally compete in this way prior to the introduction of the 'simpler choices' component of RMR. However, we recognise that this could change if these rules were removed.

¹³ The mortgage calculator is offered by the Money Advice Service, the UK's statutory body for improving people's understanding and knowledge of financial matters and their ability to manage their own financial affairs. For more information, see here: <https://www.moneyadviceservice.org.uk/en/tools/mortgage-calculator>

- Ofgem to list the most expensive tariffs on our website.
- Ofgem to enhance the Confidence Code such that it provides information to consumers on the service they can expect to receive when using different PCWs, for example by using star ratings.

1.5. Such options could help inform the consumer's decision on whether to accept an offer received through a PCW, while reducing or avoiding some of the practical considerations and potential risks to competition from a full price comparison service. We are open to exploring with the CMA the relative merits of these alternatives. In so doing, we would need to consider carefully the risks, detailed design and delivery model for each, in particular the option of enhancing the Confidence Code so that it includes star ratings because of its potential impacts on the PCW market.

1.6. If the CMA proceeds with an Ofgem price comparison service, we can help with its design. We note that there are various models for such a service that can be defined along different dimensions including:

- **The audience for the service:** As identified in the CMA's survey, not all consumers have access to the internet or feel confident using it to compare deals.¹⁴ Depending on which consumers the service is aimed at, it could be provided online only or also via the telephone. We also note that PCWs do not tend to provide comparisons for consumers with complex electrical meters beyond Economy 7. As such, an Ofgem price comparison service could fill this gap in the market, which may become increasingly important if the roll-out of smart metering leads to the introduction of more complex tariffs.
- **The service provided to the consumer:** For example, the service could provide information only on the tariff choices for an individual consumer (like that offered by the Australian Energy Regulator).¹⁵ This service is likely to require us to have additional powers. There may also be scope to offer additional services beyond personalised price comparison. For example, we could use the calculator that underpins the price comparison service to list the tariffs that are most expensive in the market on our website as a type of reputational regulation.
- **The extent of market coverage:** The service could cover tariffs offered by some or all suppliers only, or extend to all tariffs offered by suppliers plus those that are exclusive to PCWs.
- **The provider of the service:** We could offer the service ourselves or commission an independent body to do so that is accountable to

¹⁴ The CMA's survey found that 12% of respondents lack confidence in using the internet and 17% have no access to the internet.

¹⁵ There may also be scope to offer additional services beyond price comparison. For example, we could use the calculator that underpins the price comparison service to list the tariffs that are most expensive in the market on our website as a type of reputational regulation.

us. (The latter is likely to require us to have new powers as we cannot currently delegate our functions or establish another body to perform them on our behalf.) There is also the potential for a non-commercial body, other than Ofgem, to be better placed to provide or commission a price comparison service.

- 1.7. Each of the potential models will come with different benefits and risks. One of the key criteria for determining the model would be to minimise the risk of stifling innovation and a market-led solution (including a meta search engine for energy). Moreover, any regulator-operated service could be subject to intense media scrutiny and public expectation. There is a risk that this could potentially harm trust in PCWs unless the objective, target audience and nature of the service is clearly defined along with a clear consumer awareness plan.
- 1.8. There are also practical considerations in the operation of an Ofgem price comparison service. To establish a price comparison service, it is likely we would require additional powers.
- 1.9. Moreover, adequate funding and publicity of the service would be critical to its success. Depending on its purpose, it may also be necessary to consider whether the service is temporary and hence how it would be closed down at a later date.
- 1.10. If an Ofgem price comparison service is created, we will also need to consider how this impacts on our role in administering the Confidence Code.

Price comparison service for microbusiness consumers

- 1.11. We understand that the main driver for introducing an Ofgem PCW in the microbusiness market would be to support customers in accessing and assessing information, in the context of a general lack of transparency.
- 1.12. We are already aware of a number of services which provide online quotes for microbusinesses, in addition to others which support telephone searching. It is important that innovative new PCW business models are given space to develop and we are aware that some suppliers and TPIs are thinking of developing business models that would help improve transparency. In our view remedies 7a (price lists for microbusinesses) and 9 (additional information) have the potential to play a strong role by way of a coordinated intervention in supporting further development of this sector.
- 1.13. There may be a case for the impact of these two remedies being realised first, with a view to seeing whether they appropriately address the market features identified. We are mindful of the additional risks that an intervention such as remedy 6 may carry in a nascent PCW market. It is also important to consider the additional complexity of design and cost associated with an Ofgem price comparison service in the microbusiness market, and the technical challenges associated with making accurate tariff recommendations.

2. Responses to questions

Question number / para ref	Ofgem's comments
71(a)	<p><i>Would this remedy be effective in increasing customers' trust in PCWs and thereby encourage engagement in the markets and switching?</i></p> <p>Price comparison service for domestic consumers</p> <p>As set out above, we recognise the value of an independent price comparison service for domestic consumers in a market where part of the 'simpler choices' component of the RMR has been removed and PCWs compete with each other by securing exclusive tariffs from suppliers. This service can provide an independent and trusted price comparison service, helping them to engage in the market.</p> <p>The CMA specifically asks whether an Ofgem price comparison service will also increase customers' trust in PCWs. We support the view that trusted PCWs can support consumer engagement in the market by reducing search and switching costs. This was an important driver of recent changes we made to the Confidence Code to ensure that consumers can compare tariffs and suppliers with confidence.</p> <p>We understand that the CMA has proposed this remedy so that consumers would use an Ofgem price comparison service to check quotes they receive on other PCWs. We note the interaction here with remedy three, which the CMA envisages would allow suppliers to offer as many tariffs as they wish and allow PCWs to offer exclusive tariffs. It is possible that consumers use Ofgem's service instead of PCWs. But assuming they use both, trust in PCWs may increase if they produce the same list of quotes as Ofgem's service. (This scenario is likely to require the PCW and an Ofgem service to use the same methodology to compare tariffs for the individual consumer). However, in another scenario, the results do not match. The impact on trust could then depend on the extent to which the results differ and the consumers' expectations.</p> <p>Price comparison service for microbusiness consumers</p> <p>As noted by the CMA, PCW presence in the microbusiness market is generally more limited, although we are aware of a small number of services which offer online quotes (see answer c for more detail), and others which support telephone searching. Our research has shown that one in eight businesses (12%) have mainly used a price comparison website or telephone service to choose their current energy contract and 74% were satisfied with the service provided (31% very satisfied).¹⁶ Our research suggests that trust issues relate more to the role of brokers in the current market context. Whilst most of the</p>

¹⁶ <https://www.ofgem.gov.uk/ofgem-publications/94051/nondomquantfinalv4-pdf>

	<p>businesses that have used brokers (81%) were satisfied with the service provided, the perception of energy brokers more generally among micro and small businesses tends to be more negative.</p> <p>We agree with the assessment in the provisional findings report that complexity is a barrier to the emergence of PCWs in the microbusiness market. We also believe the absence of tariff transparency to be a significant barrier to PCWs entering this market. Remedies 7a and 9 should play a strong role in supporting further development of this sector. There may be a case for the impact of these two remedies being realised first, with a view to seeing whether they appropriately address the market features identified.</p> <p>It is important that innovative new PCW business models are given space to develop and we are mindful of the additional risks that an intervention such as remedy six may carry in a nascent PCW market. It is also important to consider the additional complexity of design and cost associated with an Ofgem price comparison service in the microbusiness market, and the technical challenges associated with making accurate tariff recommendations (discussed further in section d).</p>
71(b)	<p><i>Should this service be online-only, or should it also operate over the telephone for those customers without access to the internet?</i></p> <p>Price comparison service for domestic consumers</p> <p>As shown by the CMA's survey results, some consumers do not have access to the internet or do not feel confident using PCWs. An Ofgem price comparison service that operated over the telephone could be a powerful way of engaging some of these consumers.</p> <p>However, a decision on whether to provide a price comparison service over the telephone must be informed by the outcome that the remedy is seeking to achieve. If the remedy aims to improve trust in online comparison provided by PCWs (as indicated by (a) above), it may be unnecessary for an Ofgem price comparison service to be available over the telephone. Consumers that use PCWs in this way may be confident in using an online Ofgem-operated price comparison service to check the quotes they receive.</p> <p>In addition, we note that operating an Ofgem price comparison service by telephone as well as online would (substantially) increase the costs to implement the remedy.</p> <p>We also note that face-to-face communication may provide a powerful way of reaching some disengaged consumers that cannot be reached through other channels. We have undertaken work to help engage consumers in this way. For example, we have worked with Citizens Advice on Energy Best Deal and Energy Best Deal Extra, which provide advice to vulnerable consumers on energy issues through workshops and one-to-one sessions respectively.</p>

	<p>Price comparison service for microbusiness consumers</p> <p>We understand that the majority of microbusiness sales are telephone based. Many current business price comparison models also rely on telephone engagement. Further research would need to be undertaken into the additional value that telephone services provide currently, as well as the additional value they could provide in the context of the final microbusiness remedy package.</p> <p>Any need for telephone engagement may reduce with the introduction of remedies 7a¹⁷ and 9¹⁸. These remedies should support PCWs in instantly accessing tariff rates, and support customers in accessing the demographic information they need to obtain quotes.</p> <p>As with any domestic Ofgem PCW, we anticipate that the provision of a telephone service will have resource implications, which could be more severe in the microbusiness market due to the expected greater complexity of negotiated tariffs. On this basis it may be appropriate to limit any microbusiness Ofgem PCW to publishing the range of tariffs provided by suppliers.</p> <p>More generally we would expect this remedy, online or telephone, to be of less value to larger microbusinesses, due to the expected higher uptake of bespoke negotiated contracts. However, it could be a helpful reference point for negotiations for these customers.</p>
71(c)	<p><i>Is there a risk that such an independent service could undermine the development of other PCWs in the energy sector? How could this risk be mitigated?</i></p> <p>Price comparison service for domestic consumers</p> <p>We consider that there are risks that an Ofgem-operated price comparison service could undermine the development of the PCW market. The impact and likelihood of these risks depends on the model that is chosen. The most interventionist model, whereby an Ofgem-operated price comparison service can complete the switch on the consumers' behalf, poses the greatest risk to the PCW market. We set out our views on this further in response to (f).</p> <p>Even if an Ofgem-operated price comparison service is not transactional, it may still pose a risk for innovation. For example, PCWs may have an incentive</p>

¹⁷ Where an Ofgem price comparison service provides telephone comparisons, we don't envisage the telephone service would be able to provide a greater level of analysis or advice than would be provided by any web-based service (given that both would need to rely on the same underlying comparison software).

¹⁸ It is possible a telephone service could provide some value in helping customers identify the characteristics they need to obtain an accurate quote (e.g. talking customers through where they can find details of their annual consumption). However appropriate design of remedy 9 should limit the need for any service of this kind.

	<p>to replicate the way that Ofgem's service calculates and presents tariff comparison. This is because consumers may lose trust in the quotes a PCW provides if it does not provide the same result as the Ofgem service. As a result, the incentives on PCWs to innovate in how they generate and present quotes, for example by improving their accuracy, could be dampened.</p> <p>For both domestic and micro businesses, we would need to consider that remedy 6 is likely to have a distortive effect on PCWs.</p> <p>Price comparison service for microbusiness consumers</p> <p>We consider this to be a material risk in the microbusiness segment in particular, given that this is a market which is still in early stages of development.</p> <p>The Provisional Findings Report notes that Energylinx for business provides a service through its website. We know of at least two sites that offer online quotes. There are also currently price comparison services active in the market which support telephone searching.</p> <p>We are also aware that there is currently interest in new business models, which could be adversely affected by the introduction of an Ofgem PCW (depending on its intended aim). We understand that some market participants are innovating (i) to introduce market wide search on behalf of customers and enable easy switching online (something that does not happen currently) (ii) to develop standard 'off the shelf' tariffs as on the domestic side (iii) to develop ways to improve price transparency – all of which may facilitate the development of PCW type services for microbusiness customers.</p> <p>In the event there is appetite for an Ofgem-run PCW to be introduced in the microbusiness market, impacts on the competitive PCW market could be minimized by limiting the services provided by the Ofgem website. This could be by providing only published lists of prices, providing a very basic user interface, and/or not being transactional. However, these mitigation approaches would also limit the value of an Ofgem PCW overall.</p>
71(d)	<p><i>Should the Ofgem website quote the energy suppliers' list prices only? Or should it seek to provide full details of all quotes available on the market (including on other PCWs), ie function as a meta-PCW?</i></p> <p>Price comparison service for domestic consumers</p> <p>If the purpose of the remedy is to increase trust in PCWs (as suggested by (a)), consumers need to be able to compare quotes on PCWs against those on an Ofgem-operated price comparison service. Any discrepancy between the two could undermine trust in PCWs and lead to confusion. This would lead to the conclusion that an Ofgem price comparison service would need to provide full details of all quotes available on the market. However, this is likely to add to the practical challenges and cost of delivering the service.</p> <p>It is also worth bearing in mind that to the extent any Ofgem PCW would be</p>

	<p>required to be compliant with the Confidence Code (and/or a microbusiness equivalent), it would need to use (and maintain) its own tariff database and calculator.</p> <p>Price comparison service for microbusiness consumers</p> <p>As noted above, we understand that trust is not the main driver for the introduction of remedy 6 in the microbusiness market.</p> <p>In the event an Ofgem microbusiness PCW is progressed, we see two main factors which support the view that the website should be limited to quoting list prices only:</p> <ul style="list-style-type: none"> i. To leave room for the competitive PCW market to develop ii. To limit the practical challenges involved in design and development <p>We have discussed i. in answer c). In relation to ii., paragraph 70 of the remedies notice explains the significant practical difficulties associated with increased tariff numbers (and tariff complexity). In general, we would expect a much wider range of tariffs in the microbusiness market than in the domestic market, both due to the absence of a tariff cap, and to cater for different microbusiness characteristics and needs. The practical challenges associated with implementing remedy 6 are likely to be higher for the microbusiness market in general, and higher where its coverage is extended further to a 'whole of the market' view. It is worth bearing in mind that the design challenges for an Ofgem microbusiness price comparison service also become much more difficult in the context of time of use tariffs, given that load profiles vary significantly depending on the type of business.</p>
71(e)	<p><i>How could we ensure that an Ofgem price comparison service was robust in terms of offering all tariffs available on the market? Should there be an obligation on retail energy suppliers and/or PCWs to provide information to Ofgem on their tariffs?</i></p> <p>Price comparison service for domestic consumers</p> <p>With a view to minimising the cost of an Ofgem price comparison service, we consider there could be merit in a licence condition on suppliers to provide us with information on their list prices. If the Ofgem price comparison service covers all quotes available in the market, the licence condition could also require them to give us information on any prices they offer to PCWs on an exclusive basis.</p> <p>There would need to be further consideration of how such information is provided. One option would be to use an interface that allows suppliers to input prices themselves. Again, this could reduce the costs to Ofgem of running a price comparison service.</p> <p>Price comparison service for microbusiness consumers</p> <p>As above, a licence condition would potentially be necessary here.</p>

	<p>Consideration of how this information would need to be provided is particularly important in the microbusiness market in light of potential greater tariff complexity.</p> <p>See section 4. For a relevant consideration relating to the absence of a duty to offer terms.</p>
71(f)	<p><i>Should any price comparison service operated by Ofgem be transactional, ie be able to carry out switches for consumers, or should it provide information only?</i></p> <p>Price comparison service for domestic consumers</p> <p>We consider that an Ofgem price comparison service should only provide information. This is because of three concerns with provision of a transactional service:</p> <ul style="list-style-type: none"> • First, that there would have the most material impact on the PCW market compared to information-only models. Consumers would have no need to visit PCWs if they can switch through the Ofgem price comparison service. • Second, that this would significantly increase the costs of providing an Ofgem price comparison service unnecessarily (given that the consumer has alternative routes for completing a switch once it has used the Ofgem service). • Third, that this places additional risk on the Ofgem price comparison service. We would become (partly) accountable for completing a switch successfully. If things go wrong, which is not implausible given existing switching processes, we could face public criticism that undermines trust in our service (and hence realisation of the CMA's aims for remedy six) and/or financial liability if we mislead. <p>Price comparison service for microbusiness consumers</p> <p>In the microbusiness market, making the service transactional has the potential to introduce significant further difficulties, in part because suppliers have no duty to supply micro businesses as is the case in the domestic market.</p> <p>Suppliers are likely to need to perform a number of checks on customers prior to agreeing a contract. This includes checks on credit history and consumption among other things. A transactional site may also have to play a role in managing objections, which under current arrangements would introduce an extremely high resource burden. Data that we have collected shows that the proportion of objections in the non-domestic market is significantly higher than in the domestic market.¹⁹</p>

¹⁹ This data compares domestic objections against all objections in the non-domestic gas

	<p>Another difference in the non-domestic market is that brokers generally require a statement of authority from the relevant person in a business (such as a Director) that the broker is able to transact on their behalf. Some suppliers have more stringent requirements than others in relation to this, with some requiring a signed letter on headed paper which lists the MPANs/MPRNs which the broker has permission to switch. Need for authorisation of this kind would make a transactional site of this kind extremely resource intensive.²⁰</p>
71(g)	<p><i>What would be the likely costs to Ofgem of offering this type of price comparison service? Would Ofgem need additional funding and/or statutory powers in order to provide this type of service? If so, where should this funding come from?</i></p> <p>Price comparison service for domestic consumers and microbusiness customers</p> <p>We do not have experience of offering a price comparison service and hence do not have a view on the likely costs. There is reason to believe a microbusiness PCW could be more complex to design, which could impact on costs.</p> <p>It is likely that we would require additional powers to provide a price comparison service. Moreover, depending on how the service is established, we may need new powers to set up other bodies to perform our functions on our behalf, as we do not have a general power to delegate our functions. We would be willing to discuss these points in more detail with the CMA.</p> <p>Ofgem is funded by a licence fee levied on the energy industry. Additional funding could be obtained through an increase in this licence fee. However, further work is needed to determine an appropriate funding mechanism.</p>
71(h)	<p><i>How should customers be made aware of the existence of this service? Should information be provided by energy suppliers on bills/during telephone calls? Should PCWs be required to provide links to the Ofgem website during the search process to allow customers to cross-check prices?</i></p> <p>Price comparison service for domestic consumers and microbusiness customers</p> <p>Consumer awareness of an Ofgem-operated price comparison service will be critical to its success. Therefore, it is important that adequate funding is provided to raise awareness. The way in which consumers are made aware of an Ofgem service will be partly driven by the form it takes and the CMA's views on prompts to engage. (See our response to remedy 10 for our views on</p>

market and objections experiences by non-half hourly customers in the electricity market.

²⁰ We understand that in the domestic market, the domestic customer is understood to be implicitly giving permission by providing their details to the PCW.

	such prompts). Appropriate messaging should be informed by research and should undergo testing to ensure it is having the maximum (and intended) impact.
71(i)	<p><i>Is there any additional information that Ofgem should provide on its website relating to energy suppliers and/or tariffs to facilitate the customer search and switching process?</i></p> <p>Price comparison service for domestic consumers</p> <p>We currently provide information to facilitate switching, particularly through the Be An Energy Shopper website.²¹ We note that the content of this website may need to be reviewed, subject to any remedies that the CMA introduces.</p> <p>We are also working to publish regular indicators on each supplier's customer service. Our objective is to help consumers make switching decisions on the basis of factors other than price, should they wish. This information could also be used by PCWs or an Ofgem price comparison service.</p> <p>Price comparison service for microbusiness consumers</p> <p>The process of searching for tariffs using a micro business PCW is necessarily more complex.</p> <p>The tariffs available to a customer may vary by factors including meter type, profile class, HHly/NHHly settlement, region, payment method, business sector, contract end date, consumption level, and credit rating. Any Ofgem PCW would need to accommodate characteristics of this kind to ensure consumers understand which tariffs they are most likely to be able to access.</p> <p>Equally tariffs are likely to have a wider range of features which need to be presented appropriately to enable consumers to make an informed decision, e.g. deposits, choice of payment methods, early payment discounts.</p> <p>As for the domestic sector, we already provide a range of information on switching for micro businesses. Please see our micro business response to remedy 10 for further detail.</p> <p>We also explain in our micro business response to remedy 10 that there may be value in encouraging micro business customers to consider negotiating contracts to get the best deal. A prompt of this kind could be included on an Ofgem PCW.</p>

²¹ For more information, see here: <http://www.goenergyshopping.co.uk/en-gb/>



3. Other comments on this Remedy Option

	Ofgem's comments
Duty to supply and non-domestics	<p>In the domestic market, SLC 22 requires that 'Within a reasonable period of time after receiving a request from a Domestic Customer for a supply of electricity to Domestic Premises, the licensee must offer to enter into a Domestic Supply Contract with that customer.' This is known as the 'duty to supply', or the 'duty to offer terms'.</p> <p>There is no duty to offer terms in the non-domestic market and on this basis it is important to be aware that regardless of the prices advertised by suppliers, a supplier may choose to refuse to supply any customer on the basis of those terms.</p>

Remedy 7a – Price lists for microbusinesses

1. Summary

- 1.1. Among the range of microbusiness remedies identified, we believe that this remedy is likely to have the strongest impact in addressing the actual and perceived barriers in accessing and assessing information in the SME retail markets and supporting competition.
- 1.2. We believe that this remedy could better enable customers to make direct tariff comparisons, where suppliers provide automatic quotes on websites (with price list updates to PCWs alongside this). We also believe the design could be developed such that, when obtaining quotes from suppliers, customers receive information about what contract they can expect to be rolled onto at the end of that tariff, in the event they take no action.²² This may help place additional pressure on default contract prices.
- 1.3. We note that there are a number of design considerations (including the absence of a duty to supply and the lack of standard tariffs in the current market context), and we are keen to work with the CMA to identify how they can be addressed such that consumers can realise the full benefits of this remedy.

2. Responses to questions

Question number / para ref	Ofgem's comments
76(a)	<p><i>Would this remedy be effective in increasing price transparency for microbusiness gas and electricity tariffs? Would it serve to make comparisons between different suppliers easier, either directly or by encouraging the development of PCW services for microbusinesses? If not, are there other measures that would encourage this development either as an alternative to this remedy or in conjunction with it?</i></p> <p>We believe this remedy will be effective in increasing price transparency for microbusiness gas and electricity tariffs. We consider that where designed appropriately, it will support consumers in comparing tariffs, as well as facilitating the further development of price comparison services for microbusinesses. Along with Remedies 9 and 10 this should help customers</p>

²² Whilst we do not envisage this would require suppliers to commit to the precise rates the customer would be rolled onto, the supplier could explain the current rates being charged for the relevant default tariff.

	<p>realise the benefits facilitated by greater price transparency in the market.</p> <p>There are a number of considerations in implementing a remedy of this kind:</p> <ul style="list-style-type: none"> ○ Currently we understand that most suppliers do not offer standard 'off the shelf' tariffs in the microbusiness market. This is because suppliers often require a credit check before agreeing to supply (potentially also requiring a security deposit if the business has no or poor credit history) and prices can differ due to profile class, consumption, region and meter type. However we are aware that suppliers have rate cards (which can act as a starting point for negotiation), and that some suppliers are currently taking steps to develop a more standardised offering, whilst others are taking steps towards greater price transparency. These developments imply that standardised tariffs should be possible in this market. It will be necessary to think through how 'standard tariffs' are defined to the extent an obligation is placed around publishing them. ○ There is no duty to offer terms in the non-domestic market (see section 4). This means that whilst a supplier may publish prices, they are not obligated to supply a customer on these terms, or at all. This creates a risk of suppliers offering low published rates, but consistently negotiating higher rates at the point of sale. We consider that there are reputational incentives for suppliers to avoid this. However, it would also be possible to introduce some form of obligation. Please see section 4 for further discussion. ○ Tariffs may have a wide range of characteristics in the microbusiness market, with a variety of structures (e.g. some prices can be fixed, or set on a 'pass through' basis) and cost elements (such as whether a security deposit is needed, and if so, what size). Policy design would have to ensure that the right range of information is published to support customers in taking an informed view, and potentially also structuring this information in a way which maximises comparability. We also believe that alongside publishing standard tariffs, there would be value in suppliers being required to publish details of the tariff the customer would be rolled onto if they take no action at the end of their contract. This could help to better inform customers, and place downward pressure on default tariff prices. ○ It will be necessary to think through which suppliers would be obligated to publish prices. Only a subset of the non-domestic supply market supply micro businesses. It could be possible to restrict the obligation to only those suppliers who supply micro businesses.²³ ○ Equally, there are potential policy variations around which customers are targeted by the remedy. We are aware that suppliers face
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²³ It is worth being aware that some suppliers may predominantly supply I&C, but may be willing to supply micro businesses linked to that customer as part of their I&C contracts. In these circumstances, the supplier may not wish to offer terms to micro businesses in general.

	<p>challenges in identifying microbusinesses under the current definition, and a consumption only definition could be considered to address this. It is also worth being mindful of the fact that suppliers may be better able to provide a standardised offering for some sections of the microbusiness market than others (e.g. smaller microbusinesses).</p> <ul style="list-style-type: none"> ○ This policy carries a risk that micro businesses will begin to overly rely on published prices, rather than negotiating rates (which may be lower) where they have the capacity to do so. Having appropriate wording in prompts to engage can mitigate this risk. <p>Due to the anticipated high number of tariffs, and multiple criteria for accessing them, there is a risk that published price lists alone may be of limited use in supporting customers to identify and compare appropriate tariffs themselves. However, publication of these tariffs should support the development of price comparison services. It is valuable to consider whether standard formatting should be used for publishing rates.</p> <p><i>An online quote system, as described in paragraph 76 of the Notice of Potential Remedies, has the potential to better enable customers to identify and compare tariffs themselves. However, this would be of limited value to price comparison services. To the extent there is appetite to support the development of price comparison services, alongside better enabling customers to engage with suppliers directly, we see two main variants of 7a which could support engagement:</i></p> <ul style="list-style-type: none"> <i>i. Suppliers could be encouraged/mandated to offer a quote system alongside published rates</i> <i>ii. Suppliers could be mandated to offer a rate update service to PCWs where requested, and offer an online quote system to customers</i>
76(b)	<p><i>Do microbusinesses have sufficient access to the information they need (for example on their meter types) in order to engage effectively in the search and switching process?</i></p> <p>We agree that it is important for remedy 9 to support customers in accessing the full range of information they need to obtain accurate quotes.</p> <p>Further engagement with suppliers would be necessary to verify the data items that customers may need to provide to obtain accurate quotes. We understand that the range of information needed may include:</p> <ul style="list-style-type: none"> - <i>Consumption level</i> - There is a requirement for annual consumption to be included on end of fixed term contract notifications, but not on bills. As a result, customers on variable contracts, or customers who have not yet received their end of fixed term notification, may not know their consumption level. - <i>Meter type</i> - we don't believe this information is necessarily readily

	<p>accessible to customers</p> <ul style="list-style-type: none"> - <i>Profile class/settlement regime</i> – The supply number on electricity bills contains this information. To the extent it is necessary for obtaining a quote, customers would be likely to need support in understanding this. We don't believe this type of information is readily accessible on bills in the gas market, but we also understand it is likely to be less relevant in gas. - <i>Region</i> – Where a customer supplies the post code of their businesses, this should be sufficient to allow suppliers to identify the region(s). The distributor ID is also included as part of the supply number on electricity bills/statements (but not gas). However, customers would need support in understanding this. - <i>Payment method</i> – There is no requirement for this to be included on bills. - <i>Contract end date</i> – RMR introduced a requirement for this to be included on micro-business bills (from 31 March 2014) - <i>Credit rating</i> – We understand that suppliers do credit checks on customers prior to supplying
76(d)	<p><i>Should energy suppliers be permitted to fulfil this requirement by providing an automated quoting service on their websites (where microbusinesses can put in their details in order to obtain quotes) rather than a list of prices?</i></p> <p>(See answer a)</p>

3. Other comments on this Remedy Option

Para ref	Ofgem's comments
General	<p>In the domestic market, SLC 22 requires that 'Within a reasonable period of time after receiving a request from a Domestic Customer for a supply of electricity to Domestic Premises, the licensee must offer to enter into a Domestic Supply Contract with that customer.'</p> <p>There is no duty to offer terms (also called a duty to supply) in the non-domestic market and on this basis it is important to be aware that regardless of the prices advertised by suppliers, a supplier may choose to refuse to supply any customer.</p> <p>A duty to offer terms could be introduced into the microbusiness market, to match the duty in the domestic market. This would not obligate suppliers to supply on the basis of published tariffs, but it could be a factor in</p>



	<p>encouraging them to do so. A change of this kind carries some risks. It could force suppliers to take on customers that impose high costs or risks on their business, and this may create an additional barrier to entry. This could also have the effect of pushing up tariff prices. It would also be necessary to consider which non-domestic suppliers and which category of consumers would be subject to any duty of this kind. There are a range of suppliers who currently only serve medium/large non-domestic customers for instance.</p> <p>In the event a solution is considered necessary, we would be happy to do further thinking on the need for, and viability, of introducing a duty to offer terms, and whether there might be any alternative models. A less onerous requirement may be possible, for instance requiring suppliers to publish rates which consumers can reasonably expect to be supplied on, except in cases where the supplier is unwilling to offer terms, or where the customer's circumstances are sufficiently unusual so as to require a bespoke contract to be offered in place of a standard contract. We consider further thinking would be necessary to the extent there is appetite to progress any additional reform in this area.</p>
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Remedy 7b – Rules governing microbusiness TPIs

1. Summary

- 1.1. Remedy 7a has the potential to significantly change how the micro business market functions. Among other things, we would expect switching through PCWs to become a stronger feature, with a corresponding reduction in the reliance on brokers.
- 1.2. In light of this, and the rollout of smart meters, we note that the type of TPI regulation needed is likely to change over time. We believe it would be valuable to consider the most appropriate and proportionate form of TPI regulation in the light of the final remedies package.
- 1.3. Ofgem does not currently licence TPIs as we do suppliers and there are limitations to our ability to take action where TPIs are concerned. Some of the supply licences have TPIs within their scope (eg where the TPI is a representative of the supply company). We also administer the Confidence code, a voluntary code of practice for PCWs.
- 1.4. Regulatory options could range from a more light touch model which preserves scope for innovation (e.g. a voluntary code of practice such as the confidence code in the domestic markets), to more mandated approaches. These could include a mandatory code of practice, targeted intervention that hits at problem areas of TPI conduct (e.g. commission disclosure) or a general authorisation regime. Under a general authorisation regime, TPIs would not need to apply for a licence or pay a licence fee, and barriers to entry could therefore be reduced relative to a licensing regime. A TPI (with a definition being provided in legislation and by Ofgem) would operate as currently, but would be subject to certain rules that Ofgem can enforce against. We would be keen to discuss this further with the CMA.

2. Responses to questions

Question number / para ref	Ofgem's comments
80(a)	<p><i>Would this remedy be effective in improving transparency over incentives and trust in TPIs in the energy sector? How could the CMA ensure that this remedy was enforced, ie that TPIs were providing the specified information?</i></p> <p>We recognise that remedy 7a (the requirement for price transparency) has the potential to significantly change how the microbusiness market functions. Among other things, it should better enable microbusiness price comparison websites to develop. There are currently relatively few PCWs for business consumers. Most TPIs are brokers who provide quotes and agree contracts on the phone. The</p>

<p>online TPIs, such as Make it Cheaper and Utilitywise, offer quotes online to customers and this is typically followed by a customer calling up to negotiate further over phone. Remedies 9 and 10 should better support customers in obtaining quotes accurate for their circumstances, and switching.</p> <p>Overall these remedies may have the effect of shifting the balance of TPI activity away from brokers and towards online platforms that fulfil a switch, such as, price comparison websites (and fully independent switching).</p> <p>We agree that the suggested remedies address a range of the problems identified in the current market context. It will also be valuable to think about what form of regulation may be needed in light of the final remedies package.</p> <p>Regulatory approaches</p> <p>It is worth noting that TPIs in the non-domestic market are a diverse group that, among others, include brokers, energy consultants, and online quoting services. Ofgem's powers do not include licencing TPIs. Bodies such as the Energy Ombudsman also only track licensed entities. In this context, Ofgem have a range of options for regulating the TPI sector. Options could range from a more light touch model which preserves greater scope for innovation (e.g. the voluntary Confidence Code in the domestic markets), to more mandated approaches such as a direct licensing or a general authorisation regime.</p> <p>In the domestic markets, Ofgem currently administers the voluntary Confidence Code for price comparison websites.</p> <p>We recognise that TPIs are a key part of the non-domestic market and have been developing proposals to address the issues identified in the SME segment of this market. We consulted in 2014 on proposals for regulating non-domestic Third Party Intermediaries.²⁴</p> <p>In March we published an open letter²⁵ acknowledging the CMA's investigation, and stating our intention to defer the planned consultation on the TPI code of practice, subject to greater clarity, so we can determine the appropriate level and nature of intervention. In coming to a decision, the proportionality of the model and other better regulation considerations will be important factors.</p> <p>An alternative model</p> <p>We note that other regulatory models exist in other sectors. For example, Ofcom regulates the telecoms market through a general authorisation regime, under which it has the power to set conditions which apply to persons meeting specified criteria.</p> <p>We believe this model could offer a number of benefits, and we would be keen to</p>
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²⁴<https://www.ofgem.gov.uk/publications-and-updates/third-party-intermediaries-tpi-proposals-regulating-non-domestic-tpis>

²⁵https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/open_letter_tpi_principles_march_2015_for_web_0.pdf

	<p>discuss further with the CMA under what circumstances this could be an appropriate route.</p> <p>In order to implement through this route, primary legislation would need to give Ofgem this power, and to set out the applicable criteria for when the conditions would apply.</p> <p>To the extent that any interim regulation would be necessary in advance of these powers coming into effect, or as an alternative more generally, the CMA could make an order directed at TPIs putting in place a basic regulatory package (for instance with regular review points).</p> <p>Regardless of whether general authorisation regime powers are used for regulating TPIs in the short term, we consider that these powers could support us in taking future action and in responding more flexibly to emerging business models.</p>
80(b)	<p><i>What information should be provided by TPIs to microbusinesses in order to enable them to make informed choices?</i></p> <p>We set out a range of TPI voluntary principles in March 2015.²⁶ Among other things, these gave the following examples of expected TPI behaviour:</p> <ul style="list-style-type: none"> - Honesty – TPIs should identify themselves, the services being offered and any organisations they represent (directly and indirectly) clearly at the start of any interaction with a customer, and obtain the customer’s consent before any marketing. (We note that customers are also likely to benefit from being provided with TPI contact information.) - Accuracy – TPIs should make the customer aware of how much of the market they search to obtain the offers proposed, and to ensure all offers are accurately presented - Transparency - Before obtaining their agreement to the contract, TPIs should make the customer aware of all principal terms of the energy contract, including the services provided by the TPI and how the customer will pay (directly or indirectly) for those services.
80(c)	<p><i>Could the provision of certain types of information have unintended consequences (eg customers choosing tariffs based on commission rates rather than total price)? If so, are there any steps that could be taken to mitigate this effect?</i></p> <p>During the work on the non-domestic TPI code of practice, we discussed the costs and benefits associated with declaring commission rates.</p> <p>Understanding commission rates may be helpful to some customers in signalling the actual costs of energy, which could be a starting point in bilateral negotiations</p>

²⁶ <https://www.ofgem.gov.uk/ofgem-publications/93764/openlettertpiprinciplesmarch2015forweb-pdf>

	<p>between the customer and the supplier, or in highlighting the money that could be saved e.g. by setting up a collective switch type approach.</p> <p>Ultimately the overall tariff price/terms are the key pieces of information customers should be using to choose a contract, and understanding commission rates is helpful to the extent it can better inform customers about the overall tariff price terms they could achieve.</p> <p>We recognise there are a number of issues with making commission rates public:</p> <ul style="list-style-type: none"> • A variety of commission models exist. Based on information from 6 suppliers, our recent RFI revealed that commission can be received on a pence/KWh, fee per meter, or fee per contract basis. Suppliers can choose to offer standard commission rates/models to all TPIs, or a single TPI may negotiate a bespoke rate with a supplier. Due to the variety of commission models, customers may find it hard to compare commissions, and understand the overall commission cost. • Where commission rates are published e.g. on websites, there is a risk that customers will place undue focus on pursuing tariffs with low commission rates, at the expense of seeking out the cheapest tariff overall. It may also lead to competition concerns, if TPIs were able collude to agree higher commission rates from suppliers. • Where commission rates are published on bills, this policy is likely to require a long implementation timeframe. As part of the RMR, any changes to billing information required in the region of a 10 month implementation timeframe, due to the system changes necessary. We do not anticipate that any supplier would publish commission rates on bills voluntarily because of the perceived loss of competitive advantage if TPIs withdrew services, given the significant proportion of business that is brought by TPIs. <p>As with the approach in the current draft code of practice, we consider that the appropriate balance may be to put the onus on the TPI to proactively state that there is a fee/commission, and to offer to disclose this to the customer.</p>
80(d)	<p><i>Should the specified information be provided to customers in writing or orally (or both)? At what stage in the sales process should this information be provided?</i></p> <p>All principal terms should be provided before the sale. Within the current supply licence, SLC 7A.4 states that these terms should be communicated clearly but do not specify the route.</p> <p>Given that a large proportion of sales to microbusinesses are by telephone, it remains practical to allow this information to be communicated orally. However to support effective monitoring and enforcement, it would be prudent to require the full service call to be recorded, so that this can be audited by the TPI or supplier.</p>

80(e)	<p><i>Should this remedy be introduced in addition to Ofgem’s proposed code of conduct? Or should only this remedy (or only Ofgem’s code of conduct) be introduced?</i></p> <p>A range of the requirements described in the remedy are currently included in the draft TPI draft code of practice (CoP), and in the TPI principles we set out in March 2015.²⁷ The parallels are detailed in the table in section 4.</p> <p>We don’t consider it would be appropriate to duplicate regulation by implementing these aspects of the code alongside a remedy which addresses the same areas.</p> <p>Please note that the draft code hasn’t been consulted on and we have not reached a view on the final design of, or the appropriate regulatory framework and delivery mechanism for, TPI regulation. The details of our draft code, and feedback from the industry workshops we ran last year prior to our planned consultation, are available on our website.²⁸</p> <p>The draft TPI CoP was designed to address the concerns highlighted through our consumer research²⁹ and stakeholder engagement. Key concerns included both pre-sale (eg cold-calling) and post-sale elements, and the code contains a requirement for a complaints procedure. We believe addressing this range of concerns is important in supporting trust in the market.</p>
80(f)	<p><i>Are there any additional measures that should be implemented alongside this remedy to enhance its effectiveness?</i></p> <p>Remedy 7a should support tariff transparency in the market and decrease the search costs for micro businesses. Remedies 9 and 10 should better support customers in obtaining quotes accurate for their circumstances, and switching. Overall these remedies may have the effect of shifting the balance of TPI activity away from brokers and towards online platforms that fulfil a switch, such as, price comparison websites (and fully independent switching).</p> <p>In light of this, we note that the type of TPI regulation needed is likely to change over time. We believe it would be valuable to consider the most appropriate form regulatory framework in the light of the final remedies package. Some models could require additional measures (such as a general authorisation regime).</p>

²⁷ <https://www.ofgem.gov.uk/ofgem-publications/93764/openlettertpiprinciplesmarch2015forweb-pdf>

²⁸ See <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/third-party-intermediaries-tpi-programme>

²⁹ Two relevant pieces of consumer research are the BMG research report on [Micro and Small Business Engagement in Energy Markets](#) and the BMG research report on [Micro and small businesses’ experiences with and perceptions of energy broker services](#)

3. Other comments on this Remedy Option

Para ref	Ofgem's comments
General	<p>Whilst the scope of the reference, and the corresponding remedy, is limited to micro businesses, there may be merit in extending any TPI regulation to SMEs more broadly.</p> <p>Whatever the scope of the reform, it is necessary to consider how best to meet the needs of customers who purchase dual fuel contracts through TPIS and are classed as a microbusiness/SME in one fuel but not the other.</p>

4. Relevant analysis/work by Ofgem or additional evidence

Parallels between remedy and Ofgem's draft Code of Practice/TPI principles

Remedy requirement	Draft TPI CoP/TPI principles
TPIs must provide microbusinesses with information on the extent to which they cover the markets, ie highlighting which suppliers they have agreements with and which they do not;	<p>Draft code of practice: 4.2.2. In particular, [TPIs] must ensure they are clear and truthful and must not mislead the consumer about:</p> <p>i. their identity, including who they are, who they work for and/or represent. This includes the nature of their relationships with suppliers and how many suppliers they compare...</p>
TPIs must provide microbusinesses with information on whether they will provide the customer with the cheapest quote (or cheapest quotes) among those firms with which the TPI has an agreement to supply customers, or whether only a selection of quotes will be provided.	<p>iii. the characteristics of the energy supplier's product(s) offered to the consumer, including how those compare with other products in the market;</p> <p>TPI principles: 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</p>
TPIs must provide microbusinesses with information on how they are paid for their services, eg by commission from energy suppliers; and	<p>Draft code of practice: 4.4.1. Prior to providing any product or service, the member must make the consumer aware that there is a charge or fee associated with their services. This includes any payment the consumer may make either directly to the TPI or indirectly through another, named mechanism, for example where the TPI receives payment from or through</p>

	<p><i>a supplier...</i></p> <p><i>4.4.2. In addition, the member must make consumers aware that they can be given detailed information on the charges or fees for the product or service upon request. This information must be set out in clear and intelligible language.</i></p> <p><i>TPI principles:</i></p> <p><i>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.</i></p>
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Models for regulating TPIs in other sectors

- We understand that TPIs in the **financial services** industry are heavily regulated and individually licensed according to the service they provide. They can be stripped of accreditation following breaches.
- In the **communications** sector, we understand there to be a limited number of brokers. Whilst there are no requirements on commission disclosure for TPIs, we understand there is a voluntary accreditation scheme for PCWs. PCWs that sign up to the scheme agree to abide by transparency rules. They must tell the customer they are paid commission but do not have to disclose the actual amount.

Remedy 8 – Prohibit auto-rolover of microbusiness customers

1. Summary

- 1.1 We agree that this remedy (where focused around prohibiting termination fees and 'no exit' clauses for rollover contracts) has the potential to deliver benefits for some customers, specifically those served by small suppliers.
- 1.2 We are also mindful of potential negative impacts of the policy on small suppliers. We are keen to work with the CMA to ensure that any intervention strikes the right balance between the benefits it could bring to consumers and the potential risks. We are aware that aspects of the CMA's analysis are focused on larger suppliers in the market, and it would be helpful to understand the extent to which this may be relevant to the decision.
- 1.3 We have also undertaken thinking on how a ban on auto rollovers could be implemented. Among other things, we note that it could involve changes to the current objection rules,³⁰ and we think there could be customer benefits associated with requiring all rollover contracts to be fixed term.

2 Responses to questions

Question number / para ref	Ofgem's comments
83(a)	<p><i>Would this remedy be effective in allowing microbusiness customers greater opportunity to engage (by removing the narrow window in which they can choose not to roll-over automatically)?</i></p> <p>Please see section 3 for an explanation of how we understand this remedy would function.</p> <p>We agree that this remedy would support engagement by giving customers of smaller suppliers greater ability to switch away from any contract they are automatically rolled onto. The six large suppliers and Opus energy already allow</p>

³⁰ Suppliers can block a non-domestic consumer from switching if there is a term in the contract that allows them to, and the term applies in that instance. Currently 'no exit' clauses are included in some contracts, allowing suppliers to object if a customer tries to transfer in a fixed term period.

	<p>customers to switch away from rolled over contracts with 30 days' notice.</p> <p>This remedy would ensure that where a customer is rolled onto a contract,³¹ they won't be subject to termination fees, or a 'no exit' clause (see section 3), which might inhibit their ability to switch.</p> <p>The Retail Market Review has already effectively banned narrow termination windows in the micro-business market.</p> <p>SLC 7A.12 B states:</p> <p><i>(a) a Micro Business Consumer is entitled to give notice of termination before the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Supply Contract) in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and</i></p> <p><i>(b) without prejudice to any notice period which complies with paragraph 7A.11, if, at the end of any fixed term period, a Micro Business Consumer is not subject to a further fixed term period, the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.</i></p> <p>The effect of clause (a) is to ensure that micro business customers can provide notice at any time in between the date at which they commence the contract, and the 'Relevant Date' by which termination notice is required. This ensures that there is a wide window within which they can provide notice.</p> <p>The effect of clause (b) is to ensure that for any non-fixed term contracts, the customer can give notice at any time. For fixed term contracts, the supplier may still set a date by which notice is required, but clause (a) will continue to apply.</p> <p>We note in section 4 below that whilst remedy 8 can increase the ability of customers to switch away from rolled-over contracts, it could also push up prices for rollover contracts. Whilst this may encourage customers to move off these tariffs more quickly, it also has the potential to cause consumer detriment.</p>
83(b)	<p><i>Are there any means by which energy suppliers could circumvent this remedy to continue to lock customers into energy tariffs that they have not chosen for extended periods of time?</i></p> <p>Objections: Under Condition 14 of the supply licence, suppliers are permitted to put clauses in their contracts giving them the right to object to a transfer occurring. This does not extend to a suppliers' customers on deemed contracts where suppliers are not permitted to object, even on grounds of debt.³² The</p>

³¹ Either a safeguard contract in the context of remedy 11 or in the absence of remedy 11, a variable or fixed term contract with no termination fees/the ability to exit.

³² Please note that an exception to this is outstanding Green Deal charges. There are some other technical reasons that allow a supplier to object, such as if they have agreed the proposed transfer was an error.

	<p>Standards of Conduct licence condition for microbusinesses applies to objections (ie it requires objection clauses in contracts to be fair.)</p> <p>We understand that suppliers generally put clauses in contracts allowing them to object:</p> <ul style="list-style-type: none"> a) In the case of debt; b) To any transfers within the fixed term period (known as a 'no exit' clause); c) If the customer has not provided appropriate termination notice. <p>If auto-rollovers were banned, this would likely require a prohibition on suppliers objecting on ground (b) for roll-over fixed term period contracts. However, suppliers may still be able to object on grounds a), c) and any other objection clause in their contract. Objections can thus act as a barrier to switching (both for tariffs that customers have and haven't chosen).</p> <p>We remain concerned about the volume of objections in the non-domestic market.³³ Our data shows that for the quarter ending December 2014, the average industry non-domestic objection rate was 27% for gas and 43% for electricity. In February 2015, we issued a call for evidence in relation to supplier objections.³⁴ We consider there to be strong interactions between the remedies (particularly remedy 8) and the review we are undertaking on supplier objections, and welcome a view from the CMA on how our work here could support the final remedies package. We note that as well as having interactions with remedy 8, the objections rules also have interactions with remedies 6, 10, and 11.</p> <p>Awareness: More generally, a lack of awareness can effectively 'lock' customers into these tariffs. For this reason it is important for customers to be made aware that they are on a tariff of this kind, and to be prompted to switch to obtain a better deal. This should be addressed through remedies 9 and 10.</p>
83(c)	<p><i>What is the minimum or maximum notice period that customers should be required/allowed to give in order to exit a contract that they have been rolled on to?</i></p> <p>From 30 April 2015 we introduced new licence rules that reduced the maximum notice period for all micro business contracts from 90 to 30 days (SLC 7a.11).</p> <p>An alternative approach could be to remove notice periods altogether. Among other things, this would enable affected customers to benefit from our reforms to deliver reliable next day switching. However, it would also create greater uncertainty for suppliers around the volume of energy they will need to provide in</p>

³³ Please see <https://www.ofgem.gov.uk/ofgem-publications/39654/rmrnon-domestic-proposalsconsultation.pdf>, section 3 for the issues we originally identified as part of the retail market review. Some research relating to objections in the non-domestic market may also be found here: https://www.ofgem.gov.uk/sites/default/files/docs/2013/12/non-dom_cos_report_final_18_10_13_last_and_final_for_publication_0.pdf

³⁴ <https://www.ofgem.gov.uk/publications-and-updates/supplier-objections-call-evidence-0>

	the future, which could lead them to purchase more on the near-term market and expose them to greater cost uncertainty. Any associated risk premium would be expected to push prices up.
83(d)	<p><i>Should energy suppliers be required to inform customers that they are nearing the end of their contract and prompt them to switch?</i></p> <p>This is already a licence requirement. SLC 7A.8 requires suppliers to send an end of fixed term notification to micro-businesses around 60 days before contract ends (unless the micro-business has already agreed a new contract). This must include the statement of renewal terms, annual consumption and current prices and principal terms of contract if customer does nothing.</p>

3 Other comments on this Remedy Option

Para ref	Ofgem's comments
82	<p>The remedy is described as '<i>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</i>'</p> <p>and</p> <p><i>'prevent[ing] energy suppliers from including in their contracts terms which allow them to automatically roll a customer on to another fixed-term contract if the customer fails to choose an alternative contract within the switching window'</i></p> <p>We would recommend a number of amendments to these descriptions.</p> <ul style="list-style-type: none"> i. As noted under a), we believe that existing licence conditions already address issues related to narrow windows for providing notice. This ensures that customers can provide notice to switch at any time from the start of a contract, up until the date by which termination notice is required (which may be no more than 30 days before the end of the contract). ii. To ensure that customers who have been rolled over can engage and switch, we understand that: <ul style="list-style-type: none"> a. Suppliers would need to stop levying termination fees for these contracts b. Suppliers would need to be prevented from including a 'no exit' clause in contracts, and potentially other clauses which may prevent switching. iii. Pending a decision on Remedy 11 (safeguard tariff for microbusiness customers), we believe that it is valuable for suppliers to retain the

	<p>ability to roll customers on to a fixed term contract which meets the terms in ii. A fixed term contract (with no fee for early termination) offers a significant advantage to customers over variable contracts in that suppliers are required to send an 'end of fixed term notification' for these contracts, which acts as a prompt for engagement. We therefore believe that fixed term contracts are the preferable model for any contracts customers are rolled onto.</p> <p>Please note that a customer's ability to switch may also be impeded where other suppliers are not willing to offer terms. Unlike in the domestic market, there is no duty on suppliers to supply/offer terms to non-domestic customers.⁶</p>
83	<p>When a customer enters a fixed term contract, suppliers will often purchase energy on forward markets on the assumption that consumer will remain with them for the duration of that contract. As a result they may incur costs where a customer leaves early.</p> <p>In the absence of termination fees, suppliers may look to recoup the costs of hedging risks by increasing the energy prices on these contracts. We can hypothesize that smaller suppliers may have greater need to raise the prices of contracts consumers are rolled onto, where they have a less sticky customer base, and may be exposed to more risk.</p>
83	<p>In light of the voluntary end to auto rollovers implemented by the larger suppliers, the remedy is likely to benefit customers who contract with small suppliers.</p> <p>Section 4 provides a broad summary of our published position on auto rollovers in July 2014, and sets out some of the risks of the policy for small suppliers in particular. We understand that the profitability analysis is limited to a subset of suppliers. It would be helpful to understand whether this poses any challenges for fully assessing the impacts of this policy on smaller suppliers.</p>
83	<p>A design question here is around the timing of the application of the remedy to new and existing customers. In our proposals for non-domestic automatic rollovers and contract renewals, Table 1.1 on page 8 shows when larger suppliers introduced their voluntary changes. Any requirement for suppliers to amend existing rollover contracts would carry potential insolvency risks, where for instance a smaller supplier has bought energy on forward markets to service rolled over customers.³⁵ We would therefore recommend that application is limited to new customers, and existing customers, when moving onto a new contract. A transitional period could also be considered for longer fixed term contracts.</p>

³⁵ This would also create difficulties in the event we were asked to implement this policy, due to our statutory duty to have regard to the need to secure that regulated companies can finance their activities.

4 Relevant analysis/work by Ofgem or additional evidence

- 4.1. In our July 2014 [statutory consultation](#) on automatic rollovers and contract renewals, we concluded that auto-renewals are not a negative feature in their own right, but may be problematic where prices are significantly higher than an equivalent negotiated contract. This may indicate a lack of consumer awareness or engagement with the renewal or switching process.

Proportionality

- 4.2. In our July 2014 consultation we noted that a ban would be a significant intervention in the market, restricting the products that suppliers can offer to micro-businesses. Our 2013 business consumer survey, undertaken before the large supplier announcements, indicated that only 2% of business consumers said their current contract had been rolled over without their knowledge. There was no significant difference in the level of satisfaction among those who negotiated a new contract with an existing supplier (83% satisfied) and among those who had their contract rolled over (86% satisfied). We also estimated that 1% of micro-businesses would remain on rolled over contracts following the announcements of larger suppliers to stop auto-renewals. In addition, our RMR policy requiring suppliers to publish contract end and termination notice dates on bills came into effect from 31 March 2014. This policy should help to improve consumers' knowledge of these dates and we explained that we would be monitoring compliance with these rules.

Direct risks to consumers

- 4.3. There is a risk that banning auto rollovers will mean that some consumers are subject to higher prices than they would be if they were rolled onto a conventional fixed-term contract.
- 4.4. A ban will mean that suppliers have less certainty over the length of time the customer will remain with them, and will be unable to recover costs through early termination fees. Our information request in April 2013 showed that electricity prices for micro-businesses without a fixed term contract (deemed or out-of contract) were on average 80% higher than negotiated contracts.³⁶ The data also showed that around 10% of electricity consumers and 11% of gas consumers were on deemed or out-of-contract prices; and on average, half of deemed consumers stay on these prices for more than 12 months.
- 4.5. Following some suppliers' decisions to stop auto rollovers, we note the CMA's assessment that customers who have moved onto a supplier's replacement product are not seeing better prices as a result of the removal of the auto rollover term.
- 4.6. We know there to be very limited evidence on outcomes under the default products that have specifically replaced auto-rollovers, because this change

³⁶ We know that bad debt risk will also be a factor for deemed contract prices.

is so recent. Further understanding of the extent to which prices for these contracts have increased in relation to auto-rollovers would be valuable here.

Hedging risk for smaller suppliers

4.7. Having a large proportion of customers on conventional fixed-term contracts allows a supplier to hedge the risk of short-term changes in wholesale electricity and gas prices. If a small supplier is uncertain how many customers it is likely to have for the next 12 months, it will be more difficult to effectively hedge its demand and this risk is likely to translate into higher prices. Suppliers that do not have auto-renewals are likely to have more customers on variable term contracts, or as suggested above, fixed term contracts with no early termination fees/'no exit' clauses. Due to greater uncertainty about customer numbers, they would have to purchase more electricity or gas on the near-term market, one to two months ahead of delivery. The associated additional costs could be passed through to consumers, leading to higher prices. This could make it harder for smaller companies to offer competitive prices.

Remedy 9 – Additional information to domestic consumers

1. Summary

- 1.1 Remedy 9 aims to ensure that consumers are able to access and assess the information they need to understand their current circumstances and find the right deal for them. We fully support this objective and are keen to work with the CMA as it develops its detailed thinking on this remedy, including on which additional information could be provided to consumers, or indeed removed.
- 1.2 While we have not identified any additional information that should be provided to domestic consumers at this point, we think it is important to consider the route and format used to deliver this information. For instance, texts may be a more effective delivery route for certain bits of information, or the format of existing communications could be improved to ensure important information is drawn to consumers' attention. Also, as mentioned in relation to remedy 10, consumer awareness campaigns such as the government's "Power to Switch" may be an effective way of delivering key bits of information to all consumers. We also think it is important to consider whether different groups of consumers may require different types of information. For example, the needs of vulnerable or offline consumers may be different to those of others.

2. Responses to questions

Question number / para ref	Ofgem's comments
84(a)	<p><i>Does the current format and content of energy bills facilitate engagement by customers? Is there additional information that should be included on bills? Should the quantity of information on bills be reduced to enhance clarity?</i></p> <p>There are significantly more billing requirements that apply in the domestic market compared with the microbusiness market. Recent research from Citizens Advice has suggested that the length of bills should be reduced to ensure they do not confuse consumers. The domestic requirements originate from a number of different sources, including Ofgem licence conditions, EU third package, and the Energy UK billing code of practice.</p> <p>As part of both the RMR, and work conducted in parallel with the cross-industry Consumer Bills and Communications Roundtable Group (CBCRG), we looked in detail at the content and presentation of a range of supplier communications, focusing in particular on the bill.</p> <p>Through the CBCRG, we worked with stakeholders to identify the core</p>

	<p>objectives of each communication, and then assessed whether the content of each of the communications was aligned with this. Although we consider the primary objective of the bill is to inform consumers of how much they owe or have paid, we also think that as the most regularly-read communication it has an important role to play as a prompt for consumers to engage. The RMR changes, at this time yet to be introduced, were also tested as part of the group's work. In the case of the bill, the group did not develop any concrete recommendations for content that could or should be removed.</p> <p>As part of the RMR, we made changes to consumer bills to draw together existing bits of information such that this was prominent and provided consumers with the minimum information they would need to understand their current tariff and compare it with others, using a comparison site for instance. We also introduced two new prompts: (i) the cheapest tariff messaging, which was designed to ensure that consumers were made aware of cheaper offers with their current supplier, and (ii) the Tariff Comparison Rate (TCR), which was designed to prompt consumer awareness that there may be cheaper tariffs across the market. As noted in our response to remedy 3, there are links between these information remedies and the tariff rules, which will need to be considered carefully should the CMA proceed to remove some of the "simpler tariff" measures.</p> <p>Our RMR evaluation findings suggest that the changes to supplier communications have had a positive impact. Although we are only cautiously optimistic at this point, we note that the proportion of consumers reporting they found their bill, for instance, to be very or fairly clearly presented has increased from 75% to 78% since 2014. The cheapest tariff messaging also appears to have had a positive early impact, with a significant proportion recalling seeing it (34%). Of these, 31% went on to compare tariffs and 25% went on to switch tariff or supplier. Consumer awareness and use of the TCR was lower. We are currently conducting further research to establish why this might be the case, the results of which should be available by the end of September.</p> <p>Nevertheless, we consider that there is further scope to improve the clarity of bills. We are currently considering how best to take this work forward. As part of this work, we think it important to consider not only traditional paper bills, but also online forms of communication. Additionally, we have engaged with the Behavioural Insights Team who has been conducting work to explore the effectiveness of different types of prompts.</p>
84(b)	<p><i>When customers seek to switch tariffs, are they given enough/too much information on the terms and conditions of their new contract?</i></p> <p>As part of our domestic RMR reforms we introduced the Tariff Information Label, which is intended to act as a standardised template containing all of the key facts about each tariff so that consumers can easily compare the features of different tariffs on a like-for-like basis. This label must be made available online, and provided to any consumer that requests it. Suppliers must also provide the consumer with a copy of the label alongside the principal terms of the contract they have signed up to. In this way the consumer should receive a high level summary of the key facts about their tariff in an easy to understand,</p>

	<p>standardised form, along with more detailed terms and conditions. We therefore consider that, for domestic consumers, work to consider whether consumers receive sufficient information on the terms and conditions of their new contract is a low priority.</p>
84(c)	<p><i>Should customers be prompted to read their meters (quarterly or annually), either by information on their bill or by a phone call from their energy supplier? Would this increase engagement by improving the accuracy of billing?</i></p> <p>We support the CMA's suggestion to prompt consumers to read their meters. As the CMA has noted, existing requirements should ensure that consumers are informed by suppliers whether their bill is based on actual or estimated readings. Nevertheless, we consider there are a number of benefits to this proposal. In submitting meter readings regularly consumers will increase the accuracy of their bill, and minimise the chances of them receiving bills for unexpected amounts. With the rollout of smart approaching, this benefit may not be evident in the long term. However, we think that this proposal could help to improve consumers' general energy literacy and understanding. From our recent RMR evaluation research we know that there is a direct link between understanding and engagement – ie consumers with a better understanding of their current tariff and consumption tend to be more inclined to engage with the market. So improving consumer familiarity with their consumption could encourage engagement generally.</p>
84(d)	<p><i>Once customers reach the end of a contract period, should subsequent bills highlight that they have now been moved onto the standard variable tariff and/or other default tariff and encourage them to check whether they are on the most appropriate tariff for them?</i></p> <p>As part of our domestic RMR remedies we introduced new rules to improve the information provided to consumers as they were approaching the end of their fixed term contract. The end of fixed term notice now provides consumers with a projection of their expected costs should they take no action at the end of their fixed term, and also informs them of how much they could save by switching to an alternative tariff with their current supplier.</p> <p>Although this notice should inform consumers approaching the end of their fixed term tariff of what will happen, we agree with the CMA's proposal to explore whether those who have been moved to the standard variable/default tariff should be given further notifications. We also consider it may be worth exploring whether all consumers who are on a standard variable tariff, whether having been moved to one at the end of a fixed term contract or not, should be informed. The cheapest tariff messaging, introduced as part of the RMR, does this to some extent already. But we welcome consideration of whether more needs to be done. For instance, as discussed in our response regarding remedy 10, the naming of any default tariff will be important. The suggestion proposed by the CMA, that prompts to explain to consumers that they are "no longer under contract for energy", is worth exploring further.</p>

Remedy 9 MB – Additional information to microbusiness consumers

1. Summary

- 1.1. We strongly agree with the CMA's intent to review what range of additional information might be necessary to help customers access and assess information in the market.
- 1.2. In particular, we believe remedy 9 can offer benefits in helping customers to access the information they need to obtain an accurate quote. This should help customers to realise the benefits enabled by greater tariff transparency.
- 1.3. In the context of the CMA's proposed remedies, we have identified a range of other potential design elements which may benefit microbusiness customers. These include better signposting to Citizens Advice and the Ombudsman. Unlike in the domestic market, there is no licence obligation on suppliers to include these contact details. However, we believe it is important that customers are able to contact or seek advice from these organisations, and that this in turn should help to build trust. We also note that there could be benefit in requirements around tariff information formatting, to the extent this is felt to help address any challenges around tariff comparability.

2. Responses to questions

Question number / para ref	Ofgem's comments
84(a)	<p><i>Does the current format and content of energy bills facilitate engagement by customers? Is there additional information that should be included on bills? Should the quantity of information on bills be reduced to enhance clarity?</i></p> <p>The billing requirements in the microbusiness segment are much less prescriptive than those in the domestic market.</p> <p>For microbusinesses on fixed term contracts, suppliers must include on bills the contract end date, the last date by which termination can be given, and a statement to the effect that the consumer can send notice at any time before this date.³⁷</p> <p>They must also provide a range of other information on all bills which</p>

³⁷ SLC 7A.10A and B

	<p>includes:</p> <ul style="list-style-type: none"> • Meter readings³⁸ • MPAN/MPRN³⁹ • Information on dispute settlement⁴⁰ • Gas emergency number⁴¹ • Relevant distributor⁴² • Green deal information⁴³ (if applicable) <p>We are aware of research in the domestic market on billing formats and information provided on bills, and are mindful of this in our ongoing monitoring of the market and consumers' experience.⁴⁴</p> <p>Given the limited obligations relating to information provision on microbusiness bills, we consider it unlikely to be necessary to further reduce the information requirements.</p> <p>We agree with the policy intent behind CMA's question b) in relation to remedy 7a, namely to ensure consumers have adequate information to support them in engaging effectively in the search and switching process. Please see our response to remedy 7a for further thinking on what additional information items could be added to bills or other communications to support engagement. Further research into the information suppliers require to provide an accurate quote would be valuable.</p> <p>One additional information item that is likely to benefit consumers is signposting to the Citizens Advice Consumer Service and/or the Ombudsman service. This information can support consumers in seeking redress and engaging effectively, and can build trust in the market. There is currently no licence obligation for suppliers to include these contact details on non-domestic bills. In our bill compliance exercise we saw that a few suppliers had voluntarily included information for consumers about how to contact the Ombudsman and only around a quarter had information on how to contact Citizens Advice Consumer Service.⁴⁵</p>
84(b)	<p><i>When customers seek to switch tariffs, are they given enough/too much information on the terms and conditions of their new contract?</i></p> <p>Before entering into a contract, suppliers must provide the Principal Terms and make microbusinesses aware they are entering into a legally binding contract.</p>

³⁸ Electricity and Gas SLC 21B.1

³⁹ Electricity SLC 20.4 and Gas SLC 20.5

⁴⁰ Electricity and Gas SLC 20.5

⁴¹ Gas SLC 31.6

⁴² Electricity SLC 20.1

⁴³ Electricity SLC 37.2

⁴⁴ Recent research from Citizens Advice has suggested that the length of domestic bills should be reduced to ensure they do not confuse consumers.

⁴⁵ <https://www.ofgem.gov.uk/ofgem-publications/93888/billcompliancemicrobusinessopenletter20150313-pdf>

	<p>Principal Terms are defined in SLC 1 and among other things must include the terms that relate to charges, changes in charges, credit limit, load limit, any requirement for a security deposit, contract duration and the rights/circumstances under which the contract will end. There is also a requirement to set out 'any other term that may reasonably be considered to significantly affect the evaluation by the Customer of the Contract'. The amount of information is likely therefore to vary with the complexity of the contract.</p> <p>We are interested in views on whether the current information requirements in this area are appropriate. As well as thinking about whether a different set of information may be needed, another consideration is the format in which the terms and conditions are provided.</p> <p>It could be possible to have a variant of this remedy which sets requirements around the formatting of information to try to support consumers in comparing offers and contracts. In written communications (e.g. on bills and/or contracts) this could be something akin to the Tariff Information Label in the domestic market. This is likely to be more complex however in the non-domestic market due to the wide range of characteristics which may vary from tariff to tariff.⁴⁶</p>
84(c)	<p><i>Should customers be prompted to read their meters (quarterly or annually), either by information on their bill or by a phone call from their energy supplier? Would this increase engagement by improving the accuracy of billing?</i></p> <p>We recognise the CMA's finding that the disparity between actual and estimated consumption can be confusing and unhelpful for customers in understanding the relationship between the energy they consume and the amount they pay.</p> <p>In the longer term the rollout of smart meters should improve billing accuracy, although a prompt may help in the intervening period.</p> <p>We note that our domestic RMR research has shown that there is a direct link between understanding and engagement and that consumers with a better understanding of their current tariff and consumption tend to be more inclined to engage with the market. We don't have equivalent research on the non-domestic market and it is therefore unclear to what extent rectifying this issue will directly increase interest in ability to switch, relative to other remedies. However a prompt may be valuable in the longer term to the extent a link between understanding and engagement exists for these customers.</p>

⁴⁶ A common format for presenting prices has been requested by customer bodies such as the FSB. This would highlight fixed and variable elements in pricing and support the correct calculation of indexed prices, to ensure that customers are aware of the total cost of their energy and can make meaningful comparisons. However, it is important to be mindful that this also has the potential to constrain innovation, for instance where the purchase of energy is bundled with other services/ utilities.



84(d)	<p><i>Once customers reach the end of a contract period, should subsequent bills highlight that they have now been moved onto the standard variable tariff and/or other default tariff and encourage them to check whether they are on the most appropriate tariff for them?</i></p> <p>We believe this could support effective engagement. Please see our response to remedy 10 for further thoughts.</p>
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Remedy 10 – Measures to prompt domestic customers to engage

1. Summary

- 1.1. We agree that increased engagement by consumers will help reduce the AEC caused by weak consumer response and therefore unilateral market power that suppliers hold over disengaged consumers.
- 1.2. Especially in the context of the CMA's proposed remedy to introduce a transitional safeguard tariff (remedy 11), we strongly support its intention to consider the introduction of prompts targeted at consumers on default tariffs. These prompts have an important role to play in minimising the risk that consumers on a transitional safeguard tariff remain disengaged.
- 1.3. Suppliers have licence obligations to provide consumers with specific information in their routine communication with consumers (for example, through bills) and at other defined points (for example, when notifying the consumer of a price increase). These communications include information that can help all consumers to engage in the market. For example, the annual statement provides a range of information on a consumer's energy costs and consumption.
- 1.4. Some of the information that suppliers must provide can act as a prompt to engage, particularly for disengaged consumers. For example, as part of the RMR, we introduced a requirement on suppliers to give their customers personalised information on the cheapest tariff available to them on each bill (called cheapest tariff messaging (CTM)) and in annual summaries.⁴⁷ We consider it is too early to establish a clear view about the impact of the RMR but we are seeing some evidence that CTM, for example, is having a positive effect on engagement. From our RMR Year 1 Survey we found that over 30% of consumers recall seeing CTM and of these over 30% go on to compare. This illustrates the potential power of prompt type information.
- 1.5. However, we recognise that there is no single or proven prompt that will encourage inactive energy consumers to engage in the market. As the CMA has found, disengaged consumers are not a homogenous group. Therefore, prompts may need to be carefully tailored to particular types of disengaged consumers. The value of existing prompts may also change depending on the other remedies that the CMA may introduce.⁴⁸ Moreover, while parallels

⁴⁷ Cheapest tariff messaging signals to consumers the saving they can make by switching to the cheapest available tariff that their supplier offers. This is likely to be a particular prompt for disengaged consumers because it highlights the significant savings that they can make by switching tariff. Active consumers will not see such a large saving and hence the cheapest tariff messaging may not prompt engagement to the same extent.

⁴⁸ For example, personalised messaging on the cheapest available tariff may become more important in reducing search costs for consumers if parts of the 'simpler' component of RMR are removed as per remedy 3.

can be drawn with other sectors, the underlying drivers of disengagement in the retail energy markets may not be found in other markets.⁴⁹

1.6. Against this backdrop, we are keen to support the CMA in improving existing prompts to maximise their effectiveness or in developing new ones. As per the CMA's questions on remedy 10, relevant considerations will be the format and timing of prompts, who provides them and the channel through which they reach the consumer. Behavioural economics can inform such considerations, as can testing or trialling of prompts with consumers prior to and after their implementation. We are doing this now to inform our evaluation of the RMR, which is continuing to build our understanding of how consumers respond to different types of prompts. For example, our one-year survey results suggest that CTM has greater saliency among consumers compared to other information remedies⁵⁰ that we introduced.⁵¹

1.7. Consumer research we have commissioned in the past, including to inform information remedies introduced as part of RMR, suggests that prompts may be most effective when:

- They are relevant to the consumers' circumstances. Consumer First Panellists⁵² said they wanted to see evidence of the savings they can make to be convinced that switching is worthwhile.⁵³
- They help the consumer to understand their tariff. Consumer First Panellists reported that a low understanding of their tariff was one of the primary barriers to engagement.⁵⁴

1.8. Behaviour change messages (for example, comparing the consumers' consumption to those of their neighbours) seemed less salient to consumers or raised too many questions. Consumer First Panellists could not see the relevance or were sceptical about the information.⁵⁵ However, behavioural theory suggests if these messages work it might be on a

⁴⁹ This was recognised in the report on consumer engagement and switching published by the UK Regulators Network. For more information, see here: <http://www.ukrn.org.uk/wp-content/uploads/2014/12/Statement-Consumer-engagement-and-switching.pdf>

⁵⁰ We introduced a package of measures designed to provide electricity and gas consumers with better, more relevant information about their energy costs and choices. For more information, see: <https://www.ofgem.gov.uk/simpler-clearer-fairer/clearer-information>

⁵¹ For example, whereas 34% of consumers recall CTM only 19% remember seeing the Tariff Comparison Rate.

⁵² The Consumer First Panel consists of about 80 everyday domestic customers recruited from four locations across Britain. The Panel meets regularly to discuss key issues impacting on their participation in the energy market, as well as other topics related to energy.

⁵³ For more information, please see: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-consumer-first-panel-year-5-third-workshops.-research-inform-ofgems-retail-market-review-consumer-engagement-campaign>

⁵⁴ For more information, please see: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-consumer-first-panel-year-5-third-workshops.-research-inform-ofgems-retail-market-review-consumer-engagement-campaign>

⁵⁵ For more information, please see: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-consumer-first-panel-year-5-third-workshops.-research-inform-ofgems-retail-market-review-consumer-engagement-campaign>

subconscious/unconscious level and therefore you would not necessarily identify it in a research setting

- 1.9. We also note the potential role for a targeted engagement campaign. As per our response on remedy nine, we consider there could be value in a generic engagement campaign that encourages switching among all consumers. But this could also be supported by more targeted campaigns aimed at specific types of disengaged consumers through appropriate channels.

2. Responses to questions

Question number / para ref	Ofgem's comments
90(a)	<p><i>What information should be included in the prompts to customers on default tariffs in order to maximise the chances that they are acted upon?</i></p> <p>Suppliers are already required to provide prompts to all consumers that may particularly encourage those who are inactive to engage. For example, since April 2014, suppliers have been required to provide personalised information to their customers on their cheapest available tariff on bills and other communications. As noted above, we are seeing some evidence that CTM is having a positive effective on engagement. Another important prompt is the end of fixed term notification (EoFTN).</p> <p>Taking account of the CMA's proposed remedies, we consider that CTM may become more important in the future. In a market where the 'simpler' component of RMR is removed, tariffs may become more complex and numerous. Against this backdrop, the CTM will identify a tariff that can save the consumer money. The EoFTN may also become more important, if customers automatically move to the transitional safeguard tariff if they do not select a new tariff when their fixed-term contract comes to an end (as indicated in remedy 11).</p> <p>Beyond CTM, there is a potential remedy to explore around consumers opting-in to their supplier passing their contact details to parties that facilitate collective switching. These bodies could then prompt these consumers to engage when organising a collective switch. There could be interactions between our idea and the CMA's suggestion that TPIs have access to ECOES (as discussed under remedy 4a).</p> <p>We have also been working with the Behavioural Insights Team and a supplier to trial the effectiveness of prompts in promoting tariff switching and consumer engagement. The trial is testing the effectiveness of an additional prompt for online customers whose fixed-term tariff is coming to an end, sent prior to the customer receiving their end of fixed-term notice.</p>
90(a)(i)	<p><i>Should customers who have failed to engage be informed that they are 'no longer under contract for energy', that they have been 'rolled onto a safeguard</i></p>

	<p><i>tariff', or an alternative message, for example, emphasising how many customers in their area have switched in the last year?</i></p> <p>We consider that the naming of the transitional regulated safeguard tariff will be important, if this is referred to in the prompts that disengaged consumers receive. Referring to a 'safeguard' tariff indicates to the consumer that they are protected from harm, which may lead them to conclude there is no benefit from searching for a better deal. Therefore, alternatives may be more appropriate. The proposal by the CMA, that the prompt explain the consumer is 'no longer under contract for energy', is worth exploring further.</p>
90(b)	<p><i>How should prompts be communicated to customers? For example, there is some evidence from the financial sector that text prompts are particularly effective at raising awareness in terms of overdrafts etc.</i></p> <p>At present, the majority of consumers receive the communications that suppliers are required by their licence to provide in paper format. For example, in the form of paper bills or annual statements. As discussed in our response to remedy nine, we consider there is further scope to improve the clarity of bills. We are currently considering how best to take this work forward.</p> <p>We support the CMA's intention to explore whether other channels of communication may support paper-based prompts. Relevant considerations will be the extent to which disengaged consumers have access to other communication channels, such as text, internet, social media or television.⁵⁶</p> <p>We note the suggestion that text prompts have been effective in raising awareness in the financial services sector. This could also be a more effective and cheaper way of communicating with some disengaged energy consumers compared to sending paper based documents. We consider it is worth exploring whether the CTM should be provided by email or text if consumers have opted-in to receive communications in this format.</p> <p>We also note that face-to-face communication may provide a powerful way of reaching some disengaged consumers, for example those who do not have access to the internet. We have undertaken work to help engage consumers in this way. For example, we have worked with Citizens Advice on Energy Best Deal and Energy Best Deal Extra, which provide advice to vulnerable consumers on energy issues through workshops and one-to-one sessions respectively. We are also progressing work to consider the role we can play to facilitate the market for good quality face-to-face services provided by third party intermediaries while ensuring that consumers remain protected.⁵⁷ DECC has also launched the Big Energy Saving Network to support eligible third sector</p>

⁵⁶ Ofcom collects information on consumers' use of the internet, mobile phone, landline and postal services. This information is broken down by type of consumer in some cases. For more information, see here: http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-14/TCE14_research_report.pdf

⁵⁷ For more information, see our website here: <https://www.ofgem.gov.uk/publications-and-updates/roundtable-tpi-provision-face-face-services-april-2015>

	<p>organisations and community groups deliver help and advice to vulnerable consumers.⁵⁸</p> <p>Recent work using behavioural insights, by the Behavioural Insights Team and others, demonstrates the importance of testing and optimising the delivery of information intended to change behavioural outcomes to ensure it is as effective as possible. We would encourage the CMA to consider how such an approach could be used before prompts are employed, and on an ongoing basis to maximise their effectiveness.</p>
90(c)	<p><i>What should be the timing and frequency of prompts in order to balance effectiveness in terms of encouraging engagement with the cost and potential irritation that might arise from repeated prompts?</i></p> <p>In exploring the timing and frequency of any prompts, we have identified two points to consider.</p> <p>First, we note that there are already regular, or ad-hoc regulatory⁵⁹, communications between the supplier and the consumer. For example, when the supplier posts a bill or annual statement to the consumer. If any new prompts are provided by the supplier in paper-based form, it may be appropriate for them to coincide with such existing communications. For example, this may help to reduce the costs of providing prompts. On this point, we note that the frequency with which bills are issued can vary. It is also possible that including prompts on existing communications could deter engagement if consumers are overwhelmed by information. As noted in our comments on 90(b) above, please see our response to remedy nine for more about our views on the clarity of bills.</p> <p>Second, there may be other points in the consumer experience when prompts may be effective. One example is the period before winter, when some consumers' bills will be higher. Another example might be when a meter is installed, including a smart meter. At this point, the consumer's attention may be more focused on energy than would otherwise be the case. However, there are also potential risks with providing prompts at the point of installation, depending on the form they take and how they are delivered. We note that suppliers are prohibited from engaging in sales during the smart meter installation visit and must obtain the customer's consent in advance to undertake marketing activities.⁶⁰</p>

⁵⁸ For more information, see DECC's website: <https://www.gov.uk/government/publications/big-energy-saving-network-grant-offer-fund>

⁵⁹ Examples would be the price-increase notification and the end of fixed-term notice.

⁶⁰ These rules are set out in the Smart Metering Installation Code of Practice, available here: <http://www.energy-uk.org.uk/policy/smart-meters/smart-metering-installation-code-of-practice.html>

90(d)	<p><i>Who should provide the prompts: customers' energy suppliers, Ofgem or another party?</i></p> <p>At present, all consumers receive prompts through their suppliers. Some will also receive them from TPIs. We support the CMA's intention to explore who should provide prompts. Depending on the content, format and channel for providing prompts, relevant considerations will include:</p> <ul style="list-style-type: none"> • The extent to which the party providing a prompt will be recognised and trusted by the target audience, which is a key determinant for the effectiveness of messaging. • The existing capability of the party to provide a prompt, which will impact on cost for example.
90(e)	<p><i>Are there particular groups of customers who should receive prompts at specific points? For example, should house-buyers be prompted to engage with the market on completion of their purchase?</i></p> <p>Our views on timing of prompts are set out in response to (c).</p>
90(f)	<p><i>Is there benefit in others in the markets, such as rival energy providers or TPIs, being made aware of which customers remain on default tariffs (or have been rolled on to the safeguard tariff)? In this respect, data protection issues would need to be carefully considered. The ability of other market participants to identify inactive customers, however, has the benefit of potentially encouraging the customer to switch tariffs once out of contract.</i></p> <p>We welcome this proposal. It has the potential to deliver benefits for disengaged consumers by allowing suppliers and TPIs to target them. These parties have a natural incentive to do so, for example to grow market share.</p> <p>However, there are risks from making others in the markets aware of which consumers are on default tariffs. We note the potential for these consumers to receive significant and unwanted communication that may decrease their trust in the energy market or deter them from engaging. This issue is particularly relevant in the context of consumers' concerns about how their personal data is used.⁶¹ One way to mitigate this issue might be to allow consumers to opt-out.</p> <p>We also understand that the commercial terms between suppliers and TPIs restrict the latter from contacting the customer again for a defined period. There may be merit in considering whether there should be constraints on such terms, for example to enable TPIs to engage with a consumer prior to the end of a fixed-term contract.</p>

⁶¹ For more information, see: <https://ico.org.uk/media/about-the-ico/documents/1043485/annual-track-september-2014-individuals.pdf>

Remedy 10 MB – Measures to prompt microbusiness customers to engage

1. Summary

- 1.1. We are in strong support of this remedy, and consider that, alongside tariff transparency and appropriate information provision, it forms part of a cohesive and effective remedy package that can address the microbusiness market features that lead to an adverse effect on competition.
- 1.2. Prompts are vital in limiting the number of customers exposed to default tariffs, and in increasing competitive pressure on the market. We would expect research and testing to be important in identifying the appropriate language, timing and targeting of prompts to maximise effectiveness. We note that disengaged customers are not a homogenous group and there may be a need for prompts to be tailored to different customers in different circumstances.
- 1.3. For microbusinesses in particular, it will be important to not only consider switching to an alternative published 'standard' tariff, but to negotiate contracts to get the best deal. It will also be particularly important to ensure that prompts to engage are appropriately targeted. Prompts could be counterproductive if customers are unable to switch in practice, e.g. because a clause in their contract allows their supplier to object to a switch, because other suppliers are unwilling to supply them, or because the cost of energy is already included in their rent. For this reason it is important to consider barriers to switching (and any associated remedies) when designing effective prompts to engage.

2. Responses to questions

Question number / para ref	Ofgem's comments
90(a)	<p><i>What information should be included in the prompts to customers on default tariffs in order to maximise the chances that they are acted upon?</i></p> <p><i>Should customers who have failed to engage be informed that they are 'no longer under contract for energy', that they have been 'rolled onto a safeguard tariff', or an alternative message, for example, emphasising how many customers in their area have switched in the last year?</i></p> <p>We believe it is likely to be beneficial to inform customers that they are on a tariff which may be more expensive than others in the market (either published 'standard tariffs' if remedy 7a is implemented or bespoke negotiated tariffs). The wording used on any communications would need to be carefully tested, to ensure it stimulates engagement. There is a risk that use of the term 'safeguard</p>

	<p>tariff' for instance, could be overly reassuring, with a correspondingly lower impact on engagement.</p> <p>Please note that SLC 7.7 already requires suppliers to provide their deemed contract customers (domestic and non-domestic) with notice that contracts with different terms may be available and how to obtain information about those contracts. It may be worth exploring whether this information should also be included on customers' bills.</p> <p>Customers could also be referred to webpages/fact sheets which explain their rights around switching, and the steps they can take to make a switch, including information on price comparison websites.⁶²</p> <p>In the microbusiness market, it is important that any prompt to engage makes clear that the best contract rates may be achieved via negotiation. There is a risk that remedies 7a and 6 could lead microbusiness customers to become overly reliant on published prices, such that they lose out on cheaper negotiated deals.</p> <p>To the extent that some microbusiness customers are unaware of opportunities to switch (akin to issues in the domestic market), making customers aware may be valuable.</p>
90(b)	<p><i>How should prompts be communicated to customers? For example, there is some evidence from the financial sector that text prompts are particularly effective at raising awareness in terms of overdrafts etc.</i></p> <p>The BMG research report⁶³ indicates that prompts on bills may be useful for some microbusiness consumers. Please see section 5 for some relevant analysis of our recent research.</p>
90(c)	<p><i>What should be the timing and frequency of prompts in order to balance effectiveness in terms of encouraging engagement with the cost and potential irritation that might arise from repeated prompts?</i></p> <p>More generally, and particularly in the event that Remedies 8 and/or 11 are not implemented in the microbusiness market, it is valuable to consider which customers will have the capacity to switch.</p> <p>If a customer is in, or has been rolled over onto, a fixed term contract with a 'no exit' clause (or some other clause which allows the supplier to object to a switch), a prompt to engage could be frustrating and potentially desensitise them to future prompts to engage. In this event, a prompt may be better targeted at</p>

⁶² A range of information is currently available through the Ofgem website, examples include: https://www.ofgem.gov.uk/sites/default/files/docs/2015/07/micro-business_contract_renewals_factsheet_web_0.pdf, <https://www.ofgem.gov.uk/information-consumers/business-consumers/switching-your-energy-supplier>, and <https://www.ofgem.gov.uk/ofgem-publications/83161/tenancyrightsfactsheetenglishweb.pdf>

⁶³ https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/non_dom_quant_final_v4_0.pdf

	<p>specific break points in the contract (e.g. the end of fixed term notice). We have also noted in our response to remedy 8 that we remain concerned about the volume of objections in the non-domestic market, and are currently looking into supplier objection practices. We welcome a view from the CMA on how our work here could support the final remedies package.</p> <p>Please note that a customer's ability to switch may also be impeded where other suppliers are not willing to offer terms. Unlike in the domestic market, there is no duty on suppliers to offer terms in the non-domestic market. In these cases prompts could again be counterproductive.</p> <p>For the reasons described above, it is important to consider barriers to switching (and any associated remedies) when designing effective prompts to engage.</p> <p>The issue of becoming desensitised to prompts could be a risk more broadly, but further consumer research would be necessary to confirm the appropriate balance.</p> <p>As well as timing prompts in relation to a customer's contract cycle, prompts could be timed with market developments, e.g. when prices are at an annual low.</p>
90(d)	<p><i>Who should provide the prompts: customers' energy suppliers, Ofgem or another party?</i></p> <p>Please see domestic response to remedy 10.</p>
90(e)	<p><i>Are there particular groups of customers who should receive prompts at specific points? For example, should house-buyers be prompted to engage with the market on completion of their purchase?</i></p> <p>In the microbusiness market, change of tenancy for rental properties is likely to be an appropriate time to prompt engagement.</p> <p>Engagement prompts for customers on deemed/out of contract rates in general are particularly valuable to the extent that remedy 11 is not implemented/does not extend to these contract types. The supply licence already requires suppliers to provide their deemed contract customer with notice that other kinds of contracts are available.</p>
90(f)	<p><i>Is there benefit in others in the markets, such as rival energy providers or TPIs, being made aware of which customers remain on default tariffs (or have been rolled on to the safeguard tariff)? In this respect, data protection issues would need to be carefully considered. The ability of other market participants to identify inactive customers, however, has the benefit of potentially encouraging the customer to switch tariffs once out of contract.</i></p> <p>We agree that a model of this kind has the potential to support switching, and place subsequent competitive pressure on prices.</p>

	<p>However, given the market feature around TPIs which is found to have given rise to an AEC, we also would be concerned about risks that an approach of this kind could cause customer trust to be eroded further, ultimately leading to greater disengagement.</p> <p>We also agree with the CMA that data protection issues would have to be carefully considered.</p> <p>We would be happy to work further with the CMA to identify whether there is a design which achieves the aims of this policy, whilst appropriately mitigating the risks.</p>
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3. Other comments on this Remedy Option

Para ref	Ofgem's comments
89	<p>As explained above, there are some micro business customers who may not be able to engage and switch, because their energy costs are included in their rent. For these customers, prompts to engage may be of little value.</p> <p>Our recent research on Micro and Small Business Engagement in Energy Markets⁶⁴ was focused on micro business customers who were responsible, either solely or jointly, for arranging mains gas and electricity contracts or paying these bills. However, the sampling process also gave some indications of the volume of micro businesses that fell out of scope.</p> <p>Call outcomes were monitored and reported throughout the fieldwork period. The survey call outcomes showed that 13% of the total sample frame were filtered out on the basis that it was the landlord of the microbusiness who dealt with the energy contract.⁶⁵</p> <p>However, it was also found that the proportion of businesses which have non-domestic energy contracts varies considerably by business size within sector. For instance, while 68% of construction businesses with 10 to 49 employees have non-domestic energy contracts, only 14% of businesses in this industry sector with no employees have non-domestic energy contracts. Thus, more than four in five construction businesses without employees fell out of scope of the survey (either because they had domestic contracts or because landlords were making decisions on energy contracts on their behalf). The same was true of businesses without employees in business services sectors, while fewer than two in five businesses without employees in the retail and wholesale industry fell out of scope.⁶⁶</p>

⁶⁴ https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/non_dom_quant_final_v4_0.pdf

⁶⁵ See figure 3.3, p82, https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/non_dom_quant_final_v4_0.pdf

⁶⁶ See p79, https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/non_dom_quant_final_v4_0.pdf

4. Relevant analysis/work by Ofgem or additional evidence

Smaller business' understanding of contract terms

- 4.1. Our research during the RMR found that many smaller businesses did not know when their contract was due to end or when they could switch supplier.⁶⁷ This lack of understanding meant they could be rolled onto more expensive contracts and miss out on opportunities to transfer to a better deal.
- 4.2. To reduce these barriers to engagement, we introduced new rules from April 2014 to help smaller businesses avoid being caught out when their fixed term contracts came to an end. Suppliers are now required to show, on every bill or statement of account, the date the contract will end and the deadline for the customer to give termination notice. We also banned narrow termination windows. From May 2015 we introduced additional rules to further improve the information suppliers provide to micro-business when they renew a contract and reduce the maximum termination notice from 90 to 30 days.
- 4.3. Our recent surveys provide insight into small business consumers' understanding of their contract terms. However, there are significant differences in sample and methodology between the two studies and a redesign of the 2013 questionnaire⁶⁸ for the 2014 survey limits comparability.⁶⁹
- 4.4. The 2014 survey of small and micro- businesses found that 48% of respondents read or at least glanced through their contract document in the previous 12 months (23% in 2013). 84% knew their contract end date (65% in 2013) and 73% knew when they are able to start renegotiating or give termination notice (63% in 2013). This provides indicative evidence that micro and small businesses' engagement with energy contracts and awareness of contract details may have increased, taking into account the change in methodology for the 2014 survey. Supplier data provided to the CMA also shows a fall in the proportion of small businesses on rolled over contracts which suggests more are making an active choice at the end of a fixed-term contract
- 4.5. In 2014, nearly two thirds of micro and small businesses that reported having noticed contract and termination dates on their bills said they were prompted to shop around in the last 12 months by these dates on the bill.

⁶⁷ Pages 20-21, [The Retail Market Review – Impact Assessment for the final non-domestic proposals, Mar 2013](#).

⁶⁸ The 2013 survey was a telephone survey of 1,300 non-domestic customers carried out in summer 2013. It included larger business customers and is published on our [website](#).

⁶⁹ The 2014 survey included micro and small businesses only. To aid comparison between the two studies, BMG Research re-weighted the 2013 sample to reflect the 2014 survey sample as much as possible and all 2013 figures presented in the report are re-weighted. However, differences in methodology mean direct comparisons between the two surveys should be treated with caution. The report is published on our [website](#). Page 8 of the 2014 survey [report](#) gives further detail on the differences from the 2013 survey.

Although this group is small (16% of all businesses), it indicate the dates on bills could be a significant trigger for switching.

- 4.6. The 2014 survey showed that at least three-fifths of respondents who have recently read or glanced at their contract document are satisfied with various aspects of it. However, while engagement and awareness may have improved, there was some evidence that satisfaction with some elements of the contract document may have fallen. For example, in the 2014 survey, satisfaction among small and micro- business respondents with the length/size of the contract document (among respondents that had read/glanced at it) was 60% (74% in 2013). Satisfaction with the transparency of costs and charges was 65% (77% in 2013) and satisfaction with the clarity of the duration of the contract was 77% (86% in 2013).

Remedy 11 – Safeguard tariff

1. Summary

- 1.1. Remedy 11 of the CMA's remedies notice seeks views on the introduction of a transitional "safeguard regulated tariff" for disengaged domestic and microbusiness consumers. We understand and support the rationale for considering such a remedy, ie to limit detriment to consumers from tariffs priced significantly above the competitive level. We are keen to engage in discussing the design and implementation, and are prepared to set the tariff if considered appropriate.
- 1.2. Section 1 summarises some of the key issues we see and section 2 sets out a more detailed response to the questions asked by the CMA for domestic and micro business consumers.

Safeguard tariff for domestic consumers

- 1.3. We have been concerned that incumbent suppliers are able to segment between their active and inactive consumers and this results in consumers on Standard Variable Tariffs (SVTs) receiving a particularly poor deal. The CMA's findings help demonstrate this is happening. We understand why it is necessary to consider implementing a safeguard tariff to help limit the detriment to inactive consumers, particularly vulnerable consumers. Our preference is for consumers to be protected via effective competition rather than price regulation. So, we would see this as a transitional measure, tightly targeted and accompanied with measures to improve engagement in the market until competition is better able to protect disengaged consumers.
- 1.4. It is essential that this remedy is combined with measures that will help promote engagement. Ideally you would want as many customers as possible switching onto competitive tariffs before the measure was introduced. We believe that this could significantly mitigate some of the potential risks associated with the measure. In our response to remedy 10 on prompts to engage we have set out some ideas.
- 1.5. A key question is which consumers are targeted, and if all disengaged consumers should be on default tariffs because they have not engaged with the market (eg consumers remaining on SVTs) or the stickiest customers (eg those that have never switched). Alternatively the tariff could be more closely targeted, for example at vulnerable consumers (eg those in receipt of Cold Weather Payments) for whom the detriment as a result of high prices is likely to be greatest and both our analysis shows more likely to be disengaged. If the policy is targeted at all consumers on SVTs (ie 70% of the customer base) it will be important to ensure there is sufficient headroom to encourage consumers to engage. If it is targeted at vulnerable consumers there is a strong case for this to be a low margin product.
- 1.6. Similarly there appears to be a good case for targeting the policy only at incumbent suppliers given most customers of independent suppliers will have been active in the market in the past few years indicating they are able

to engage. However application will need to be in a non-discriminatory manner.

- 1.7. It is important that the length of the remedy or clear criteria for when the policy should lapse is explicit at the outset or when and how an independent review is to be carried out. If this is not set out at the start we can see that removing the safeguard tariff at a later date would be even more controversial. We can support development of the strategy.
- 1.8. One of the questions in your consultation is whether the CMA should set the tariff or whether it should fall to the regulator, ourselves. There are also the questions around who implements it through legislative amendments (eg which party would be able implement the legal framework fastest) and who is responsible for deciding when and how the policy is removed. We are keen to work together on the design questions and are prepared to do the work needed to set the tariff level and to update it from time to time if this is seen as the best implementation approach.

Safeguard tariff for microbusinesses

- 1.9. We welcome the CMA's detailed findings on default tariff margins in the SME market and share concerns over weak customer response, giving suppliers a position of unilateral market power over their inactive microbusiness customer base. As in the domestic market, we understand why it is necessary to consider implementing a safeguard tariff to help limit the detriment to inactive customers.
- 1.10. We note that there are a number of important differences between the domestic and microbusiness markets that would have implications for the design of such a tariff. In particular, in the absence of a duty to supply, a cap could lead suppliers to refuse to supply the most costly customers in the market.
- 1.11. We can work with the CMA to see if solutions can be found to address the range of design challenges identified, to ensure that any policy can deliver the intended benefits for microbusiness consumers.
- 1.12. Where a microbusiness safeguard tariff is found to be overly complex to implement in desired timescales, it could be possible to focus on implementation in the domestic market in the short term, with Ofgem being given a framework power to extend the transitory measure to the microbusiness market. This would be used in the event that improvements are not seen and could include a sunset clause so that the framework power would fall away after a specified period.
- 1.13. We also consider that where implemented quickly, greater tariff transparency (remedy 7a) has significant potential to bring about change in the microbusiness market, which could reduce the need for a safeguard tariff of this kind.

2. Responses to questions

Question number / para ref	Ofgem's comments
95(a)	<p><i>Should the safeguard tariff be set on a cost plus basis or should they be related to other retail prices?</i></p> <p>We can see that a cost plus basis where the regulator / CMA make an assessment of the costs plus allowed headroom is likely to be the most viable model especially if the safeguard tariff applied to sticky consumers. An approach where the safeguard tariff was calculated relative to other prices could be an option where the tariff applied only to a small subset of energy consumers.</p> <p>The choice of model may partly depend on the CMA's objectives. For example where the CMA's objectives were to implement this as quickly as possible, for a very limited time period, and targeted as tightly as possible there might be a case to develop a less resource intensive model (which may be less accurate).</p> <p>There are international models such as the Dutch model, Belgian⁷⁰ as well as New South Wales mentioned in the CMA's remedies notice that may be useful to draw lessons from. We have been able to previously draw on our network of regulators, particularly European, to learn about the structure in their countries and will develop these relationships further.</p> <p>A relative price (for example based on a basket of tariffs) could be much simpler to implement, especially in short timescales. There would need to be further work on how this might impact the tariffs suppliers offered in the market. We are particularly concerned about the risks of gaming this tariff where it was set based on a basket or indexed to other retail prices. Therefore serious consideration would need to be given to mitigate this. We are also aware that in combination with other remedies (eg removal of RMR simpler choices) there are likely to be significantly more tariffs, more innovative tariffs and potentially a more dynamic market. A basket of appropriate tariffs on which to set the relative price could potentially be more difficult to identify in this world.</p> <p>We believe that the cost plus model is likely to be the preferred option. We note that this does require an intensive amount of data from suppliers on an ongoing-basis and might require an internal wholesale model including hedging strategies. The key costs are likely to be wholesale, network and social and environmental costs.</p>

⁷⁰ Brief information in the public domain on the Belgian model can be found in the report: http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/NATIONAL_REPORTS/National%20Reporting%202013, p52

	<p>There will need to be a decision on whether costs should be based on some form of average/median costs or efficient costs. This decision is then related to the allowed headroom.</p> <p>Additionally the various cost assumptions/methodologies to derive them could be challenged intensively by suppliers, and on an ongoing basis. The latter might be minimised if Ofgem/CMA could come up with some sort of indexation arrangement. Examples of indexation exist in other markets with some form of safeguard regulation eg Belgium. This could also aid understanding and transparency of how the tariff was set.</p> <p>A challenge associated with both of these models is that suppliers have different costs and allocation procedures, which in turn can result in different prices or different net margins. Setting one price cap (subject to region / payment type) has the potential to benefit some suppliers more than others.</p> <p>In the microbusiness market in particular, it has the potential to either require the cap to be set so high that most default tariffs (including some deemed) are not affected, or to be set lower such that it is below the cost of supply for some customers.</p>
95(b)	<p><i>If safeguard tariffs were set on a cost plus basis, which approach(es) should be considered to determining the wholesale energy cost element of the tariffs? What are the relative merits?</i></p> <p>There are elements of the tariff design that will influence the most appropriate model of determining wholesale costs.</p> <p>The wholesale cost will need to take account of:</p> <ol style="list-style-type: none"> 1) Projections of wholesale market costs to be incurred – this will depend on the hedging strategy, tariff structure and review periods. 2) Projections of other direct fuel costs (eg, reconciliation by difference, shaping, balancing and losses). <p>To set a maximum price for the safeguard tariff using a cost plus basis is likely to require choosing a representative hedging strategy which may differ for the domestic tariff and microbusiness tariff. Elements of the Supply Market Indicator (SMI) model could form the building block for setting the safeguard tariff on a cost plus basis.</p> <p>A supplier's hedging strategy often varies depending on the type of tariff. The tariff structure that is used for the safeguard tariff is likely to be important when determining wholesale energy costs. A one year fixed term (with no exit fees) tariff may be the most appropriate for the safeguard tariff, and customers that do not engage following an end of contract notice would be rolled over again on it.</p> <p>The wholesale cost element and the strategy used to determine domestic and</p>

	micro business costs could potentially differ as well.
95(c)	<p><i>Could the imposition of a transitional safeguard price cap result in energy suppliers reducing the quality of service offered to consumers on this tariff? Is this risk reduced by customers ability to choose alternative unregulated tariffs?</i></p> <p>Whilst we agree that this may result in pressure to reduce some costs for suppliers, there are some important factors which could help limit this:</p> <ul style="list-style-type: none"> • There is evidence that some indirect costs may not be efficient. Therefore suppliers may choose to focus on efficiency rather than reducing the quality of service. • If the safeguard is combined with measures to promote engagement and encourage consumers to move away from a safeguard tariff the increased competition should provide some pressure on suppliers to maintain if not improve their customer service. • Transparency of quality of service measures can be used to both empower consumers and put pressure on suppliers to improve customer service. This is an area that Ofgem is working on to put more information in an easily accessible way in the public domain. • Standards of Conduct introduced as part of RMR for both domestic and microbusinesses could deter suppliers from reducing the quality of service. For example suppliers have to make it easy for consumers to contact them, act promptly and courteously to put things right. <p>It is also worth noting that we regulate aspects of service provision and have taken enforcement action⁷¹ where suppliers have performed particularly poorly.</p>
95(d)	<p><i>Should all domestic consumers and microbusiness customers on default tariffs be rolled onto the safeguard tariffs?</i></p> <p>Safeguard tariff for domestic customers</p> <p>We believe that the tariff should be targeted narrowly at those most likely to be negatively affected by the highly priced SVT tariffs.</p> <p>Communications should be targeted at consumers before they are moved to the regulated tariff to encourage engagement. Therefore for those consumers that could be subject to the safeguard they would need to be informed that their existing tariff will come to an end on a certain date and if they do not engage they will be transferred onto the safeguard tariff. They should be informed there are more competitive deals available. For example as</p>

⁷¹ Any enforcement action Ofgem takes is subject to our general Enforcement guidelines

	<p>discussed below the name of the safeguard tariff could have a role to play in communicating this message. Additionally some form of cheapest tariff messaging / personalised prompt could be issued, accompanied with public or private large scale marketing campaigns. It is possible to envisage some collective switching schemes being independently organised and marketed as well in response to the safeguard.</p> <p>In terms of the consumers that should be rolled onto a safeguard tariff we think that there are a number of alternative design options for domestic consumers that we would be keen to explore with you.</p> <ul style="list-style-type: none"> • All SVT consumers: At its widest the measure would involve offering the safeguard tariff to all consumers currently on SVT tariffs, so currently 70% of all households. We would need to consider how the risks associated with widespread disengagement could be mitigated. • "Most sticky" SVT customers: A narrower alternative would be to target only the very stickiest consumers; for example those that have never switched gas or electricity supplier (by meter points our estimates suggest 30-40%). We can explore the extent to which meter point data can be used to identify these consumers. • Vulnerable consumers: Some designs will include targeting this at vulnerable consumers who remain on SVTs, who as both of our findings show are more likely to be disengaged and for whom the detriment of high energy prices is likely to be greatest. Whilst vulnerability can be transitional potential proxies for vulnerable consumers could include those in receipt of Cold Weather Payments. We recognise that not all vulnerable consumers are on SVT tariffs therefore there should be incentives for them to remain in the competitive part of the market. <p>Safeguard tariff for microbusinesses</p> <p>We understand that a safeguard tariff for microbusinesses would be implemented in the form of a maximum price for all deemed, OOC, and fixed and variable rollover contracts.⁷² We understand that these different types of default contracts would continue to exist with suppliers continuing to price at different levels below the cap.</p> <p>We note that there are a number of important differences between the domestic and microbusiness markets that have implications for the final design.</p> <p>Firstly there are a set of design challenges associated with implementing this remedy in the microbusiness market in particular:</p>
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⁷² We note that for the purposes of the analysis, the CMA has included evergreen tariffs in the 'default' tariff category (tariffs that customers did not actively choose to be on). It is worth being aware that while many (potentially most) evergreen customers do not actively choose their tariff; there may still be customers who have actively chosen to be on evergreen tariffs.

	<ul style="list-style-type: none"> • There is no duty to supply in the non-domestic market (please see remedy template 7a for further discussion). This means that where any maximum price for default tariffs falls below cost for a customer group, suppliers are likely to cease supplying those customers. Where a maximum price reduces profits for a particular customer group, some suppliers may seek to move to supply higher profit customers in their place. Under both of these scenarios, the customers imposing the highest costs may find it difficult to get energy supply. <p>We have considered what measures might be implemented to address this issue. One option would be for a high maximum price to be set, such that no customers impose costs on suppliers that are too high to recover. However, assuming deemed/OOC/and fixed term and variable rollover tariffs will all be subject to a single maximum price cap, the price may need to be very high. In this scenario many default tariffs may still remain high. At worst a very high cap could actually lead to increases in lower priced tariffs (i.e. where suppliers see the maximum price as legitimising high prices). An alternative could be introducing a duty to supply. Our response to remedy 7a sets out some thoughts on introducing a duty to supply in the microbusiness market, including the associated risks.</p> <ul style="list-style-type: none"> • The level of cost imposed by microbusiness customers on suppliers is expected to vary from the level of cost imposed on suppliers by domestic customers. <p>This would suggest that separate caps would be needed in the domestic and microbusiness markets.</p> <ul style="list-style-type: none"> • The true costs of supplying across microbusiness default tariffs are expected to vary by default tariff type (e.g. deemed tariffs are particularly exposed to bad debt risks because of objection rules⁷³), supplier type, and customer demographic. In this context it is unclear how a cap can be set which adequately protects microbusiness customers across the market, whilst also allowing suppliers to recover costs. <p>It could be possible to restrict application of the policy to certain default tariff types, certain suppliers, or a subset of microbusinesses. However, it is unclear to what extent any single group can be identified which is subject to a similar cost profile, due to the interaction of different factors.</p> <p>It could be possible to try to band caps to groups of tariffs/suppliers with a similar cost profile. However more work needs to be done to establish to what extent banding of this kind would be possible, in part because it may require</p>
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⁷³ Paragraphs 9.18 and 9.27 of the provisional findings explain that bad debt is a more substantial issue in the microbusiness market due to the risk of businesses ceasing trading/difficulties contacting customers. Bad debt costs for deemed contracts are also higher in the microbusiness market because suppliers are generally not permitted to object on the basis of debt, to their deemed customers transferring. Suppliers are permitted to object to domestic deemed customers for debt reasons. For further discussion, please see below and our response to remedy 8.

	<p>many different bands, cutting across the market in potentially conflicting ways. It is also helpful to understand to what extent the scope of the CMA's profit analysis enables a full assessment of what banding of this kind would need to look like.</p> <p>Changes could be made to the objection rules to try to make costs across tariff types more uniform than they are currently. This could involve either banning objections on the basis of debt for all default tariff types (which would be expected to lead to price rises across these tariff types to reflect risks imposed), or objections on the basis of debt to be permitted for deemed contracts (which would have a detrimental impact on customers and would exacerbate existing concerns about the volume of objections).</p> <p>Secondly, there are a range of factors which may reduce the need for a transitory measure of this kind in the microbusiness market:</p> <ul style="list-style-type: none"> • Further targeted measures, such as introducing an obligation to publish tariffs, could have a potentially very significant impact in addressing the market features that lead to an AEC. This could be further supported by measures such as requiring suppliers to include in their published tariffs/quotes the details of the default tariff the customer can be expected to roll onto at the end of the contract if they take no action. This can help place downward pressure on default tariff prices. • The speed with which different reforms can be implemented will vary. Where reforms such as tariff transparency can be implemented quickly,⁷⁴ the need for transitional protections may be reduced. • Equally, where the design of a safeguard tariff for microbusinesses takes longer to implement due to the complex issues described above, the benefits and associated proportionality of the reform will reduce. <p>Finally, it may be worth considering to what extent banning evergreen tariffs will deliver customer benefits in the microbusiness market.</p> <p>We are keen to work with the CMA to see if an appropriate design can be found to address these issues, to ensure that any policy can deliver the intended benefits for customers who find themselves on uncompetitive tariffs because they have not actively engaged with the market</p> <p>If a microbusiness safeguard tariff is found to be overly complex to implement, it could be possible to focus on implementation in the domestic market in the short term, with Ofgem being given a framework power to extend the transitory measure to the microbusiness market. This would be used in the event that improvements are not seen and could include a sunset clause so that the framework power would fall away after a specified period.</p>
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⁷⁴ It would be valuable to identify both how quickly tariff transparency could be implemented, but also how quickly existing price comparison services could assimilate this tariff information into their price comparison services. The speed with which this is possible may depend on the design of remedy 7a, e.g. the format the tariff information is provided in.

	<p>This could work as a regulatory deterrent and place pressure on suppliers to keep prices competitive and cost reflective voluntarily. We note that we also asked for information on deemed rates as part of our auto rollover review, and one option could be to gather and examine data of this kind in more detail.</p>
95(e)	<p><i>How should headroom be calculated to provide the right level of consumer protection while not unnecessarily reducing healthy competition?</i></p> <p>A key issue for this policy is to establish the appropriate profit margin with headroom. This is challenging as most regulatory approaches to establishing a reasonable profit are based on a cost of capital earned on fixed assets, but this is an asset light business. We think it would be most appropriate to draw on the benchmarking exercise you undertook in the profitability analysis.</p> <p>There are a number of factors that will need to be considered:</p> <ul style="list-style-type: none"> • It needs to ensure incentives to engage. Therefore it needs to be clear this policy is not about giving consumers the most competitive energy deal but about limiting detriment from very high priced tariffs. In that respect we would encourage renaming the tariff to help as a prompt to engage and avoid using terms such as "safeguard". • However at the same time the allowed headroom needs to be low enough to protect consumers from existing high priced SVTs • The allowed headroom needs to allow for flexibility given uncertainties eg weather and variable consumption, and desire to avoid continual adjustment in response to minor cost/revenue changes. • The target group of consumers is likely to influence the level of allowed headroom ie all sticky consumers compared to all vulnerable consumers. As mentioned above if it was just vulnerable consumers there may be a case to make this a low margin product. • We recognise costs differ by supplier. This, combined with our duty to enable suppliers to finance their activities, could add further complexity.
95(f)	<p><i>What regulatory information would be required to set the safeguard tariffs?</i></p> <p>The regulatory information required will depend heavily on the design of the safeguard tariff (ie cost plus vs relative). One of the key challenges is likely to be acquiring accurate data from suppliers.</p> <p>Broadly the information that we think would be required for a cost plus model:</p> <ul style="list-style-type: none"> • Consumption, costs and revenues that suppliers have realised and future projections. It is likely to be necessary to request this by tariff type but recognise that cost allocation is likely to vary significantly amongst suppliers. The historical information they provide will need to cover a long enough period to be able to build up a robust baseline of their past activities.

	<ul style="list-style-type: none"> Information on the hedging strategies and the stated wholesale cost allocation procedures. This could be helpful to compare the internal hedging model that the CMA / Ofgem would need to build with suppliers hedging strategies. Information explaining any changes in cost allocation procedures over the period. <p>In the event that the model relies on Ofgem/ CMA assessing changing market costs to inform a cap the SMI could be used as the basis but would need to be developed further. We note that whilst existing data to undertake this analysis would need to be significantly updated and expanded in any sector of the market, this is particularly the case for the micro business market, given the absence of a non-domestic SMI. Multiple datasets may be needed for different profile classes, consumption levels and regions.</p> <p>We recognise that the information required to set a price level relative to other measures could be less. For example if it was based on a basket of tariffs the main information required would be:</p> <ul style="list-style-type: none"> Information on all tariffs in the market. There would need to be whole of market coverage to be able to choose the most appropriate basket. We are aware that there may be a very substantial number of safeguard tariffs in the microbusiness market, to the extent that some of the pricing is bespoke rather than standardised. For verification purposes it could be necessary to supplement this with information about suppliers' costs and cost allocation processes but this does significantly increase the required resource from suppliers and the authority setting the tariff.
95(g)	<p><i>How long should the safeguard 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 the level of the safeguard price caps after a certain period of time?</i></p> <p>It is essential that it is clear at the outset that this is a transitional measure and it is accompanied by clear criteria or review periods that would help determine when the safeguard tariff falls away. This also helps ensure regulatory certainty and compliance with EU law. The aim would be for the tariff to fall away when there is sufficient competitive pressure on suppliers to protect inactive consumers in the market.</p> <p>There are a number of potential options which we should explore:</p> <ul style="list-style-type: none"> Some form of ex ante criteria for removal of the safeguard when only a certain proportion of consumers remain on the safeguard tariff. A review, potentially independent review, with the date defined at the outset. For example in the event that Ofgem was responsible for setting the tariff, the CMA could be responsible for conducting the review and establishing if the safeguard was still required. We are conscience that there may be a number of natural review points associated with a certain milestone with the roll out of smart meters. A sunset clause when the remedy is implemented perhaps linked to

	<p>other remedies in the package.</p> <p>More generally it will be important to have a monitoring and evaluation framework in place preceding the implementation of the policy so that the impact can be measured and it can be used to inform when the safeguard tariff should fall away. We should consider which indicators of competitiveness would be most appropriate for this assessment.</p>
95(h)	<p><i>How frequently – if at all – would the cap need to reassessed? If the cap is set on the basis of directly passing through wholesale and network costs, then it may not be necessary to revisit the safeguard price level?</i></p> <p>Suppliers generally change their SVT prices in the domestic market one to two times a year. The frequency with which the cap would need to be reassessed would depend on</p> <ul style="list-style-type: none"> • How the cap was set – eg cost plus basis / cost plus basis with some form of indexation or relative to other tariffs in the market. • The level of headroom. • Whether some form of adjustment mechanism could also be possible to allow early review of the level of the cap eg, in the event of a market shock, or supplier request. <p>The level of headroom and proportion of consumers impacted by the tariff could also influence the frequency with which the tariff needs to be reviewed. We would also suggest that there needs to be a mechanism to review the methodology in case significant issues are uncovered.</p> <p>We think that a cap that moved infrequently and did not need to be reassessed regularly would be preferable especially given that any change is likely to be controversial and extremely closely scrutinised and therefore highly resource intensive. We agree that an indexation formula should be further explored as there would be transparency advantages as well to automatic updating of the cap.</p>
95(i)	<p><i>Which energy suppliers should be subject to the safeguard cap and why? Should it be restricted to the Six Large Energy Firms, or should all retail energy suppliers be covered?</i></p> <p>Safeguard tariff for domestic consumers</p> <p>The CMA concluded that weak consumer response results in firms having a position of unilateral market power over their inactive customer base which they are able to exploit through their pricing policies – in effect they are able to price their SVT tariffs higher than a competitive market would bear. As set out in our incumbency paper we are particularly concerned that the largest six firms hold a disproportionate share of sticky consumers and this acts as a barrier to entry and expansion for independent suppliers as well as enabling them to charge higher prices to disengaged consumers. The stickiest consumers (ie those that have never switched) are not with independent suppliers. Therefore our preference would be for the cap to be restricted to the six large energy firms if the policy is targeted at sticky consumers.</p>

	<p>If the policy is targeted at vulnerable consumers the same arguments do not hold to the same extent.</p> <p>Safeguard tariff for microbusinesses</p> <p>We discuss in section d the fact that different suppliers will face different costs, and the potential for a number of caps to be needed depending on the scope of any safeguard tariff in the microbusiness market.</p> <p>In the microbusiness market, and the gas market in particular, we note that the 'big six' classification is of less relevance due to the significant market shares of suppliers such as Gazprom. Whilst the margin data on a supplier by supplier basis is redacted, we note that in targeting the remedy, it will be important to be mindful of any limitations imposed by the scope of the margin analysis.</p>
95(j)	<p><i>How should the transition from the current arrangements be managed?</i></p> <p>From a consumer perspective it is important to allow for companies to market their competitive tariffs and use other prompts to engage to ensure as few consumers are on the safeguard tariff and have engaged ahead of its introduction. More detail was set out in question d.</p> <p>From a supplier's perspective the transition will need to be carefully considered particularly if all consumers on SVT tariffs were to be moved onto the safeguard tariff. It might be helpful to phase the move eg first suppliers must move those that have never switched, then those that have been with the supplier for more than x number of years and so on. This also helps ensure those that are more likely to engage in the market have the opportunity to select a competitive tariff.</p>
95(k)	<p><i>Would energy suppliers have the ability to circumvent the remedy, for example, by encouraging disengaged consumers to switch onto less favourable, unregulated tariffs and how could such risks be mitigated?</i></p> <p>We agree it would be important to avoid the risk identified. Currently as part of the current domestic standard licence conditions there are some tools that should help consumers avoid making poor decisions. For example under the RMR the personal projection rules require suppliers to provide consumers future cost projections, as well as under the marketing licence condition and the rules on cheapest tariff messaging on bills.</p> <p>Similarly the domestic Standards of Conduct seek to ensure that customers are treated fairly and are not misled. Consumer protection laws against misleading information and actions would also be relevant to consider.</p> <p>We note that in the microbusiness market, remedy 7a is particularly important in helping customers understand the best deal for their circumstances, and in mitigating risks of this kind.</p>

95(l)	<p><i>Should the CMA set the level of the safeguard price caps, or should it make a recommendation to Ofgem to do so?</i></p> <p>We have explored many of the questions above relating to regulated tariffs previously and can over the course of the process share more of the detail. There are a number of questions about "division of labour":</p> <ul style="list-style-type: none"> • Who implements it through legislative amendments. • Who is responsible for deciding when and how the policy is removed. • Who is responsible for the tariff design. • Who sets the tariff. <p>We are keen to work together on all the design questions and stand ready to do the work needed to set the tariff level and to update it from time to time if this is seen as the best implementation approach.</p>
95(m)	<p><i>Are there any potential unintended consequences of setting safeguard price caps, for example, in terms of their potential impact on the level of other, unregulated tariffs?</i></p> <p>There are some unintended consequences that we would need to work to mitigate:</p> <ul style="list-style-type: none"> • Suppliers currently have different hedging strategies and would continue to be free to do so. However, we think there is a strong probability that many of them would pursue the lowest risk approach of simply hedging in the manner used to calculate the estimate in the first place. As such, the approach taken to calculating wholesale energy costs could likely cause suppliers to converge on a single hedging strategy when purchasing the energy required for consumers on the safeguard tariff. This has been the case in Australia for example. This could reduce tariff choice for consumers and increase the risks of tacit coordination. • If the tariff is set too high this could risk legitimising prices above competitive costs for suppliers and further enable cross subsidisation of competitive tariffs. • There is a risk that this policy reduces incentives to engage and switch tariff or supplier. <ul style="list-style-type: none"> ◦ Given that one of the aims would be to limit detriment to consumers it is possible that if non SVT/ rollover prices do not also fall the gains from switching tariff / supplier would fall reducing customer switching. ◦ Some firms may also respond to this policy by increasing prices of other tariffs to maintain profit, potentially at the expense of market share. This would further erode the gains from switching. There needs to be further work on considering how this affects larger and independent suppliers' incentives with

	<p>regard to customer retention/acquisition tariffs.</p> <ul style="list-style-type: none"> ○ Some consumers may believe because they are on a regulated tariff they are getting a good deal and this may deter switching. As mentioned earlier the name of the tariff as well as measures to promote engagement are likely to be essential to limiting any detriment. • There is a risk that a regulated tariff becomes a permanent feature as it may be very difficult to exit from. This highlights the importance of a clear exit strategy from the start. • Finally from a practical perspective there is a risk that the price level may not be able to adjust to significant price shocks sufficiently quickly. In the event of an upward cost shock this could impact suppliers' business models significantly. This is something that can be considered in the design of the mechanism. <p>Please see section d) for a range of considerations specific to the microbusiness market.</p>
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3. Other comments on this Remedy Option

	Ofgem's comments
Legislative Considerations	<p>It is important to ensure that the remedy is compatible with the requirements set out in the EU Third Energy Package. To the extent that this remedy is implemented through a licence modification, it would have to be compatible with our principal objective and general duties, including our better regulation duties. It would be appealable to the CMA if implemented by Ofgem.</p>

Remedy 12a – Implementation of Project Nexus

1. Summary

- 1.1. We support the objectives of this remedy, and in effect it is already being implemented. In recent months we have established the Project Nexus Implementation Steering Group, which is now providing robust governance for the project, including key recommendations and/or decisions around the timing, risk mitigation actions, etc. The group is supported by an independent project and assurance manager (PwC).
- 1.2. The steering group has recently endorsed PwC's recommendation that the revised Project Nexus implementation date be set to 1 October 2016. Industry parties are now working to this date which will shortly be reinforced through modification to the UNC. Importantly, the UNC modification will include obligations on all parties to meet certain project milestones.

2. Responses to questions

Question number / para ref	Ofgem's comments
99(a)	<p><i>How long should the parties be given to implement Project Nexus?</i></p> <p>A revised implementation date of 1 October 2016 has been proposed by PwC based on a robust assessment of parties' readiness for Project Nexus, including an analysis of the extent of outstanding work, particularly around systems testing. PwC also brought to bear its own experience of SAP implementations. This date has now been agreed by the recently formed steering group.</p> <p>We consider that this revised date is robust. We have also put in place plans for mitigation measures to preserve this date in the event of slippage.</p>
99(b)	<p><i>Should the CMA implement this remedy directly (eg via an order and/or a licence modification) or should it make a recommendation to Ofgem to implement the remedy?</i></p> <p>We consider that the recently strengthened project governance will be sufficient to ensure timely delivery of Project Nexus, though we have not ruled out targeted licence modifications if this proves to be necessary.</p> <p>However, given the potential for consumer detriment if the systems fail, the decision on whether or not to go live on 1 October 2016 must be taken in light of the result of market trials. Our current view is therefore that codifying the</p>



Responses to CMA Notice of Remedies

	implementation date within the UNC, together with specific milestones that both Xoserve and shippers are required to meet, will provide sufficient certainty whilst retaining a degree of flexibility to alter the date if it proves to be needed.
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Remedy 12b – Monthly submissions of Annual Quantity

1. Summary

- 1.1. We welcome the CMA's recognition of the problems in the current gas settlement arrangements, and of the scope for Project Nexus to address many of these concerns. We agree that in order for energy costs to be accurately targeted, the accuracy of AQs must improve. That in turn will depend on greater frequency and accuracy of meter reads being submitted to Xoserve and entered into settlements. This will be facilitated by, and to an extent dependent upon, the roll out of smart meters and enhanced central systems. However, whilst an AQ will be possible each month post-Nexus, we do not consider that this should necessarily be mandated. Proportionality and costs to consumers are key considerations.
- 1.2. We consider that meter read performance targets should instead be determined according to an evidence-based performance assurance regime. Such a regime should balance improvements to settlement risk against the costs of achieving such targets. We are currently working with industry parties to develop such a regime, and UNC modification proposals are currently under development.
- 1.3. We would be happy to work with the CMA further on promoting the development of such a performance assurance regime. We would also be happy to provide the CMA with further information in this area if it would be helpful.

2. Responses to questions

Question number / para ref	Ofgem's comments
101 (a)	<p><i>Is it proportionate to require the mandatory monthly updating of AQs? Would it be more proportionate to require less frequent updating of AQs? Would less frequent updating still be effective in terms of removing the scope for gaming of the system?</i></p> <p>A mandatory requirement to revise AQs on a monthly basis would not currently be practicable. More generally, proportionality and costs are key considerations for any new requirement in this area. Post-Nexus, it would be advantageous to have meter reads taken at least every twelve months, but not necessarily monthly. We think that a performance assurance regime in gas would be a more effective way of setting meter read performance targets.</p> <p>Current situation: Whilst smart meters are being rolled out, this is not expected to be complete until 2020. In the absence of a smart meter, the</p>

	<p>majority of domestic meter readings are obtained through a site visit, or directly from the consumer. This may make the requirement for a monthly read prohibitively expensive and/or an imposition upon the consumer.</p> <p>The capacity constraints of current systems would also preclude all such readings from being entered into settlements. Currently, the UNC limits gas shippers to submitting reads for a given supply point at not less than 63 day intervals⁷⁵.</p> <p>Post-Nexus: The systems to be implemented as part of Project Nexus offer greater capacity, though as things stand there will still be a minimum period of 25 days between read submission for supply points that opt for periodic meter readings with existing standards for submission and timing ('Product 4' supply points⁷⁶).</p> <p>We have previously expressed concern that the full benefits of Project Nexus will not be realised if shippers continue to settle the bulk of their portfolios under Product 4. Shippers are currently only required to submit a meter read for 70% of their smaller (typically domestic) supply points each year. Shippers should submit a read for all meters at least once every two years. If they fail to do so the Gas Transporters (GTs) can, at their discretion, step in and carry out a meter reading themselves, with costs charged back to the shipper. The GTs have elected not to enforce this provision for several years.</p> <p>Post-Nexus, a prolonged period between reads will not preclude the meter point consumption from being individually reconciled. However, the effect of the reconciliation will be limited to the preceding 12 months, and in proportion to the standard consumption profile. This may 'crystallise' any unreconciled consumption for periods beyond 12 months and contribute to Unidentified Gas costs for those days. Energy not being reconciled to the same period in which it was consumed could distort cost allocation, particularly where there is significant fluctuation in daily gas prices. This indicates that the threshold for read frequency should be less than 12 months, but not necessarily monthly.</p> <p>Performance assurance regime: Notwithstanding the UNC requirements, our recent request for information on AQs found that most suppliers read a high proportion of meters at least once every 6 months, and that these reads are largely being entered into central settlements, not withheld. However, there is substantial scope for improvement.</p> <p>We consider that a performance assurance regime should be introduced into</p>
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⁷⁵ UNC Section M 3.7.2

⁷⁶ Following the introduction of Project Nexus there will be four settlement products available to gas shippers: Product 1 – DM. Time critical, with reads required by 10am. This is mandatory for supply points with an AQ above 58.6MWh only; Product 2 – 'DM-lite', submission of reads is not time critical and can be submitted at any time of day; Product 3 – daily readings submitted in batches; Product 4 – periodic meter readings, with *existing standards* for read submission and timing. Products 2 – 4 are available to any supply point.

	<p>gas, drawing upon the experiences of the electricity performance assurance framework that has been in place for a number of years. Through such a regime, we may incentivise shippers to improve their performance not just in obtaining and submitting into settlements accurate meter readings, but to also tackle the other contributory factors to Unidentified Gas. UNC modification proposals are currently being progressed in this area (see below) and we will await the outcome of those before deciding what further action on our part may be necessary. However, our provisional thinking is that there should be greater incentive for shippers to utilise settlement Product 3, allowing for a greater number of daily reads to enter into settlement on a batch basis. We also consider that the read requirements should be tightened, primarily to prevent unreconciled energy from being 'timed out' of accurate reconciliation after 12 months and/or contributing to Unidentified Gas costs.</p> <p>Whilst we should aim to maximize the value of data available from smart meters, in mandating any particular targets we must also consider the need for exceptions where a consumers has refused the installation of a smart meter.</p> <p>Current UNC modification proposals: For reference, we have provided links to the latest versions of the UNC modification proposals regarding a performance assurance regime (UNC 506, UNC 506A, UNC 520).</p> <p>These are looking to develop the framework in an incremental way:</p> <ul style="list-style-type: none"> • 506/506A will establish the framework and provide governance for the performance assurance measures. • 520 is the first step to develop monitoring and reporting. • These will be followed by modifications to develop the more targeted rules and incentive mechanisms.
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Remedy 13 –Half-hourly settlement of profile classes 1-4

1. Summary

- 1.1. We agree with the CMA's finding that use of load profiles in electricity settlement dampens suppliers' incentives to introduce new products that encourage consumers to shift load away from peak periods, to the detriment of competition. This is one of the reasons that we consider it is in consumers' interests to be settled using their half-hourly consumption data, as stated in our previous publications on this matter.⁷⁷
- 1.2. Our understanding is that the CMA's proposed remedy is an optional approach. (Specifically, this would require relevant market participants to agree a binding plan that, once implemented, would give suppliers the ability, if they choose, to settle domestic and SME consumers (those in Profile Classes 1-4) using their half-hourly consumption data in a cost-effective way).
- 1.3. This optional approach could help realise some of the benefits of half-hourly settlement for consumers as part of a transition to a mandatory approach. We support the idea of transitional measures to permit optional half-hourly switching, and we are happy to support this process. However, we would welcome further clarity from the CMA on the proposed shape of the remedy as its thinking progresses, if it provisionally decided this should be part of its remedy package.
- 1.4. As set out in our response to question 103(d), we consider that all consumers should eventually be settled using half-hourly consumption data to realise the full system-wide benefits of demand-side response (DSR). Our thinking on half-hourly settlement has therefore been in the context of this end goal. However, it may still be relevant to the development of intermediate steps such as the CMA's proposed remedy.
- 1.5. There is a question about when is the right time to progress work to reform the electricity settlement process. We are conscious of this in considering the next steps for our settlement work.⁷⁸ As explained in previous submissions to the CMA, we have undertaken significant work to consider how all consumers in Profile Classes 1-4 can be settled using their half-hourly consumption data.⁷⁹ We have also identified, at a high level, the

⁷⁷ See for example: <https://www.ofgem.gov.uk/publications-and-updates/electricity-settlement-%E2%80%93-moving-half-hourly-settlement>

⁷⁸ As the CMA is aware, we are considering our next steps in the context of our flexibility strategy, which is due to be published later this summer. This will provide a broad strategy for flexibility, which is relevant for half-hourly settlement, and will outline four priority work areas for the next 6-12 months. However, we will not cover half-hourly settlement in detail in this paper.

⁷⁹ For a summary of progress made, see: <https://www.ofgem.gov.uk/publications-and-updates/update-electricity-settlement-project>

policy issues that require further consideration and the significant changes that could be needed to implement any reforms.⁸⁰

- 1.6. There will be practical considerations for the development of optional half-hourly settlement, including how much industry time would be required. We would welcome the opportunity to help the CMA to identify these practical issues which would need to be addressed in order to implement its remedy. There are also potentially important distributional consequences from optional half-hourly settlement. For example, if the least engaged customers remain settled on profiles, then these customers could end up paying for certain costs associated with distributed generation.
- 1.7. In relation to mandatory half-hour settlement, our initial view is that towards the end of smart meter roll-out would seem an appropriate time to implement any reforms to deliver half-hourly settlement for all consumers. This reduces the risk of concurrent regulatory change derailing the roll-out and the significant benefits it can bring for consumers. Moreover, industry is also likely to have more resource available. In their response to the Provisional Findings, DECC noted that they will shortly be bringing forward proposals for pre-legislative scrutiny that will seek to give Ofgem greater powers in order to deliver settlement reform more quickly. We will work with DECC in the coming months to develop a clear plan for the implementation of mandatory half-hourly settlement. This plan will need to take into account the other significant changes in train in the industry, including the smart meter roll-out and the move to next day switching.
- 1.8. We also note that the BSC Panel has recently approved the establishment of a new group, chaired by Elexon, called the Settlement Reform Advisory Group. This group plans to explore settlement of consumers in Profile Classes 1-4 on an elective basis and hence could have a role to play if the CMA proceeds with remedy 13.
- 1.9. However, the code governance issues identified by the CMA may affect the timing of this proposed remedy. Any improvements to code governance (as proposed under remedy 18) will take time to implement. This means that in either case (acting under the current code governance arrangements, or waiting for remedy 18 to take effect), it may take a while to develop a plan.⁸¹

⁸⁰ The CMA noted our views on this matter in paragraph 92 of Appendix 8.6.

⁸¹ This applies to optional half-hourly settlement – but could be a more significant issue for mandatory half-hourly settlement.

2. Responses to questions

Question number / para ref	Ofgem's comments
103(a)	<p><i>Would this remedy be effective in stimulating tariff innovation, in particular in terms of time-of-use tariffs?</i></p> <p>We support the CMA's view that settling consumers using their half-hourly consumption data strengthens the incentives on suppliers to innovate in products that encourage load shifting, including time-of-use tariffs. Therefore, assuming that this remedy enables suppliers to choose to settle domestic and SME consumers using half-hourly consumption data, it could stimulate tariff innovation. However, without mandatory half-hourly settlement, we consider that the full system-wide benefits of demand-side response from the offer and take up of time-of-use tariffs will not be realised.</p>
103(b)	<p><i>How long should parties be given to agree this plan?</i></p> <p>As noted above, we will work with DECC to develop a plan for implementing settlement reform. In considering timescales for implementing any reforms, it is important to consider the interaction with other regulatory changes.</p> <p>Assuming that the remedy is to deliver a plan for optional half-hourly settlement, the development of a plan might take less time than for mandatory half-hourly settlement. In the latter case, the development of a plan would be a significant task in itself, and the CMA may want to consider the time required to plan other large-scale projects, such as next-day switching.</p>
103(c)	<p><i>What are the principal barriers to the introduction of a cost-effective option to use half-hourly consumption data in electricity settlement for profile classes 1-4? How could these be reduced?</i></p> <p>We understand that this question is seeking views on what aspects of the existing settlement process may need to change. In 2014, we explored this question with an industry expert group as part of our work to consider how all consumers in Profile Classes 1-4 could be settled using their half-hourly consumption data. We identified two aspects of the process that may need to change:</p> <ul style="list-style-type: none"> • First, the Change of Measurement Class process that is used to

	<p>transfer sites from non-half-hourly to half-hourly settlement.</p> <ul style="list-style-type: none"> Second, the definition of the data collection and data aggregation, and how they are delivered.⁸²
103(d)	<p><i>Should the use of half-hourly consumption data in settlement for these profile classes (or certain of them) be optional for energy suppliers, or should it be mandatory? What are the advantages/disadvantages of each approach?</i></p> <p>We consider that, without mandatory HH settlement, there is a risk that suppliers target those with flatter consumption profiles. These consumers use less energy at peak than is assumed by the average load profile. Therefore, a supplier can cut costs without the consumer shifting load. Without behaviour change, the system-wide benefits of demand-side response (DSR) will not be realised. Moreover, there could be negative outcomes for those remaining on the non-half-hourly load profiles. They will become more costly to serve as the average load profile used to settle NHH consumers changes to reflect the transition of the flattest customers. If this is reflected in higher bills, these consumers will pay more without receiving price signals that provide incentives for them to shift load and hence save money.</p> <p>We therefore have a clear position that mandatory half-hourly settlement should be the end goal. Optional half-hourly settlement may deliver some benefits in the interim, but we do not consider that this approach would be capable of delivering half-hourly settlement across the market in a timely manner.</p>
103(e)	<p><i>Are there are distributional considerations that we should take into account in relation to time-of-use tariffs? For example, might vulnerable consumers end up paying more if they fail to change their consumption patterns? Or will the decline in the required generation capacity outweigh any increase in peak prices?</i></p> <p>We consider that the potential distributional impacts⁸³ of half-hourly settlement for domestic and SME consumers require further consideration. These impacts arise because not all consumers will be willing or able to shift load. In 2014 we commissioned initial analysis on these impacts.⁸⁴</p>

⁸² For more information, see the annex to our letter here:

https://www.ofgem.gov.uk/sites/default/files/docs/2015/01/settlement_final_doc.pdf

⁸³ See response to question 103(d).

⁸⁴ For more information, see our letter here: <https://www.ofgem.gov.uk/publications-and-updates/investigating-potential-impacts-time-use-tariffs-domestic-electricity-customers-smarter-markets-programme>

103(f)	<p><i>When should the (optional/mandatory) use of half-hourly consumption data replace settlement based on assumed customer profiles? If it necessary to wait until 2020 when all domestic consumers have smart meters installed? Alternatively, could the use of half-hourly consumption data be phased in for those customers with smart meters prior to 2020?</i></p> <p>Our initial view is that towards the end of smart meter roll-out would seem an appropriate time to implement any reforms to deliver half-hourly settlement for all consumers. This reduces the risk of concurrent regulatory change derailing the roll-out and the significant benefits it can bring for consumers, such as accurate billing. (The CMA refers to the DECC impact assessment for smart metering – this shows significant benefits from the smart meter roll-out, even without peak load shifting). Moreover, industry is also likely to have more resource available. Such considerations may also be relevant to implementation of any reforms that would enable suppliers, if they choose, to settle their customers using half-hourly consumption data (depending on the scale of reform required).</p> <p>We share the objectives of maximising the benefits of smart meters as quickly as possible, and aim to ensure all consumers are settled on a half-hourly basis soon after the roll-out of smart meters. To meet this timetable, we will work with DECC in the coming months to develop a clear plan for the implementation of mandatory half-hourly settlement. This plan will need to take into account the other significant changes in train in the industry, including the smart meter roll-out and the move to next day switching.</p> <p>We also note that the BSC Panel has recently approved the establishment of a new group, chaired by Elexon, called the Settlement Reform Advisory Group. This group plans to explore settlement of consumers in Profile Classes 1-4 on an elective basis and hence could have a role to play if the CMA proceeds with remedy 13.</p>
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Remedy 14 – Improvements to financial reporting

1. Summary

- 1.1. We see improving financial transparency as an important objective and we have done a lot of work in this area to get a better understanding of cost drivers and profits: in particular our Supply Market Indicator and the Consolidated Segmental Statements. We support the CMA's objective to improve the quality of financial reporting and we are keen to engage on best ways to achieve this aim, given our own experience to date.
- 1.2. The CSS are one of the key tools we use to improve transparency of energy company profitability. The objective of the CSS is to provide *robust, useful and accessible* information on the revenues, costs and profits of the electricity generation and supply businesses of the large vertically integrated companies.
- 1.3. We have commissioned in the past three independent reviews to improve the transparency and comparability of these accounts. The latest review was on transfer pricing and it found that the policies companies are using reflect the arm's length standard.⁸⁵ As a result, we have more confidence that the CSS present an accurate picture of segmental profitability.
- 1.4. New rules to make the information clearer, more timely and robust came into effect in February 2015, including a requirement for the statements to be fully audited.⁸⁶ We are open to further improvements, such as including balance sheet information. This would allow us to use alternative profitability measures to those currently available, such as ROCE.
- 1.5. The CSS does not currently include trading business activities. We committed to revisiting the inclusion of this information in the CSS to improve confidence in the statements once the market investigation is complete. Given limitations on Ofgem's powers, there are significant challenges with this, not least the fact that we do not licence trading activity and it is difficult to isolate GB based, non-speculative trading. We note that some of these challenges could be overcome by the CMA, given that powers under part 4 of the Enterprise Act 2002 to make orders or accept binding undertakings could be used in respect of non-licensed entities such as a trading business or parent company of a vertically integrated supplier/generator. Therefore we think that there would be strong benefits in

⁸⁵ BDO (2014), Review of Big Six Transfer Pricing Policies,

https://www.ofgem.gov.uk/sites/default/files/docs/2014/10/bdo_transfer_pricing_review_0.pdf

⁸⁶ Ofgem (2014), Decision on proposed licence modifications to improve the transparency of energy company profits, <https://www.ofgem.gov.uk/publications-and-updates/decision-proposed-licence-modifications-improve-transparency-energy-company-profits>

exploring whether the CMA would be the more appropriate body to introduce further reporting requirements that relate to those activities.

- 1.6. Further consideration is needed on the potential impacts of developing a new comprehensive 'market-orientated' regulatory accounting framework given that we do not price regulate generators or suppliers. It would be more resource intensive for companies to report to Ofgem in this way and it may be difficult under current reporting systems.

2. Responses to questions

Question number / para ref	Ofgem's comments
109 (a)	<p><i>Should the scope of the individual areas reported on align with the scope of the markets as set out for generation and retail supply in our provisional findings? For example, should a requirement to report wholesale energy costs on the basis of standard products traded on the open wholesale markets be imposed?</i></p> <p>We see value in having financial results which reflect the business models of the firms, including where they source their wholesale energy in practice. Any benefits of increased standardisation also need to be considered against the costs for firms of providing this information. Further consideration should also be given to whether the proposed reporting requirements could potentially impose constraints on company structure.</p> <p>We note that there may be other ways to increase transparency around prices traded in the open market.</p>
109 (b)	<p><i>What regulatory reporting principles would be particularly relevant to the preparation of regulatory financial information in this sector?</i></p> <p>There are a number of guidance documents related to reporting under RIIO-ED1: https://www.ofgem.gov.uk/publications-and-updates/riio-ed1-guidance-documents</p>
109 (c)	<p><i>Would summary profit and loss account and balance sheet information for each area be sufficient to enable the effective regulation of the sector and the development of appropriate policies? Or should the large domestic and SME energy suppliers be required to collect and submit additional, more granular financial information?</i></p> <p>This depends on whether we could replicate the granularity of the segmental information we already receive via the CSS (ie by gas/electricity and domestic/ non-domestic) from the balance sheet information.</p>
109 (d)	<p><i>Should Ofgem require that the summary profit and loss and balance sheet information be audited in accordance with the regulatory reporting framework?</i></p>

	Yes, as the CSS now is, to give confidence that the information has been prepared correctly.
109 (e)	<p><i>Should this remedy apply to the firms that are currently under an obligation to provide Ofgem with Consolidated Segmental Statements? Or should it apply to a larger or narrower set of firms?</i></p> <p>We consulted on this last year and there was a mixed response. Some respondents suggested that this would be too burdensome for the smaller suppliers, while the six larger energy suppliers suggested that this should be an obligation for all market participants (possibly with a size threshold in place).</p> <p>If the CMA's primary concern is transparency of vertically integrated players, then most independent suppliers do not fall under this category, which could be another argument to exclude them from the proposed reporting obligations.</p>
109 (f)	<p><i>What would be the costs of imposing such a remedy? We note that some firms' reporting systems are not currently capable of providing information on such a 'market-orientated' basis and that our remedy could require significant additional system requirements.</i></p> <p>The industry is best placed to give estimates of the cost involved in changing their reporting processes to meet the requirement. It would also have resource implications for Ofgem – we would need to employ a designated team of accountants to implement and monitor this requirement.</p>
109 (g)	<p><i>Should the CMA implement this remedy by way of licence modifications or by way of a recommendation to Ofgem?</i></p> <p>There may be significant benefits in the CMA using their order making powers to create a bespoke obligation that sits outside licence conditions. A licence condition can only require the licence holder to do things and therefore it could not require an unlicensed parent company or trading subsidiary to provide/publish financial information.</p> <p>We note that some of these challenges could be overcome by the CMA, given that powers under part 4 of the Enterprise Act 2002 to make orders or accept binding undertakings could be used in respect of non-licensed entities such as a trading business or parent company of a vertically integrated supplier/generator. Therefore we think that there would be strong benefits in exploring whether the CMA would be the more appropriate body to introduce such a framework.</p>
109 (h)	<p><i>To what extent should this financial information on performance be published?</i></p> <p>As demonstrated by the dissatisfaction with the level of transparency of financial reporting from multiple parties, there is significant appetite for more</p>



	financial information to be published. This provides important information to help hold the industry to account. Nevertheless, we are keenly aware of the tension between providing ever more transparency and the impact on competition.
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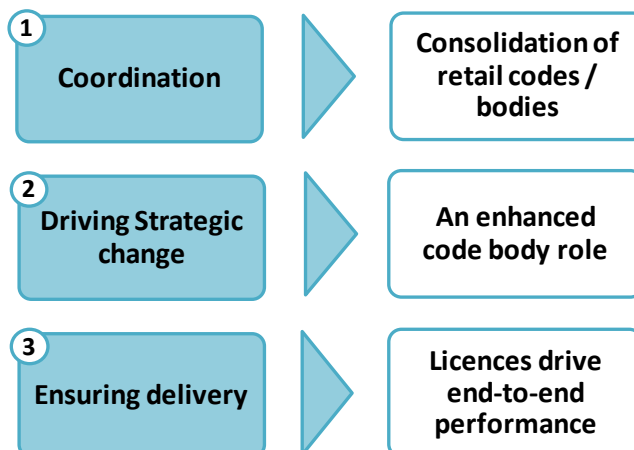
Remedy 18 – Code governance

1. Summary

- 1.1. We agree with your identification of the code governance AEC and how you have characterised the issues as arising from (i) parties' conflicting interests and/or limited incentives to promote and deliver policy changes; (ii) Ofgem's insufficient ability to influence the development and implementation phases of a code modification process for key and cross-cutting projects.
- 1.2. We also welcome and agree with the thrust of two of your draft remedies – 18(a) and 18(b). We believe that these remedies could be extended in some areas.
- 1.3. In particular, we agree with the sentiment in 18(a) that making the delivery of certain code functions more accountable to Ofgem through a licensing approach would create consumer benefit. To better achieve this objective (and others described below) we would recommend creating a single retail codes body.
- 1.4. Remedy 18(c) requires further consideration in light of legal requirements under the Third Energy Package with regards to the independence and role of national regulatory authorities.

2. Our proposal for a single retail codes body

- 2.1. We think that the solution to the codes governance challenges has three strands. Firstly, we think that there should be a single licensed body responsible for the retail codes. Existing arrangements seeking to deliver far-reaching and/or complex change (eg Project Nexus) have been insufficient in ensuring that all actors in the change process are



co-ordinated, and we think a single body should be responsible for this coordination. We think that in the long term this is best achieved by combining activities of existing bodies in this space, rather than by creating a new body to sit above them. We think this is the best way to retain the necessary expertise and skills, and avoid additional bureaucracy.

- 2.2. We think the focus should initially be on retail codes as this is the area where conflicts are most pronounced. In the upstream and more technical areas accountability for the codes is clearer, especially for those where National Grid is the sole code owner. There is also less direct impact on

retail competition and separate work is ongoing in this area – for example to look at the need for an end-to-end technical system view.

2.3. Secondly, we think the governance regime needs to respond to the strategic direction of policy. The single retail body's role therefore should go beyond code administration. We think a single retail code body should have a role in developing codes in line with the strategic direction set by ourselves, and we would then be able to hold them to account for delivering this through the licence. This would mean a move away from a mainly industry-led code development process for significant policy change in consumers' interests, though we still see a central role for industry involvement in the change assessment process, and in delivery of more incremental changes that are not aimed at meeting strategic policy objectives.

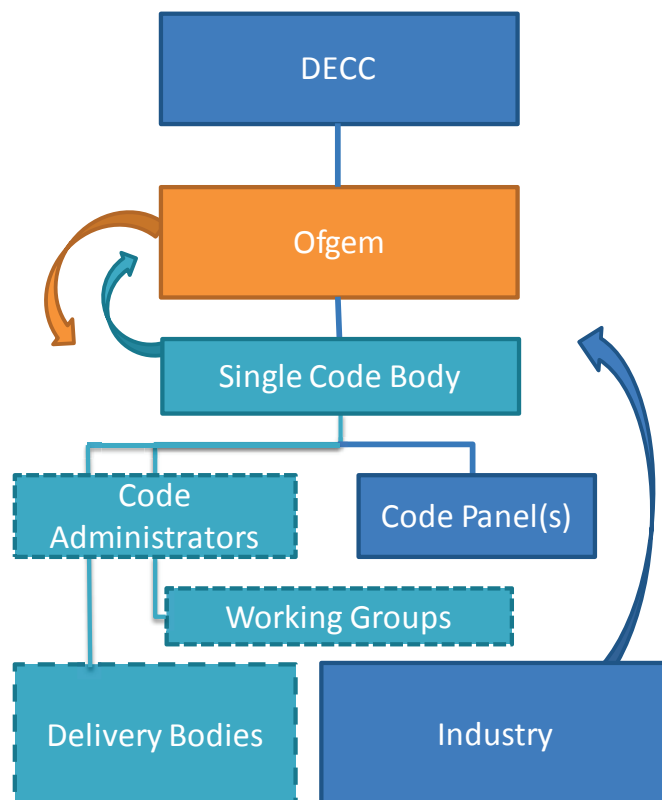
2.4. We think this approach would then also address many of the issues remedy 18(b) seems designed to address.

2.5. Thirdly, there is the need to ensure timely delivery of code change. This requires strong alignment of a single licensed retail code body and the delivery bodies. A single licensed code retail body could be given responsibility for contracting with delivery bodies (or these bodies could be licensed in their own right).

A single code body with an enhanced role

2.6. We think these changes will benefit consumers by enabling more timely delivery of code changes that would be in their interests. This is particularly important in the context of an evolving industry, in which the volume and pace of change is increasing to deliver major reform in the coming years – for example, to secure the full benefits of smart meters.

2.7. Our Code Governance Review is looking at improvements to the arrangements in the short term, but we believe that more fundamental change is necessary to enable the industry rules to adapt and allow for a more dynamic energy market.



3. Responses to questions

Question number / para ref	Ofgem's comments
18a – Recommendation to DECC to make code administration and/or implementation of code changes a licensable activity	
	<p>We agree with and welcome the thrust of this remedy as a means to drive strategic change and ensure timely delivery of change in the interests of consumers. In particular, we agree with the sentiment in 18(a) that making delivery of certain code functions more accountable to Ofgem through a licensing approach would create consumer benefit.</p> <p>Our proposal for a single retail code body involves a licence to ensure that the new body acts in line with consumers' interests and our strategic vision for the market. Ensuring end-to-end performance of change in the market also involves timely delivery of code and systems changes. This requires strong alignment of a single retail code body and the delivery bodies. The new code body could be given responsibility for contracting with these bodies.</p> <p>More generally, we agree it is important to consider the different functions associated with the code change process when designing appropriate governance mechanisms. Some activities may be more suitable for licencing, and careful consideration needs to be given to developing effective incentives. For activities associated with delivery bodies these could potentially include outputs-based incentives and reputational incentives. This is however a challenging task and Ofgem is currently examining the types of incentives that might provide appropriate signals to DCC to deliver IT systems changes.</p> <p>It will be also necessary to consider what the most appropriate funding model would be for the new body. While the code bodies are generally funded by industry, this would not necessarily be the right approach for the single code body</p> <p>We have seen efficiency benefits delivered through competitive tenders, for example as part of our offshore transmission regime. However, we would suggest that competitive tenders may be more suitable to some functions, particularly when the activity has well-defined outputs that allow for price competition. Competitive tendering may be less straight-forward where the activities are related to specific skills and expertise, or when they involve long-term timeframes. However we note that DECC carried out a tender for the award for the DCC licence (as a delivery body) and also for the Smart Energy Code Administrator.</p>

18b - Granting Ofgem more powers to project-manage and/or control timetable of the process of developing and/or implementing code changes

In our Code Governance open letter⁸⁷, we are seeking views on the possibility of introducing additional SCR powers to: (i) direct the timetable which a code modification coming out of an SCR must follow, and/or (ii) enable Ofgem to draft a code modification proposal under the SCR.

Our proposed enhanced SCR process seeks to increase Ofgem oversight within the current governance framework, as there is no single body providing this oversight in the arrangements as they are today. But we question if this level of detailed oversight/project management is an appropriate role for an economic regulator. While it may be appropriate as a pragmatic measure in the interim to ensure delivery of beneficial change in the shorter term, it is not clear that the type of expertise and resource for this role sits appropriately with the regulator in the long-term. This is why we think a single licensed body could fulfil this role, with Ofgem setting the vision for the market, and the single body developing solutions to give practical effect to our policies.

18c – Appointment of an independent code adjudicator to determine which code changes should be adopted in the case of dispute

While we agree there are benefits of having a single body in the retail codes space, we would note legal requirements under the Third Energy Package with regards to the independence and regulatory tasks of national regulatory authorities. These may cause challenges for the creation of a separate adjudication body (18c).

⁸⁷ <https://www.ofgem.gov.uk/sites/default/files/docs/2015/05/cgr-open-letter.pdf>