

***Citizens Advice response to 'Supplemental Notice of Possible Remedies'<sup>1</sup>***

**(a) Would this remedy be effective in encouraging customers to engage more frequently in the market? Are there certain groups of customers who could not be covered by this remedy and, therefore, would not benefit, eg those on prepayment, DTS or other meters?**

**(i) To what extent is the higher level of engagement observed in response to end of fixed-term contract notifications the result of the type of customer who has chosen those products, rather than a response to the notification itself?**

We think it is unlikely that this remedy would be effective in encouraging consumers to engage more frequently with the market. This is because while it is presented as a 'radical alternative' to the current system of standard variable tariffs there are actually substantive similarities with what it would be replacing.

British Gas outlines its proposed replacement to the standard variable tariff as having the following characteristics:

- a supplier set price;
- a variable (rather than a fixed) price;
- a one year fixed term; and
- no exit fees.

In addition, you would be notified annually of a need to enter into a new contract. If you did not, you would roll over onto a replacement tariff with the above characteristics.

Meanwhile, an existing standard variable tariff will have the following characteristics:

- a supplier set price;
- a variable (rather than a fixed) price; and
- no exit fees.

In addition, you receive an annual statement encouraging you to shop around. If you do not, you continue on the same tariff with the above characteristics.

In all substantive regards, what British Gas is proposing is simply a continuation of a rebranded standard variable tariff except in how an annual prompt to switch is delivered, and in any impact it may have on consumer perceptions on whether they can switch at any time or only at defined times.

Currently, all consumers - including those on standard variable tariffs - must at least annually be sent a reminder that they may benefit from switching as well as providing them relevant information, such as consumption data that they would need to shop around.<sup>2</sup> In addition, a

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<sup>1</sup> 'Energy market investigation: notification of supplemental remedies,' published by CMA on 26 October 2015.

<sup>2</sup> Standard Licence Condition 31A.

prompt to consider switching must be included on the front page of every bill.<sup>3</sup> Despite these multiple, and at least annual, reminders many consumers do not.

Under the British Gas proposal, the frequency of reminders appears to be the same as customers currently receive: at least annual, with 'additional prompting' within year. If consumers fail to respond, the consequences will also be the same as they currently are: that they will remain on a default tariff. So the frequency of prompts, and the consequences of failing to act, appear the same under either the baseline or British Gas's proposals.

It appears reasonable to presuppose that default fixed term tariffs would continue to be as overpriced as standard variable tariffs currently are, given that suppliers would have full discretion on how to price them (under both British Gas and Scottish Power proposals) and that inactive consumers would either end up, or remain on such tariffs.

Both British Gas and Scottish Power make comparisons with higher engagement levels prompted by other fixed term products either in the energy or other markets. In neither area are the comparisons used particularly informative or relevant to diagnosing a solution to the problem of disengagement in the energy market.

On the energy comparisons, Scottish Power suggests that 'engagement rates when fixed term energy products come to an end are much higher than at other times - including SVT tariff increases' while British Gas references Ofgem research showing that engagement with end of fixed term notifications is higher than other routine communications. We are confident both statements are true, but they omit a crucial point: that you will only be receiving these notifications if you are already an engaged consumer, because only engaged consumers will currently be on fixed term contracts. In effect, both pieces of evidence simply point out that people who are already engaged are more likely to respond to prompts to switch than the wider population. The group being referenced is not a good proxy for the wider group of disengaged consumers that the CMA needs to reach.

The comparisons with other sectors appear relatively weak and are not clearly relevant. Scottish Power points out that 'Comparison between sectors shows that car and home insurance, which have annual renewal processes, have higher switching rates than energy.' We have less visibility on product design features in those sectors than in energy, but it does not appear to us that these are necessarily evergreen products.

In home insurance services, it appears to generally be the case that if you let your insurance policy lapse you are uninsured; supply of the service is not evergreen. There is therefore a (potentially severe) adverse consequence to the consumer of not shopping round. The equivalent does not exist in energy; supply to your home will continue even if you do not re-contract. That is the case both under the current baseline and under either British Gas or Scottish Power's proposals. No new signal to switch would be introduced and the consequences of not switching - remaining on a default tariff - would remain the same.

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<sup>3</sup> SLC31A Schedule 1.

In the case of car insurance, we are aware that there are both one-off and auto-renewing policies on the market. The balance of sales between the two is not something we have been able to establish in the time available for this consultation but this may be something the CMA wishes to establish if it regards the analogy as a relevant one, because understanding what fraction of customers should act, rather than must act, when their initial fixed term lapses could help to give context to car insurance switching figures and behaviours.<sup>4</sup> The CMA would also need to understand what price signals exist around auto-renewing car insurance policies when compared to evergreen energy SVTs. Do those insurance policies charge a similar amount for year 2 cover, or is there typically a leap (or fall, or broad continuation) in the premium? We suspect there may be a sharper year on year price difference for remaining with the same car insurer than there is for remaining on the same energy supplier's standard variable tariff, though we have not been able to conduct any data analysis of this in the time available during this consultation. If it is minded to view the auto-renewing car insurance market as analogous, the CMA should seek to understand whether the year on year price differentials for disengaged customers are sharper, lesser, or similar in that market as it may help to gauge whether the prompts to switch in that market would be effective in the energy market.

It appears to us that there is one key area of difference between the British Gas and Scottish Power proposals, in relation to whether the default tariff is fixed price or variable price. British Gas favours the latter, while Scottish Power favours the former for a fixed period before moving to the latter.<sup>5</sup> Scottish Power states that 'We envisage that the fixed term default tariff would be on a fixed price for the first three years, in order to achieve the necessary change in customer thinking' but does not say why that would impact consumer thinking or why three years has been chosen rather than any other duration. Without any more detailed explanation of the reasoning on either point it is hard to reach a view as to the merits of those aspects of scheme design. It is possible that the 'change in customer thinking' is alluding to getting consumers comfortable with being on fixed price tariffs, which are the current principal acquisition product, in the hope that such comfort would encourage them to continue to want such products (and therefore switch to them) once that three year period ends. This is possible, though far from guaranteed. We comment further on the relative merits of fixed price versus variable price default tariffs in our answer to question (e).

Scottish Power suggests that 'it will be necessary to exempt PPM customers who do not have a smart meter from this approach because of the tariff code limitations which we have previously described.' British Gas is silent on this point, so it is unclear whether there are alternative views on whether a workaround for prepay customers who do not have smart meters exists. At present, only a small proportion of PPM customers have smart meters. Full rollout is due by 2020, but this still leaves five years of patchy coverage. Your analysis, and ours, suggests that prepay customers are more disengaged than the mean. This suggests a remedy of this type may be a poorly targeted way of trying to tackle this AEC.

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<sup>4</sup> i.e. energy consumers on SVT are in a 'should act' rather than a 'must act' position; they will pay more for their energy if they do not shop around but they will not be without energy. Likewise, consumers with auto-renewing car insurance are in a 'should act' position; they will probably pay more for their car insurance if they do not shop around but they will not be without car insurance. But consumers with fixed term car insurance are in a 'must act' position; they will be uninsured if they do not seek new cover. We therefore think it is possible that there may be relevant lessons to be learnt from any effective measures in the 'should act' (auto-renewal) car insurance market, but less clear that the 'must act' section of that market is relevant.

<sup>5</sup> See paragraph 13 of its response.

We do not believe this remedy will address the needs of consumers with Dynamically Teleswitched (DTS) meters, who are another group of consumers that the CMA has identified are currently poorly served by the competitive market.

A general and, in our view, very significant problem of this remedy is that the rebranding of standard variable tariffs as fixed term contracts could actually deter consumers from considering switching at times in the cycle other than when that fixed term is ending. This is because 'fixed term' is likely to imply to a consumer that they must stay on that contract for a fixed period of time (after all, is that not the most obvious plain English interpretation of what 'fixed term' means?). Consumers experience of fixed term products in other markets is likely to be that there is often an early exit fee or some other penalty associated with leaving the contract early; it may be assumed that one exists on a fixed term energy tariff even if that is not the intention of the proposals. It may also be assumed by some consumers that they cannot switch at all within contract, either with or without penalties - because if they can, then how is it 'fixed term'? So there is a risk these proposals could make engagement levels worse.

**(b) Would this remedy be effective in protecting those customers who failed to engage in the market, even after receiving prompts, from paying high prices? Would the extension of SLC 7, in the manner proposed by Centrica, provide such protection?**

We think it is unlikely that this remedy would be effective in protecting those consumers who failed to engage from paying high prices. They would remain on a default tariff, with rates set at the discretion of the supplier - much as they are today. The CMA's analysis suggests that disengaged consumers pay much higher rates for their energy than those who engage with the switching process and there is little reason to believe this would change. As we highlight in our answer to question (a), there are fundamental similarities between these proposals and the existing characteristics of standard variable tariffs, particularly in the most relevant areas of prompts to switch and of consequences for not switching. So while we do not entirely rule out some dynamic effects prompted by the rebranding, these are not 'radical' proposals in the way the proposers suggest, but more of a continuation of the status quo. Repeating the same approach is likely to deliver the same outcome.

Furthermore, there is a possible risk that this proposal could worsen as opposed to improve the current situation. If these previously disengaged consumers are transferred onto a new fixed term contract, some of these households may believe they are unable to switch until the fixed term period comes to an end. There are already many consumer myths out there about switching, which our organisation spends a lot of time trying to debunk through our media messaging and direct outreach work with consumers (many of whom are disengaged or vulnerable)<sup>6</sup>. It could make outreach work amongst these groups of consumers more difficult if consumers on this new type of tariff believe that they're only entitled to switch during a narrow window. Much would depend on the wording used by suppliers and we discuss this further in question (d).

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<sup>6</sup> [https://www.citizensadvice.org.uk/Global/Migrated\\_Documents/corporate/fsfl-ebd-evaluation-report-2013-14-final.pdf](https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/fsfl-ebd-evaluation-report-2013-14-final.pdf) The 2014-15 evaluation report will be published in late November.

Two specific clauses within SLC7 are identified as relevant for extension, 7.3 and 7.4. We consider that the extension of SLC7.3 would provide some helpful protection and should be extended to cover the default tariff, if the CMA decided to implement such a tariff. We are less convinced that SLC7.4 is a useful protection (either currently, or in extended form).

SLC7.3 simply states that ‘the licensee must take all reasonable steps to ensure that the terms of each of its Deemed Contracts are not unduly onerous.’ This is a reasonable and appropriate basic consumer protection. Because a deemed contract exists in situations where the consumer has not sought to enter into a contract with the supplier<sup>7</sup> it is entirely appropriate that its terms are not unduly onerous, as the consumer has not given their informed consent to a more complex contract. In particular, there should not be any exit penalties in such circumstances as this could frustrate their ability to shop around for a better deal. This is a useful current protection, and we would support its extension if this remedy were adopted.

The situation with Clause 7.4 is rather different. In its current form we regard it as something of a placebo provision that neither causes consumer harm nor provides obvious protection. The intention of 7.4 is to try and put a constraint on overcharging of customers on deemed contracts by stating that:

*‘one way in which the terms of a Deemed Contract will be unduly onerous [...] is if the revenue derived*

- a. significantly exceeds the licensee’s costs of supplying electricity to such premises;*
- and*
- b. exceeds such costs of supplying electricity by significantly more than the licensee’s revenue exceeds its costs of supplying electricity to the generality of its Domestic Customers [...]*

The (b) provision means that a supplier can only fall foul of this provision if their deemed contract is priced significantly above that faced by the generality of its customers. But at present, suppliers’ deemed contracts are their standard variable tariffs, and the generality of customers - at least for the major suppliers - are on standard variable tariffs. So deemed contract revenue is inherently benchmarked at the level of standard variable tariff revenue. This absence of differential means that even if the condition precedent in (a) - that revenue is significantly exceeding costs of supply - is met, that (b) will not be met. This means SLC7.4 does not provide credible deterrence to overcharging on deemed/standard variable tariffs. The CMA’s own evidence is that suppliers are in a position of ‘unilateral market power concerning their inactive customer base’, and this view was reinforced recently in comments made by Ofgem Chief Executive Dermot Nolan.<sup>8</sup> Consumers on deemed contracts fall within that group - despite the existence of SLC7.4. So although SLC7.4 is, on face value, trying to prevent overcharging it is not working.

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<sup>7</sup> For example, when moving into a new home and beginning to consume energy.

<sup>8</sup> In a recent speech to the Energy UK Annual Conference, Nolan said ‘For the vast majority – the 70% of consumers who remain on standard variable tariffs – energy bills have fallen very little this year...In a properly functioning market, when costs fall, competition should be driving down prices for all consumers, whether they are on fixed rate or standard variable tariffs.’ <http://tinyurl.com/oas4dtd>

If suppliers' default tariffs and those that the 'generality' of their customers are on continue to be one and the same thing, and that appears to be the case under these proposals, the extension of this provision would deliver no meaningful consumer protection.

**(c) Should this remedy apply to domestic customers only, or should it also be extended to microbusiness customers?**

A better way for the CMA (or Ofgem) to help disengaged microbusinesses would be to use existing powers to investigate the deemed rates charged and establish whether they accurately reflect the risks faced by suppliers of these customers. We also advocate the mandating of full price publishing on the websites of all suppliers who supply micro-businesses, with Ofgem playing a significant role in facilitating how this looks to promote engagement. In addition Ofgem should strengthen the TPI code to ensure all brokers disclose all relevant information and ban auto-rollovers. All of these remedies will promote engagement more effectively than a forced move to fixed term contracts as proposed here.

**(d) The wording of the end of fixed-term notifications appears to be critical to the effective functioning of this remedy. Should Ofgem take responsibility for developing and testing appropriate wording, or should the energy suppliers retain responsibility for this?**

**(i) If suppliers design these prompts, how can they be incentivised to maximise their effectiveness?**

Given the scale of disengagement in energy and the potentially very serious effects disengagement can have on consumers' ability to afford essential energy supplies, we would favour Ofgem undertaking robust research into the matter and issuing guidance to suppliers.

The contention from British Gas that the wording of prompts should be left to suppliers in order to allow for 'competitive differentiation' shows an inherent misunderstanding of the scale and nature of the problem being addressed. A third of consumers on their suppliers' SVT have been on that tariff for more than five years, the negative effects of this in terms of financial capability are likely to be severe. This means there is an imperative to have a minimum standard to ensure that communications create certainty, are understood and acted on. Leaving such an important endeavour to the market may result in perpetuating precisely the problem that this remedy would seek to fix, by sanctioning uneven or half-hearted implementation.

There may be natural incentives on incumbent suppliers to minimise the effectiveness of these messages, not maximise them. We consider this possibility further in our answer to question (j).

Your analysis suggests that most consumers are aware of their right to switch<sup>9</sup>, but that despite this most consumers remain on standard variable tariffs, which generally offer poor value. This high awareness of the right to switch, but low prevalence of enacting that right, despite existing prompts, could suggest that the content of such prompts is wrong. There may be value in testing alternative (or complementary) messages to tackle perceptions that could cause disengagement. This could include providing reassurance to tackle fear of delays or complications in the switching process, or highlighting non-price benefits of switching such as customer service league tables or more convenient payment methods. It is possible such alternatives will work no better, and could even work worse, than existing prompts - but they are worthy of trialling.

**(e) Should the default tariff be fixed price as well as fixed term, or should suppliers be allowed to roll customers onto a variable price tariff?**

- (i) If the default tariff were variable price, should energy suppliers be required to roll all customers who did not take action onto the same tariff, such that in effect there was only a single variable price default tariff per supplier?**
- (ii) If the default tariff were fixed price, should energy suppliers be required to roll all customers who did not take action within a given period, eg one month, onto the same default tariff? Is there a risk that the existence of multiple default tariffs (eg one for every month) would reduce the pressure on SVT pricing that currently results from media attention on changes to SVTs?**

Under either approach, there are risks that the existence of multiple default tariffs per supplier could create price confusion and a more complicated search process that would reduce rather than increase competitive pressure. We consider that matter further in our answer to question (k) on unintended consequences.

We think it is likely that a fixed price initially three year fixed term default tariff as proposed by Scottish Power would be very differently priced than a one year variable price one would, because the latter could be repriced mid term to reflect changing costs in a way the former could not. It would therefore represent a bigger leap from the status quo than a variable price default would, and you would need to be particularly certain this was not to consumers detriment before adopting a proposal along those lines.

**(f) How should this remedy be implemented in order to ensure it is effective and proportionate?**

- (i) How long should energy suppliers be given to phase existing customers off their SVTs?**
- (ii) Should the remedy be phased in starting with customers who have been on the SVT longest? Alternatively, should it be organised geographically in order to facilitate marketing by competitors and support from consumer groups in later years? For example, energy suppliers might be required to move all SVT customers in a region to the default tariff in the same month, such that the**

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<sup>9</sup> Your domestic customer survey results suggest that 89% are aware it is possible to switch supplier, 81% are aware it is possible to change payment method, 76% are aware it is possible to change tariff and 64% are aware it is possible to do all three.

**following year energy suppliers, PCWs and other TPIs would know that a large number of customers in that region might be looking to move in that month.**

**(iii) Should energy suppliers be required to provide contact details for all SVT customers or a subset of SVT customers (eg those who have been on the default tariff for several years in a row, eg three or five years) to Ofgem, which could then seek to contact them with further prompts? Alternatively, should suppliers be required to place the contact details of these customers on a shared database, available to all licensed energy suppliers, in order to allow targeted marketing to these customers? We note that GDF has been required to share such information on those of its customers who remain on the regulated tariff in France.**

If this remedy were to be implemented, we suggest that all customers are transferred to the new tariff as quickly as possible. This would allow for media messaging to support the changes, which could help encourage people to shop around for better deals. However this could attract greater implementation costs and this would need to be factored into any decision to implement such a remedy.

Those customers who have been on SVT longest are unlikely to cleanly map onto those customers who are most disengaged in the way sub question (ii) implies. This is because a disengaged consumer can inadvertently change SVT when moving home; some short tenure SVT consumers are actually disengaged (see our answer to question (h) for further explanation). But we recognise that an exact proxy for disengagement that can be systemised in a phased roll-out may be hard to find. So in the absence of a better proxy, and assuming that a phased roll-out is considered necessary as more manageable than a 'big bang' roll-out, then duration on SVT may be a reasonable criteria to use in that phasing.

On the question of regional roll-out, we think this is unnecessary. We are a national consumer group, and other consumer voices in the energy debate such as Which? and NEA (for England and Wales) and Energy Action Scotland (for Scotland), the energy regulator Ofgem, and consumer advice websites such as moneysavingexpert.com, are all also national rather than regional bodies, so we would see no particular advantage in terms of the support that consumer groups could provide if roll-out were regional. If anything, for us, it may make the messaging more complicated if we had to provide different advice in different parts of the country. To go down the road of regional roll-out you would need to receive relatively compelling evidence from suppliers of the benefits it could bring.

The proposal to make customer details available to all licensed suppliers is problematic. Getting a supply licence is a straightforward task with relatively limited vetting and a low upfront cost<sup>10</sup> and many applications appear to be speculative rather than from organisations committed to joining the market - there are currently 127 domestic electricity supplier licences in force, a number far in excess of the number of active suppliers. The vetting regime may need to be strengthened if holding such a licence may give you a route to the personal data of potentially millions of customers as it may otherwise be at risk of abuse (i.e. people applying for a licence who have no intention of becoming a supplier, but who may

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<sup>10</sup> Ordinarily £450 to gain a domestic gas or electricity supply licence.



wish to access this personal data). We think you would also need to consider including a hurdle that meant that only active suppliers, i.e. organisations who are actually supplying consumers and not simply holding a licence, could access this data.

Consumers have not given their express permission for their data to be used in this way. If they are bombarded with unsolicited marketing messages, particularly if they are conveyed through more intrusive routes such as phone or doorstep sales, this could undermine trust in the sector rather than build it. This could, perhaps, be avoided if informed consent was given by consumers for the use of their data in this way - for example through an opt-in process. But this in turn creates a logical disconnect: because it would require consumers who are disengaged with the switching process to engage with an opt-in process, to tell them about switching. That they would do so appears illogical.

In tandem, those concerns about data abuse and invasive unsolicited marketing are sufficient that we could not support giving all suppliers access to disengaged consumers' personal data. Those concerns would be alleviated if Ofgem were able to access and use the data rather than suppliers, given it lacks incentives to misuse data. But whether consumers would respond to direct prompts (i.e. through a personalised letter or email, rather than a generic message in a broadcast comment or public statement) from a regulator to switch is unknown. If a remedy involving Ofgem as the data hub is favoured, it may be worth doing some practical testing of the form this takes to understand what works and what does not before moving to mass roll-out.

For the most vulnerable households, our preference remains that these consumers are simply opted in to a better deal - either a more competitive price or automatic access to the Warm Home Discount or similar price support. The British Gas proposal in particular acknowledges that, even following implementation, there will still be consumers who are vulnerable and do not take part in the market. To assume that their prospects will be improved by overall market activity increasing is highly speculative and has not been borne out in the energy market previously.

**(g) What should the default tariff be called? Should it be the 'emergency' tariff to further prompt engagement or would some other wording be more appropriate? Is there a risk that certain customers will be concerned that their energy supply will be cut off if they do not engage following an end of contract prompt?**

**(i) How should the CMA assess the costs of such potential distress to customers?**

**(ii) Are there means by which this distress could be avoided or mitigated?**

We recognise the logic in arguments put forward suggesting that the naming of the default tariff could affect consumer behaviour in its own right - for example that 'safeguard' may discourage engagement as it suggests the consumer is 'safe' if they remain on that tariff.

Notwithstanding this, we think there are problems with giving the default tariff an implicitly highly toxic name, such as the 'emergency' tariff. There are some consumers who simply cannot switch through lack of meaningful choice (this is particularly true for DTS consumers)

or because they are prevented from doing so (for example, by restrictive clauses in tenancy agreements). Pointedly telling consumers who cannot switch that they are in an ‘emergency’ situation may cause them a degree of distress without any real benefit as they have no way of responding to that ‘emergency’. In part that may be mitigatable by tackling those other constraints on switching.

But while we think ‘emergency’ may be pushing name toxicity too far, we think there may be value in exploring alternatives to ‘standard variable.’ This could be explored as part of the message testing exercise envisaged under question (d), if this remedy is taken forward.

**(h) Should Ofgem monitor the proportion of customers on default tariffs, their average tenure and/or the pricing of default tariffs (eg with a view to publishing summary information)?**

**(i) Should all energy suppliers be subject to the prohibition on evergreen tariffs?**

We think monitoring of this type would be prudent. Without it, it will be difficult to gauge the success or failure of the remedy. We suggest that monitoring of this kind takes place even if a decision is made not to progress this remedy, as understanding price differentials and the stickiness (or not) of customers would be useful information in any event.

Some caution should be exercised around the use of tenure<sup>11</sup> as a measure of engagement, as it is a crude proxy rather than an exact one. A consumer will inherit a deemed contract with the previous owner/tenant’s supplier at a property when they move in and begin consuming energy unless they take active steps to transfer across to their old supplier or to a new supplier in their new home. This means that it is possible for an entirely disengaged consumer to have only spent a short period of time on their supplier’s standard variable tariff - short tenure can reflect a housing switch, not an energy switch. This does not mean that this data is not useful, but simply that it should not be overrelied upon as a measure of engagement - some disengaged consumers will appear to be engaged based on this measure.

Consumers are not a homogenous mass and the circumstances of different types of energy consumers will differ from the generality. You will be aware from our past evidence that we think that those in the rented sector and both prepay and DTS customers face higher barriers to engagement than the mean. Likewise, the CMA’s own analysis suggest specific demographic groups that are less engaged than the mean, or are more likely to be on poor value tariffs.<sup>12</sup> Any monitoring conducted by Ofgem will need to tease out not simply how this remedy affects engagement in the round, but how it affects those groups who are vulnerable and/or habitually disengaged. Because suppliers are unlikely to store all the necessary information to allow it to assess that from standing information requests, this means that Ofgem should seek to supplement the information it receives from suppliers with its own

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<sup>11</sup> In this context, we are interpreting tenure as meaning time spent with their current supplier, rather than the nature of their relationship with the property they live in (owning or renting). Centrica appears to be using this interpretation in Figure B of its proposal.

<sup>12</sup> Your domestic customer survey results suggest the young, those on low incomes, renters, and those with relatively low levels of educational attainment are particularly likely to be on SVTs or prepay.

ongoing assessment of the demographic breakdown of the types of consumers switching. Without this, it will be impossible to assess whether pockets of society remain fundamentally disengaged, and whether any remedy here is well targeted or not.

Regarding sub-question (i), we would make the point that these proposals do not meaningfully end evergreen tariffs. If a consumer remains disengaged, they will retain an evergreen relationship with their supplier's default tariff. That relationship may be rebadged on an annual basis - this year you are on default tariff 2015, next year on default tariff 2016 - but it is otherwise as evergreen as the standard variable tariff it is notionally replacing. Notwithstanding that point, if this remedy is taken forward it may be appropriate to apply it to all suppliers provided the implementation costs are limited. This is because it may cause consumer confusion if the approach taken varies from supplier to supplier. We can see two possible reasons not to do so though.

The first is if the implementation costs of the remedy were very significant. If that were the case, there may be more of a case for excluding smaller or niche suppliers for proportionality reasons. We are not in a position to reach a view on those costs based on the currently available information and therefore make no judgement on the weight of this argument at this time.

The second is if it makes market entry or participation for challenger suppliers harder for non-implementation cost reasons, for example by undermining their business models. A number of independent energy suppliers have chosen to focus on offering evergreen tariffs such as GB Energy, Good Energy, Ecotricity, etc. We do not believe that these companies are the particular target of this remedy but it is important to acknowledge that this proposal could have negative consequences for their particular business models.

**(j) Would any energy suppliers have the ability to circumvent the remedy? If so, how could they do this?**

Circumvention would require motivation as well as opportunity, and it is not clear to us that the former would exist even if the latter did. As outlined in our answer to question (a) we consider these proposals to be substantively similar to the status quo, particularly in the case of the British Gas variant. The CMA's inquiry has highlighted that consumers on such tariffs are overpaying. If you want regulatory licence to rip off your customers, arrangements like those that are being proposed appear to be a great way to do this - it is therefore unclear why the large players would want to circumvent this remedy.

Should the tenor and content of prompts be left to suppliers, it could be argued there would be a perverse incentive to obfuscate or complicate any switching message, complying with the letter, rather than spirit of these requirements and thereby ensuring consumers remained on their less competitive, higher margin tariffs. Past supplier opposition to including white labels in their cheapest tariff messaging represents a case in point in terms of previous reluctance to promote some deals.

**(k) Could this remedy give rise to unintended consequences and, if so, what these might be and how they might be prevented or mitigated?**

At present, when price changes are made to standard variable tariffs the rise or cut will affect all consumers on that tariff. This could change under these proposals. Scottish Power suggests that ‘suppliers could adjust the price of the default tariff frequently (perhaps as often as monthly)’ and both Scottish Power and British Gas appear to envisage a staggered roll-out with different customers having different expiry dates on their annual tariffs. In effect, that we may move from a world where suppliers have one default tariff (their SVT) to one where they have several default tariffs, identical in their design features but with different termination dates. Because supplier costs will be subject to ongoing change, they may wish to reprice some, but not all, of those multiple default tariffs in each pricing round. This could be motivated by manageability (i.e. to smooth out peaks and troughs in call centre loading, or mailouts) or because the underlying costs are different (i.e. hedged at different times). In principle, that could lead to greater cost reflectivity in user tariffs. Plus, if consumers do respond to the annual termination notices in a way that they do not respond to annual statements then, in theory, this smoothing could reduce total supplier costs and, in turn, consumer costs.

But a single supplier selling multiple differently priced default tariffs could also lead to greater confusion. For example, it may add another parameter to search criteria when shopping around. A customer who is on a default tariff would have to specify which termination date variant of it they are on when using a price comparison tool, simply knowing that they are on that supplier’s default [SVT] tariff would no longer be enough. Likewise, it may make marketing more complex; a “we are X% cheaper than supplier Y’s standard tariff” claim could become endlessly caveated if supplier Y has a number of differently priced variants of that tariff. Arguably we would move from a market with a relatively simple standard tariff and more complex acquisition products to one with both more complex standard and acquisition products. This may not help to build consumer trust, and could further entrench disengagement. This is a material risk, given Ofgem research indicates 36% of consumers already find it difficult to compare tariffs<sup>13</sup>, despite the changes introduced through RMR.

We are not in a position to assess the implementation costs to suppliers of this approach, but if these are substantive (and we do not assume they are, they may not be) they may discourage market entry and will be priced through to consumers. You should seek to understand these costs better if you are minded to pursue this approach as they may erode any consumer gains (assuming some exist, and we doubt they do) from this proposal.

As mentioned in our response to question (a), and as highlighted by Scottish Power in its response, it may not be possible to apply this remedy to prepay customers who do not have smart meters. This may create confusion in the interim period before full roll-out, with some prepay consumers on new default tariffs and others on old default tariffs. It also undermines the case for this remedy tackling the relevant AEC, as your evidence suggests that prepay customers are stickier than the average customer on a default tariff.

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<sup>13</sup> Retail Market Review 2015 Survery (p.38), [https://www.ofgem.gov.uk/sites/default/files/docs/2015/09/rmr\\_survey\\_2015\\_report\\_for\\_publication\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2015/09/rmr_survey_2015_report_for_publication_0.pdf)

There are potential cost implications associated with the initial three year fix approach put forward by Scottish Power which we consider further in relation to questions (l) and (m).

At present, consumers receive an annual prompt to switch in their annual statement, supplemented by within year nudges.<sup>14</sup> Under the proposals, they will receive an annual prompt to switch in their termination notice, supplemented by within year nudges. It is possible that the new nudges may be more or less effective than the old ones (or roughly equivalent). There would be value in road testing messaging in prompts to see what works and what does not; see our answer to question (d). The monitoring regime implemented by Ofgem would need to provide a means for understanding why engagement levels had changed (for good or ill).

The British Gas suggestion of staggering the migration from evergreen to fixed deals raises additional problems due to the extended timeframe put forward. Supposing the remedy achieves the desired effects, the fact that it would take three years to realise them is problematic both from a consumer detriment and political standpoint. It would mean some consumers being put at a disadvantage for significantly longer than others.

**(l) Are there any relevant customer benefits to which we should have regard as being affected by the proposed remedy?**

**and**

**(m) What are the relevant costs and benefits that we should take into account when considering the proportionality of this remedy?**

It appears to us that any benefits relevant to question (l) would also be a subset of the benefits relevant to question (m), so we provide a combined answer to both questions.

The costs appear principally driven by implementation; the process of rolling customers off evergreen SVT on to (in practice, still evergreen) 'fixed term' tariffs. There would undoubtedly be IT and customer communication costs associated with this. Some of these would be one-off, while others may be enduring (for example, a more complicated search process for consumers when shopping around. We consider this further in our answer to question (k) on unintended consequences).

In the event that the Scottish Power variant were adopted, there could be costs or benefits to different consumers resulting from being moved to a fixed price contract for the initial period. This could either be beneficial or detrimental depending on market movements (i.e. whether changes in the underlying costs of the supplier come to make that tariff look over, or under priced when compared to how a floating variable price would have evolved over that period). They may also be beneficial or detrimental impacts on different consumers depending on whether they wanted to be on a fixed price deal or not - some may welcome it as an avenue previously blocked to them, while others may have preferred to stay on a variable price. The three year fix that Scottish Power proposes is much longer than most fixes available in the market and you would need to understand how that affected any risk premia and/or hedging

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<sup>14</sup> For most customers, through their bills. Prepay customers will not receive within year bills so will receive fewer prompts.

costs priced in to that approach. At the moment, fixed term deals are usually cheaper than variable price deals but because they are usually shorter than that proposed, because they are being tailored to a different type of customer (the engaged, rather than the disengaged), and because wholesale market conditions could cease being as benign as they have been in the last couple of years, it does not necessarily follow that a long fixed default tariff would be cheaper than SVT.

**(n) Are there any alternative remedies that would be as effective as the proposed remedy in addressing the provisional AEC and that would be less costly and/or intrusive?**

As put forward in our previous written submissions, we favour an alternative approach whereby vulnerable, sticky consumers are afforded a more meaningful, material protection from detriment. One of our preferred remedies would involve a mandatory switch of certain consumers fitting a vulnerability profile (broadly matching the Cold Weather Payments group) to their suppliers' cheapest deal. We have calculated that the solution - which in effect helps vulnerable, sticky households to do something they could have done themselves - would help people save an average of £100 - 150.

The move would be designed to create maximum impact where it is required most, honing in on disengaged consumers who are currently suffering the most financial detriment. As acknowledged in the submissions from both British Gas and Scottish Power, they expect a sticky core of consumers to not move despite their own best efforts and those of the regulator. Given the persistence and problems caused by non-engagement, we favour an approach that tackles this issue in a non business as usual way, at least until the problem of how to engage such consumers in the market is solved.

In our view this represents a solution that is likely to be more effective than that suggested in this paper, which does nothing additional to prevent energy suppliers overcharging vulnerable, sticky customers or directly tackle the barriers to switching - real and perceived - that many households face.

An alternative approach would be for the current Warm Home Discount to be extended to cover all suppliers and for data matching to be extended to cover broader group consumers as well. The most recent annual report for the scheme highlighted that it reached a record 2.2m homes in 2014/15, and further extension in our view represents an efficient, cost effective way of improving energy affordability for vulnerable consumers.

**(o) Should the CMA seek to implement this remedy itself via an order (eg to make a licence modification), or whether it should make a recommendation that another body, such as Ofgem or DECC, implement the remedy?**

On face value, these routes differ principally in terms of their likely timing and the influence this has on scheme design. We assume that if the CMA were to seek to implement this remedy itself that would mean the design work had to be finished by April 2016 when the inquiry finishes, whereas if Ofgem or DECC were to implement it they may have more time.

This suggests that there is probably a trade-off to be made between expeditious implementation (which is probably best served by the CMA making the decision) and fuller assessment of all possible design and delivery options (which is probably best served by an organisation less time constrained than the CMA making the decision).

Setting aside any implication it may have for delivery timing, we have no strong views on whether any of these bodies is clearly preferable to the others, or should be ruled out. All three have appropriate competence to deliver a remedy in this area, if tasked to do so.