

RWE
Response to the CMA's Supplemental Notice of Possible Remedies
Response dated 13 November 2015

Introduction

1. As set out in our response to the CMA's Provisional Findings ("PFs") and Notice of Possible Remedies ("Remedies Notice" or "RN"), RWE does not agree with the CMA's provisional finding that there is a combination of features of the domestic markets for retail supply of gas and electricity that gives rise to an AEC through an overarching feature of weak customer response. The CMA has not produced convincing evidence of weak customer response and has overstated the level of any disengagement. RWE also does not consider that the CMA has produced proper evidence of the existence of, or suppliers' ability to exploit, unilateral market power.
2. RWE would note additionally that a remedy that prohibits the use of evergreen tariffs, i.e. *inter alia* that abolishes standard variable tariffs, seems to presuppose that all SVT customers exhibit weak customer response (and are being exploited by suppliers) and that they require additional prompts to engage. As we noted in our response to PFs, it is not appropriate to regard 'disengaged customers' and 'SVT customers' as interchangeable when these two groups of customers are clearly not the same.
3. In our response to PFs and the RN, we acknowledged that *some customers* may have difficulties accessing and assessing information and that we are supportive of the introduction of appropriate measures to reduce these difficulties. We also supported the CMA's provisional finding that the 'simpler choices' component of RMR gives rise to an AEC through reducing suppliers' ability to innovate in designing tariff structures to meet customer demand, and are supportive of the withdrawal of the 'simpler choices' rules.
4. We considered, and continue to consider, that remedies to address informational difficulties and to withdraw the 'simpler choices' rules would be the most appropriate way of addressing any AECs that may exist.¹ These remedies, commented on in detail in our response to the RN, will be the most effective and proportionate means of addressing any AEC. They are less onerous, and less likely to result in unintended consequences or loss of relevant customer benefits, than the other remedies under consideration by the CMA, in particular the safeguard tariff (remedy 11) and also the prohibition of evergreen tariffs.
5. However, if and to the extent that the CMA considers that the remedies supported by RWE are inadequate to address any AEC, RWE consider that a

¹ See our response to the RN, in particular, response to remedies 3, 6, 9 and 10.

prohibition on evergreen tariffs would be a more proportionate (less damaging) remedy than the introduction of a regulated safeguard tariff. This is provided of course that any such prohibition is implemented in a manner that is not unduly burdensome for suppliers and that minimises the risk of unintended consequences and/or loss of relevant customer benefits.

6. We note that both Centrica and Scottish Power have proposed abolishing evergreen tariffs as an *alternative* to a safeguard tariff remedy. We agree that it should only be regarded as an alternative. We remain firmly of the belief that the imposition of a safeguard tariff would be ineffective and disproportionate, for the reasons set out in our response to the RN. Clearly since RWE believes a safeguard tariff on its own would be disproportionate, the imposition of a prohibition on evergreen tariffs in addition would render the CMA's remedies even more disproportionate.
7. Should the CMA be minded to proceed with a prohibition on evergreen tariffs, the CMA will need to satisfy itself about the expected effectiveness and proportionality of this remedy in increasing customer engagement.
8. For the avoidance of doubt, while this remedy envisages the default tariff would be a one year fixed term tariff, we do not think there should be any limit on the duration of suppliers' non-default fixed term products. Suppliers should continue to be able to offer e.g. two or three year fixed term products to customers wanting to fix prices for a longer period.
9. As regards the microbusiness segment, as also set out in our response to the CMA's PFs and RN, RWE does not agree with the CMA's provisional finding that there is a combination of features of the SME markets for retail supply of gas and electricity that give rise to an AEC through an overarching feature of weak customer response.
10. Furthermore, in our follow up to the response hearing submitted on 22 September 2015, we explained to the CMA the recent changes to the industry, how we have changed the way we run our business and the positive impact these changes have had on the way in which customers engage with us. It is important that the CMA properly takes into account the impact of the recent changes.
11. In any case, we would note that the large majority of microbusiness customers are on fixed term contracts. Our acquisition and retention Fixed products offer a fixed term of one to three years. Our Flexible product, which a customer will move onto at the end of a Fixed contract if they do not agree a new Fixed contract with us, currently offers a fixed price for 12 months (so is not truly an 'evergreen' product within the CMA definition) and the customer is free to leave at any time by giving notice. All Fixed and Flexible customers already receive

notifications prior to the end of their fixed term (or fixed price in the case of Flexible), making clear that their contract is due to come to an end and/or that their fixed price will change. Our only variable price variable term products are our Deemed and Default ('OOC' in CMA terminology) products, and as explained further below, we consider that there are very good reasons why these should not become fixed term products. We no longer offer our variable evergreen product.

12. Therefore we do not consider there is any justification, nor any need, for a prohibition of evergreen contracts.
13. For clarity, as set out in our response to the RN and our recent response to the CMA's follow up questions in relation to remedy 8, we do consider that auto-rollover should be prohibited across the whole microbusiness sector. The CMA may wish to consider the kind of products it is appropriate for customers who do not take action to be moved onto at the end of a Fixed contract. We would advocate products similar to RWE's Flexible product which offers the benefit of a fixed price for 12 months along with the flexibility of being able to leave or change products at any time on 30 days' notice. Additionally, as set out in our 22 September submission, the CMA could consider whether any of the engagement tools we have employed or are considering should be rolled out across the market.

(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, e.g. those on prepayment, DTS or other meters?

14. RWE agrees that introducing a contract renewal cycle for customers on SVT alongside some of the other proposed remedies, such as removal of 'simpler choices', could increase customer engagement by encouraging customers to engage more frequently in the market. This could then be complemented by offering a variety of tariffs to appeal to different customer groups particularly those who only engage intermittently.
15. RWE would expect such a trigger to prompt engagement amongst some customers. For example, price change notifications often encourage customers to switch tariffs with their existing supplier. We have also observed increased levels of activity at tariff term end over time. This activity (by both customers on SVT and non-standard tariffs) would suggest that the notification acts as a prompt to engage and that consumers learn over time that switching can be easy and risk free, reducing perceived barriers to switching and therefore increasing activity.

16. We also believe that all customers, regardless of their payment method, could move to the annual contract renewal model and should find that the number of fixed term contract offers available to them increases in the future, notably as smart meters become more prevalent.
17. The small proportion of SVT customers with restricted meters or tariffs (other than Economy 7 meters/tariffs) could enter the annual renewal cycle, however it is likely that they would only have one available tariff option with their existing supplier. Although engagement could be prompted for these customers they would be unable to search for alternative offers on a price comparison website in the same way as customers with regular meters. RWE believes it would not be commercially viable or proportionate in any event for suppliers to make all offers available to all meter and tariff types. RWE continues to support a diverse range of restricted meter tariffs which have been largely preserved (i.e. not available to new applicants) since the 1970s. These tariffs (which are available for fewer than [CONFIDENTIAL] electricity customers) enable customers with aged electrical space/water heating systems to continue to operate those systems which, in many cases, would not operate satisfactorily on currently-offered tariffs, which tend to offer fewer hours per day at lower, "off peak" rates. Examples of these preserved tariffs include:
- Off Peak tariffs providing 9, 11 or 13 hours/day at Off Peak rates, supported on related MPANs;
 - Time-of-Use tariffs (other than Economy 7); and
 - Multi-rate tariffs, with Day, Night and Heat rates, supported by dual-MPAN metering configurations.
- (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?
18. Whilst RWE agrees customers on fixed term contracts are engaged we do not believe it appropriate to regard 'SVT customers' and 'disengaged customers' as interchangeable. The cohort of customers on SVT is continually changing as customers switch supplier or tariff and new consumers move onto an SVT, often for only a short period of time. There is spectrum of engagement across the consumers on SVT and some of those consumers may benefit from additional prompts to engage.
19. We note that, in addition to the increased engagement by fixed term customers following an end of term notification, we also see a higher level of engagement by SVT customers in response to price change notifications. This would indicate that notifications/nudges can increase engagement, and it is not only fixed term customers who respond to these nudges.

(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 7², in the manner proposed by Centrica, provide such protection?

20. RWE does not believe SVT prices are high or accept the CMA's contention that weak customer response (to the extent it can properly be evidenced by any of the features identified by the CMA within the Provisional Findings) gives suppliers a position of unilateral market power concerning inactive customers, or the contention that suppliers have the ability to exploit such a position.³ The prices set for SVT are suppliers' non-discounted prices and therefore they are higher than certain discounted fixed term products, which is a feature of the see-saw pricing model that exists in this market. However, it does not mean that SVT prices are high.
21. There are already commercial pressures that act to protect SVT customers from excessive pricing – e.g. consumers switching from SVT to fixed term tariffs when the size of discounts increase. This competitive pressure will also apply to any default tariff.
22. That said, to the extent the CMA is concerned about high default prices, RWE would support the proposed use of elements of SLC7 relating to deemed tariffs, i.e. requiring that they are not 'unduly onerous'.
23. From the proposal RWE assumes that the default tariff would also be the supplier's deemed tariff, i.e. used for homemovers in addition to legacy SVT and fixed term tariff ends. This would ensure that all types of customers, including those who only engage intermittently benefit from the competitive pressures on the default tariff.

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

24. RWE npower has previously described remedies which it believes could form an effective and proportionate remedies package to address the CMA's concerns in the microbusiness segment. RWE npower therefore believes that adding this remedy to a remedies package would be disproportionate to address the concerns the CMA has identified.

² Centrica told us that 'The CMA could apply elements of existing regulation Standard Licence Condition 7, relating to deemed tariffs, to the default tariff (i.e. a requirement that such terms must not be unduly onerous). This would mean that competition in the market for non-default FTCs would exert price pressure on the default tariff by ensuring that:

- revenues would not significantly exceed the licensee's costs of supplying energy to the premises of default tariff customers; and
- margins earned on default tariff customers would not significantly exceed margins earned on the supply of energy to the generality of domestic customers.'

³ Provisional Findings response paragraph 21

25. In considering whether this remedy should be extended to microbusiness customers, RWE npower believes that the CMA should consider whether it is incrementally valuable as part of an effective and proportionate remedies package. In that regard, RWE notes that the majority of microbusiness customers are already on fixed term contracts and therefore we do not believe this remedy is necessary as it is close to the contract approach already commonplace in the microbusiness market. RWE has now also closed all its historic non-domestic evergreen tariffs.

26. The only remaining microbusiness products that do not offer a fixed term (or a 12 month fixed price, in the case of Flexible) are Deemed and Default tariffs. Given that nature of these products – they are interim products for microbusiness customers who move into new business premises or terminate an existing contract to leave RWE npower – it clearly would not be appropriate to fix the term of these products.

(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?

27. RWE considers that Ofgem should, in consultation with suppliers, develop a framework setting out the minimum level of information to be included within such communications. This framework should not restrict the ability of suppliers to engage customers by building on the framework and developing appropriate information to target customers at the right time. RWE believes that getting communication right is the best way to get customers to engage in the market and as such any framework provided should be trialled and tested to ensure it engages the correct response from customers.

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

28. For the purposes of this question, we assume effectiveness refers to encouraging customers to consciously engage in the market (whether or not they ultimately switch tariffs or supplier).

29. Principles based guidance from Ofgem will provide suppliers with a framework within which to design their communications. Whilst RWE would not expect this to be as prescriptive as, for example, some of the RMR requirements, at the same time we would not expect it to give suppliers so much leeway as to design ineffective communications. Similarly, the CMA would need to consider how some of the existing regulated communications will work if this remedy were implemented, for example the Product End Notification (PEN) uses the assumption that the customer will realign to SVT at the end of the fixed term contract.

30. In any case, as a result of this remedy, we would expect suppliers to face increased competition from other suppliers and PCWs targeting their default customer base, particularly towards the end of their fixed term (if known). RWE does not believe that it would be in suppliers' interests to send ineffective communications to its customers.
31. It is important that if this remedy is introduced it is supported by a national advertising campaign to ensure media coverage that highlights the positive benefits of moving to an annual contract. This will ensure customers understand the benefits, relevance and importance of annual notifications.

(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?

32. The choice of variable or fixed price default product would require the CMA to strike a balance between consumer engagement and consumer price certainty. Ultimately, as the choice of default product is critical to the success of such a market change in engaging customers, RWE urges the CMA to develop a careful and discerning understanding of consumers' preference for either a fixed price or variable price default tariff. RWE suggests this might be done by carrying out a survey of customers, to establish the most appropriate default tariff to ensure high levels of customer engagement in the retail energy market.
33. RWE recognises that there are advantages and disadvantages for consumers with either a fixed price fixed term default tariff or a variable price fixed term default tariff. The advantages and disadvantages of the two options are set out below. In considering this, RWE has assumed that suppliers are able to manage the price setting themselves, and prices will not be controlled by a regulator.

Variable price default tariff

- 33.1 A variable price would have the advantage of allowing a supplier to have a single price (for each region, and by payment and meter type – see below) for all customers on its default tariff at any point in time. A single variable price default tariff would be easy for customers to understand, and is highly visible to all stakeholders and the media. This means that consumers are easily able to identify what tariff they are on or would default to, for example when utilising price comparison websites, thus making it easy for consumers to make accurate assessments of the best possible deal available in the market when compared to their default tariff.
- 33.2 A single variable price default tariff would allow consumers to know, with a degree of certainty, in advance the extent to which their price is going to change at the expiry of their fixed price deal.

- 33.3 A single variable price default tariff would allow suppliers to manage their costs effectively, smoothing out to some degree volatility in input costs. This would result in lower price volatility for the consumer.

Fixed price default tariff

- 33.4 A fixed price default tariff would, in RWE's view, require a range of different default tariff rates for different customers depending on when they move onto the default tariff. This is because suppliers would hedge their commodity cost risk at a time close to the customer transferring onto that default tariff, and so default tariff pricing would happen discretely for each block of customers as they move onto a default tariff.
- 33.5 RWE believes this would result in twelve monthly fixed price default tariffs over the course of each year. Different default tariff end dates could lead to a risk of confusing consumers as they would need to understand which iteration of the default tariff they were on to be able to do accurate price comparisons.
- 33.6 A fixed price default tariff would need to be determined by the costs of supply in the market at the time the default tariff is set. This will mean that not all customers on such a default tariff are paying the same rate. In effect, some customers may get a lower price, and some customers might get a higher price over time, depending on when they roll onto a default contract.
- 33.7 As the default price would be fixed at a point in time and will not change to reflect changing wholesale prices, this could mean there is significant variation between a customer's default price and the fixed term contracts available in the market at any given time. A fixed price default tariff could represent a particularly good deal for default customers in the event that wholesale prices *rise* after the default price is fixed (though suppliers will need to factor in this risk in setting each fixed default price), and these customers may choose to stay on the default tariff rather than switching to the available fixed term contracts. Equally, a fixed price default tariff could represent a poorer deal if wholesale prices fall after the default price is fixed, which we would expect to result in more default customers moving off the default tariff.
- 33.8 A fixed price default tariff would be a significant change for the domestic customer market, which is likely to engage consumers. When considering the wider retail UK markets, RWE believes a fixed price default tariff market would feel familiar to consumers used to the motor or home insurance markets.
- 33.9 RWE acknowledges Centrica's view that the risks of purchasing commodity for the default tariff would be better managed through variable pricing as the number and tenor of customers on the tariff may vary significantly over time. RWE believes, however, that the critical need in this regard is for suppliers to be able to set tariff levels at an appropriate level to adapt to market conditions as

they change. RWE believes that if suppliers are free to set prices, then in both a single variable and fixed price default market, suppliers can effectively manage the risks Centrica sets out.

- 33.10 RWE does not consider that the default tariff should be price regulated (save that it should be either fixed or variable for all suppliers). As explained further in RWE's response to remedy 11 (and further submission on the impact of a safeguard tariff on liquidity – which will be submitted imminently), RWE believes that there is a risk that any regulated price that defines a hedging approach for suppliers would have the unintended consequence of distorting the wholesale market by concentrating suppliers' purchasing activities at particular times to align with the price setting mechanism of that 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?

34. In a single variable price default tariff market, suppliers would still have to charge different prices for each region to reflect regional variations in cost, and prices would need to differ for payment method and meter type. However, save for these variations, a supplier should have the same price for all customers on a default tariff at a given time. RWE believes that discrete variable tariffs priced at different times would be very difficult to administer, and would not capture the benefit to the consumers set out above in terms of ease of price comparison.

(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, e.g. one month, onto the same default tariff? Is there a risk that the existence of multiple default tariffs (e.g. one for every month) would reduce the pressure on SVT pricing that currently results from media attention on changes to SVTs?

35. RWE agrees that if the default tariff were fixed price, each supplier should be required to roll all customers who did not take action within a given period (which we think should be one month) onto the same default tariff, subject only to variations for region, payment type and tariff type.

36. We have set out above what we consider to be the advantages and disadvantages of variable and fixed price default tariffs for the consumer. We do not consider that either presents any *clear* advantage over the other terms of ensuring competitive pressure on pricing. Multiple fixed price default tariffs may be confusing for consumers and would be potentially difficult for suppliers and PCWs to administer. A fixed price default tariff also potentially creates a complex relationship to wholesale market price. Nonetheless, under either pricing model, if this remedy achieves the increased engagement it is intended to bring about, we would expect to face competitive pressure on our default price. We consider

that an effective remedy or package of remedies implemented by the CMA should not rely on ongoing media pressure on pricing; rather it should drive consumer engagement (and trust), which will exert pressure on pricing.

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

37. As mentioned above the package of remedies we believe to be sufficient is already set out in our response to the RN and we do not believe additional changes are necessary.

38. To the extent that CMA considers that the package of remedies that RWE believes sufficient is not effective, RWE believes it would be more effective and proportionate to include this remedy in a remedies package than to add a safeguard tariff. In doing so, it will be important to ensure:

38.1 In particular, that suppliers are not restricted in setting prices.

38.2 That there is nothing in the design of this remedy that cuts across the other proposed measures to increase engagement and enhance competition.

38.3 That the remedy avoids as far as possible any unintended consequences on new product and tariff innovation.

39. If this remedy were to be implemented RWE believes it should be done in a manner that allows suppliers sufficient time to plan and make the appropriate system changes and develop suitable communications to its customers, in order to enable them to offer annual contracts.

40. In drafting this response RWE has assumed that the timing of the annual contract renewal process i.e. a customer's fixed term tariff end date will need to be aligned with the timing of the existing Annual Statements. This will avoid duplicating the information being sent to customers which would be confusing for customers and costly for suppliers. As such RWE believes the CMA will need to ensure Supply Licence Condition 31A is amended to enable the alignment of Annual Statements and annual renewal dates.

(i) How long should energy suppliers be given to phase existing customers off their SVTs?

41. Given its current customer base RWE suggests phasing in the annual contract model over 2-3 years will minimise the risk to customer service levels and enables an appropriate length of time to optimise the annual contract process as learnings are made through the implementation journey. The phasing timeframe could be reviewed at various milestones to measure customer response and operational impact and adjustments made to the transition plan accordingly.

42. Phasing the transition minimises the requirement of suppliers to temporarily expand contact centres. For example if a shorter phasing period of twelve months was imposed on suppliers this could potentially result in suppliers issuing a large number notifications per month. With large volumes of notifications being sent to customers, and with an uncertain response rate, the impact upon contact centres and back office processes could be enormous. Under or overestimating the impact of the notifications could lead to a poor consumer experience at a time when the industry is looking to build trust and engage SVT consumers; and/or additional but unnecessary costs being incurred.

(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 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.

43. RWE npower does not believe the transition to the default tariff should prioritise and commence with customers who have been on SVT the longest. If, as this proposal assumes, these customers are the least engaged, then it is all the more important to ensure that they have a good customer experience so as to encourage them to engage (and if they constitute the first phase there is inevitably a risk that they will suffer any initial teething problems). Additionally, the early phases of this remedy should allow suppliers to derive learnings that they can use to improve the process for future phases, and if these customers are indeed the least engaged then their responses to the move might not be representative of what the industry can expect to see from future phases. Furthermore, under a fixed price default tariff, there is a risk that if the least engaged customers are all moved together, a supplier could circumvent the aim of the remedy by moving these customers onto a less competitive default price than is subsequently made available to more engaged customers.

44. A more appropriate approach to provide the best customer experience based on customer demand is to phase it with each phase including a variety/cross-section of customer types (i.e. different terms on SVT, payment methods, consumption levels, regions). The phasing could also be adjusted to account for the seasonal impact as RWE would expect higher customer engagement and activity during winter months when customer consumption is greater.

45. As regards the alternative of moving customers 'geographically', RWE assumes the CMA means that all suppliers would move their customers in a given region at a given time. If the phasing was organised in this way, this would discriminate against suppliers with the largest incumbent base in each region – it would particularly discriminate against the supplier whose incumbent region is moved

first. The incumbent supplier's customer services are likely to be impacted by the increased customer contact, which will potentially result in a poor customer experience and will not help to build customer trust. In addition, the incumbent supplier in the first region to be transitioned, would also be subject to increased competition from other suppliers for its default customers after one year i.e. at the first default tariff renewal date. However, that incumbent supplier would have to wait longer than this to have the equivalent opportunity to target the default customers of *other* incumbent suppliers in the regions which come later in the phasing plan.

(iii) Should energy suppliers be required to provide contact details for all SVT customers or a subset of SVT customers (e.g. those who have been on the default tariff for several years in a row, e.g. 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.

46. As RWE has mentioned above we consider the package of remedies we believe to be sufficient is already set out in our response to the RN and we do not believe additional changes are necessary including the requirement of suppliers to provide SVT customer details to Ofgem. If the package of remedies is supported by a national advertising campaign and suppliers are able to create prompts to engage customers within a principles based framework developed with Ofgem then the number of customers who intermittently engage should increase.
47. As discussed previously⁴ there are data protection issues involved in letting third parties provide prompts to customers as those third parties would require access to the customers' personal data to enable them to do so. As data controllers (i.e. the organisations that determine the purposes and manner in which any personal data is, or is to be, processed) of their customers' personal data, energy suppliers would need to ensure that a customer was aware of the fact that another party may contact them (i.e. the energy supplier would need to gain the customer's consent for the third party to use their data for the purposes intended here). This consent is usually obtained via the fair processing notices within the energy suppliers' terms and conditions of supply. In addition, energy suppliers have obligations to ensure the proportionality of any data that is shared as well as ensuring it is held securely. There are inherently more risks involved in such a proposal. What precisely energy suppliers would be required to do would depend on what option was taken.

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RWE npower's response to Remedy 10 of the Provisional Findings paragraph 2.18

48. Taking the sharing of information with Ofgem for Ofgem (or a third party acting on its behalf) to provide prompts (assuming those prompts are in effect a form of service message as opposed to a marketing message) then either energy suppliers would need to be placed under a legal obligation to provide the data (in a way that ticked the required boxes under Schedule 2 and potentially Schedule 3 of the Data Protection Act to provide the necessary consent) or they potentially would need to make changes to their fair processing notices if they do not already cover what is proposed. Energy suppliers would need to ensure the data being shared was proportionate to the exercise at hand, they had some form of written terms in place (a data sharing agreement) with the third party covering the purposes the data could be used for, how long it could be retained, how frequently it would need to be refreshed etc. They would also need to satisfy themselves that the third party was capable of holding the data securely and that only those people who were required to access it could access it.
49. In relation to data being provided into a shared database enabling any energy supplier to access it to contact those customers for marketing purposes, no energy supplier would be able to comply unless and until they had consent for the time being of the relevant customers indicating that they were happy for other energy suppliers to market to them by their chosen mechanism (be that by mail, phone, SMS or email). No data can be shared without that marketing consent being in place. In addition, the data would need to be kept up to date and there would need to be an unsubscribe mechanism to record those customers who no longer wanted to receive such marketing. As specified above, there would also need to be a data sharing agreement in place between the parties who have access to the shared database covering the same points that were set out above and again the security of the customers data would be paramount.
50. RWE npower's understanding of the GDF Suez scenario is that GDF Suez in its capacity as the 'data controller' (i.e. the organisation that determines the purposes and manner in which any personal data is, or is to be, processed) would have entered into a data processing/sharing agreement with all authorised gas suppliers wishing to have access to the data. The agreement would have needed to set out the responsibilities of all the parties and the conditions necessary to enable the processing of the information. As the contemplated dataset is a mixture of corporate customer data (i.e. legal entities) and consumer data (i.e. living individuals), the two types of data would have to be treated differently. Only the latter benefits from the protection of the French Data Protection Act (DPA). Pursuant to the French DPA, living individuals must be informed of the proposed sharing of their personal data with third parties and they must be provided with the opportunity to object to the communication of their information.

51. The Authority required GDF Suez to send postal or electronic communication to all affected living individuals to satisfy the above requirement and offer them an opportunity to object to the sharing within 30 days.⁵
52. We consider that the Information Commissioner's guidance in relation to this type of exercise would be required. Their guidance to date would suggest that this type of exercise would not obtain valid consent to market to customers.
53. RWE npower considers that any message rival suppliers send to customers who have moved to, or remain on, the default tariff would be considered as marketing and as such would require customer consent to be obtained in a similar process to that imposed in France (or a suitable equivalent in the UK).
54. If suppliers were required to place SVT customer data on a shared database RWE would question whether customers would want to receive increased contact from, potentially multiple, third parties. An unintended consequence of consumers receiving multiple prompts from different parties is to frustrate consumers and reduce engagement with the market.
55. As suggested in RWE's response to the CMA's Provisional Findings an alternative option could be for consumers to sign up to a regular alerts service through an independent price comparison service such as the one proposed in remedy 6⁶ which might operate along the lines of the existing alert services, or might additionally allow the customer to input the date on which their fixed term tariff ends.

(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?

56. RWE considers 'emergency' tariff would not be an appropriate name for the default tariff as there is a risk that certain customers will be concerned that their energy supply will be cut off. This is particularly relevant for prepayment customers who would be familiar with term 'emergency credit' where their meter needs to be topped up. RWE believes the name should be neutral so that it does not cause the customer distress and believes 'default' or 'lapsed' tariff may be more appropriate, but customer research should be conducted to understand customer responses to the tariff name to ensure it is not automatically considered as the best tariff option for the customer.

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

⁵ <http://www.twobirds.com/en/news/articles/2014/france/french-competition-authority-orders-gdf-suez-to-give-competitors-access-to-customer-data>

⁶ Remedy 10 paragraph 2.27

57. It is difficult to quantify the costs of distress caused by inappropriate communications to customers. It is very important however that all reasonable measures are taken to avoid customer distress – see further below. RWE has already described the merits of undertaking consumer survey work to help understand aspects of important detail in remedies design in order to avoid unintended consequences.

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

58. As discussed earlier, it is important that the phased introduction of this remedy, as part of a package of CMA remedies, is supported with a national advertising campaign that highlights the positive benefits of moving to annual contracts. This will ensure customers understand the benefits, relevance and importance of the annual notifications and are encouraged to engage with the changing energy market.

59. The campaign will need to run throughout the transition period to minimise the risk of distressing customers. As different customer groups may respond differently to the notifications and prompts they should be thoroughly tested and learnings applied to ensure the best customer experience for all customer groups.

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

60. RWE agrees that Ofgem should monitor and publish the proportion of customers on default tariffs, the average tenure and/or the pricing of default tariffs provided it does so for all suppliers within the market.

61. RWE assumes that the CMA does not envisage Ofgem using such information as an indication of the effectiveness of the remedy. For reasons already given it is not appropriate to regard an SVT customer as necessarily disengaged, and it would be equally inappropriate to measure engagement by reference to the proportion and tenure of customers on default tariffs.

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

62. Yes, RWE believes the prohibition on evergreen tariffs – if adopted – should apply to all suppliers to avoid a two tier regulation on operating default tariffs which will act to confuse customers.

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

63. Any licence condition that implements this remedy should include anti-circumvention provision. Suppliers could circumvent the remedy in the following ways:
- 63.1 As noted above, in a fixed price default tariff, there is a risk that if the least engaged customers are all moved together, a supplier could circumvent the aim of the remedy by moving these customers onto a less competitive default price than is subsequently made available to more engaged customers.
- 63.2 There are various ways in which suppliers could discourage customers from switching onto that supplier's own fixed term contracts, although we would note that this might not circumvent the remedy as such – if the remedy results in a prompt to engagement, the customer could of course switch to another supplier. These are as follow.
- 63.3 Legacy suppliers could prevent their single fuel customers from seeing large savings messages by not having a single fuel only option i.e. by only offering dual fuel tariffs.
- 63.4 The gas incumbent supplier can offer dual fuel tariffs to their single fuel gas base knowing with some certainty that the customer will have an electricity supply, whereas an incumbent electricity supplier cannot offer a dual fuel tariff to their single fuel electricity customers with such certainty as there is no real way of knowing if the customer's property has a gas supply.
- 63.5 Subject to the relaxation of rules surrounding the offering of sales incentives, suppliers could look to converge their default and acquisition tariff prices to reduce the Cheapest Tariff Messaging savings message visible to the consumer. Tariff discounts could be replaced with sales incentives such as cashback and vouchers to acquire new customers.

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

64. Moving towards an annual renewal cycle with fixed term contracts could prevent innovation and partnerships where the new business model may not fit the annual contract model.
65. If this remedy is effective at increasing engagement, the proportion of customers who move between the default tariff and the non-default fixed term tariffs would be expected to increase, which RWE believes will result in price convergence between the two tariff types. As discussed in RWE's response to remedy 11 of the RN, all tariffs in the market affect all other tariffs. [CONFIDENTIAL], and there is a critical relationship between non-default and default prices. An unintended consequence may be a reduction of discounting for customer acquisition, which in turn could reduce customer engagement.

66. There would need to be clear communication to customers who receive the Warm Home Discount (WHD) to ensure they are protected and do not lose their entitlement if they switch to a smaller supplier.

67. We would note that every recent regulatory intervention has had at least some unintended consequences prompting further engagement. It will be important that the CMA minimises to the extent possible any unintended consequences, which might otherwise negate any incremental benefit resulting from this remedy.

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

68. It is unlikely that discounts currently enjoyed by customers on non-standard tariffs will continue at the same levels if this remedy was introduced due to price convergence between the default and non-default tariffs as referenced above.

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

69. RWE believes the costs of this remedy could potentially act as a barrier to entry and as such the CMA should take the following costs into account when considering the proportionality of this remedy:

69.1 Operational costs resulting from sending additional customer prompts and the increased customer contact in relation to both the tariff change and queries regarding the prompts which do not result in a tariff change.

69.2 Acquisition and loss costs resulting from processing increased customer gains and losses, including additional debt risk and PCW commission fees.

69.3 System changes incurred by suppliers to update their billing and customer management systems to move to an annual review system. RWE currently offers tariffs with a fixed term end date where all customers who switch to that tariff have the same term end date. However if the remedy required a move towards customer specific annual contract dates [CONFIDENTIAL].

69.4 Advertising costs to support the national campaign to educate consumers on the positive benefits of moving to annual contract market.

70. RWE believes the CMA should take into account the benefits it believes would accrue from this remedy, but only to the extent to which such benefits are incremental over and above a package of remedies which excludes it. RWE further considers that there may be a benefit to suppliers in the future as customers become more engaged thereby potentially enabling suppliers to offer alternative tariffs and services to previously less engaged customers.

(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?

71. As noted above and in previous responses, RWE does not accept the CMA's contention that weak customer response (to the extent it can properly be evidenced by any of the features identified by the CMA within the Provisional Findings) gives suppliers a position of unilateral market power concerning inactive customers, or the contention that suppliers have the ability to exploit such a position.
72. RWE is unclear on how effective the proposed remedy would be in increasing customer engagement. The remedy may encourage customers to engage more frequently in the market but its incremental effect beyond the other proposed remedies such as removal of 'simpler choices' may be modest, and in light of likely increased costs could be disproportionate. RWE believes that an effective package of remedies can be developed from the CMA's suggested 'enabling' remedies which would reduce both consumers' real and perceived barriers to switching, and restore suppliers' incentives and ability to innovate. (See in particular RWE's response to the RN, remedies 3, 6, 9 and 10.)

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

73. RWE believes that the CMA should be accountable for implementing this remedy. The CMA should draft and implement this remedy via an Order so it can ensure the detailed legal drafting of the new/revised Standard Licence Conditions properly reflect the intended purpose of the remedy and it is implemented within a clear and acceptable timeline.