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Response to the CMA's addendum to its provisional findings report and second supplemental notice of possible remedies

We welcome the CMA drawing attention to the challenges that prepayment customers can face when seeking to engage in the energy markets. Improving outcomes for consumers who use prepayment meters - who are more likely to be financially vulnerable than those using other payment methods - is a priority for Ofgem.¹

We recognise many of the issues that the CMA has highlighted in its addendum to its provisional findings. There have been some positive developments in the prepayment segment. For example, suppliers are offering a small but growing number of innovative prepayment tariffs.² As the CMA has recognised, smart meters have the potential to transform the sector. However, at present, consumers with prepayment meters continue to face disadvantages relative to other consumers. This includes much more limited availability of cheaper fixed-term tariffs.

Alongside the addendum to its provisional findings, the CMA has published details of a number of possible remedies aimed at improving outcomes for prepayment customers. We share the CMA's goal of removing the barriers to effective competition that exist in the prepayment segment, and provide some broad comments on the different measures below.

Remedy 19 – facilitating data sharing

One of the possible remedies that the CMA discusses is to require suppliers to provide Ofgem with the contact details and consumption data of their prepayment customers. This information would then be placed on a shared database which could be accessed by other suppliers to allow personalised quotes to be sent. The proposal is closely related to measures described both in the CMA's original remedies notice (paragraph 90.f) and its supplemental remedies notice (paragraph 21.f.iii). These proposals envisaged the sharing of data relating to a broader group of less-engaged consumers (not just those with prepayment meters).

In our view, if sufficient protections can be put in place, facilitating data sharing may be a promising way of helping the benefits of competition to reach less-engaged consumers and reducing the advantages that incumbent suppliers enjoy. We would see value in any scheme of this type being piloted before being rolled out more widely, to directly test its impact.

¹ We provided a general update on prepayment in our [consumer vulnerability strategy progress report](#), and have an active programme of work ongoing in this area. This includes our [most recent consultation](#), published in December 2015, which sets out proposals to improve outcomes for prepayment customers.

² See our [June 2015 review](#).

Low consumer engagement is not an issue that is restricted to the prepayment segment.³ Given this, if the CMA reaches the conclusion that this measure would be an effective and proportionate way of improving engagement, then consideration should be given to targeting the database at a broad group of sticky consumers, irrespective of payment type. For instance, the database might include all customers that have been on their current suppliers' default tariff for more than a given number of years.

There are various design challenges associated with the proposal, including – crucially – how to ensure that those on the database do not receive large volumes of unwanted communications. If it is intended that Ofgem would have a role in implementing this remedy, it will also be important to consider how the proposal would fit within the framework of our powers and funding arrangements, and how parties' use of the database would be monitored and enforced (eg whether via licence modifications or contractual terms). We provide an initial discussion of some of these issues in the appendix to this letter. We would be happy to engage with the CMA further on these questions if the decision is made to take this proposal forward.

Remedy 22 – introducing a transitional 'safeguard price cap'

The CMA also discusses the possibility of putting in place a transitional price cap for prepayment customers, a proposal which is closely related to the idea of introducing a transitional safeguard regulated tariff into the wider market. As described in our response to the original remedies notice, in our view, consumers' interests are best protected by effective competition rather than price regulation. However, given its provisional findings, we can understand why the CMA is considering the possibility of introducing temporary measures to control outcomes directly alongside its other proposals.

Like a safeguard tariff, the key risk of a price cap is that it may undermine competition in the market and reduce incentives for consumers to engage. In particular, a transitional price cap on prepayment tariffs could undermine the effectiveness of measures introduced to facilitate data sharing (discussed above) if it reduced the likelihood of PPM consumers responding to proactive marketing or made the customers on the database less attractive to acquiring suppliers. Given this, if the CMA does decide to introduce some form of transitional price regulation, then we would support this being targeted at a narrow group of those most at risk of detriment from the AECs that the CMA has identified. We envisage that the customer group protected by any cap would be narrower than the group of consumers included in any data sharing initiative. We provide some thoughts on which types of consumers might make up those most at risk of detriment in the appendix.

Concluding remarks

The CMA also discusses a number of other measures, many of which interact closely with, and are complementary to, our own ongoing work in the sector. We provide further detailed comments on each of the remedies described by the CMA in the appendix to this letter.

As it moves towards the next stage of its investigation, it will be important for the CMA to consider the overall package of prompts that consumers – both those with prepayment meters and those that pay by credit – receive. For example, the introduction of data sharing measures which are effective in encouraging competing suppliers to provide personalised quotes might reduce the need for prompts to be sent by existing suppliers. Considering communications in the round is particularly important given the risk of

³ For example, we note that the overall proportion of prepayment customers that switch between suppliers every year is similar to that for other customers

overloading consumers with information, in an environment where bills and other supplier communications are already crowded.

We are happy to offer whatever assistance we can to the CMA as it considers its remedies further.

Yours sincerely

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Comments on the CMA's remedies proposals

Remedy 19 – facilitating the sharing of data relating to prepayment meter customers

Effectiveness of the remedy

As set out in our previous submissions, we share the CMA's concern that a general lack of engagement among domestic gas and electricity consumers has resulted in a weakening of the competitive pressure that incumbent suppliers face. This, combined with the fact that suppliers are able to segment the market between sticky and active customers, means that consumers on non-acquisition tariffs (such as the standard variable tariffs currently offered by suppliers) tend to receive a worse deal.

We consider that the data sharing remedy described by the CMA may offer a promising way of helping to ensure that the benefits of competition reach less engaged consumers (including those that are not regular internet users). It should also reinforce other measures designed to remove barriers to engagement or prompt consumers to engage in the market. It has the potential to directly remedy the advantage that incumbent suppliers enjoy compared to newer entrants, which has been a focus of a number of our previous submissions to the CMA.

The success of the remedy hinges on whether personalised quotes from competing suppliers (delivered by post or phone) would be an effective trigger of consumer engagement – and would have a material impact on households' behaviour, above and beyond that of the prompts and marketing that prepayment customers already receive. A key advantage of the remedy (unlike prompts which a customer's current supplier is required to give) is that the suppliers designing the communications should have an incentive to do so in a way that highlight the benefits of switching in a compelling way.

There is a risk that the remedy could be undermined by other constraints on prepayment customers' ability to switch (such as the impact of debt or the requirement for credit checks), if these mean that consumers are unable to ultimately switch to the tariffs that they are offered. There may also be a risk that suppliers are reluctant or unable to offer competitively-priced tariffs to those on the database in the first place, for example because of fears around taking on indebted customers or limitations on tariff codes. For this reason, the effectiveness of this remedy is likely to be contingent on the success of the steps being taken by Ofgem and the measures being proposed by the CMA to address the other barriers that affect prepayment customers.

We see value in any scheme of this type being piloted to directly test its impact and iron out any design issues before being rolled out more widely, and we would like to explore further with the CMA what legal and practical implications may arise in relation to this. Different ways of selecting this pilot group might include taking a random sample of all eligible customers or selecting a particular region where the scheme is to be piloted.

Who to include on the database

If the CMA reaches the conclusion that the remedy would be effective in encouraging more consumers to engage in the market, then we think there is a strong argument that the measure should be targeted at those households that meet some general criteria of disengagement *irrespective* of payment type (rather than the database being limited to prepayment customers only). For instance, suppliers could be required to provide details of all customers that have been on their default tariff for a period of more than a certain number of years.

The CMA should also consider whether the database might be shared with other parties instead of (or in addition to) suppliers. For example, this might include Confidence Code accredited price comparison websites or the Citizens Advice Service. Different parties could be given access to the contact details of different groups of customers within the database, depending on which would be able to most effectively engage that particular consumer group (for instance, depending on whether the consumers are in vulnerable circumstances).

The role of Ofgem

It will be important to consider how the proposal would work within the current framework of our powers and funding arrangements, and whether new powers might be required, eg powers to delegate certain functions. This will depend on the specific nature of the task that we are required to carry out. If the CMA is minded to take this proposal forward, we are happy to offer our assistance in helping to further explore the considerations associated with Ofgem managing administration of a database of this type. In any eventuality, it will be necessary to consider the resourcing and financial impact carefully.

Different options exist for how the database could be managed. In particular, the database could be run directly by Ofgem. Alternatively, the database could be managed by a non-commercial body other than Ofgem, for example one which was appointed and funded directly by suppliers under our supervision. We could also play a greater or lesser role in the design of the database and ongoing regulation of how customers' details are used.

Design challenges

Assuming that the CMA reaches the conclusion that the proposal would be effective in driving consumer engagement, the two main challenges that we envisage with the design of the remedy are:

- a) addressing concerns around the protection of consumers' personal data whilst facilitating an effective prompt; and
- b) the risk that consumers (particularly those in vulnerable circumstances) receive large volumes of unwanted marketing as a result of the remedy.

In relation to the first of these risks, the CMA sets out in its supplemental remedies notice that it believes an opt-out scheme would be compatible with data protection legislation, although this would require any contacts to be non-electronic (ie not emails or SMS). We agree with the CMA that it is crucial that the data protection implications are considered very carefully before any decision is taken to proceed, to ensure that consumers are treated fairly and to mitigate the risk that consumers receive unwanted third party communications.

The Standards of Conduct⁴ that suppliers are required to adhere to should provide some protection for customers in terms of how suppliers use their details. However, additional restrictions may need to be placed on how customer data can be used in order to manage the volume of communications that consumers receive. To give some examples, this might be achieved by:

- placing limits on the number of communications that a party is able to send to any one consumer;
- only allowing communications to be sent within a fixed time window, or information from the database to be used for a limited period of time (related to this, it will be

⁴ Standard condition 25C of gas and electricity supply licences.

important to ensure that the database is updated with sufficient frequency such that consumers that have switched supplier do not continue to receive quotes);

- requiring different suppliers to include their quotes for a specific consumer in a single communication, sent by a third party; and/or
- limiting access to the database to a subset of all suppliers or TPIs. For example, this could be a single (or set of) 'preferred partners', selected competitively on the basis of, for example, how favourable the terms they agree to offer consumers are.

It would be necessary to consider what would be the most effective way of framing the requirements above, whether by CMA order, licence condition and/or contract. Another important consideration will be how compliance could be monitored and how breaches (e.g. of data handling conditions) could be effectively enforced.

Another design consideration is the need for restrictions on the products that suppliers are allowed to market to consumers identified using details within the database. For instance, the terms of use may need to specify that the details are only to be used for the marketing of energy tariffs and not any other services (although there is a question as to how bundled offers should be treated), and may not be passed onto third parties.

It will be important to make clear to consumers – particularly in the letter asking if they would like to opt out of the scheme – the value of being included in the database. In particular, it should be made clear that consumers will be provided with personalised quotes based on historic consumption (not just generic marketing information), and that they may be able to save significant amounts of money if they do decide to switch. It should also be emphasised that strict restrictions will be placed on how suppliers can use customers' details.

One important design decision is whether or not the database might include information on a consumer's current tariff. Information of this type would allow marketing materials to include an accurate estimate of the amount a customer could save, which may allow for more compelling prompts – but at the same time may raise further issues for consideration such as, for example, the potential commercial sensitivity of the information being shared.

Finally, we are conscious of the significant pressure that suppliers are currently facing to modify systems in light of the smart meter roll-out, the move to half-hourly settlement and the introduction of next day switching. These pressures should be taken into account in deciding on the final design and timing of any database remedy.

Links with other remedies

It will be important to consider how a data sharing remedy might sit within a broader package of remedies aimed at improving consumer engagement. For example, a database that was effective in encouraging competing suppliers to provide personalised quotes might reduce the need for additional requirements to be placed on the prompts that existing suppliers must send to their customers (Remedy 10 in the CMA's original remedies notice). We discuss some of the tensions between a database and the transitional price regulation proposals being considered by the CMA in the context of remedy 22, below.

We'd also encourage the CMA to explore whether other technical solutions might provide an alternative way for customers to access personalised quotes. For instance, the Midata initiative has the potential to enable consumers to easily share their consumption information with suppliers or third parties and quickly access personalised quotes, potentially replicating some of the benefits of measures to facilitate data sharing described by the CMA. Given this, the CMA may wish to consider whether there are any steps that might be taken to help encourage suppliers to participate in the scheme and speed up the roll-out of services based on the Midata initiative, and whether this might provide an

alternative to the data sharing measures being considered, at least for those customers who are regular internet users.

Remedy 20a – prohibiting the charging of a security deposit in circumstances when a customer is not in debt and has not incurred any fines, charges or interest for late payment in the last six months

We welcome the CMA’s recognition of the potential impact of security deposits on some prepayment customers’ ability to switch. The CMA’s findings support those of our PPM review in June 2015, where we raised concerns about limited switching by prepayment customers to credit meters and recognised that prepayment customers have access to fewer competitively-priced tariffs compared with those paying by credit. We noted concerns that security deposits may be acting as a barrier to PPM consumers switching payment method to credit meters and therefore accessing more competitive deals.

It is important to note that security deposits are likely to be required only from a relatively small number of PPM customers. Five suppliers currently have a policy to request a security deposit when a customer wishes to switch from prepayment to credit⁵. Customers who are not in debt and have a low or medium credit risk are unlikely to be asked to pay a security deposit when switching to a credit meter - typically it is only customers with a high credit risk that will be asked for a deposit.

Suppliers have told us that they are flexible and take consumers’ personal circumstances into account when deciding whether to request a security deposit in line with existing regulatory requirements⁶. Nonetheless, consumers with these suppliers may still face detriment as a result of being required to pay a security deposit when switching meter, eg low-income consumers being asked to pay an upfront lump sum they cannot afford or accessing high cost, short term lending. We think it is important that consumers are only asked to pay a security deposit when it is fair and reasonable to do so.

We understand the motivation behind the additional restrictions on the use of security deposits which are being considered by the CMA. There are a number of factors which we think is important to take into account if the CMA decides to proceed with this remedy.

First, we are of the view that the existing protections mean that a supplier should consider a consumer’s vulnerability when deciding what payment method is appropriate⁷. We interpret SLC 25C as meaning that the circumstances in which security deposits are requested must be fair. SLC 27.3 and 27.4 provide that security deposits must not be requested if it is unreasonable in all circumstances of the case and a security deposit must not exceed a reasonable amount⁸. We would welcome a discussion with the CMA about how consideration of consumers’ circumstances and vulnerability could work in practice, when switching between payment methods.

⁵ These five suppliers have around 962,500 electricity and 616,500 gas prepayment customers in total. Npower has a policy only to credit check existing customers when they move or want a new fuel. If the customer has a poor credit rating, they may request a security deposit. The number of customers affected is therefore likely to be lower than the total provided.

⁶ the regulatory framework (SLC 22 and 27 in particular) which allows a supplier to request a security deposit if the customer isn’t willing to have a PPM and these requirements also mean that the personal circumstances need to be taken into account as part of the supplier’s assessment of whether the security deposit and the amount is reasonable.

⁷ It must be safe and reasonably practical for a customer to use a prepayment meter - SLC 28.1A and 28.1B, Modification Direction for changes to SLC 28 of the Gas and Electricity Supply Licences. <https://www.ofgem.gov.uk/sites/default/files/docs/2011/09/modification-direction.pdf>

⁸ Guidance we have published provides that security deposits should not exceed 1.5 times the average quarterly fuel consumption. It may be unreasonable to request a security deposit where a customer has a payment history showing regular payment or where the customer has demonstrated a reasonable credit history. Ofgem, June 2007, 128e/07 Appendix 10 SLR - Supplementary document (electricity), <https://www.ofgem.gov.uk/ofgem-publications/38821/appendix-10-slr-supplementary-document-electricity-final.pdf>; Ofgem, June 2007, 128f/07 Appendix 11 SLR - Supplementary document (gas), <https://www.ofgem.gov.uk/ofgem-publications/38822/appendix-11-slr-supplementary-document-gas-final.pdf>

Second, if the decision is taken to move to an approach whereby security deposits are explicitly prohibited under certain circumstances, it is important to manage the risk that suppliers adopt a 'tick box' approach rather than engaging with each customer to understand their circumstances. This may lead to suppliers being less flexible than they currently are in using security deposits. We do not want to deter suppliers from using their discretion in accounting for vulnerability in their decision to decide when it is fair and reasonable to request a security deposit. In line with existing protections we expect suppliers to be able to demonstrate their approach is fair and reasonable.

A third consideration is whether it is appropriate to base the decision on whether a customer has any debt. Many customers value the budgeting control that prepayment offers, and customers may be debt-free because they are using a prepayment meter. Some customers may find themselves unable to budget and manage their bills in arrears and end up back in debt. We therefore stress the importance of suppliers engaging with customers to identify the most appropriate payment method. It is important that suppliers keep the cost of debt down otherwise suppliers may spread this cost across all consumers' bills. This includes debt accrued by customers who are unwilling to pay for their energy.

We anticipate that security deposits are likely to be used less frequently as a debt management tool in a smart world because suppliers should be able to monitor their customers' accounts meaning they can intervene sooner to support customers in payment difficulty. The speed with which any remedies are implemented is therefore an important consideration. Depending on the CMA's final decision, Ofgem would need to update the existing licence condition and/or guidance on SLC 27.3 and 27.4.

Citizens Advice is currently undertaking research on the role of credit information in determining consumers' eligibility to change from prepayment to credit meters, and the integration of smart meter data within decision-making. We encourage the CMA to take the findings of this research into account in its final decision.

There are also close links to Ofgem's intended work on supplier debt objections, which relates to credit meter customers. The use of security deposits is an important aspect of this process. Suppliers' approach to debt has impacts on their engagement with consumers, and ultimately if, when and how a prepayment meter is installed.

Remedy 20b – prohibiting suppliers from charging customers upfront for the cost of a new meter when switching away from prepayment

We welcome the CMA's recognition of this issue. We consider this proposed remedy to be complementary to the widespread removal of these charges⁹ which has already been carried out by industry. In our recent PPM consultation we said that if we find PPM customers are suffering detriment because of these charges, we would take further steps to protect them.

We raised concerns about the impact on prepayment customers of charges to install and remove prepayment meters in our June 2015 review. We noted that these costs can increase indebtedness, increase vulnerability and may also act as barriers to engagement and switching. Our analysis showed that consumers with a standard variable PPM tariff could save as much as £300 a year by moving to the cheapest Direct Debit (DD) tariff in the market¹⁰. However, the number of PPM customers who switch to credit meters remains very low. About 130,000 electricity and 103,000 gas prepayment customers switched to credit meters in 2014¹¹. This represented around 3% of all electricity and all gas PPM customers¹². Given the potential savings available on the market, we noted that it is important that consumers are able to switch easily and are not discouraged to do so by having to pay for a removal charge.

Following publication of the PPM review, Ofgem's CEO, Dermot Nolan, wrote to suppliers seeking an end to charges for installing and removing prepayment meters. A number of suppliers have since removed these charges or are reviewing their policies in this area. As of December 2015, only around 4% of prepayment customers would face removal charges in the event that their prepayment meter was removed.

We consider this change to be consistent with the spirit of the customer objective set out in SLC 25C – the domestic Standards of Conduct (SoC) - which requires suppliers to take all reasonable steps to ensure that customers are treated fairly. In our recent consultation we encouraged all suppliers to consider these examples in light of their own business and customer needs, and to continue pushing themselves to deliver fair treatment to prepayment customers who are often in vulnerable situations. In line with the SoC, all suppliers should keep their approach under review, for example by considering feedback from consumer research and complaints data.

The issue addressed by this proposed remedy is time sensitive. The rollout of smart meters will result in suppliers being able to switch payment modes remotely, meaning that consumers should not face charges to have a PPM installed or removed. Many suppliers have indicated that they do not intend to charge for a remote switch. We agree that this should be the case. However, until the rollout is complete, some traditional PPM customers may continue to be charged. There may also be cases where smart meters cannot be installed, or a customer refuses to have one installed.

⁹ We have viewed these as the costs for exchanging a PPM and the installation of a credit meter.

¹⁰ Ofgem, June 2015, Prepayment review: understanding supplier charging practices and barriers to switching https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/prepayment_report_june_2015_finalforpublication.pdf

¹¹ Ofgem, September 2015, Domestic Suppliers' Social Obligations: 2014 annual report, <https://www.ofgem.gov.uk/publications-and-updates/domestic-suppliers-social-obligations-2014-annual-report>

¹² Ibid.

Remedy 20c – requiring suppliers to provide annual notifications to prepayment meter customers setting out their right to switch and highlighting any potential restrictions or charges that may be payable

We share the CMA's concern about the relatively low proportion of prepayment customers who switch to credit meters. We agree that if prepayment customers are not properly informed about their ability to request a credit meter and the factors that the decision will depend on, this may discourage them from switching to a credit meter.

It will be important to think about any new information requirements within the context of the overall package of communications that a prepayment customer receives, and ensure that prepayment customers are not overloaded with information. We note that under current licence conditions, suppliers are required to provide various pieces of information to customers with prepayment meters. These requirements mean that customers already receive some information from their supplier informing them that they may request a credit meter, and that their ability to do so may be subject to restrictions such as a credit check.

In particular, the statements of account, annual statements and contract variation notices that suppliers send their customers are required to include information on the cheapest tariff offered by their current supplier, and the savings available if they were to switch (the 'cheapest tariff messaging', introduced as part of the Retail Market Review)¹³. Under SLC 31E, for prepayment customers suppliers must include alongside this information:

- a) A clear message which explains that the overall cheapest tariff may involve meter changes and explaining the costs involved.
- b) A statement, where applicable, to remind PPM consumers that they may be able to switch supplier even if in debt up to £500, in accordance with the debt assignment protocol (DAP).

In addition, under SLC 28.1, suppliers must also provide customers prior to or upon installation of a prepayment meter information about (among other things) the advantages and disadvantages of a prepayment meter and how it operates. Suppliers have an obligation to prepare a statement which sets out its obligations under 28.1 and take all reasonable steps to inform each of their prepayment customers, at least once a year, of the statement and how to obtain it. A copy of the statement must be given on request and free of charge. Suppliers also need to be mindful of the Standards of Conduct to ensure that customers are treated fairly in terms of the information they are provided.

If the CMA finds that there is a gap in the information that prepayment customers receive then - in line with our submissions to the CMA in our response to its previous notices of possible remedies - in designing any new prompt, the CMA should consider that:

- The most effective way of communicating the information may involve channels other than letters sent by post. Text, email or via an app could all also be considered.
- In our view, there may be benefits in linking the prompt to changes of circumstances which affect the likelihood that a customer will be able to switch to a credit meter. Making the communication more relevant to a customer's circumstances is likely to increase the effectiveness of any prompt.
- If suppliers are chosen to deliver the prompt, there may be advantages associated with avoiding overly prescriptive rules and focusing on outcomes in accompanying regulation.

¹³ More specifically, consumers are presented information on both the 'Relevant Cheapest Tariff' for their payment type, and the 'Alternative Cheapest Tariff' across all payment types.

- Sending additional communications might reduce the impact of existing ones. Similarly, including additional material on a communication risks diluting its existing message.

Remedy 21 – reforming the protocol for assignment of debt on prepayment meters

We welcome the CMA's recognition of the DAP as an issue in the prepayment segment, and the shared objective of ensuring that the DAP does not create unnecessary barriers to switching. We have recently implemented further reforms to the DAP which have increased the number of PPM customers in debt switching supplier. We agree that there is scope for further industry-led improvement of the DAP.

Following our work with industry last year, 11 suppliers (the six large suppliers plus Ecotricity, First Utility, Spark, Utilita and Utility Warehouse) voluntarily implemented a change to the DAP process by adopting the Point of Acquisition (POA) model. This change is designed to remove the barrier related to the Data Protection Act identified by the CMA. While it is still early days, this change appears to have had a positive impact on the number of indebted PPM customers successfully switching supplier. Results from the first quarter of data where this model was in place show an uplift in the proportion of attempted switches being completed from 0.3% (electricity) and 0.4% (gas) in July-September 2014 to 3.4% (electricity) and 4.2% (gas) in July-September 2015.

Some independent suppliers face issues when deciding whether to take on indebted PPM customers via the DAP. In particular, we understand that some independent suppliers may be reluctant to acquire indebted customers, particularly in large numbers, because they do not wish to take on the burden of a significant debt which they have to pay to the previous supplier. This reluctance persists despite the 10% discount that an acquiring supplier receives on any debt that they take on.

Although one significant process issue has been addressed by implementation of the POA model, industry believes that a number of other technical issues are causing attempted switches to fail partway through the switching process. For example, suppliers have informed us that a large proportion of attempted switches fail because the two suppliers involved in the switch hold differing records of the name of the customer, leading to uncertainty and confusion as to whom the debt should be assigned to.

In our view, further reform to the DAP may best be achieved by industry formulating an action plan with solutions to the technical issues they have identified, along with a timetable for implementation in 2016. One advantage of this approach is that it would allow changes to be introduced more quickly than would be the case if reforms were made via modifications to the licence conditions. We understand that Energy UK is leading work on behalf of industry to further reform the DAP by addressing these issues. We recognise that modifying the supply licence per the CMA's proposal represents another route to bringing about improvements with the DAP should industry-led action prove ineffective.

Remedy 22 – introducing a transitional ‘safeguard price cap’ for domestic prepayment customers

As stated in our response to the Notice of Possible Remedies in relation to the transitional safeguard tariff proposal, we understand the CMA’s rationale for considering some form of transitional price regulation to limit the detriment arising to customers as a result of the AECs that have been identified. Our preference is for consumers to be protected via effective competition rather than price regulation: so we would see any measure of this type as being transitional, tightly targeted and accompanied by measures to improve engagement in the market.

A transitional price cap specific to prepayment customers is subject to many of the same trade-offs as a transitional safeguard tariff applied to the market more widely. In particular, capping prices would lead to an immediate reduction in the amount some consumers pay, but at the same time carries a risk of undermining competition in the market (for example, by eroding the incentive for eligible customers to engage in the market or resulting in suppliers being unable to recover their costs). It also risks negatively impacting on other remedies aimed at stimulating engagement. For example, a price cap on prepayment tariffs could undermine the effectiveness of any measures introduced to facilitate data sharing if it reduced the likelihood of prepayment consumers responding to proactive marketing, or made the customers on the database less attractive to acquiring suppliers¹⁴.

Given these challenges, if the CMA does decide to introduce some form of transitional price regulation, then we would support this being targeted at a narrow group of those most at risk of detriment from the AECs that the CMA has identified. It is likely to make sense to ensure that the customer group protected by any cap is narrower than the group of consumers included in any data sharing initiative. Focusing on a narrow group of those most disadvantaged by the AECs will help to maximise the direct impact on consumer detriment and minimise the distortionary impact on competition in the market.

More specifically, we would support targeting any cap at those consumers that face the greatest barriers to engagement, and suffer the greatest detriment as a result of not being able to engage¹⁵. To give some examples, the criteria used to identify those that face the greatest barriers to engagement might include having limited internet access or living in rented housing, in addition to having a prepayment meter. Consumers may be more likely to suffer detriment if they have low incomes but high energy needs, and if they are particularly at risk from being in a cold home (although in some cases, the detriment suffered by some of these groups may be reduced by social programmes which are already in place, such as cold weather payments). Under this model, having a prepayment meter would not on its own be enough for a household to qualify for a regulated price cap.

We agree with the CMA that tying the level of the cap to the prices of other tariffs could provide a tractable way of enabling the regulated price cap to follow developments in suppliers’ costs. It would also make implementation of the price cap much quicker and simpler to achieve. The main risk associated with this approach is that it may create an additional incentive for suppliers to increase the prices of the other tariffs that they offer (because an increase in prices now increases revenues not only from customers on the tariff in question, but also from prepayment customers subject to the cap). There are different steps the CMA might take in designing how the level of the cap is linked to the

¹⁴ There are also significant legal considerations associated with introducing price regulation, including factors which will affect the compatibility of the CMA’s proposal with EU law. These are discussed in our response to the CMA’s original remedies notice.

¹⁵ An alternative approach would be to target the cap at those prepayment customers that do not respond to other measures to increase their engagement in the market (eg respond to prompts they receive as a result of any data sharing initiative).

prices of other tariffs in order to reduce this risk¹⁶. The risk would be lower the narrower the group of customers at which the price cap were targeted.

We support linking eligibility for the cap to whether or not a prepayment customer has a smart meter. The smart meter roll-out should serve to reduce or remove many of the additional barriers to engaging that prepayment customers face over and above those paying by credit. One advantage of only capping prices for prepayment customers with traditional meters is that this would create a natural transition for the removal of the transitional price cap, as the smart meter roll-out progresses.

¹⁶ For example, this incentive might be reduced by (a) basing the cap on a basket of tariffs on offer across the market, rather than only the prices of that supplier (b) including as broad a range of tariffs as possible in the basket such that changing the price of any one tariff would have little impact on the basket as a whole (c) choosing the parameter with reference to which the cap is set, such that it is less sensitive to movements in the price of any one supplier (eg tying the cap to the median price in the basket rather than the mean).