

Appendix 9.2: Evidence concerning the auto-rollover remedy

Responses to the Remedies Notice

1. In this section we set out a summary of the responses to the Remedies Notice. The responses below can be found in full on our website.

The Six Large Energy Firms

2. Centrica told us that it believes that the ending of auto-rollover contracts (with fixed-term Rollover Periods) would be beneficial to microbusiness customers and would help generate trust and engagement in the microbusiness segments. Since ending auto-rollover contracts (with fixed-term Rollover Periods), Centrica said that it had seen increased competitive forces as a result of the removal of the narrow window of opportunity for switching, and that would help support the right kind of conditions for PCWs to emerge.
3. In responding to the question ‘could this remedy be circumnavigated?’ Centrica said that customers not on fixed-term contracts should be provided with regular prompts. Centrica’s BGB VPP customers are required to give 30 days’ notice if they are not on a fixed-term contract.
4. Scottish Power told us that its policy regarding auto-rollover contracts was already in line with the proposed remedy and that it would support the implementation of the remedy. In its view, the remedy would provide consistency across the market, providing greater assurance to microbusiness customers that they would not be penalised by a new supplier for failing to act within the window, and would thereby reduce a potential barrier to engagement.
5. Scottish Power said that it did not see how this remedy could be circumvented and stated that a 30-day switching notice period would be a maximum, suggesting that it could even be abolished, as has been the case in the domestic sector.
6. EDF Energy told us that it agreed that if customers had not chosen another contract within a narrow switching window, then they should not be rolled onto fixed-term contracts, which they cannot terminate without penalty. It added that its current approach to rollovers represents a viable working example of the solution the CMA would like to see delivered by suppliers. It said that all EDF Energy customers who came to the end of a contract were rolled onto Easy Fix product. This product provided customers with certainty of pricing for 12 months. Customers could, if they wished, terminate the contract with no exit fee by giving 30 days’ notice.

7. EDF Energy also told us that to prevent circumnavigation of this remedy, as part of standards of conduct, any terms and conditions should be fair, transparent and appropriate to the small business market.
8. SSE told us that the greatest benefits for customer engagement could be obtained by prohibiting auto-rollovers (with fixed-term Rollover Periods). This measure would allow all customers who have reached the end of their existing contract to move to a new contract or switch supplier at any point following their move to a default tariff, with only limited notice (currently 30 days) being required.
9. SSE told us that a coherent approach from all suppliers would help reduce customer confusion and help them better understand their options for renegotiating or switching. Since SSE ended auto-rollovers (with fixed-term Rollover Periods) in 2014, internal analysis at SSE had shown increased levels of engagement.
10. E.ON told us that ending auto-rollover contracts (with fixed-term Rollover Periods) would be an effective remedy. E.ON had expressed to Ofgem previously the view that auto-rollover contracts (with fixed-term Rollover Periods) should be prohibited. Since ending auto-rollover (with fixed-term Rollover Periods), E.ON told us that it had seen greater engagement from its SME customers.
11. E.ON went further and told us that to be effective the remedy should apply to existing contracts as well, otherwise some customers would not benefit until 2017 at the earliest. By ending auto-rollover, E.ON believed that it would make comparing contracts on a like-for-like basis across the suppliers easier for the customer.
12. The only way E.ON could see suppliers circumventing this remedy would be through service bundling, which could sometimes be advantageous to customers but needed clear and transparent dealings with customers. Regarding notice periods, E.ON suggested that a 30-day period would be suitable.
13. RWE told us that where the customer had not specifically re-contracted, then they should be able to leave on giving 30 days' notice. RWE said that this would allow microbusiness customers a greater opportunity to engage.

Non-Six Large Energy Firms

14. Corona Energy told us that this remedy would have unintended consequences. It elaborated that if auto-rollovers were banned, then customers who were not engaged in the market place would be placed on deemed/out of

contract rates which were typically higher than rolled contract prices. It added that while the customers may be able to exit a deemed contract immediately, their ability to do so would make no difference to a disengaged customer. The unintended consequence would be that the customers would pay higher prices than they would have paid had they been on fixed-term Rollover Periods. Corona also told us that the rolled-over contract was already limited to a year and a shorter period would affect a supplier's ability to hedge, which would have a direct impact on price.

15. Drax (Haven) was supportive of [X] provided that the termination window was not narrow, but it also noted that auto-rollovers were a valuable choice for microbusiness customers, and the removal of auto-rollovers (with fixed-term Rollover Periods) might result in general price increases, as could changes to cash-out prices.
16. Gazprom told us that any remedy would need to avoid the competitive part of the microbusiness market. It stated that it was important to note that in the competitive microbusiness segment the price on rollover was generally a commercial price as opposed to a default tariff. In its experience, removing the option for customers to rollover onto a commercial rate would expose them to potentially more expensive OOC rates. Given the above and the action taken by the Six Large Energy Firms (which have prohibited fixed-term Rollover Periods), Gazprom felt that no further action was required at this time. In relation to what the notice period might be, Gazprom did not know what the optimum would be but noted that the shorter the period, the higher the relative costs.

Third party intermediaries

17. CIPS told us that there should be greater engagement between the suppliers and microbusinesses prior to contract end dates. To support this remedy CIPS said that a microbusiness should be notified within 24 hours of any objections made by its supplier to a proposed switch and that the notice period for a business on a rolled-over contract should be 14 days.
18. The Utilities Intermediary Association (UIA) noted that the industry had largely adopted this remedy in recent years and that it should be adopted by all suppliers. A suitable notice period for those on rolled-over contracts would be the switching time plus seven days.
19. ICoSS told us that the banning of auto-rollover contracts (with fixed-term Rollover Periods) was not necessary as the large suppliers had recently stopped this practice. ICoSS said therefore that prohibiting such a contract

offering would increase prices and reduce choice for engaged customers, as well as hurt smaller suppliers.

20. Inenco told us [redacted]. It also suggested that the notice period would have to be a minimum of 30 days.

Other parties

21. Make it Cheaper told us that ending auto-rollover contracts (with fixed-term Rollover Periods) needed to be carried out swiftly. It said that suppliers needed a uniform approach to avoid the ever-changing landscape of recent years, which did not help engagement. Make it Cheaper also stated that sufficient monitoring of the enforcement of any remedy needed to be put in place as its own internal research had found that some suppliers were not following Ofgem's rules to the letter.
22. There was further support for this remedy from Ecotricity, Good Energy, [redacted], the FSB and Ovo Energy.

Parties' additional submissions on auto-rollover contracts

23. On the 28 October 2015, we sent the Six Large Energy Firms and certain non-Six Large Energy Firms an information request regarding their current practice regarding auto-rollover contracts. We have summarised parties' responses below.
24. Centrica believed that its own actions in stopping auto-rollover (with fixed-term Rollover Periods) had helped create greater consumer engagement. Although it agreed in principle with the remedy, it believed the market would work to make these changes without intervention.
25. SSE said that it had voluntarily stopped the auto-rollover (with fixed-term Rollover Periods) of microbusiness contracts in April 2014.
26. E.ON supported a proposal which would prevent a customer being rolled onto a further fixed-term contract. Following customer research it stopped 'auto rollovers' in its SME business in April 2014. As an alternative customers went onto a variable price tariff, under which they had to provide 30 days' notice prior to switching.
27. RWE agreed with the CMA's proposal in its Remedies Notice that energy firms in circumstances where customers were inactive at contract end would be free to roll customers onto a flexible contract, ie one that the customer could exit having provided a reasonable period of notice. RWE said that

where that customer had not specifically re-contracted, then it must be able to leave any contract on giving 30 days' notice.

28. Good Energy said that it only offered variable contracts to microbusiness customers. It told us that it supports the removal of suppliers' ability to auto-rollover microbusiness customers onto another fixed-term contract.
29. Gazprom said that if a customer failed to respond to its renewal offer, its contract would be rolled over for 12 months on the basis of the commercial price quoted in the renewal letter. Gazprom told us that it perceived the effect of removing rollovers would be that suppliers would move customers onto OOC rates at the end of their contract period. This would expose customers to higher costs as these rates reflected the high risk of supplying with no certainty of continuity.'
30. Haven (Drax) said that suppliers' lack of certainty over the supply period was likely to increase prices for consumers as suppliers would not be able to buy power (or gas) in the same way.
31. Corona Energy said that it did not believe that auto-rollover contracts (with fixed-term Rollover Periods) should be banned. It said that banning them would force more customers onto higher-priced contracts and it was unlikely to encourage disengaged customers.
32. BES Utilities thought that this remedy would lead to price increases and a reduced tariff offering to customers. As a non-SLEF, BES Utilities relied heavily on its ability to auto-roll customers (with fixed-term Rollover Periods) and the protection this offered in terms of hedging and volatility in pricing for their customers. BES Utilities also did not believe that this would address the issue of disengaged customers as the customers had not engaged with the switching process to begin with. It felt strongly that the protections offered to microbusiness customers by SLC7A were sufficient to allow ample opportunity to engage in the contract renewal process without the need to remove auto-rollover contracts (with fixed-term Rollover Periods).
33. Ovo told us that having read the CMA's questions, it had nothing further to contribute on the subject of how the CMA should seek to carry out the proposed remedy. It did, however, remain supportive of both remedies. It would also support any other remedies that the CMA was minded to propose that would seek to improve transparency in the microbusiness segment.
34. Total told us that auto-rollover contracts (with fixed-term Rollover Periods) should not be prohibited. It said that suppliers would buy energy forward on behalf of customers. Therefore, suppliers required some certainty of contract length in order to do this efficiently. Suppliers would incur additional balancing

or energy purchasing risk and this additional risk would have to be reflected in the price that suppliers could offer if the customer fell out of contract with no fixed term.

35. Ecotricity told us that it did not do auto-rollovers and therefore it did not consider it necessary to respond to this remedy.
36. Good Energy supported the removal of clauses that permit suppliers to auto-roll microbusiness customers onto another fixed-term auto-rollover contract.

Parties' additional submissions on termination fees and exit clause

37. On 28 October 2015, we sent the Six Large Energy Firms and certain non-Six Large Energy Firms an information request regarding auto-rollover contracts. We have summarised parties' responses to termination fees and exit clauses below.
38. Centrica supported the cessation of fixed-term auto-rollover contracts in favour of flexible contracts that allowed customers to exit at any time given a suitable notice period. Centrica believed that a termination notice should only remain valid for a defined period of time from receipt (eg 60 to 90 days), as a number of customers submitted notices but did not change supplier. Centrica said a limit would give suppliers some ability to hedge, which would reduce the upward pressure on prices that the more volatile near-term market would otherwise create.
39. Scottish Power agreed that auto-rollover contracts should not include a 'termination fee' or 'no exit' clause. Its current process puts customers onto a one-year fixed-priced deal with a 30-day notice and no termination fee.
40. EDF Energy was fully supportive of the proposal to not include a termination fee on all auto-rollover contracts.¹ It supported the removal of termination fees provided that there was still a reasonable notice period: it believed that 30 days was sufficient and in line with Ofgem's 30-day mandated notice period to prevent auto-rollover. It added that fixed-price for a fixed-term product was EDF Energy's most competitive because the customers reflected the lowest commercial risk in part because an early termination fee was charged. Conversely, deemed contracts were the highest as customers could leave without any notice period. EDF Energy's current auto-rollover contract, 'Easy Fix', currently sat in the middle because of its 30-day notice period.

¹ EDF Energy added that this was in line with changes it had made in 2013 by removing all termination charges from the Easy Fix auto-rollover product.

41. SSE said that it supported this remedy including the removal of termination fees and 'no exit' clauses on auto-rollover contracts. SSE currently had a 30-day notice period on its variable business rate tariffs.
42. E.ON supported the proposal to prevent microbusiness customers being rolled over onto a further fixed-term contract. E.ON's auto-rollover customers were rolled onto a variable price tariff under which they must provide 30 days' notice prior to switching.
43. RWE agreed that an auto-rollover contract should not include a termination fee or a 'no exit' clause.
44. Good Energy did not believe that microbusinesses on auto-rollover contracts should face exit fees. Good Energy only offered a variable tariff so its micro-business customers did not face exit fees.
45. Gazprom believed that removing termination fees could have detrimental effects on customers as it could lead to higher charges being imposed on auto-rollover contracts. Rollover contracts were priced on a 12-month fixed renewal period. If certainty of supply was removed it would be likely that customers would be rolled onto either more expensive OOC rates, or the risk premium of supplying these customers would substantially increase. Gazprom said that its customers benefited from the commercial prices that derived from an appropriate level of certainty.
46. [✂].
47. Corona Energy did not believe that termination fees were necessary provided a suitable notice period (6 to 12 months) existed to give the suppliers the ability to hedge.

Parties' submissions on price changes relating to the Rollover Period

48. On 28 October 2015 we sent the Six Large Energy Firms and certain non-Six Large Energy Firms an information request regarding auto-rollover contracts. We have summarised parties' responses in relation to the changes of price of contracts once a customer on an auto-rollover contract (during the Rollover Period) has served a termination notice.
49. Centrica agreed that suppliers should not change a customer's tariff (price), when they were already on an auto-rolled over contract, after they had issued a termination notice, with the following exceptions:
 - (a) where a customer elected to change its tariff; and

- (b) where the supplier amended the price of the current tariff and gave appropriate notice to the microbusiness customer.
50. Scottish Power agreed that suppliers should not be able to move customers onto an alternative tariff unilaterally. However, it added that suppliers should retain the ability to negotiate with customers an appropriate deal and agree a new tariff. It said that customers should be able to choose freely. It also agreed that this remedy should be applicable to all microbusiness customers. Scottish Power currently often identified customers who had served a termination notice and it made an outbound call to offer them one of its available tariffs.
 51. EDF Energy told us that it was generally supportive of not putting micro-business customers onto new tariffs if they had auto-rolled over, provided that they did not break their payment terms. EDF Energy noted that microbusiness customers who served their notice did not always leave and therefore suppliers would have to roll them onto another tariff to ensure continued supply. EDF Energy was also supportive of the proposal to remove 'no exit' clauses on auto-rollover contracts. Its current practice was to request that microbusiness customers who wanted to exit its auto-rollover contract – Easy Fix – provide 30 days' notice to leave. It also said that the 30-day notice period struck a reasonable balance between flexibility for the microbusiness to leave, with a more managed commercial risk for the supplier and was also an Ofgem-mandated notice period.
 52. SSE said that if a microbusiness customer had sent a Notice of Termination but did nothing at the end of their fixed-term contract, they would be placed on SSE's deemed rates. SSE would be concerned if the remedy prevented suppliers transferring customers to a different tariff when they terminated an acquisition or retention contract – it said deemed contracts were unrestricted tariffs from which a customer might leave at any time and which reflected the increased risk associated with the fact that the customer had terminated their contract but not yet left SSE.
 53. E.ON did not agree that it would be a barrier to switching if the supplier put the customer onto a tariff which reflected the risks to the supplier of an 'open ended' position. In the case of E.ON's customers, after the termination window OOC prices applied and the customer could leave at any point.
 54. Gazprom did not have any major concerns with preventing suppliers from changing a customer's tariff once they had given notice to leave.
 55. Haven supported the principle that customers should remain on their current terms.

Parties' submissions on making the remedy applicable to all microbusiness customers

56. On 28 October 2015, we sent the Six Large Energy Firms and certain non-Six Large Energy Firms an information request regarding auto-rollover contracts. We have summarised the parties' responses regarding whether the remedy should apply to all microbusiness customers on auto-rollover contracts, when the remedy is implemented.
57. E.ON agreed that this remedy should be applied to all microbusiness customers on auto-rolled over contracts – including those who were on longer-term auto-rollover contracts – to ensure the benefits were applied to customers as soon as possible.
58. RWE agreed that this arrangement should apply to all microbusiness customers on auto-rolled over contracts, including those who would already be on auto-rolled over contracts when the remedy became effective.
59. Gazprom was concerned that if this applied to customers on currently rolled-over contracts this would significantly alter the risk profile of existing contracts, which would be subject to prices that were priced on the assumption that they would continue for 12 months.
60. Haven told us that if this remedy were applied to all microbusiness customers, then it would cut across existing contractual arrangements and amount to a retrospective change in the law. It said that this would be extremely disruptive to suppliers and customers and that Haven would likely suffer losses if it was no longer able to supply customers whom they have already bought for. Haven believed that if this remedy was brought into force it would need to be done in a phased way and should apply to new contracts for future consumption.
61. Total told us that it should not be applicable retrospectively to microbusiness customers who were currently within a fixed rollover period. The contract rates that these customers were on would not be reflective of the risk that costs could be incurred if they were free to change supplier before the contract's end.

Parties' submissions on termination fees on evergreen and OOC contracts

62. On 28 October 2015 we sent the Six Large Energy Firms and certain non-Six Large Energy Firms an information request regarding evergreen and OOC contracts. We have summarised the parties' responses in relation to termination fees on such contracts.

63. The parties stated that suppliers were permitted to apply termination fees on evergreen and OOC contracts, but not to deemed contracts.
64. Centrica told us that it currently [REDACTED].
65. Scottish Power said that it did not currently charge a termination fee on any of its evergreen tariffs or OOC tariffs. However, it said that it would not wish to rule out the potential for termination fees, for example if the dynamics of the market changed such that the volume or size of customers terminating contracts led to significantly increased hedging costs. It was not aware of it having previously charged termination fees on any of its evergreen and OOC contracts.
66. EDF Energy told us that it did not currently charge termination fees on any of its evergreen or OOC tariffs. However, before October 2013 it charged a termination fee for customers that auto-rolled over onto another fixed-term contract. This fee included a £500 administration fee and a charge worked out at 1.5 pence for each unit of electricity that EDF Energy estimated the microbusiness would have used, based on a daily average, from the date of the microbusiness' new supply start date to the end of their current contract with it.
67. SSE said that it did not charge termination fees for any customers on deemed, OOC or evergreen tariffs. If a customer was on SSE's Variable Business Rate (OOC tariff), this was subject to 30 days' notice of them leaving, however [REDACTED]. If a customer decided to leave without giving 30 days' notice then SSE could apply an exit fee, [REDACTED].
68. E.ON said that it did not currently charge or plan to charge termination fees on its evergreen tariffs or OOC tariffs. E.ON had not previously charged termination fees on its evergreen or OOC tariffs.
69. RWE said that it did not charge termination fees for evergreen or OOC tariffs but reserved the right to keep its position under review. It had not charged exit fees for evergreen or OOC tariffs at any stage.
70. Gazprom said that it did not operate evergreen contracts, and its 'out of contract' arrangements did not have termination fees associated with them.
71. Haven said that although the regulatory framework did not prevent termination fees being applied to evergreen and OOC tariffs, to do so would be inconsistent with these features of OOC and evergreen contracts. It did not offer evergreen contracts and it did not apply termination fees to OOC or deemed tariffs. It had no plans to introduce termination fees for these tariffs.

72. Total told us it did not currently charge, or plan to charge termination fees on evergreen, deemed or OOC tariffs.
73. Good Energy said that it only offered SVTs to microbusinesses and these did not include any exit fees.

Review of the grounds for objections

74. Ofgem told us that under Condition 14 of the supply licence, suppliers were permitted to put clauses in their contracts that gave them the right to object to a transfer occurring. Ofgem told us that suppliers could put clauses in contracts allowing them to object on the following grounds:
 - (a) in the case of debt;
 - (b) to any transfers within the fixed-term period (known as a 'no exit' clause);
and
 - (c) if the customer had not provided appropriate termination notice.²
75. Ofgem added that this did not extend to suppliers' customers on deemed contracts, where suppliers were not permitted to object, even on grounds of debt. The Standards of Conduct licence condition (SLC 7B) for microbusiness customers applies to objections (ie it requires objection clauses in contracts to be fair).
76. Scottish Power suggested that the CMA revise the grounds³ on which suppliers could object to microbusiness customers transferring contracts between suppliers.⁴
77. We consulted the Six Large Energy Firms, certain non-Six Large Energy Firms and Ofgem on whether the SLCs allowed suppliers to put unfair terms in contracts and whether the grounds for objections needed to be revised. The overwhelming feedback from the parties was that the grounds for objections were fair and that this was also monitored by Ofgem. In addition, these suppliers also provided data to support their claim that the overwhelming majority of objections related to debt owed by a microbusiness and transfers within a fixed-term period.
78. Ofgem also said that most of the complaints it received, and suppliers it had investigated in relation to objections, related to issues not pertaining to the

² [Ofgem's response to the Remedies Notice](#).

³ Align to the domestic sector.

⁴ [Scottish Power's response to the Remedies Notice](#).

grounds for objections listed above in Appendix 9.2, paragraph 74. Ofgem stated that it regularly monitored the grounds for objections to assess whether they were unfair.

79. We also note that Ofgem is currently conducting a wide-ranging review of objections and that it has been consulting the industry. In addition, Ofgem is also reviewing the objections regime to ensure that non-domestic customers in debt were more easily able to get the best deal, while ensuring that suppliers would be able to take appropriate steps to have debt repaid.
80. Therefore, in light of the above, our provisional position is not to amend the grounds for objections.