

## Consultation Response

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### CMA Energy Market Investigation - Provisional decision on remedies

#### About Which?

Which? is the largest consumer organisation in the UK with more than 1.2 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

#### Summary

Which? welcomes the opportunity to comment on the CMA *provisional decision on remedies* from its Energy market investigation. In this response Which? does not intend to address each individual remedy proposed by the CMA. Our responses to the *provisional findings and possible remedies* still stand. In this submission we focus instead on those elements of the *provisional decision on remedies* that are new, where Which? has concerns, or where Which? believes the CMA could take further action to improve outcomes for energy customers. For example, through the sending of clearer signals on how success of the remedies will be tested and what further action might be considered should the energy market not deliver that success.

In summary:

- The CMA's analysis clearly shows that the energy market is failing consumers. With customers collectively overpaying by £1.7 billion a year, and rising, the market needs reform.
- Which? agrees with the CMA that customer engagement in the energy market needs to be improved, and whilst there are significant gains to be made from switching supplier, Which? is concerned about the risk that an Ofgem-controlled database will result in unwanted marketing rather than engaged customers.
- Which? is concerned about the limited detail in the provisional decision on remedies on how the CMA will measure success both for its proposed remedies and for the energy market as whole.

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- Which? welcomes the remedy to create an Ofgem-led programme of testing.
- Which? broadly welcomes the remedies related to the Price Comparison Website (PCW) market, however there is a need for careful oversight of how customer data will be used.
- Which? agrees with the CMA's decision to limit its price control remedy to a smaller number of customers (with Pre-Payment Meters) but remains concerned about the lack of detail on success measures and the inclusion of 'headroom' in the remedy.

The CMA has had a unique opportunity in this investigation to propose remedies that address parts of the energy market that have an adverse effect on competition and cause substantial detriment to energy customers. After two years of investigation, Which? is concerned that the provisional decision on remedies still do not go far enough to ensure that the energy market works well for consumers.

### 1. Outcomes, success measures and testing of interventions

Which? made the following points in response to the initial findings:

- Regulators need to take the necessary time to work with consumers, and consumer groups, to test the detail of any proposed remedies to make sure the remedies will work across the whole market and to ensure that they will be effective.
- The CMA should set out how this testing will continue beyond the final remedies to make sure that the measures put in place will deliver sustained engagement by consumers with the market.
- The CMA should be clear how the final remedies for the energy market will be judged as having been successful in addressing the adverse effects on competition (AECs) identified through its investigation.

Which? proposed that the CMA should commit to a review of the market after a set period of time (in our response to the initial findings and provisional remedies we suggested two years from the publication of the final remedies) to test and measure whether there is evidence that the remedies are achieving the proposed aims, that consumer engagement has improved and the extent to which consumers are continuing to collectively overpay for their energy due to a lack of effective competition.

Additionally, Which? suggested that the CMA should signal that if effective competition is not working at that point, it would introduce on-going cost-based price controls to protect groups of consumers.

Whilst Which? welcomes the proposed remedy of an on-going Ofgem-led programme of engagement and testing, we are disappointed that the CMA has not established success criteria for its proposed remedies and the energy market overall.

Which? is also disappointed that the CMA has not sent a clear signal to the energy market that credible, stronger interventions are likely if the market continues to fail consumers. Without this signal, and if remedies to improve consumer engagement take time to have effect or do not have a significant effect, Which? is concerned that providers will not change their current behaviour. This concern is strengthened by the fact that the CMA itself does not expect its



remedies to start to have the effect of reducing the considerable consumer detriment it has identified until 2019/20.

The CMA has been investigating the energy market for two years and Which? notes that during this period the situation for consumers has actually worsened as the potential savings customers could make from switching has increased, because energy providers have not reduced retail prices in line with underlying cost reductions in the wholesale market. Which?'s own research in March 2016<sup>1</sup> found that customers on standard tariffs with the six large vertically integrated energy suppliers could save up to £400 if they switched to the cheapest deal on the market instead of the £30 they would save if they stayed with their current provider following the price cuts announced by these providers in the first quarter of 2016.

**Which? recommends that the CMA reconsiders the provisional final remedies in this context and sets out: a clear measure of success for the energy market, a specific review period, and signal to energy companies that if markets do not work better for consumers then further, stronger intervention is likely.**

## 2. An Ofgem-led programme of testing

Throughout Which?'s response to the *provisional findings and possible remedies* we highlighted the need for consumer testing to be undertaken to measure the impact of any remedies before they are adopted across the market.

Which? welcomes the proposal that Ofgem undertake an on-going programme of identifying, testing and implementing measures to promote consumer engagement in the domestic retail energy market. We also agree that it should not have a sunset date because markets will continually change, as will consumers' expectations of them.

## 3. Remedies to improve the functioning of the Price Comparison (PCW) Market

Which? broadly welcomes the proposed remedies to improve the functioning of the competitive PCW market, including:

- Remedies enabling PCWs to differentiate on market coverage and to negotiate and pass on the benefits of commissions from suppliers (and Which? agrees with the requirement for transparency by PCWs of their coverage if the 'whole of market' requirement is removed from the Ofgem Confidence Code);
- Remedies that will help PCWs improve the accuracy of the switching experience for consumers, by allowing PCWs to access data held in central databases that can already be accessed by suppliers and by making certain amendments to Midata.

It is essential that there is careful oversight of how consumer data accessed in the way set out in the *provisional decision on remedies* is used. Any misuse of consumer data would undermine consumer confidence in PCWs and the switching process, acting directly counter to the intended effect of the remedy.

<sup>1</sup> <https://press.which.co.uk/whichpressreleases/energy-investigation-must-deliver-as-big-six-customers-miss-out-on-400-savings/>



However, Which? considers the remedies to improve the functioning of the PCW market, even if they are entirely effective, will not eliminate all failures in the switching process. If erroneous switches continue this could also continue to create a barrier to consumer engagement. Therefore Which? is disappointed that the CMA has not taken further our previous suggestion in our response to the *provisional findings* that a regime of providing automatic compensation to consumers when switching goes wrong could provide useful incentives to improve the switching experience.

#### 4. An Ofgem-controlled database of ‘disengaged customers’

Which? notes the new proposed database remedy which the CMA expects will allow rival suppliers to identify consumers who have been on default tariffs for more than three years and target those customers with tailored marketing information by post. Whilst Which? understand the CMA’s desire to enable suppliers to provide personalised information to encourage disengaged customers to consider switching, Which? remains concerned about this remedy.

Primarily, Which? is concerned that without further consideration, the creation of an Ofgem-controlled database could lead to a rise in unwanted marketing therefore further undermining consumer trust in the energy market rather than improving consumer engagement and increasing levels of switching.

Recent Which? research<sup>2</sup> reinforces our concern about whether an Ofgem-controlled database will actively encourage people to switch. Which? commissioned Populus to explore energy customers attitudes towards marketing letters from rival energy firms.

- Four in ten (37%) of people who are responsible or jointly responsible for their energy bills and who haven’t switched supplier in the last three years or more state that they would be likely to opt-out of receiving letters from rival energy firms with better deals if they were offered the choice.
- A third (35%) of this group of people would put letters in the bin or scan them quickly and 10% wouldn’t do anything with the information.
- 40% of people who haven’t looked into switching said they haven’t because they don’t think there is enough difference between suppliers to make switching worthwhile and 26% weren’t interested in switching at all.
- Four in ten (42%) said that receiving a letter from a rival energy supplier informing them of cheaper tariffs available is not likely to prompt them to switch. People were more likely to say that having a poor experience with their current supplier or the price of their tariff increasing would prompt them into look into switching.

Which? believes that the findings of this research highlight a range of concerns about the proposed Ofgem-controlled database of disengaged customers:

- Consumers could view letters from energy companies as unsolicited junk marketing and therefore not engage with marketing letters in the first place.

<sup>2</sup> Populus, on behalf of Which?, surveyed 1,797 GB adults who are responsible or jointly responsible for the gas and electricity bills in their household, March 2016. Data weighted to be demographically representative of the GB population.



- Multiple mailings from different suppliers will present the consumer with a new layer of complexity by having to compare a range of letters and offers potentially increasing their disengagement from the energy market rather than increasing engagement.
- The proposal in its current form needs thorough testing as to whether opening up customer data to rival suppliers will lead to more switching.

Additionally, Which? is concerned about the potential misuse of consumer data. Without further consideration there is a danger that an Ofgem-controlled database of disengaged customers could lead to a rise in unwanted marketing and nuisance calls. As the very subjects of this remedy are already 'disengaged' there is potential that they are less likely to notice misuse of their data.

Furthermore, there is potential for energy customers to mistrust marketing materials from energy suppliers. Which?'s Consumer Insight Tracker highlights that in March 2016 one in three (36%) of people said they distrust energy companies<sup>3</sup>. There is therefore the risk that energy customers will not engage with marketing letters from energy companies. Which? notes however, that consumers could be more likely to trust an independent third-party although this would need further testing.

Which? understands that the CMA has sought to address some of these issues in the detailed design of the remedy, however we remain to be convinced that this has been fully completed. In fact, the source of the letters (rival suppliers) is 'hard baked' into the remedy already and the effect of this has not been tested with consumers. Which? is concerned about the imposition of a national solution to address the Domestic Weak Customer Response AEC without testing or assessment with customers on a smaller scale. The CMA (and Ofgem) should therefore consider how to test all aspects of the database remedy, then test with consumers and evaluate, before it is introduced in any form.

Finally, Which? notes that this remedy is modelled on a similar policy introduced into the French energy market which is cited in the full provisional decision on remedies document. However, Which? has not been able to identify evidence of the French programme's success or impact as this information has been redacted by the CMA.

## 5. Pre-Payment Meters Price Cap Remedy

Which? agrees with the proposal to limit the price control remedy to a subset of customers who may be more vulnerable. However the concerns Which? set out in our submission to the *provisional findings and possible remedies* remain. Which? is concerned that the proposed cap will include 'headroom' thus legitimising overcharging of the very group of customers the remedy is intending to protect for the period in question.

Additionally, and as stated in our response to the *provisional findings*, Which? is concerned about the limited detail on the success and testing criteria for this remedy. The CMA has set out that the PPM Price Cap should 'sunset' within five years or with the completion of the rollout of smart meters - whichever is earlier. Which? notes that the CMA itself recognises that the impact of smart meters is 'uncertain'<sup>4</sup>. If a price control is warranted for a sub-set

<sup>3</sup> Which? Consumer Insight Tracker (March 2016) <http://consumerinsight.which.co.uk/tracker/trust>

<sup>4</sup> Paragraph 112 of the CMA Energy Investigation *provisional decision on remedies*, 17 March 2016



of customers on a temporary basis, then Which? believes the CMA should clearly identify the circumstances in which the price cap should cease.

Traditionally price caps have been put in place to protect consumers in the absence of effective competition and were removed when competition became effective. As set out earlier in our response, we consider that the CMA should assess the market again at a defined point, or instruct Ofgem to assess the market, to determine whether the final remedies have been effective in addressing the AECs identified. This assessment would allow an informed decision about the validity of any price cap rather than linking it to an arbitrary date.

#### **6. Proposed remedies where Which? has no additional comments**

There are a number of proposed remedies that Which? has commented on previously in our submission to the *provisional findings and possible remedies* and we therefore have no further comments. These include:

- The remedies that address the Wholesale market including the Contracts for Difference and, Locational Pricing.
- The retail remedies that address Gas and Electricity Settlement reforms, tariff codes for prepayment meters and those that address restricted meters.
- The remedies that address the Microbusiness Weak Customer Response AEC.
- The remedies that address the Governance AEC including those that address Ofgem's duties and objectives, the relationship between DECC and Ofgem, analysis of impact of policy and regulation, the regime of financial reporting and the governance of industry codes.

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