

CMA ENERGY MARKET INVESTIGATION

SCOTTISHPOWER'S RESPONSE TO THE CONSULTATION ON THE DATABASE ORDER

1. INTRODUCTION

- 1.1 The CMA issued an initial consultation on the proposed database remedy on 12 September 2016, following publication of its final report on 24 June 2016. It then issued a formal consultation on 18 October comprising a draft order (incorporating draft additions to the electricity and gas supply licences) and a draft explanatory note.
- 1.2 ScottishPower remains strongly supportive of this remedy which we believe has the potential to generate significant additional customer engagement in the market.
- 1.3 We note that the CMA has made a number of changes since the initial consultation, including: clarification of the definition of disengaged customer, clarification of how it would expect suppliers to act if they face practical difficulties in identifying whether a particular customer falls within this definition; and other clarifications and drafting amendments.
- 1.4 We welcome the above changes, and our response to the formal consultation focuses on three remaining issues:
- (a) restrictions on supplier communication with customers about the database (section 2);
 - (b) definition of domestic customer data (section 3);
 - (c) first contact communication text for 'section 11' customers (section 4).
- 1.5 The explanatory note (para 87) comments that Ofgem may require cooperation from suppliers before the date when the Order comes into force, eg cooperation in identifying consumers for early trials. We are committed to working constructively with Ofgem to make this remedy a success, and we have already confirmed our willingness to Ofgem to participate in planned early trials.

2. PROVISION OF INFORMATION TO CUSTOMERS

- 2.1 We think it is important that (so far as is reasonably practicable) customers understand how their personal data will be used in the 'switching alert service' (as Ofgem has provisionally named it) and are made sufficiently aware of it. If customers receive personalised marketing communications revealing detailed knowledge of their energy consumption 'out of the blue' (because they have forgotten or never read the 'first contact communication') this is likely to result in customer dissatisfaction and/or anxiety, and increased operational costs (answering calls) which could otherwise be avoided.
- 2.2 We understand that a balance needs to be struck between making customers aware of the service and constraining suppliers' ability to encourage opt-out, but we are concerned that the proposed rules (and the supporting commentary in the explanatory note) may turn out to be too stringent, and we think it would be prudent to give Ofgem flexibility to permit additional communications as appropriate, eg in

the light of its trials or operational experience. For example, if there is a pattern of dissatisfaction from customers who received the first contact communication so long ago that they have forgotten it, Ofgem could reasonably take the view that suppliers should reissue it at appropriate intervals.

2.3 This could be achieved by modifying Article 7 as follows (additions in red text):

Except for sending the First Contact Communication in accordance with the Authority’s direction or any subsequent communication permitted under a direction from the Authority, the licensee must not initiate any communication (whether in Writing or orally) with a Disengaged Customer supplied by the licensee about the Secure Database, including the process for opting out.

2.4 The explanatory note (para74) confirms that suppliers will be permitted to include hyperlinks on their websites, or otherwise direct their customers, to areas on Ofgem’s website where relevant information is provided. We assume that this would, for example, permit suppliers to include an item in their ‘frequently asked questions’ section along the following lines, but would appreciate confirmation of this in the explanatory note:

“Q: Why have I received a sales letter from a different supplier with information about my tariff and consumption?”

A: This is part of the ‘switching alert service’ overseen by the regulator, Ofgem. Further details of this service are [here](#).”

3. DEFINITION OF DOMESTIC CUSTOMER DATA

3.1 The draft Order and supply licence amendments have different definitions of Domestic Customer Data. The supply licence amendments include at the end: “and (c) any additional items of information specified by the Authority that are necessary for the purposes contemplated by the CMA Order.” We suggest, for consistency, that the definition in the Order should be amended to match the supply licence definitions.

3.2 We also think that Ofgem’s ability to specify additional items of information (which could have cost, operational or consumer privacy impacts) should be subject to consultation where appropriate. We therefore suggest that the relevant text is amended as follows:

“and (c) any additional items of information specified by the Authority (after consultation where appropriate) that are necessary for the purposes contemplated by the CMA Order.”

4. FIRST CONTACT COMMUNICATION TEXT FOR ‘SECTION 11’ CUSTOMERS

4.1 Section 11 of the DPA gives data subjects the right to opt out of marketing from a data controller, and suppliers are therefore required to maintain a list of their customers who have opted out from receiving marketing.

4.2 Such customers may feel annoyed when they receive the first contact communication from their supplier, if they perceive it as marketing for the switching alert service. They may also feel annoyed when they subsequently receive marketing from rival suppliers, especially if they have not properly understood the first contact communication letter.

4.3 We believe this could be avoided (without any loss of effectiveness to the remedy) if Ofgem were to prescribe a variant of the communication text for such ‘section 11’ customers which explains that:

(a) The supplier is aware that the customer has opted out of marketing, but is still required to write to them in this instance regardless of their opt-out;

- (b) The customer's existing opt-out won't exclude them from the switching alert service, so they'll need to opt out again if they do not wish to participate.