

ENERGY MARKET INVESTIGATION

Summary of responses to the consultation on the Draft Energy Market Investigation (Microbusinesses) Order, the associated Draft Licence Conditions and Draft Explanatory Note

Introduction

1. On 18 October 2016, the Competition and Markets Authority (CMA) consulted on a draft order relating to Microbusinesses (the Draft Order), including the associated draft Licence Conditions (the Draft Licence Conditions) and a draft explanatory note (the Draft Explanatory Note) for the implementation of the price transparency and auto-rollover remedies set out in the energy market investigation final report (the Report).¹ The consultation closed on 18 November 2016.
2. In response to its consultation, the CMA received ten submissions relating to the Draft Order, Draft Licence Conditions and the Draft Explanatory Note. Non-confidential versions of the responses received are available on the CMA's webpages.²
3. This paper sets out the main changes that have been made to the Draft Order as a result of these submissions, and also gives reasons why certain suggested changes were not been made to the Draft Order. Almost all of the submissions received related to the price transparency remedy. The submissions exclusively concerning the auto-rollover remedy were not material and as such are not covered in this paper.
4. Minor changes (such as the correction of typographical and spelling errors, minor clarifications to the Draft Explanatory Note, and other consequential changes) are not discussed in this paper. References to specific Articles in this paper refer to the final version of the order published on the same date as this paper (the Order). Capitalised terms in this paper have the same meaning as defined in the Order, unless otherwise specified below.

¹ [Energy market investigation: Final report.](#)

² [Energy market investigation case page.](#)

5. Responses to the consultation on the price transparency remedy can be categorised as follows:
 - (a) comments seeking clarification to the drafting and on the application of the Draft Order, Draft Licence Conditions and Draft Explanatory Note that the CMA has accepted. These include:
 - (i) the distinction between the Required Price Information and Initial Quote;
 - (ii) how the Required Price Information is to be displayed; and
 - (iii) the approach for disclosing the Required Price Information as between different sales channels.
 - (b) suggested changes that the CMA has not made to the Draft Order, Draft Licence Conditions and Draft Explanatory Note, relating to:
 - (i) other amendments to, and clarifications concerning, the Required Price Information;
 - (ii) remedy design points addressed in the Report; and
 - (iii) miscellaneous clarifications.

Comments seeking clarification to the drafting and on the application of the Draft Order, Draft Licence Conditions and Draft Explanatory Note

6. With the intent to make the CMA's approach clearer, some respondents have suggested amendments to and/or sought clarification on definitions and other drafting aspects in the Draft Order, Draft Licence Conditions and Draft Explanatory Note.

The distinction between the Required Price Information and the Initial Quote

7. Two respondents sought clarification on the definitions of the Required Price Information and the Initial Quote in the Draft Order. One of these respondents noted the commentary in the Draft Explanatory Note³ about the distinction between these definitions, and asked the CMA to clarify under what circumstances the contract prices disclosed as the Required Price Information may not be immediately fulfillable. The other respondent queried whether suppliers will be required to show all their contract prices, including those for new and existing customers, under the definition of the Required Price

³ See paragraph 42 of the Draft Explanatory Note.

Information. It also suggested amendments to the Required Price Information and Initial Quote definitions.

8. In order to remove any confusion that might have existed between the separate defined terms of the Required Price Information and the Initial Quote (as set out in the Draft Order), the CMA has removed the separate obligation on suppliers in Article 3.1 to provide the Initial Quote(s), and has amended the definition of the Required Price Information. Where relevant, the CMA has merged aspects of the (former) Initial Quote definition into the Required Price Information definition (as set out in the Draft Order). As a result of these changes and under the amended definition of the Required Price Information, suppliers must disclose, in the Prescribed Format, each separate combination of Standing Charges, Unit Rates and all other associated charges per electricity meter and gas meter which:
 - (a) is available for a Relevant Micro Business Customer to enter into a contract to purchase the supply of electricity or gas (or both) from the supplier; and
 - (b) remains available for an identified period, subject only to the supplier conducting a successful credit check and any terms and conditions that may apply to any existing contract between that supplier and the customer.⁴
9. With regard to the respondent's query on immediate fulfillability of contracts summarised in paragraph 7 above, the CMA notes that the Required Price Information disclosed must be transactable (ie immediately available or capable of being entered into as a contract subject to the customer passing a credit check and any terms and conditions that may apply to the customer's existing contract with that supplier). In addition, for the avoidance of doubt, immediate fulfillability does not necessarily imply that the contract has to start immediately. A supplier can choose the contract start date of its contracts, and when to bring contracts onto the market.⁵ The CMA has also clarified in the Explanatory Note that a supplier will be required to show the Required Price Information results for all of its acquisition and retention contracts available to new and existing customers.⁶

⁴ See Article 3.1 of the Order and paragraph 29 of the Explanatory Note.

⁵ See paragraph 17.55 of the Report.

⁶ See paragraph 35 of the Explanatory Note and paragraph 17.44 of the Report.

How the Required Price Information is to be displayed

10. Four respondents sought clarification on what specific price information needs to be disclosed in the Required Price Information pursuant to the obligation in Article 3.1 of the Order. Some respondents noted that the Draft Explanatory Note contained more details than were set out in the Draft Order.
11. The CMA notes that it can be appropriate for the Explanatory Note to provide guidance to industry participants concerning how the Order is to be applied in practice, and that this can involve including further details and/or worked examples. However, the CMA acknowledges that the particular importance of compliance with Article 3.1 to the success of the price transparency remedy as a whole, and has consequently clarified in Article 3.1 of the Order that the Required Price Information must be disclosed in the 'Prescribed Format' (defined in Article 2 of the Order). The definition of Prescribed Format, which is consistent with the requirements set out in the Draft Explanatory Note⁷, requires suppliers to disclose:
 - (a) a total estimated contract price covering the duration of each contract calculated from the Primary Information; and
 - (b) a breakdown of that total estimated price, which is made up of the standing charge(s), unit rate(s) and all other associated charges, as applicable.

Approach for disclosing the Required Price Information as between different sales channels

12. One respondent said that there was insufficient clarity as to how the price disclosure requirements are intended to work in relation to contracts available via various sales channels.
13. The CMA notes that the sales channels can be categorised as follows:
 - (a) via a supplier's direct sales channels such as its online and telephone sales; and
 - (b) through third party intermediaries (TPIs), which is an external sales channel from the supplier's perspective. TPIs can either be online (for example PCWs) and/or offline (for example some brokers).
14. In response, the CMA has amended the Explanatory Note to explain how Articles 3.2 and 3.3 of the Order, which require the Required Price Information

⁷ See paragraphs 36 to 40 of the Explanatory Note.

to be displayed clearly and prominently, are to be interpreted in relation to the sales channels outlined in paragraph 13 above.⁸

15. In this regard, the CMA draws particular attention to the requirements for a contract available only through TPI(s).⁹ A supplier must ensure that the Required Price Information for such a contract is disclosed either:
 - (a) on its online quotation tool (or via one or more third party online platform(s)), indicating that the associated contract is available through TPI(s), including instructions on how to contact any such TPI(s); or
 - (b) on the TPI's website, by providing a web link to such TPI(s).

Suggested changes that the CMA has not made to the Draft Order, Draft Licence Conditions and Draft Explanatory Note

Other amendments to, and clarifications concerning, the Required Price Information

16. One respondent suggested that the requirement to disclose a total estimated contract price (as described above in paragraph 11) should be amended to include an estimated annual contract price instead. It said that this would aid in price comparison for contracts with different durations.
17. The CMA disagrees with the respondent for the following reasons:
 - (a) displaying the total estimated price for the duration of the contract will ensure that a Relevant Micro Business Customer sees the full cost of the contract, including charges that may only apply for a proportion of the total duration (for example, a two year fixed term contract with different pricing structures in each year);
 - (b) if the market were to gravitate towards non-annual contract durations¹⁰, then the annual contract price may not always be the most useful comparator; and
 - (c) suppliers are not prevented from disclosing an annualised estimated contract price, in addition to the total estimated contract price.
18. Furthermore, two respondents, one of which was a supplier, suggested that the CMA should remove the requirement to display a total contract price. Both

⁸ See paragraphs 45 to 48 of the Explanatory Note for further guidance.

⁹ A contract that is only available via a TPI(s) and is not available via the supplier's direct sales channels (online and/or telephone).

¹⁰ For example, 6, 10, 13, 18, or 23 months.

respondents said that the total contract price would not be “possible to fulfil” because it was made up of multiple charges. They added that suppliers would not be able to provide the total contract price based on a Relevant Micro Business Customer’s previous consumption, which could vary year-on-year.

19. The CMA notes that no other supplier has raised the same concerns. Also, at a practical level, the CMA considers that it should be reasonable for a supplier to calculate a total estimated contract price, which comprises the following components:
 - (a) the standing charge, which is based on a straight-forward pence per day calculation;
 - (b) the unit rate(s), which also involves a straight-forward single rate in pence per kWh, at least as regards gas supply. For electricity supply, where a non-domestic customer has a Relevant Electricity Metering Arrangement and satisfies the other conditions making it a Relevant Micro Business Customer, the unit rate(s) will be no more than three Consumption Windows per Electricity Meter¹¹;
 - (c) other associated charges, which only require a pence per day or pence per kWh disclosure, or the estimated total for each category of associated charges; and
 - (d) estimated consumption in kWh, which is provided by the Relevant Micro Business Customer as part of the Primary Information. Importantly, and for the avoidance of doubt, the total estimated contract price could differ from the total amount that the customer actually pays under the contract (where, for example, the customer’s actual consumption differs from the estimated consumption). It will be open for the supplier to make this clear to the Relevant Micro Business Customer, when displaying the Required Price Information. The CMA notes that PCWs currently draw attention to this issue for domestic customers.
20. One respondent queried whether the Required Price Information would be negotiable following the Relevant Micro Business Customer entering its secondary information filters. To add clarity on how the remedy is supposed to work in practice, the CMA notes that upon the Relevant Micro Business Customer entering its Primary Information, the supplier will have to disclose the Required Price Information results for all available contracts. The Relevant Micro Business Customer can then enter its secondary information (for

¹¹ See paragraph 17.20 of the Report, the definition of Relevant Micro Business Customer in the Order, and paragraph 25 of the Explanatory Note.

example, contract start date, payment method), a process that will simply filter the search results generated from the Primary Information. All the Required Price Information results that are disclosed will be negotiable. However, a supplier will not be permitted to increase the Required Price Information that is disclosed if the Relevant Micro Business Customer passes the credit check.¹²

21. One respondent sought clarification on how it would have to interact with TPIs. The CMA notes that suppliers are free to determine how they interact with TPIs. For the avoidance of doubt, the price transparency remedy does not seek to regulate such interactions.¹³
22. One respondent asked whether suppliers will be required to disclose the Required Price Information as separate contracts in instances where it had the same standing charge and unit rate, but different total contract prices (for instance, because of different other associated charges). The CMA has amended the Explanatory Note to clarify that each variation in total contract price for a given set of Primary Information¹⁴ will have to be a separate disclosure of the Required Price Information in order for a supplier to comply with Article 3.1.

Remedy design points addressed in the Report

23. Three respondents suggested that the CMA should increase the number of Primary Information inputs:
 - (a) One respondent submitted that suppliers should be allowed to ask whether a Relevant Micro Business Customer is new or existing at the same time as the input of the Primary Information. It added that not doing so would display many contract prices, some of which would be unavailable to certain microbusiness customers, thus driving customer dissatisfaction and complaints.
 - (b) Another respondent advocated that the contract start date should be a Primary Information input. It said that doing so would facilitate disclosure of a clear transactable contract as part of the Required Price Information and result in a much better comparable tool.

¹² See paragraph 17.56(c) of the Report and paragraph 40 of the Explanatory Note.

¹³ Please see paragraphs 45 to 48 of the Explanatory Note for the approach to Required Price Information between sales channels.

¹⁴ For instance, where a supplier's acquisition contract had the same standing charge and unit rate(s) as a retention contract, but only the retention contract had a charge for paper billing (as another associated charge), the supplier would be required to disclose the Required Price Information for both contracts.

- (c) Another respondent also proposed that the contract start date should be a Primary Information input. However, it said that many fixed price contracts had a fixed end date, and not a fixed duration. Therefore, if the contract start date was not a Primary Information input, it would have to assume a contract start date in order to calculate the total contract price.
24. The CMA notes that in relation to the submissions noted in paragraphs 23(a) and 23(b), these concerns were addressed in the Report.¹⁵ No argument has been made, or evidence provided, by parties suggesting the existence of a material change of circumstances or special reason to depart from the decisions set out in the Report. Hence, the CMA has decided to leave the number of Primary Information inputs unchanged from that in the Report.
25. In addition the CMA makes the following comments:
- (a) Increasing the number of Primary Information inputs would increase the search costs, and result in less price transparency. The secondary information filters will allow Relevant Micro Business Customers to filter the search results from the Primary Information inputs,¹⁶ making it a user-friendly experience.
- (b) Suppliers will be allowed to disclose the relevant contract start date(s), or any other critical information, alongside the Required Price Information once the Relevant Micro Business Customer enters its Primary Information. Thus, there is flexibility within these requirements to ensure that the Relevant Micro Business Customer is not confused, nor dissatisfied with the online search experience.
- (c) In response in particular to the submission noted at paragraph 23(c), if the fixed end date of a contract is known, then it should be possible for the supplier to determine the duration of the contract, at any given date. This will allow suppliers to assume a valid contract start date for the purposes of this remedy. The CMA notes that no other party raised the same concern.
26. Additionally, one respondent said that it may not be able to provide accurate Required Price Information, if it had to estimate consumption in kWh from spend (£). This was because it would have to make certain assumptions about the Relevant Micro Business Customer's current contract, and that it

¹⁵ See paragraph 17.28(e) of the Report and paragraphs 229 to 237 of Appendix 17.1: Price Transparency Remedy.

¹⁶ See paragraph 17.51 of the Report and paragraph 35 of the Explanatory Note.

would not have such data for new customers. Therefore, it suggested that the CMA omit spend (£) from the definition of Additional Information.

27. The CMA notes that the purpose of the Additional Information field of spend (£) is to allow a Relevant Micro Business Customer to obtain the Required Price Information if it does not immediately have access to its consumption figure.¹⁷ The CMA recognises that the £ (spend) conversion to kWh is an estimate. It will, nevertheless, serve as a useful proxy to consumption in kWh. Had the CMA removed £ (spend) from the definition of Additional Information, a customer that did not know its consumption would not have been able to obtain its Requirement Price Information and, as a result, would not benefit from this remedy. Therefore, the inclusion of £ (spend) as Additional Information will reduce the search costs and enhance price transparency for the customer.
28. One respondent was concerned about its ability to offer bespoke contracts, which could be negotiated and would be cost reflective. The CMA considered the issue of bespoke contracts during the design of the remedy. The CMA confirms that a supplier can offer tailored contracts by developing its secondary information filters as part of its online quotation tool.¹⁸ The CMA also notes that online quotation tools can offer prices that will be cost reflective by accounting for up-to-date changes in wholesale energy prices and other costs, and that such contract prices will also be negotiable (see paragraph 20).¹⁹

Miscellaneous clarifications

29. One respondent sought clarification and suggested that a supplier that owns and operates more than one brand should not be compelled to display the prices of each brand on the website of its other brand(s). The CMA agrees with the respondent.²⁰ However, a supplier will have to ensure that all brands and companies within the corporate group operated by the licence holder disclose online, the Required Price Information of all of its available contracts.²¹

¹⁷ See paragraph 17.53 of the Report

¹⁸ See paragraph 17.54 of the Report.

¹⁹ See paragraphs 17.54 and 17.56 of the Report.

²⁰ See paragraph 42 of the Explanatory Note.

²¹ See paragraphs 17.44 and 17.51 of the Report.

Appendix 1: Respondents to the consultation on the Draft Order, the associated Draft Licence Conditions and Draft Explanatory Note

1. The CMA received 10 responses to the Draft Order, Draft Explanatory Note and Draft Licence Conditions. These were from:
 - (a) Association of Convenience Stores;
 - (b) Centrica;
 - (c) EDF;
 - (d) Energy UK;
 - (e) E.ON;
 - (f) Good Energy;
 - (g) Makeitcheaper;
 - (h) RWE;
 - (i) Scottish Power; and
 - (j) SSE.
2. Non-confidential versions of these responses are published on the [Energy market investigation case page](#).