



# uSwitch response to the CMA's DCT market study – update paper

Non-confidential version

24 April 2017

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## 2 Introduction

uSwitch welcomes the opportunity to respond to the CMA's update paper on its market study into digital comparison tools ('DCTs'). In broad terms, uSwitch supports the CMA's findings. The initial conclusions drawn by the CMA are broadly sound and very much in the right direction.

uSwitch is particularly pleased that the CMA has decided it is not necessary to make a market investigation reference. Like the other respondents to the earlier consultation, uSwitch does not believe that a market investigation was warranted given that the market is operating reasonably well and that any areas for improvement can be achieved by alternative means.

uSwitch is keen to see the good industry engagement with the CMA continue for the second half of the study and hopes the observations set out in this response are useful and help to inform the CMA's thinking as the final conclusions take shape.

There are several points that uSwitch wishes to make on areas contained in the update paper which are set out in the sections below.

We look forward to working with the CMA over the next six months as it develops its final proposals.

## 3 Approach to regulation

### 3.1 Inconsistent sectoral regulatory regimes

[X]

The need for compliance of the different sectoral regulation can also be a source of confusion for consumers using one DCT to compare a number of regulated products. We would welcome the CMA taking actions to ensure these regimes become simpler, easier to comply and more targeted at only those cases where intervention is truly necessary.

### 3.2 Accreditation schemes and market coverage requirements

[X]

Accreditation schemes can be a significant source of unfairness as they apply to a narrow definition of a price comparison website, but not to other parties acting as intermediaries. This creates inconsistency, unfairness and potential confusion for consumers.

[X] uSwitch strongly supports the finding that research has shown that users do not expect DCTs to provide coverage of the entire market<sup>2</sup> – which matches its own experience in that consumers have a clear understanding about the results they see using DCTs.

uSwitch agrees with the following points concerning ‘all of the market’ requirements noted by the CMA in its update:

- That the requirement has a negative impact on competition between DCTs which often compete to have the most comprehensive coverage of markets.<sup>3</sup>
- That the requirement weakens a DCT’s ability to negotiate effectively with suppliers (i.e. it weakens a DCT’s bargaining position).<sup>4</sup>
- That the inclusion of all suppliers and products is difficult or impossible for DCTs, particularly in complex markets, and trying to do so detracts from the customer experience and potentially creates confusion.<sup>5</sup>
- That the requirement reduces a DCT’s ability to vet suppliers and that it undermines the commercial incentives for DCTs to invest in both their approval processes and the range of listed suppliers - as all suppliers would potentially receive free exposure on the DCT regardless of whether or not a commercial relationship existed between them. This, in turn, undermines the financial viability of the DCT and threatens its existence, risking the loss of the significant benefits that DCTs offer consumers.

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<sup>2</sup> As noted in paragraph 8.39 of the update.

<sup>3</sup> As noted in paragraph 8.34(a) of the update.

<sup>4</sup> As noted in paragraph 8.34(b) of the update

<sup>5</sup> As noted in paragraph 8.34(c) of the update paper.

- In addition, the existence of the comprehensiveness requirements gives undue power to suppliers and restricts DCTs from being able to provide their services to customers in the affected sectors. By extension, the requirements can be said to weaken competition between DCTs. The inconsistency of the accreditation schemes (particularly in respect of DCT independence, transparency and market coverage requirements) do not aid competition or consumer welfare (uSwitch is pleased to note that the CMA acknowledges in its update problems with inconsistency between the substance and administration of the different accreditation schemes<sup>6</sup>).

[X]

While uSwitch believes the accreditation scheme approach is flawed, it does not believe that direct regulation is the answer. uSwitch does not believe that removing the accreditation scheme approach would generate any competition or consumer welfare issues. In the place of accreditation schemes, uSwitch feels that establishing and maintaining high consumer confidence in DCTs – particularly in relation to would-be or first-time users - would best be achieved by an outcomes-based approach focused on high level principles. uSwitch also believes that providing good quality, meaningful information to customers about the service and how the customer’s data will be used in connection with the service, may also be useful.

In practical terms, the principles approach may be best achieved by means of guidance focused on DCTs which is underpinned by existing consumer law. uSwitch feels strongly that duplication of regulation should be avoided and there are numerous consumer protection measures which already potentially apply meaning that further regulation to specific to DCTs is unnecessary.

[X]

uSwitch believes there may be some value in the idea discussed in the update paper of developing a single set of cross-sector principles. uSwitch broadly agrees with many of the proposed themes of a cross-sector approach set out in table 8.4 of the CMA update. [X] If the CMA chose to pursue a cross-sector principles approach, uSwitch would expect the details of such principles to subject to a separate public consultation.

As noted above, uSwitch’s preference for a regulatory solution would be for the CMA to publish guidance, supported by existing consumer law which already offers consumers protection in respect of information provision requirements, unfair marketing and trading practices, and comparative advertising.<sup>7</sup> These set out clear, well-established and comprehensive provisions providing the consumers with robust protection which apply across all sectors. The existence of

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<sup>6</sup> See paragraph 8.18 of the CMA market study update paper.

<sup>7</sup> Including the Consumer Rights Act 2015, the Consumer Protection from Unfair Trading Regulations 2008, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the Electronic Commerce (EC Directive) Regulations 2002, and the Business Protection from Misleading Marketing Regulations 2008.

this body of consumer protection law makes the imposition of further regulation on DCTs unnecessary.

## 4 Inputs to DCTs – access to data

uSwitch supports the CMA’s findings concerning the importance of DCTs having good access to data to be able to properly provide services to consumers. Comprehensive and accurate data is at the heart of DCTs’ ability to help consumers make better purchasing and switching decisions. The sharing of data from suppliers to DCTs is becoming increasingly important - particularly as markets become more and more sophisticated where consumers’ purchasing decisions are influenced by factors much broader than price alone.

uSwitch acknowledges the CMA’s comments in paragraph 6.8 of the update paper, namely that regulation can help overcome DCTs’ difficulties around access to data. There may be scope for a similar remedy to be imposed on suppliers as the measures that were developed as part of the retail banking investigation (particularly the use of open APIs). Other measures could perhaps also be considered, including:

- The ability to gain access via an API to communications providers’ broadband speed estimates. This would enable a DCT to provide to customers speed information in the form of a comparison table allowing consumers to make meaningful comparisons of different products without the need to start multiple purchasing journeys.
- The ability to gain access via an API to communications providers’ mobile coverage maps at given locations.
- Machine-readable lending criteria in mortgages so that DCTs can offer an automated comparison of mortgages that a customer is likely to be eligible for.
- Machine-readable energy tariffs from suppliers to enable comparison results.

As the update paper notes<sup>8</sup> consumer usage information is very important for providing meaningful DCT services for products in certain sectors. uSwitch is pleased to see that one of the CMA’s initial conclusions is that there is scope of DCTs to have better access to consumer usage data in energy – particularly in the form of smart meter data. uSwitch feels that further provision of consumer data can help to enable even greater usefulness of DCTs for consumers in the future. In particular, uSwitch would like to see the following:

- Implementation of the Midata programme in energy so that customers can receive better comparison services from DCTs in that sector.
- In relation to the Open Banking initiative for current accounts and other relevant banking services, to have functionality which enables customers to give intermediaries consent for ongoing access to their relevant data (rather than access on a one-off basis) to allow the development of market monitoring and similar services.
- Intermediary access to DCC smart meters tariff and consumption information in the energy market.
- The ability to integrate more closely with consumer credit services, particularly credit card products (i.e. to be able to create and display a comparison table on the basis of actual APR/offer quotes and a customer’s likely acceptance from a ‘soft’ credit check).

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<sup>8</sup> At paragraph 6.15 and box 6.2 of the update paper

The above developments would help DCTs play a bigger and more significant role in delivering good consumer outcomes in the relevant markets. This is particularly important as products and markets become more complex and consumers' purchasing decisions continue to be influenced by an increasingly wide range of factors.

[X]