

NHBC Undertakings – summary of consultation responses

1. The CMA received four responses to the consultation on Superseded Undertakings, which began on 18 October 2017 and closed on 1 November 2017. Two of the responses did not address the Undertakings and have not been commented on further. This document summarises the matters raised in the remaining two responses, one from a body that runs a consumer code and one from a structural warranty provider, and our view of these responses.

Summary of responses

A structural warranty provider

2. [X] welcomed the CMA decision to seek new Undertakings. Its response focused on the premium refund scheme. In summary, the suggestions made were:
 - to extend the undertakings to include a transparency requirement requiring NHBC to publish within 10 days of Commencement, on its website, the criteria used to determine entitlement to and size of any refund;
 - publication of these criteria to trigger review and approval of the criteria by CMA;
 - publication at least annually of the total amount of refund paid (and the amount of the largest and smallest payment);
 - that the undertakings should also cover CMA oversight of NHBC's initial proposed rule changes (within 20 days of commencement) and that, as with the premium refund criteria, these should only take effect after CMA approval;
 - [X] reasoning for the suggested changes refers to the statement in paragraph 4.81 of the Final Decision that 'NHBC's premium refunds may play some role in disincentivising switching'. In its view, this would justify inclusion in the Undertakings of an obligation on NHBC to address the lack of transparency in relation to the premium refund scheme.

3. In reviewing remedies, our function is to consider whether the undertakings in question remain appropriate to address the issue that they were put in place to resolve. In its original report, the MMC's recommendations did not address issues relating to the premium refund scheme. In addition, our overall conclusion in the Final Decision in relation to premium refunds (see paragraph 4.81), is that 'given that refunds are only due 15 years after the premiums are paid and are dependent on claims levels on warranties during that period, the link between the upfront choice of warranty provider and a possible future premium refund is indirect and uncertain.'
4. Given that this was not an issue identified in the MMC's original report, and our conclusion as to the uncertain and indirect link between choice of warranty provider and premium refund, we did not consider it appropriate or necessary to specifically address the refund scheme within the remedies. Our view is that [redacted] submission does not provide a basis for including transparency obligations in relation to the premium refunds within the Superseded Undertakings or for the inclusion in the Superseded Undertakings of a requirement that CMA conduct a prior review of NHBC's initial rule changes including the methodology and criteria for calculating premium refunds.
5. We note also that the Final Decision itself marks an increase in transparency with regard to the premium refund scheme, in particular at paragraphs 4.66 to 4.78. In addition, the Final Decision notes NHBC's offer to take steps to further increase transparency in relation to the premium refund scheme and we continue to encourage NHBC to take such steps as a matter of good practice.

A body that runs a consumer code

6. [redacted] noted its support for the CMA's Provisional Decision and provided a number of comments on the Final Decision and the Superseded Undertakings.
7. [redacted] recommends that CMA should continue to review changes to NHBC rules in advance of implementation by NHBC. It gives two reasons for this: firstly that, given its size, NHBC's rule changes can have 'huge' effects on other smaller providers and that delay in sorting this out can place a very heavy burden; secondly that prior review will be more cost effective for CMA than where it has to 'pick apart' post implementation issues.
8. We consider that the points made by [redacted] relate not to the Superseded Undertakings but to the Final Decision and in particular to the points set out at paragraph 5.7 that relate to future arrangements for monitoring NHBC rule

changes. Monitoring arrangements at paragraph 5.7 of the Final Decision were previously set out for consultation in the Provisional Decision. For completeness we have addressed them here, as that aspect of the Final Decision is effectively carried over into the Undertakings.

9. [X] response does not give any example of rule changes that have occurred or may occur in the future, where the immediate effects for competitors have been so significant that a reactive review of the changes (for example following third party complaint) would be too slow to prevent a significant burden falling on smaller suppliers. [X] does not explain or give examples of where post-implementation issues, arising in the period between the rule being introduced by NHBC and the CMA becoming aware of concerns and intervening, would significantly add to the CMA's review costs. In any event, the CMA considers that where compliance issues arise, reliance on third party complaint is likely to result in more targeted and effective intervention by the CMA should such intervention be necessary.
10. Having considered [X] submission, our view is that it does not provide a basis to revisit the approach to reviewing NHBC rule changes set out in the Final Decision at paragraph 5.7 and reflected in the Superseded Undertakings.

Conclusion

11. Having analysed the responses to consultation on the Superseded Undertakings, we have decided that no changes are necessary to the Superseded Undertakings.