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Competition in energy markets in Great Britain

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Summary

This Commons Library briefing paper looks at the history of political and regulatory intervention designed to increase the competeviness of domestic energy markets in Great Britain. The Paper sets out the timetable for the *Energy Market Investigation* and summarises the *provisional findings* and *possible remedies* that the Competition and Markets Authority (CMA) has published. The paper also summarises the main actions that Ofgem has undertaken in the past to tackle the level and complexity of tariffs.

Domestic energy consumers grew accustomed to 'cheap' energy in the years after the liberalisation of the domestic gas and electricity markets around the turn of the century. But in more recent years, particularly since the recession, many households have been struggling with price increases.

Since 2008, Governments and the energy regulator – Ofgem – have sought to reduce the barriers to effective competitiveness in the gas and electricity markets, particularly for supplies to domestic consumers.

Up and until now, the main aims of the regulatory interventions have been to ensure that both the wholesale and retail gas and electricity markets are competitive. For retail consumers, the aim has been to make tariffs simpler, clearer and fairer.

The various interventions have culminated in the reference by Ofgem to the Competition and Markets Authority (CMA) to conduct an *Energy Market Investigation* in June 2014. In referring the matter to the CMA it was intended to be a once and for all investigation as to whether or not there are further barriers to effective competition because the CMA has more extensive powers that can address any long-term structural barriers to competition.

In the course of its investigation to date, the CMA has published a large volume of evidence on its website including over 100 submissions from interested parties and transcripts of 30 Hearings with industry participants and interested parties.

The CMA published its summary of *provisional findings* and its notice of *possible remedies* on 7 July 2015.

In its *provisional findings* the CMA has suggested a range of 'adverse effects on competition' (AECs) as well as areas that did not give rise to AECs; it found

- a range of problems hindering competition in the market, including the extent to which consumers are engaged in the market and shortcomings in the regulatory framework..
- customers are not taking advantage of switching suppliers. Dual fuel customers could save an average of £160 a year by switching to a cheaper deal. About 70% of customers are currently on the 'default' standard variable tariff (SVT) despite the presence of generally cheaper fixed-rate deals.
- regulatory interventions designed to simplify prices, such as the 'four-tariff rule', are not having the desired effect.
- lack of transparency that is hampering trust in the sector.
- competition in the wholesale gas and electricity generation markets works well, and the presence of vertically integrated firms does not have a detrimental impact on competition.

The CMA has then set out 20 *proposed remedies* in its proposed notice of remedies that are designed to address the 'adverse effects on competition' (AEC) that it set out in its provisional findings.

Since its original provisional findings and notice of possible remedies, the CMA has:

- extended the time limit of its energy market investigation from 25 December 2015 to 26 June 2016, with a list of provisional remedies in March 2016 and a final report in June 2016
- published additional provisional findings and possible remedies concerning the prepayment market and proposed an alternative remedy concerning its proposed 'regulated safeguard tariff'

1. Introduction

The energy sector faces three conflicting pressures.

- Firstly, consumers grew accustomed to cheap energy in the years after the liberalisation of the domestic gas and electricity markets around the turn of the century. But in more recent years, particularly since the recession, many households have been struggling with price increases.

- Secondly, the UK faces a challenge in delivering its future energy requirements. In the long term the Department of Energy and Climate Change (DECC) has estimated that electricity capacity will need to grow as demand is likely to increase by between 30 and 100 per cent by 2050.

- Thirdly, the UK is committed to reducing its greenhouse gas emissions by at least 80% in 2050 under the Climate Change Act 2008.

In short, energy must become low carbon, while remaining affordable to consumers and attractive to investment.

This Briefing Paper looks first at the history of political and regulatory interventions designed to increase the competiveness of domestic energy markets in Great Britain.

The Paper sets out the timetable for the *Energy Market Investigation.* It then summarises the *provisional findings* that the CMA has published that give rise to an 'adverse effect on competition' (AEC) and summarises the *possible remedies* that are designed to address these AECs. [1]

The Paper finally summarises the main actions that Ofgem has undertaken to date to tackle the level and complexity of tariff.

Annex 1 summarises the CMA's *Updated Issues Statement* published earlier on 18 February 2015.

1 The considerable volume of written evidence and notes of Hearings can be found on the dedicated CMA website for the *Energy Market Investigation*.

2. Political and regulatory intervention

2.1 Summary of interventions

The following paragraphs set out the principal interventions by Governments, the Opposition and by Ofgem concerning competition in the domestic energy market in Great Britain..

The current Government's position (and that of the previous Coalition Government and Labour Government) is to promote competition in the retail energy markets.

Similarly Ofgem considers that energy supply works best if customers find it easy to switch supplier, in order to benefit from better deals. The challenge is to strike a balance between simpler and cheaper tariffs for customers, while not actually setting final supply prices and stifling competition in the energy supply industry. Supply price controls were removed in the GB market following privatisation and the introduction of competition by 2000.

Box 1 summarises the principal political and regulatory interventions that have sought to address the competitiveness of the domestic electricity and gas markets in Great Britain.

Box 1: Political and regulatory interventions

1. April 2009: Ofgem Energy Supply Probe – proposed retail market remedies
2. March 2011: Ofgem The Retail Market Review - Findings and initial proposals
3. September 2013: Leader of the Opposition announced plans to freeze energy bills for 20 months if Labour won the next general election
4. October 2013: Prime Minister calls for a 'competition test'
5. November 2013: Ofgem consultation on assessment of competition in the energy market
6. March 2014: Ofgem and CMA State of the Market Assessment
7. June 2014: Reference by Ofgem to Competition and Markets Authority (CMA) to investigate the supply and acquisition of energy in Great Britain
8. June 2015: Letter from Secretary of State for Energy and Climate Change to 'Big Six' calling for reduced prices

2.2 Details of interventions

The following paragraphs discuss each of these interventions in turn.

1. April 2009: Ofgem *Energy Supply Probe*

The Energy Supply Probe was Ofgem's first major investigation of competition in the electricity and gas markets since the full liberalisation of the two markets in the late 1990s.

The Probe found that although the market was working well in important respects – there was no evidence of a cartel, and retail price rises could be justified by wholesale costs – there were a range of features in the market that weakened competition. The result was that the market was not working in the best interests of consumers.

There were new licence conditions and obligations to:

- require any difference in the terms and conditions offered by suppliers in respect of different payment methods to be cost reflective;
- prohibit undue discrimination in any terms and conditions offered to consumers;
- improve the information they provide to customers on bills and in an annual statement;
- help vulnerable and indebted customers who are currently blocked from changing suppliers due to outstanding debts;
- improve the conduct of their sales and marketing activities;
- help small business customers by providing them with better information regarding the terms and conditions of their contracts; and
- improve the transparency of their supply and generation activities.

2. March 2011 to August 2013: Ofgem *Retail Market Review*

In March 2011, partly in response to the increase in tariffs, the Retail Market Review (RMR) proposed changes to the regulatory framework that were intended to result in 'simpler, clearer and fairer' tariffs.

In 2013, Ofgem proposed changes to a number of licence conditions with the objective of making the market simpler, clearer and fairer to customers. The RMR reforms that took effect in 2014 introduced a number of obligations on suppliers, including several provisions relating to tariffs, notably:

- having four core tariffs for gas and four for electricity;
- having one structure for tariffs – a unit rate (or unit rates for time-of-use tariffs) and standing charge, which can be zero; and
- offering a maximum of two cash discounts, one for dual fuel (where a domestic consumer takes gas and electricity from the same supplier) and one for managing their account online

3. September 2013: Proposal by Leader of the Opposition

On 24 September 2013, Ed Miliband announced plans to freeze energy bills for 20 months if Labour won the next general election. Labour said the move would save average households £120 and businesses £1,800

– but would cost energy companies £4.5 billion.[2] The proposal would be part of wider plans to change market regulation and ensure 'fairer' prices for customers.[3] The proposals chimed with calls from consumer organisations but were criticised by some energy companies. Scottish Power warned that prices freezes would deter the investment required to meet future energy needs.[4]

Following this announcement, on 29 November 2013 the Labour Party published its *Green Paper on Energy* which included a 10 point plan to increase competition in the energy sector. Most significantly it proposed restructuring the energy supply market so that electricity is traded between generators and suppliers through a 'pool'. The move aims address potential transparency issues when generators and suppliers (often arms of the same organisation) trade with each other. This position was included in the *Labour Party Manifesto* before the 2015 General Election.

4. October 2013: Intervention by the Prime Minister

In October 2013, the Prime Minister had announced that a 'competition test' would be conducted to establish how competition in the energy market might be improved so that bills would be reduced as follows:

> [..]What we need to do is recognise that there are four bits to an energy bill: the wholesale prices, which are beyond our control; the costs of transmission and the grid, which are difficult to change; the profits of the energy companies; and the green regulations. It is those last two that we need to get to grips with.
>
> So I can tell the House today that we will be having a proper competition test carried out over the next year to get to the bottom of whether this market can be more competitive. I want more companies, I want better regulation and I want better deals for consumers, but yes, we also need to roll back the green charges that the right hon. Gentleman put in place as Energy Secretary.[5]

5. November 2013: Ofgem Market assessment framework

In November 2013, Ofgem worked with the Office of Fair Trading and the Competition and Markets Authority (CMA) to produce an assessment of competition in the energy retail market.

6. March 2014: Ofgem State of the Market Assessment

Following its consultation on the market assessment framework, Ofgem published its findings; the assessment concluded:

> Declining consumer confidence with 43 per cent distrusting energy companies to be open and transparent.
>
> Continuing uncertainty over whether the vertical integration of the large energy companies is in consumers' interests. (On privatisation the energy market was separated into supply and generation companies, however most supply companies have

2 BBC News website, *Ed Miliband: Labour would freeze energy prices*, 24 September 2013
3 BBC News website, *Ed Miliband's letter to energy firms*, 25 September 2013
4 Guardian, *Scottish Power warns Labour's energy price freeze would hit investment in UK*, 1 October 2013
5 HC Deb, October 2013 c239

generation arms that generate a large proportion of the energy they sell).

Retail profits increasing from £233 million in 2009 to £1.1 billion in 2012, with no clear evidence of suppliers becoming more efficient in reducing their own costs, although further evidence would be required to determine whether firms have had the opportunity to earn excess profits, and

Suppliers consistently setting higher prices for consumers who have not switched.[6]

7. June 2014: Ofgem reference to the Competition and Markets Authority

In June 2014, the Coalition Government supported Ofgem's referral to the Competition and Markets Authority (CMA) to undertake an *Energy Market Investigation*

By referring the the matter to the CMA, Ofgem was intending there to be a once-and-for-all investigation into whether or not there are further barriers to effective competition because the CMA has more extensive powers that can address any long-term structural barriers to competition.

In deciding to make a reference to the Competition and Markets Authority; Ofgem said

> During its investigation, the CMA will seek to identify features of the market that have an adverse effect on competition. The State of the Market report identified the principal market features that may have a harmful effect on competition, outlined below. The CMA has discretion to look at any issue within the terms of reference, including those beyond the issues below.
>
> *Weak customer response*. Evidence that customer activity in the market is low, and trust is low, which is preventing the process of competition from working effectively.
>
> *Incumbency advantages*. Suppliers that gained a large customer base when competition was introduced continue to charge higher prices to their less active customers. This suggests competition is not working effectively for all customers.
>
> *Possible tacit coordination*. We found no evidence of direct coordination, but there is evidence of possible tacit coordination, which can weaken competitive rivalry between companies.
>
> *Vertical integration.* Vertical integration is prevalent in this market. It can provide efficiency benefits but can also harm competition. A full investigation of the balance between costs and benefits is needed, to establish whether vertical integration is best for competition.
>
> *Barriers to entry and expansion.* Barriers identified in our report included credit and collateral requirements, low wholesale market liquidity, extensive industry regulation, and policy uncertainty.
>
> These key features of the market contribute to poor outcomes for consumers, including increasing retail profitability and low levels of consumer trust. In addition to the principal features listed above, our work has identified a number of other features that

[6] Ofgem *State of the Market Assessment* 27 March 2014

> the CMA may wish to consider. We will set these out in subsequent submissions to the CMA. [7]

The reference followed Ofgem's consultation on referring the energy market to the CMA following the publication of the *State of the Market Assessment* in March 2014

8 June 2015: Letter from Secretary of State for Energy and Climate Change

In June 2015, shortly after the General Election, the new Secretary of State for Energy and Climate Change wrote to the 'Big Six' energy companies and called for them to reduce their energy prices. [8] The text of the letter and the response of the companies has not been published.

7 Ofgem *Decision to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain* 26 June 2014

8 BBC *Big six energy firms face price call from Energy Secretary Amber Rudd* , 2 June 2015

3. CMA *Energy Market Investigation*

This section outlines the timetable for the CMA's *Energy Market Investigation* and a summary of the main issues that have arisen so far.

"Any market investigation by the CMA is a lengthy and complex process"

3.1 Timetable

Any market investigation by the CMA is a lengthy and complex process.

Originally the CMA signalled that it intended to publish a final report by 25 December 2015. But due to the volume of evidence and comments on its original findings and provisional remedies, the CMA has extended the inquiry to 26 June 2016. It is now planning to publish its provisional decision on remedies in March 2016 with a view to reaching its final decision by June 2016.

Box 2 outlines the updated key dates in the *Energy market investigation* as outlined by the CMA. [9]

Box 2: CMA *Energy Market Investigation* updated timetable

26 June 2014	Reference made by Ofgem
Jul to Sept 2014	Initial info' requests; submissions; initial issues
September 2014	Site visits, issue questionnaires
October 2014	Hearings
Jan/Feb 2015	Publication of working papers/amended issues
Feb/Mar 2015	Further hearings
March 2015	Deadline for all parties' responses
7 July 2015	Notify provisional findings and possible remedies
March 2016	Provisional decision on remedies
June 2016	Final decisions on remedies
26 June 2016	Statutory deadline

The following summarises the lengthy and complex discussion of the original *provisional findings* and the *notice of possible remedies* published in July 2015 and the more recent supplemental findings and proposed remedies published in October and December 2015.

Annex 1 summarises the earlier *Updated issues statement* published in February 2015.

9 The CMA originally announced the extension to the investigation to 26 June 2016 on 21 September 2015. (CMA press release) with expectation of afimal report by April 2016. It announced the latest revision to the timetable on 20 January 2016

3.2 Summary of original provisional findings and proposed remedies

In its original *provisional findings* published in July 2015, the CMA has suggested a range of 'adverse effects on competition' (AECs) as well as areas that did not give rise to AECs, it found:

- a range of problems hindering competition in the market, including the extent to which consumers are engaged in the market and shortcomings in regulation and the ability to deliver change across the market. It also points to the need for a coherent and transparent approach to responsibilities and policy implementation by those overseeing the industry;
- dual-fuel customers could save an average of £160 a year by switching to a cheaper deal. About 70% of customers are currently on the 'default' standard variable tariff (SVT) despite the presence of generally cheaper fixed-rate deals. Lack of awareness of what deals are available, confusing and inaccurate bills and the real and perceived difficulties of changing suppliers all deter switching – and the higher price levels reflect that suppliers can charge higher prices to these disengaged customers;
- regulatory interventions designed to simplify prices, such as the 'four-tariff rule', are not having the desired effect of increasing engagement, and have limited discounting and reduced competition;
- lack of transparency that is hampering trust in the sector; and
- competition in the wholesale gas and electricity generation markets works well, and the presence of vertically integrated firms does not have a detrimental impact on competition. It has also found that there is no strong case for returning to the old 'pool' system for the wholesale electricity market.

The CMA set out 20 proposed remedies in its original *proposed notice of remedies* that are designed to address the AECs that it set out in its provisional findings.

Among the proposed remedies are:

- remove from domestic retail energy suppliers' licences the 'simpler choices' component of the Retail Market Rules (RMR)
- measures to prompt customers on default tariffs to engage in the market
- a transitional 'safeguard regulated tariff' for disengaged domestic and microbusiness customers
- measures to address barriers to switching by domestic customers; this includes penalties for failing to switch in the required time, and possible cooling-off period when suppliers, required to switch next day in 2019
- Ofgem to provide an independent price comparison service for domestic (and microbusiness) customers

- improve the current regulatory framework for financial reporting
- requirement that energy firms prioritise the roll-out of smart meters to domestic customers who currently have a prepayment meter

3.3 Original provisional findings

In summarising the CMA's provisional findings, the following concentrates on the (shorter) *Notice of provisional findings* [10] which sets out what features of the energy market give rise to an 'adverse effect on competition' (AEC). These AECs then lead to the *notice of possible remedies* that are set out in section 3.4 below.

Summarising the report in this way means that we have not included all the analysis that underlines the finding of a particular AEC. [11] In particular we do not discuss any further the fact that the CMA has provisionally concluded that in general the wholesale electricity and gas markets do not pose an 'adverse effect on competition.'

Wholesale electricity market

The CMA, in its *provisional findings,* has found the following features of the wholesale electricity market in Great Britain that have an 'adverse effect on competition' (AEC):

- the absence of locational pricing for transmission losses is a feature of the wholesale electricity market in Great Britain that is likely to distort competition between generators and to have both short- and long-run effects on generation and demand
- mechanisms for allocating CfDs are a feature of the wholesale electricity market in Great Britain giving rise to an AEC through increasing the risk of inefficient allocation of financial support to generation capacity and which adversely impacts competition. [12]

Domestic retail supply of gas and electricity

The CMA has found a combination of features of the markets for *domestic retail supply of gas and electricity* give rise to an AEC through "weak customer response which, in turn, gives suppliers a position of unilateral market power concerning their inactive customer base which they are able to exploit through their pricing policies or otherwise"; in particular customers:

- have limited awareness of and interest in their ability to switch energy supplier.
- face actual and perceived barriers to accessing and assessing information.
- face actual and/or perceived barriers to switching, such as where they have uncertified meters or experience

[10] CMA *Notice of provisional findings* made under Rule 11.3 of the CMA Rules of Procedure (CMA17)

[11] For the full report and analysis of the provisional findings see the CMA's *provisional findings report* published on 10 July 2015 together with the extensive appendices and a glossary on its website.

[12] CMA *Notice of provisional findings* 7 July 2015

erroneous transfers which have the potential to cause material detriment to those who suffer from them.

- Have a lack of confidence in, and access to, price comparison websites (PCWs) by certain categories of customers, including the less well-educated and the less well-off. [ ] alternative forms of third party intermediaries (TPIs), such as collective switching schemes, may become increasingly important for such customers.
- who have prepayment meters, which place technical constraints on customers on such meters from engaging fully with the markets, and which reduce customers' ability and incentive to engage in the markets and search for better deals.

The CMA said

- The overarching feature of weak customer response gives suppliers a position of *unilateral market power* concerning their inactive customer base.
- [ ] suppliers in such a position have the ability to exploit such a position, for example, through price discrimination by pricing their standard variable tariffs (SVTs) materially above a level that can be justified by cost differences from their non-standard tariffs and/or pricing above a level that is justified by the costs incurred with operating an efficient domestic retail supply business.
- The 'simpler choices' component of the Retail Market Review rules is a feature of the markets [ ] that gives rise to an AEC through reducing retail suppliers' ability to innovate in designing tariff structures to meet customer demand, in particular, over the long term, and by softening competition between PCWs

Microbusinesses

The CMA has provisionally found that a combination of features of the markets for retail supply of gas and electricity to SMEs give rise to an AEC through an overarching feature of weak customer response from microbusinesses. In particular:

- customers have limited awareness of and interest in their ability to switch energy supplier;
- a general lack of price transparency concerning the tariffs that are available to microbusinesses which results from many microbusiness tariffs not being published; a substantial proportion of microbusiness tariffs being individually negotiated between customer and supplier; and
- some microbusiness customers are on auto-rollover tariffs (where customers are signed up for an initial period at a fixed rate, with an automatic rollover for a subsequent fixed period at a rate they have not negotiated with no exit clause).

Regulatory policy making

The CMA has provisionally found that a lack of robustness and transparency in regulatory decision-making which increases the risk of poor policy decisions which have an adverse impact on competition.

In particular, the CMA has found

- a lack of a regulatory requirement for clear and relevant financial reporting concerning generation and retail profitability;
- a lack of effective communication on the forecasted and actual impact of government and regulatory policies over energy prices and bills;
- Ofgem's statutory objectives and duties which, in certain circumstances, may constrain its ability to promote effective competition; and
- the absence of a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making and implementation can be addressed transparently.

Industry Codes

The CMA has provisionally found that the way industry codes are governed gives rise to an AEC through limiting innovation and causing the energy markets to fail to keep pace with regulatory developments and other policy objectives.

3.4 Original provisional notice of remedies

The CMA has sought to address the *provisional findings* set out in section 3.3 above that have led to adverse effects on competition with 20 *possible remedies*. [13]

The following lists these remedies in the order that is set out in the CMA's Notice of possible remedies. Alongside each possible remedy, the CMA has set out a series of ways the remedy might be implemented and seeks views from interested parties on these suggestions.

Transmission losses

- *Remedy 1* – Introduction of a new standard condition to electricity generators', suppliers', interconnectors', transmission, and distribution licences to require that variable transmission losses are priced on the basis of location in order to achieve technical efficiency

Contacts for difference

- *Remedy 2a* – DECC to undertake and consult on a clear and thorough impact assessment before awarding any CfD outside the CfD auction mechanism
- *Remedy 2b* – DECC to undertake and consult on a clear and thorough assessment before allocating technologies between pots and the CfD budget to the different pots

Retail prices

- *Remedy 3* – Remove from domestic retail energy suppliers' licences the 'simpler choices' component of the Retail Market Rules (RMR)

[13] CMA Notice of provisional findings 7 July 2015

- *Remedy 4* – Possible measures to address barriers to switching by domestic customers; this includes penalties for failing to switch in the required time, and possible cooling off period when suppliers required to switch next day in 2019
- *Remedy 5* – Requirement that energy firms prioritise the roll-out of smart meters to domestic customers who currently have a prepayment meter
- *Remedy 6* – Ofgem to provide an independent price comparison service for domestic (and microbusiness) customers
- *Remedy 7* – Measures to reduce actual and perceived barriers to accessing and assessing information in the SME retail energy markets; including the introduction of a new requirement in the licences of retail energy suppliers to provide price lists for microbusinesses on their own websites and to make this information available to Price Comparison Websites (PCWs); rules governing the information that third party intermediaries (TPIs) are required to provide to microbusiness customers

Microbusinesses

- *Remedy 8* – Introduction of a new requirement into the licences of retail energy suppliers that prohibits the inclusion of terms that permit the auto-rollover of microbusiness customers on to new contracts with a narrow window for switching supplier and/or tariff
- *Remedy 9* – Measures to provide either domestic and/or microbusiness customers with different or additional information to reduce actual or perceived barriers to accessing and assessing information

Encouragement to switch suppliers

- *Remedy 10* – Measures to prompt customers on default tariffs to engage in the market
- *Remedy 11* – A transitional 'safeguard regulated tariff' for disengaged domestic and microbusiness customers

Metering

- *Remedies 12 and 13* – set out suggested technical changes to deal with issues concerning meter reading cycles

Greater transparency of financial reporting for suppliers

- *Remedy 14* – Remedy to improve the current regulatory framework for financial reporting

Better communication of the effect of policies on customer prices and bills

- *Remedy 15* – More effective assessment of trade-offs between policy objectives and communication of impact of policies on prices and bills

DECC and Ofgem

- *Remedy 16* — Revision of Ofgem's statutory objectives and duties in order to increase its ability to promote effective competition

- *Remedy 17* – Introduction of a formal mechanism through which disagreements between DECC and Ofgem over policy decision-making can be addressed transparently

Industry Codes

- *Remedy 18a, b and c* – Recommendation to DECC to make code administration and/or implementation of code changes a licensable activity; .granting Ofgem more powers to project-manage and/or control timetable of the process of developing and/or implementing code changes; appointment of an independent code adjudicator to determine which code changes should be adopted in the case of dispute

3.5 Further provisional findings and possible remedies

Since the initial findings and remedies were published in July 2015, the CMA has published further provisional findings and possible remedies that are summarised below.

Prepayment segment

On 16 December 2015, the CMA published new *findings* on the pre-payment segment (PPS) of the domestic energy market as follows:

> [ ] the inquiry group has provisionally found that a combination of features of the markets for domestic retail supply of gas and electricity in Great Britain, relating specifically to the PPS, give rise to an AEC. These features, in combination, reduce retail suppliers' incentives (and, for some, their ability) to compete to acquire PPM customers (in particular, customers with an outstanding debt or a poor credit history) and to innovate by offering tariff structures that meet customers' demand. As a result, the tariffs available in the PPS are not competitively priced compared with the DD segment. These features are as follows:
>
> - Technical constraints that limit the ability of all suppliers, and in particular new entrants, to innovate by offering tariff structures that meet demand from PPM customers who do not have a smart meter.
> - Softened incentives for all suppliers, and in particular new entrants, to compete to acquire PPM customers due to:
>   - actual and perceived higher costs to engage with, and acquire, PPM customers compared with other customers; and
>   - a low prospect of successfully completing the switch of indebted customers, who represent about 15% of PPM customer

The CMA's *proposed additional remedies* are as follows:

- **Remedy 19** – facilitating sharing of data relating to prepayment meter customers
- **Remedy 20** – removing the barriers that prepayment meter customers without a debt face when attempting to switch to a credit meter

- **Remedy 20a** – prohibit the charging of a security deposit in circumstances when a customer is not in debt and has not incurred any fines, charges or interest for late payment in the last six months
- **Remedy 20b** – Suppliers are prohibited from charging customers upfront for the cost of a new meter when switching away from prepayment
- **Remedy 20c** – Require suppliers to provide annual notifications to prepayment meter customers setting out their right to switch and highlighting any potential restrictions or charges that may be payable
- **Remedy 21** – reform the protocol for assignment of debt on prepayment meters
- **Remedy 22** – A transitional 'safeguard price cap' for domestic prepayment customers

Alternative incentives to switch

An additional remedy proposal – based on the proposals submitted to the CMA by Scottish Power and Centrica – which the CMA believe might be effective in addressing the provisional AEC arising from a weak customer response on the part of domestic customers. The CMA note that, although Scottish Power and Centrica have proposed this remedy as an alternative to Remedy 11 (see below), the CMA's current view is that it provides a means of prompting customers to engage with the retail energy markets and, as a result, should be considered as a specific proposal in the context of Remedy 10 (see below) – that referred to *Measures to prompt customers on default tariffs to engage in the markets*.

The CMA published its *proposed alternative remedy* on 26 October 2015 and this is summarised as follows

- **Alternative Remedy 11** Remedies to encourage customer engagement by prohibiting the use of evergreen tariffs

3.6 Reaction to original CMA findings and remedies

The following sets out the reaction of the Government, energy consumers, the energy industry and a group of former energy regulators to the provisional findings and notice of provisional remedies. In total there were nearly 90 written responses and some 10 summaries of oral hearings. [14]

Department for Energy and Climate Change

DECC's most comprehensive response was provided in its oral hearing on 6 August 2015. [15]

14 CMA *Energy market investigation* website
15 Summary of hearing with the Department of Energy and Climate Change on 6 August 2015

The CMA's proposed regulated safeguard tariff (Remedy 11) has probably attracted most comment, DECC said

> [ ] but DECC felt that the *safeguard tariff* [Remedy 11] could entrench disengagement if people felt that the safeguard tariff was approved by the regulator and once on it they would be less inclined to switch.
>
> DECC suggested it was worth considering whether it would be possible to target the remedy in such a way that it favoured vulnerable customers or those who were inherited by a supplier

Citizen's Advice

Citizen's Advice commented that "the Competition and Markets Authority (CMA) investigation will only be a success if it paves the way for an energy market that works for all consumers and called on energy firms not to delay in reducing customer's bills."

Gillian Guy, Chief Executive of Citizens Advice, said:

> The energy market has failed the overwhelming majority of customers.
>
> Consumers don't trust the relationship between prices and profits. Millions are locked out of the benefits of the competition that exists.
>
> The CMA needs to provide a framework that gives customers confidence that they are not getting a raw deal and protects the interests of all consumers, including those who cannot or do not switch.
>
> The remedies recommended by the CMA are encouraging but will take some time before they are finally agreed and implemented. In the meantime, we call on energy companies – who are benefiting from massive reductions in wholesale prices – to help customers and reduce bills.[16]

In its detailed written response to the CMA, Citizens Advice said on Remedy 11:

> Citizens Advice warmly welcomes the CMA finding that some form of price regulation is needed to protect disengaged consumers from relatively expensive evergreen tariffs. The GB energy market has for too long allowed regressive cross subsidisation by suppliers that takes away from their poorest customers and gives to their most affluent, even in the face of extensive research highlighting both the high level of disengagement in the market, and this disengagement being both more pronounced and more detrimental among vulnerable consumers [17]

Energy UK

Lawrence Slade, chief executive of Energy UK, as the main body representing energy firms in the UK, said:

> The energy industry recognises the need to put customers first while delivering secure, affordable and cleaner energy. Customers

16 Citizens Advice press release *CMA investigation must address failures of energy market* 7 July 2015
17 Citizens Advice written response, 2 September 2015

> can save money when they shop around for deals that suit their individual circumstances.
>
> There is greater choice for customers - around a quarter of a million households switch energy supplier every month with many opting for one of around 25 suppliers vying with the established players in the market. It is easy to switch and a few minutes online could save households money and get them the deal that's right for them.
>
> Our members have improved openness and continue to work to make things clearer for customers who, as acknowledged by DECC among others, say, increasingly, they trust suppliers.
>
> The industry continues to develop a number of voluntary measures – such as improvements to bills and quicker switching – which have already been introduced to further support customers.
>
> The industry will now fully consider the report. These are not the final results and our members will continue to work closely with the Competitions and Markets Authority, government and the regulator to ensure the best outcome for all customers.[18]

In its written response to the CMA, Energy UK said

> Energy UK strongly believes that open and competitive markets are the route to delivering the best outcome for customers, both in terms of ensuring value for money and choice. In our view any remedy taken forward by the CMA should be designed to support a competitive market.
>
> Energy UK therefore agrees with the CMA where it has supported an open and competitive approach. For example, we note that the competitive CfD auction that took place in early 2015 saw the delivery of the best possible price for consumers and agree that (except in specific justified cases) any future allocation should be delivered with the same principles.
>
> However, Energy UK considers that remedy 11 - a transitional safeguard regulated tariff, may be counterproductive as any regulated price would likely reduce the incentive for customers to engage in the market and undermine competition, as noted by the recent European Commission's communication into retail energy markets. Energy UK therefore has concerns over the unintended consequences of introducing such a tariff.

Energy UK was supportive of a number of the CMA's other proposed remedies as detailed in its written response. [19]

Ofgem

Ofgem provided a detailed and comprehensive written response, they said:

> We referred the energy market to the CMA because we have long been concerned that competition is not working as well as it could for consumers. We welcome the CMA's Provisional Findings and Notice of Possible Remedies, and the thorough analysis the CMA has conducted on the market. The adverse effects on competition (AECs) you have identified largely reflect our own concerns about the problems in the market. We will provide you with our full support in developing an effective, coherent,

---

[18] Energy UK press release *Energy UK's comment on the CMA initial findings* 7 July 2015

[19] Energy UK written response to CMA, 14 August 2015

> achievable and forward-looking package of remedies for the benefit of consumers.
>
> To protect the interests of disengaged consumers, the CMA proposes the introduction of a transitional safeguard tariff [Remedy 11]. We understand the rationale behind this proposal. If the CMA decides to proceed with this remedy, we will provide all the support we can in the development of its detailed design.
>
> n general, our view is that consumers' interests are best protected by effective competition. For this reason, we would like to explore with the CMA how to ensure that any safeguard tariff is tightly targeted, and is accompanied by effective measures to encourage consumers to engage in the competitive market. It is also important that any safeguard tariff is transitional: a key element of its design will be a plan for exiting from the tariff at the appropriate time. [20]

Former energy regulators

Fiver former energy regulators [21] have commented in detail on the CMA's provisional findings and proposed remedies; the main points are as follows:

> We welcome the CMA's finding that numerous important aspects of the energy sector are generally not a problem. We note the finding that other aspects do have an adverse effect on competition, and with some important exceptions we consider that the proposed remedies are appropriate.
>
> The CMA finds that the "simpler choices" aspect of RMR regulation has had an adverse effect on competition. We believe that this finding is justified, and we welcome the proposed remedy to remove these obligations on suppliers.
>
> But we have grave concerns about the CMA's analysis of customer engagement and over-charging, and about its recommended reintroduction of price controls [Remedy 11].
>
> This is yet another change in regulatory policy, and in an even more interventionist direction than the regulatory policy of the last 7 years. The notion that customer engagement is insufficient for a competitive retail energy market to work is out of touch with competitive retail energy markets around the world.

The former energy regulators go on to comment in detail on the CMA's findings and proposed remedies.[22]

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[20] Ofgem written response to CMA, 2 September 2015

[21] The former regulators are Mr Stephen Littlechild, Sir Callum McCarthy, Eileen Marshall CBE, Stephen Smith and Clare Spottiswoode CBE

[22] Former energy regulators *Submission on Summary of Provisional Findings Report and Notice of Possible Remedies* 16 July 2015

4. Dealing with tariff complexity

The section looks in more detail at the regulatory interventions designed to improve competitiveness of the energy markets for domestic consumers.

4.1 Current policy

The Library standard note on *Help with Energy Bills* [23] outlines Government support for people with their energy bills and energy efficiency, but the main GB policy driver for keeping bills down is the promotion of competition in the energy supply industry.

For competition to work, people need to be willing to switch supplier, rather than, for instance, sticking with the former monopoly operator in their area, the successor to their regional electricity company.

The Energy Regulator Ofgem's primary duty under statute is to protect the interests of current and future consumers. It seeks to do this primarily though promoting competition in the energy market, along with regulation. Ofgem controls the costs of some contributing factors to domestic bills (such as transmission and distribution charges, basically the charges for transporting energy using the gas and electricity networks[24]) but it does not put a cap on final bills or 'supply' prices, preferring to encourage competition.

This is why Ofgem has supported switching campaigns such as the Citizens Advice *Energy Best Deal*. Much government support to help people achieve lower energy bills also comes through encouraging switching campaigns. For example, in October 2011 the Government hosted an energy 'summit' at Number 10[25] with the Big 6 suppliers and Ofgem. One outcome of the meeting was Government support for a Check, Switch and Save to Insulate campaign. DECC and BIS are also promoting collective purchasing and switching schemes.[26]

However, to switch, people need to be able to compare deals to those they are currently on. There has therefore been a long standing push by Ofgem towards clearer bills and tariffs, culminating at present through its retail market review (RMR).

Ofgem's RMR draft impact assessment estimated, after contacting suppliers, that:

> ".. the number of tariffs open for consumer to sign up to, as at 28 August 2012, around 900.
>
> Due to the high number of tariffs, consumers are likely to encounter a large range of choices when looking for a new tariff.

---

23 House of Commons Library *Help with Energy Bills*, 13 December 2011
24 See for example Ofgem's Household energy bills explained Factsheet Jan 2013
25 Number 10 press release 17 October 2011 Summit was with the six biggest power firms, consumer groups and regulator Ofgem
26 BIS, *Guide for community buying groups* 8 February 2013 and DECC, *Community Energy* guidance and *Collective switching and purchasing* web pages

> This is particularly an issue for those consumers unable or unwilling to use online comparison sites which can filter options.
>
> Dead tariffs also contribute to tariff complexity. According to information provided by suppliers, there are over 650 dead tariffs". [27]

DECC says that of the "estimated 650 'dead tariffs', around a third could be poor value".[28] *Consumer Focus* and *Which?* Two other advocates of switching, and of simpler bills, have also done work on this. *Which?* illustrated the complexity of tariffs when it told the Energy Bill committee that it had found people on over 1,440 tariffs.[29]

Consumer Focus (now Consumer Futures) has summarised the problem well:

> Suppliers offer different prices and different benefits for a homogenous product in order to attract new customers and retain their existing ones. There are hundreds of different tariffs available and the associated benefits are presented in a variety of different ways making direct comparisons difficult, time consuming or impossible.
>
> New product features such as termination fees, complex discounts and introductory or short term offers have led to many consumers feeling that they had been mis-sold as they didn't fully understand the implications of what they signed up to.
>
> Mis-selling of tariffs and unsolicited doorstep marketing over the years since liberalisation have also served to cement this distrust.
>
> Bills and annual statements are long, full of complex information and hard for many to understand, not least because many households don't have a clear understanding of how to translate their day to day use of gas and electricity into 'units' or kilowatt hours. It is, therefore, not surprising that many consumers are reluctant to engage with the energy market.[30]

Even former Energy Minister Charles Hendry said that he found it too complicated to switch.[31]

4.2 Previous moves to tackle tariff complexity

Ofgem's 'Energy Supply Probe' remedies; Annual Energy Statements

An Ofgem Energy Supply Probe[32] published in October 2008 found a lack of transparency regarding tariffs and introductory offers and some unfair pricing arrangements. As a result, the differentials between different payment methods (e.g. for people on pre-payment meters versus those paying by direct debit) were reduced. Companies are only

27 Ofgem, 26 October 2012
28 DECC "Turning non-switchers into savvy switchers" – Davey press notice 17 May 2013
29 See Library research paper 13/10, Energy Bill Committee Stage Report, 12 March 2013 p. 39
30 Consumer Focus response to Ofgem retail market review, February 2012
31 HC Deb 19 October 2011 c941 and HC Deb 20 October 2011 c1047
32 The link in the text is to the Probe's home page for all documents, correct as of 18 October 2012;

now allowed to charge 'justified' extra costs associated with different payment collection methods.

Ofgem can make such changes by changing the licence conditions under which companies operate, and has the ability to fine companies heavily (up to 10% of turnover) if they do not comply with their licence conditions. In other words, it can make quite detailed changes without the need for primary legislation.

Another Ofgem requirement was that Annual Energy Statements be sent to all customers. These are intended to show people what tariff they are on and how much energy they use annually, along with a reminder that they can switch. Knowing average consumption improves the accuracy of comparison sites. However, these statements have taken a variety of forms, and are often included on the back of bills, where they can go unnoticed.

Political commitments

In September 2011 the then Secretary of State for Energy Chris Huhne announced greater powers for the regulator Ofgem, and that:

> The Government and energy suppliers have agreed in principle to ensure consumers know if their supplier has cheaper tariffs. Suppliers have agreed in principle to signpost consumers to cheaper deals information this winter, and we intend that by next year more bespoke information will be displayed on the bill itself. [33]
>
> Early in 2012 Labour announced a policy of requiring energy companies to give their cheapest tariffs to over-75s.[34] During an Opposition Day debate in May 2012 on the cost of living, the Shadow Energy spokesperson Caroline Flint outlined Labour's plans. Replying, the Secretary of State for Energy Ed Davey said:[35]
>
> Last month, my right hon. Friend the Deputy Prime Minister announced the deal that we secured working with the six big energy companies to give customers a guaranteed offer of the best tariff. From the autumn, suppliers will contact consumers annually to tell them which is the best tariff for their household, and if consumers call energy companies, they will have to offer them the best tariff.

The undertaking to legislate

During Prime Minister's Questions on 17 October 2012, the Prime Minister said:[36]

> *Chris Williamson (Derby North) (Lab)*: At the Prime Minister's energy summit last year, he promised faithfully that he would take action to help people reduce their energy bills. Will he tell the House and the country: how is it going?
>
> *The Prime Minister*: We have encouraged people to switch, which is one of the best ways to get energy bills down. I can announce, which I am sure the hon. Gentleman will welcome, that we will be

33 DECC press release 11/076 *More teeth for Ofgem, more rights for energy consumers* 20 September 2011
34 Financial Times 10 January 2012, *Labour calls for over-75s to get best energy tariffs*
35 HC Deb 16 May 2012 c563
36 HC Deb 17 October 2012 c316

> legislating so that energy companies have to give the lowest tariff to their customers—something that Labour did not do in 13 years, even though the Leader of the Labour party could have done it because he had the job.

As outlined above, the Government had already announced that energy companies had agreed in principle to let their customers know if 'cheaper deals' on tariffs were available.[37] The commitment to legislate was new.

In response to an Urgent Question on 18 October 2012, the Minister of State for Energy, John Hayes, confirmed that this new commitment "to help energy consumers to get the best deal" would be fulfilled through the then forthcoming *Energy Bill 2012.*[38]

As well as Ofgem's own powers as regulator, the Secretary of State is already able to modify the conditions of supply licences to ensure that a company gives domestic customers *information* about one or more of the company's lowest tariffs, under the *Energy Act 2011*. This may include savings to be made, where to find further information and how to switch.[39]

The Prime Minister's and Government's moves prompted speculation in the media that 'clumsy regulation' might adversely affect competition, and cause a 'levelling up' of prices.[40]

The Minister for Energy declined to confirm whether the intention was to legislate specifically to put all customers on the lowest tariff, and said this was a "complicated area".[41]

Ofgem's 2011 *retail market review* (RMR)

Behind the scenes, Ofgem worked to follow up its *Energy Supply Probe* findings though a consultation process. It published its final proposals on 21 June 2013, after what it termed "two years extensive research".

Its 2011 *Retail Market Review (RMR) domestic proposals document* had initially proposed, among other measures such as 'four core tariffs', that Ofgem would set a standard standing charge so suppliers would compete on a single unit rate for each standard tariff.[42]

In this way suppliers would be able to change only the unit price, making comparisons easier.[43] In response, several of the 'Big 6' energy companies undertook voluntarily to reduce their numbers of tariffs.[44]

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37 See former Secretary of State for Energy Chris Huhne's announcement 20 September 2011, DECC press release 11/076, and HC Deb 16 May 2012 c563, and below for more detail

38 HC Deb 18 October 2012 c487

39 See the House of Commons Library Research Paper on the Energy Bill 2011, pp44-45

40 See for instance the *Guardian* 18 October 2012 "Energy tariff plans under pressure" *Telegraph* 18 October 2012 "Energy policy 'shambles' as David Cameron and Ed Davey outline opposing plans" *Financial Times* 21 November 2012 Energy Bill puts low rates in doubt p4

41 HC Deb 18 October 2012 c487 and c496

42 Ofgem, 1 December 2011 *The retail market review: Domestic proposals*

43 Ofgem press notice 14 October 2011 *Radical reform for a simpler, more competitive energy market* f

44 See for instance Consumer Focus *Simpler tariffs*

But in October 2012, two days after the Prime Minister's announcement on legislating, Ofgem issued a press release saying that the Big 6 initiatives did not go far enough, and announcing a further consultation. Consumer Focus thought that trying to present all suppliers' tariffs in one comparison table was unrealistic.[45]

In its *Retail Market Review Updated domestic proposals document* of October 2012, Ofgem said the responses felt that a uniform national standing charge might "harm particular groups of customers". It would prevent suppliers from reflecting their fixed costs in the standing charge and result in low or zero standing charge offers (which benefit low volume users) being removed. With the removal of the proposed fixed standing charge Ofgem felt it could no longer "deliver an at a glance comparison of tariffs across the market", either.[46]

Ofgem proposed in October 2012 to:

- limit each supplier to 'four core tariffs' (in each of several categories,
- have all tariffs expressed as a standing charge and single unit price, and
- have an "Easy-to-use Tariff Comparison Rate" (TCR).[47]

The 'four core tariffs' and the TCR remain essentially the final proposals, even though concern has been expressed about the usefulness of a TCR. The final document which went to statutory consultation in June 2013 acknowledged the difficulties:

Some concern was voiced in responses as to how effective the TCR would be as a comparison tool and whether it could be misleading for low use consumers. Some respondents advocated a "single unit price" with a zero or regulated standing charge, which we had consulted on previously. We remain of the view that the TCR is the best way of presenting the different elements of the tariff and associated discounts in a single figure to prompt consumers to engage and seek further information.[48]

Ofgem also set out when the provisions will be brought in as follows:

August 2013 - Fairer treatment

From 26 August 2013 suppliers are obliged to abide by our new standards of conduct to ensure suppliers treat you fairly and honestly.

This includes requirements such as:

- Suppliers and their reps must be honest, transparent and professional in all of their dealings with you.
- They must embed fair treatment of consumers at all levels of

[45] Consumer Focus response to Ofgem retail market review, February 2012
[46] Ofgem *The Retail Market Review – Updated domestic proposals* October 2012
[47] Ofgem press release 19 October 2012 Ofgem publishes plans to deliver a simpler, clearer, and fairer energy market for consumers
[48] Ofgem, *The Retail Market Review – Statutory consultation on the RMR domestic proposals* 20 June 2013

their organisation.

- They will have to be easily contactable, and act promptly and courteously to put things right.

October 2013 - Consumer protection rules

- From 23 October 2013 new rules have been in place, which, amongst other things:
    - Provide better protections for consumers on fixed term contracts
    - Ensure consumers are not on poor value 'dead tariffs'

December 2013 - Simpler choices

From 31 December 2013 the number and complexity of tariffs will be reduced. This will make comparing tariffs easier and less time consuming. Once you have decided on meter type and how you want to pay, you will face no more than four different core tariff offers for electricity, and four for gas. Complex tiered tariffs will be banned, so all tariffs will be simpler. In addition, the discounts suppliers apply to energy tariffs will be simplified.

March 2014 - Clearer information

From 31 March 2014 our new rules will ensure consumers are regularly provided with information about the cheapest tariff for them with their current supplier. They will also receive clear and helpful information about their current tariff and energy usage.

June 2014 – Migration of "dead tariff" consumers

By 30 June 2014 any consumers who are on old, expensive, evergreen tariffs that are no longer open to new customers (so-called 'dead tariffs') will be switched to their supplier's cheapest variable rate. If the dead tariff is still cheaper than the standard tariff, you will not automatically be moved off it.

Suppliers will have to annually check after this to ensure any customers who remain on a dead tariff are not paying more than the supplier's cheapest variable rate. The first of these checks will have to happen by 30th June 2015.[49]

[49] Ofgem RMR webpage as of 6 July 2015

Annex 1: CMA E*nergy Market Investigation*: Initial Issues

The CMA set out its initial review of the main issues as it saw them shortly after the date of the reference by Ofgem.

Following the gathering of a large volume of written evidence, site visits and the first round of hearings involving the main parties and relevant third parties, the CMA issued an Updated Issues Statement on 18 February 2015.[50]

The CMA's main approach to investigating the energy markets has been to propose five *Theories of Harm*. These are set out in Box 3 below.

Box 3: CMA Theories of Harm

- Theory of harm 1: the market rules and regulatory framework distort competition and lead to inefficiencies in wholesale electricity markets.
- Theory of harm 2: market power in electricity generation leads to higher prices.
- Theory of harm 3a: opaque prices and low liquidity in wholesale electricity markets distort competition in retail and generation.
- Theory of harm 3b: vertically integrated electricity companies act to harm the competitive position of non-integrated firms to the detriment of the consumer, either by increasing the costs of non-integrated energy suppliers or reducing the sales of non-integrated generating companies.
- Theory of harm 4: energy suppliers face weak incentives to compete on price and non-price factors in retail markets, due in particular to inactive customers, supplier behaviour and/or regulatory interventions.
- Theory of harm 5: the broader regulatory framework, including the current system of code governance, acts as a barrier to pro-competitive innovation and change.

In its *Updated Issues Statement*, the CMA reached an initial view on each of the theories of harm it identified.

In the *provisional findings* the CMA provides firmer conclusions subject to final consultations before its final report.

The following sets out the initial views under each theory of harm.

Theory of harm 1: the market rules and regulatory framework distort competition and lead to inefficiencies in wholesale electricity markets

> We have [ ] identified a number of areas where our initial view is that the market rules and regulatory framework could potentially distort competition and lead to inefficiencies in wholesale electricity markets. Most notably, at this stage, we consider that:
>
> - there may be a risk of the imbalance price reforms overcompensating generators, given potential interactions with the Capacity Market;

50 The considerable volume of written evidence and notes of Hearings can be found on the dedicated CMA website for the *Energy Market Investigation*.

- the absence of locational pricing of constraints and losses may distort competition; and
- there may be a risk that a lack of competition in the CfD allocation mechanism may mean that CfDs are not allocated to the most efficient projects or at least cost to energy consumers.

Theory of harm 2: market power in electricity generation leads to higher prices.

> On the basis of the evidence we have reviewed and the analysis we have conducted to date, it does not appear to us likely, overall, that firms have the ability and incentive to increase profits by withdrawing capacity in generation, through the exercise of either unilateral market power (UMP) or coordinated market power.

On the wholesale gas market the CMA said

> Wholesale gas markets were not covered by a theory of harm in our issues statement, on the basis that the wholesale gas market in Great Britain did not appear to possess the potentially harmful features that have been identified in wholesale electricity. We have conducted a more detailed assessment of this question, and this overall conclusion has not changed.

Theory of harm 3a: opaque prices and low liquidity in wholesale electricity markets distort competition in retail and generation

> The lack of liquidity in less widely traded products may impose some degree of increased risk on market participants, and therefore we think it is appropriate that Ofgem continues to monitor and attempt to improve it.
>
> However, based on the evidence we have reviewed to date, current levels of liquidity appear to be sufficient to allow independent suppliers and generators to trade and hedge in the same way as the Six Large Energy Firms. There-fore, our initial view is that liquidity does not seem to be distorting competition or acting as a barrier to entry or expansion.

Theory of harm 3b: vertically integrated electricity companies act to harm the competitive position of non-integrated firms to the detriment of the consumer, either by increasing the costs of non-integrated energy suppliers or reducing the sales of non-integrated generating companies.

> Taken together, our initial view at this stage is that it is unlikely that a vertically integrated firm has the ability and incentive to engage in customer or input foreclosure.

Theory of harm 4: energy suppliers face weak incentives to compete on price and non-price factors in retail markets, due in particular to inactive customers, supplier behaviour and/or regulatory interventions.

Ofgem's concerns about retail markets were one of the key reasons for making the market investigation reference. In the reference document, Ofgem identified weak customer response, incumbency advantages, and tacit coordination as features (among others) of GB retail energy markets that may be having a harmful effect on competition. [51]

[51] Ofgem *Decision to make a market investigation reference in respect of the supply and acquisition of energy in Great Britain* 26 June 2014

> This is the most complex section and at this stage there are less firm conclusions with the promise of further analysis.
>
> There are around 27 million domestic electricity customers and 23 million domestic gas customers. Where customers use both electricity and gas, they often take both fuels from the same supplier – 19 million customers currently purchase their energy in this way.Tariffs take a variety of different forms: SVTs are the most common type of tariff currently, followed by fixed-rate tariffs which can vary in term. The SVTs have no end dates whereas the fixed-rate tariffs do have specified end dates.
>
> Between 50% and 90% of the customers of the Six Large Energy Firms are currently on the SVT. In the analysis that follows, we sometimes compare the SVT with all other tariffs combined, which we call 'non-standard tariffs'.[52]

The CMA said:

> Our initial view is that the history of liberalisation and regulatory decisions have had a strong influence on the nature and strength of competition between the Six Large Energy Firms. The evidence we have reviewed appears to suggest that in recent years there have been weaker competitive pressures on the SVT than on non-standard tariffs.

The CMA looked at 'inactive customers', ie those who had not switched suppliers and, based on their analysis, found that:

> We analysed the gains from switching over the period Quarter 1 2012 to Quarter 2 2014. We found that during this period, over 95% of the dual fuel domestic customers of the Six Large Energy Firms could save by switching tariff and/or supplier and that the average saving for these customers was between *£158 and £234 a year* (depending on the supplier).

In looking at why customers did not switch the CMA initially concluded that SVT customers have, in recent years, paid higher prices than those on non-standard tariffs. The CMA said "we are particularly interested in understanding which domestic customers are on the SVT and the potential barriers to engagement they may face."

The CMA's initial analysis of the survey evidence suggested that, relative to customers on fixed-price tariffs, customers on the SVT:

- are less likely to have considered switching, shopped around, switched provider or switched tariff with an existing provider;
- are less educated, less well-off, more likely to describe themselves as struggling financially, less likely to own their own home, less likely to have internet access, more likely to be disabled or a single parent; and
- more likely to be with an ex-incumbent supplier and to think switching is a hassle, that there are no real differences between suppliers and that something may go wrong if they switch.

[52] CMA *Energy Market Investigation: Updated Issues Statement* 18 February 2015

The CMA looked at the performance of Price Comparison Websites (PCW) and was awaiting further evidence before coming to a conclusion.

This was before the critical conclusions of the Inquiry by the Energy and Climate Change Committee which said:

> Switching must be made easier in order to engage consumers in the energy market and helping to foster competition amongst suppliers and drive down energy bills. However, recent reports of unscrupulous practices amongst some energy price comparison websites have damaged consumer trust both in the websites themselves and in the switching process more generally.
>
> We recognise that the criticisms contained in this report do not apply across all price comparison websites. We hope that the recent debate on how price comparison websites operate will provide all sites-good and bad-with an opportunity to take stock of their operations and strive for greater transparency. Some of these websites need to do much more to live up to the claim that they are consumer champions.
>
> As an immediate and essential first step towards rebuilding confidence, any consumers who have been encouraged to switch to tariffs that may not have been the cheapest or most appropriate for their needs should be compensated. We urge the price comparison websites to put in place a straightforward process for consumers to seek compensation.[53]

The CMA looked at the behaviour of suppliers and in particular whether they exercised 'Universal Market Power' (UMP); the CMA wanted to conduct further analysis but said:

> Elements of the evidence that we have reviewed to date appear to us at this stage to be consistent with the hypothesis that the Six Large Energy Firms have UMP over their SVT customers.

53 Energy and Climate Change Committee *Protecting consumers: Making energy price comparison websites transparent* 24 February 2015

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