Promoting choice and value for all gas and electricity customers

Energy Supply Probe – proposed retail market remedies

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Target Audience: Energy suppliers and generators, consumers, consumer organisations and representatives, academics and other interested parties.

Overview:

In February 2008, Ofgem launched the Energy Supply Probe, a study of the state of the energy supply markets in Great Britain. We published our Initial Findings Report in October 2008. This identified a number of important areas where competition could work more effectively – and proposed a range of remedies to address the issues.

Consultation on our findings and proposed remedies closed in December 2008. In the light of responses received, we set out here a package of proposals to promote competition in the retail energy supply market. We invite comments on these proposals by the end of May.

We will seek agreement on this package of proposals, modified as appropriate in the light of comments received from stakeholders, with a view to bringing forward licence changes by the summer. In order to benefit consumers as soon as possible, our aim is to implement the package in the autumn – in time for next winter. If agreement with suppliers is not forthcoming on an acceptable package of reforms on this timescale, we will decide whether to refer the market to the Competition Commission for investigation.

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Context

Ofgem's principal objective is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition. In keeping with this objective, we launched a study of the state of GB energy supply markets ('the Probe') in February 2008. In October 2008, we set out our initial findings on the operation of the GB retail energy markets and set out for consultation a package of measures to tackle the issues raised. This document outlines the remedies that we have developed to address the flaws in the retail energy market. They complement our separate proposals to outlaw unfair price discrimination.

Associated Documents

- Energy Supply Markets Probe - Call for Evidence (30/08), 27 March 2008
- Energy Supply Probe - Initial Findings Report (140/08), 6 October 2008
- Addressing unfair price differentials (01/09), 8 January 2009
- Open letter on 65 day notice period for unilateral contract variations, 20 February 2009
- Quarterly Wholesale/Retail Price Report – February 2009 (15/09), 2 March 2009
- Addressing undue discrimination – final proposals (42/09), 15 April 2009
- Ofgem Consumer First Panel: Research Findings from the Second Events – Billing Information and Price Metric (March 2009), Opinion Leader, 15 April 2009

The above documents are available via the Ofgem website at the following location:

http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Pages/Energysupplyprobe.aspx

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Summary

In October 2008, Ofgem set out the initial findings of its investigation into the operation of the GB retail energy markets. This found that the fundamental structures of a competitive market are in place, and the transition to effective competitive markets is well advanced and continuing. Our investigation did, however, identify a number of important areas where consumers are not yet benefiting fully from the competitive market and vulnerable consumer groups are disproportionately affected.

In responding to the concerns raised, we remain convinced that consumers benefit most from a vibrant competitive market. The package of measures we propose is designed to improve the functioning of the market for all consumers, particularly vulnerable households and small businesses. The key objectives of the package are to:

- improve the quality and accessibility of the information available to consumers so that they can make well-informed decisions about their energy supply; and
- empower more consumers to engage effectively in the market.

We also propose to seek greater transparency of the activities of the major supply and generation businesses principally to give consumers and firms confidence that the market is competitive and fair. A summary of these measures is set out overleaf.

As part of this package, suppliers will be expected to deal fairly with customers at all times and behave in a way that helps customers to engage effectively with the competitive market. We spell out a set of new, overarching standards of conduct that suppliers will be expected to meet. These broad standards will complement our other proposals and will remind suppliers of what customers expect of them.

Over time, we would expect these remedies to make competition in the retail energy markets work more effectively for all consumers and to bring significant benefits to many consumers. However, this will not happen overnight. Meanwhile, we do not believe that competitive pressures alone will protect all consumers from potential detriment caused by undue discrimination in suppliers' product offerings. Ofgem has a statutory duty to protect consumers, with particular regard to the interests of vulnerable consumers. It is therefore appropriate to introduce a licence condition explicitly prohibiting undue discrimination. This will apply for a limited period – to allow time for the package of retail remedies to take effect. The details of these proposed new licence requirements are set out in a separate document published for consultation today.

We welcome comments on these proposals by the end of May. We will engage key stakeholders during that period and, subject to the results of our consultation, we will seek agreement with suppliers on the proposed package of reforms. If supplier agreement on an acceptable package of reforms is not forthcoming, we will consider making a market investigation reference to the Competition Commission.

The proposed retail remedies package

We propose that suppliers active in the domestic market should:

- Improve the information they give to their customers by: stating on each bill the name of the customer's tariff and their annual consumption; and sending each customer an annual statement.

- Reduce confusion surrounding their tariffs and improve how tariff information is presented.

- Provide customers with confidence about the switching process by introducing a guarantee that changing supplier will be a safe process.

- Help vulnerable and indebted consumers who are currently blocked from changing suppliers due to outstanding debts, including by:
    - permitting them to switch where a debt is the result of supplier error;
    - increasing the threshold below which PPM customers are free to switch supplier and transfer debt to the new supplier, from £100 to £200; and
    - permitting them to switch where they would avoid the retrospective application of an adverse unilateral contract variation by switching.

- When attempting to sell on the doorstep:
    - provide the consumer prior to any sale with a written quotation and, in certain circumstances, a comparison with the consumer's current deal;
    - provide additional information at the point of sale; and
    - establish the basis for the customer's agreement after the sale.

We propose the following measures for the small business sector:

- to introduce a range of informational remedies aimed at improving small business consumers' ability to engage with the energy market;
- to eliminate suppliers' ability to automatically roll small business consumers onto a fixed-term contract when their existing contract expires;
- to work with Consumer Focus to expand their accreditation scheme to cover switching sites operating in the business-to-business market; and
- that third party intermediaries develop a more robust code of practice to establish best practice in the sector.

We propose the following actions to improve market transparency:

- to collect financial information from the Big 6 that will show the profits, underlying costs and revenues separately for their supply and generation businesses, for gas and electricity consumers and for domestic and non-domestic consumers; and to publish industry-wide information on an annual basis; and
- to increase the depth of the monthly information that suppliers provide to us on switching and customer numbers.

1. Introduction

1.1. We launched our study of the state of GB energy supply markets (the Probe) in February 2008.[1] It focused on the functioning of competition in the electricity and gas markets for both domestic and small and medium enterprise (SME) consumers and considered wholesale energy markets only to the extent that this is necessary to assess whether retail markets are working effectively.

1.2. We published our Initial Findings Report in October 2008, which reported on the operation of the GB retail energy market. The report set out for consultation a package of measures to tackle the range of issues identified. These proposed remedies were grouped into five key action areas:

- Action 1: promoting more active customer engagement;
- Action 2: helping consumers make well-informed choices;
- Action 3: reducing barriers to entry and expansion;
- Action 4: helping small business consumers; and
- Action 5: addressing concerns over unfair price differentials.

1.3. Consultation on the Initial Findings Report closed in December 2008. A summary of responses is contained in Appendix 2 and copies of non-confidential responses can be found on the Ofgem website. We also held discussions with a wide range of stakeholders to help develop our thinking on specific measures.

1.4. The present consultation document sets out our package of proposals to address the problems identified in relation to retail energy supply markets and how we intend to deliver these measures.

Other Probe workstreams

1.5. The problems identified by the Probe in relation to undue discrimination are being tackled on a separate timetable. We consulted on these proposals in January 2009[2] and announced on 23 March 2009 that we are minded to introduce two new standard licence conditions: to require suppliers to achieve cost reflectivity between payment methods; and to prohibit undue discrimination.[3]

1.6. The prohibition on undue discrimination is intended to operate only for a limited period to allow the package of retail remedies proposed in the present document to take effect and therefore the licence condition includes a sunset clause. We are publishing alongside the present document a consultation on our proposed draft licence conditions and draft guidelines that set out how Ofgem intends to interpret and enforce those new licence conditions.[4]

[1] The Terms of Reference for the Probe can be found in Appendix 4.
[2] *Addressing unfair price differentials* (01/09), 8 January 2009.
[3] *Regulator's new rules pack a punch for customers* (R 14), 23 March 2009.
[4] *Addressing undue discrimination – final proposals* (42/09), 15 April 2009.

1.7. While the Probe focused on the operation of retail energy supply markets, the Initial Findings Report also identified concerns about both the level of liquidity in the wholesale electricity markets and about the functioning of the wholesale market itself. Work on these issues is also being progressed separately from the remedies outlined in the present document:

- We have been investigating the underlying causes of low wholesale market liquidity – and considering ways to promote an increase in liquidity. We intend to publish a discussion document shortly setting out our analysis to date and suggesting possible ways forward.
- We published a consultation document on 30 March, which considered three broad approaches to tackling the issue of undue exploitation of market power in the GB wholesale electricity sector.[5] The deadline for responses is 8 May 2009. Following consideration of responses, Ofgem will look to issue its final proposals document on its preferred approach to tackling market power concerns by the end of the summer.

1.8. The Initial Findings Report undertook to review regulatory obligations that could act as an undue deterrent to new entry or an obstacle to small supplier growth. Some concern was expressed by stakeholders over the burden on smaller suppliers of compliance with regulatory and market rules and obligations.[6] These concerns are largely captured by existing initiatives, including our ongoing Code Governance Review.[7] Those that are not, including for example credit requirements on small suppliers, will need to be considered further in due course. We will continue to strive, wherever possible, to remove undue burdens on small suppliers and new entrants.

The structure of this document

1.9. Chapter two proposes a set of overarching standards of conduct that we expect suppliers to adhere to in their dealings with consumers. These will be underpinned, where necessary, by more detailed licence conditions and by industry self regulation.

1.10. The following four chapters explore the issues identified in our Initial Findings Report and set out our proposals to address them:

- Chapter three sets out proposals to promote more active consumer engagement, particularly through improving the quality of information provided to customers;
- Chapter four sets out proposals to help consumers make well-informed choices, particularly in response to doorstep selling;
- Chapter five sets out proposals to help small business consumers; and
- Chapter six sets out proposals to promote greater market transparency and facilitate enhanced market monitoring.

1.11. Finally, chapter seven sets out the next steps for the Probe.

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[5] *Addressing Market Power Concerns in the Electricity Wholesale Sector - Initial Policy Proposals* (30/09), 30 March 2009.
[6] Ofgem hosted a meeting of small suppliers on 10 December 2008. The meeting discussed the potential remedies arising from the Energy Supply Probe regarding barriers to entry and expansion.
[7] Further details on this project are available on our website.

2. Standards of conduct for suppliers in the retail market

This chapter explores the common underlying aims of the measures suggested in the Initial Findings Report. We then set out our proposal to introduce a set of overarching standards of conduct that we expect suppliers to adhere to in their dealings with consumers. These standards will be underpinned, where necessary, by more detailed licence conditions and by industry self regulation. We set out our proposals in the remainder of this document.

2.1. Ofgem's principal objective established in statute is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition. As outlined in chapter one, we are keen to further improve the functioning of the retail energy supply markets and believe that more effective competition is in the best interests of consumers.

2.2. There are a number of special features of energy supply that make regulation both challenging and of particular importance. These features have the potential to create barriers to consumer engagement with consequences to consumers that result from a less than fully effective competitive market:

- In practical terms, both electricity and gas are non-discretionary products. For nearly all consumers energy supply is an essential service.
- The cost of electricity and gas is a significant part of household budgets, particularly for those on low incomes and the fuel poor.[8]
- Electricity and gas are delivered continuously to households, usually under "evergreen" arrangements, and are not consumed directly but rather through a variety of appliances.
- The pricing structures for electricity and gas supply and the range of choices available are complex. Consumers often do not understand the units in which they buy energy (kWh) and identifying the best offer for an individual household is complicated – particularly with limited price comparison services, which in any case many cannot access or do not trust.
- Consumer confidence in energy companies is relatively low.[9]

2.3. It has long been recognised that regulation by Ofgem must take full account of these special features of the electricity and gas market, and place particular responsibility on suppliers to ensure the market functions well – before, during and after the customer acquisition process.

2.4. The level of consumer participation in retail energy markets in Great Britain is amongst the highest of any such markets in the EU and throughout the world. The annual domestic switching rate of around 20 per cent also compares well with other retail services in Great Britain, such as telecommunications, insurance products, mortgages and personal current accounts. However, our Initial Findings Report identified a number of areas of concern that act as barriers to some consumers'

[8] Fuel poverty is defined as when a household needs to spend more than 10 per cent of their household income on all domestic fuel use including appliances to heat their home to an adequate level of warmth.
[9] The MORI report for BERR on the *2008 Customer Conditions Survey* found energy to be ranked lowest out of the 50 sectors surveyed in terms of consumer confidence.

ability to make effective choices. Our research found that just over half of domestic consumers who switch do so reactively in response to a salesperson. As many as one third of switchers subsequently do not achieve a price reduction. Moreover, both domestic and small non-domestic consumers reported difficulty in comparing tariff offerings, including in particular because of the complexity of offerings and a lack of knowledge as to their current tariff and consumption level. In addition, our research found that some consumers were not aware of the savings they could make simply by changing their payment type or by switching to another tariff with their existing supplier.

2.5. In order to address these concerns the Initial Findings Report proposed a number of potential remedies aimed at improving the availability and transparency of information for consumers, including:

- improving customer information;
- addressing tariff confusion;
- promoting confidence in price comparison and switching sites; and
- strengthening the rules governing suppliers' sales and marketing activities.

2.6. Most of these proposals have two common underlying aims: to encourage suppliers to treat consumers fairly at each stage in the acquisition process (from marketing, through to sales, switching and post sales) and to ensure that consumers have full access to understandable information on the alternatives available to them. These commonalities and the interactions between the remedies being considered have become increasingly evident as our work in these areas has progressed.

2.7. The energy supply market is also characterised by ongoing innovation and change. Initiatives such as the roll out of smart metering and the increased interest in the offerings of energy service companies clearly suggest that this trend is set to continue. This makes effective regulation in this area particularly challenging and makes it difficult to future proof any new licence requirements. We found that issues causing consumer detriment can arise, and have arisen, which are not covered by existing detailed licence conditions but breach the intention behind those conditions.[10]

2.8. To tackle these problems, we propose to introduce a common set of overarching standards of conduct that we expect suppliers to take all reasonable steps to adhere to in their dealings with consumers. These will be underpinned, where necessary, by more detailed licence conditions relating to both domestic and small non-domestic customers, and by industry self regulation. Our proposals are set out in the remainder of this document.

2.9. The main attractions of adopting such an approach include the fact that these overarching standards can span the full range of supplier interactions with consumers and can adapt to product innovation. In addition, we believe that standards will encourage compliance with the "spirit" of regulation and a real focus

[10] For example, recent concerns around direct debit increases is one area where there was no licence condition to enforce.

on consumers, rather than just the "letter" of more detailed requirements without consumers really benefitting.[11]

The overarching standards

2.10. In order to help consumers engage effectively in the market, we consider that standards of conduct should focus on achieving the following outcomes for consumers:

- consumers should be able to compare products easily;
- consumers should be confident that when dealing with suppliers, they will be treated fairly and provided with full, clear and accurate information at all stages in the supplier-consumer relationship (before, during and after sales);
- consumers should be confident that suppliers will take their circumstances into account and provide information on the most appropriate products for them; and
- consumers should not face unreasonable barriers to switching between products or suppliers.

2.11. Our aim has been to develop a set of standards that are sufficiently broad to capture the full range of supplier interactions with consumers (before, during and after sales) and to apply to future developments in the sector. The standards are intended to encourage suppliers to focus on outcomes for consumers whilst being pro-competitive. They are aimed primarily at ensuring consumers are able to engage effectively with the market and are protected, as far as possible, from making poor decisions when considering switching tariff and/or supplier. We envisage that the standards will apply to all domestic customers and to small business customers (as defined in chapter five).

2.12. The proposed overarching standards of conduct are outlined below.

Standards that we expect suppliers to take all reasonable steps to adhere to in their dealings with domestic and small business consumers:

- *You must not sell a customer a product or service that he or she does not fully understand or that is inappropriate for their needs and circumstances;*
- *You must not change anything about a customer's product or service without clearly explaining to him or her why;*
- *You must not prevent a customer from switching product or supplier without good reason;*
- *You must not offer products that are unnecessarily complex or confusing; and*
- *You must make it easy for customers to contact you and act promptly and courteously to put things right when you make a mistake.*

[11] For example, by putting required information in small font or in a non-prominent position on customer communications.

Status of the overarching standards

2.13. We believe that a set of overarching standards along these lines would be helpful not only in making clear what consumers expect from suppliers but also in driving improved performance by suppliers. They provide a useful articulation of how we interpret the consumer interest in the context of retail supply markets. However, a key question is what status these standards should have. Simply presenting standards without attaching more concrete status to them may reduce the likelihood that they will have a real and permanent impact. We have therefore looked at two broad options for how to embed them on a more enduring and effective basis.

- Option 1 – the standards could be inserted as **a preamble to relevant licence conditions**. This would then provide a context, and an aid, to the interpretation of the conditions that followed. The standards would not be directly enforceable themselves but rather, when considering breaches of the specific associated licence conditions, we could have regard to the standards to help determine the seriousness of the breach and hence the action that we should take.
- Option 2 – the standards could be set out as **overall aims** and used to drive an increased focus on outcomes for consumers. By including these standards in our guidelines and referring regularly to them in our decisions we would provide them with status as our articulation of the consumer interest.

2.14. Under either option more detailed modifications to current licences would be needed in order to address specific improvements to consumer information arrangements. These modifications are outlined in subsequent chapters. We prefer option 1. Having the standards as a preamble to relevant licence conditions would strike an appropriate balance in giving them sufficient status while not creating unnecessary regulatory uncertainty. Further work will be needed once we have settled on the detailed remedies that we plan to pursue in order to establish the appropriate package of licence conditions to which this approach should be applied.

2.15. We have also considered but rejected at this stage the idea of incorporating these standards as directly-enforceable licence conditions. While this would provide a more flexible enforcement tool, able to cope with changes in suppliers' practices and technological innovation, we are concerned about the regulatory uncertainty that could result from creating such broad obligations. For clarity, and to facilitate enforcement, we believe that more specific obligations are currently preferable. However, this remains an option we will consider when we review the effectiveness of the overall package of remedies in due course.

2.16. The overarching standards of conduct have a similar objective to that incorporated in broader consumer protection legislation, including the Unfair Terms in Consumer Contracts Regulations 1999 and the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs). However, the standards we propose focus on particular aspects that are of concern to energy consumers. Given that there is limited case law on the CPRs, there is an advantage in setting out what we see as the key issues. We would expect to build further on this in the guidance we are committed to produce on the CPRs. However, as we do not have any power to impose financial penalties for breaches of consumer protection legislation, there is still a need for specific licence conditions in key areas as proposed in this document.

3. Promoting more effective consumer engagement

This chapter considers the issues that may prevent domestic consumers from engaging effectively with energy suppliers and with the energy market more broadly. Such issues could stem from a lack of relevant information, a lack of confidence in suppliers or market intermediaries or from other reasons. In addition, the range of tariff options in the market can cause confusion and may deter consumers from engaging. We set out a range of proposals to promote more effective consumer engagement.

We propose that suppliers active in the domestic market should:

- Improve the information they give to their customers by:
  - stating the full and exact name of each tariff used by the customer, along with information on their annual consumption, on each bill; and
  - sending each customer an annual statement, which would include the tariff name, the customer's consumption and a reminder of their right to switch.
- Reduce confusion surrounding their tariffs and improve how tariff information is presented.
- Provide customers with confidence about the process of switching supplier by introducing a guarantee that changing supplier will be a safe process.
- Help vulnerable and indebted consumers who may, at present, be blocked from changing suppliers due to outstanding debts by:
  - offering the customer advice when the objection is first raised;
  - permitting them to switch where a debt is the result of supplier error;
  - increasing the threshold below which prepayment meter customers are free to switch supplier and transfer debt to the new supplier, from £100 to £200;
  - permitting them to switch where they would avoid the retrospective application of an adverse unilateral contract variation by switching; and
  - improving the transparency and customer awareness of debt build-up and debt blocking arrangements.

Improving consumer information

The problem

3.1. Research conducted as part of the Probe showed that around 37 per cent of all consumers are reactive and typically only switch in response to a call from a salesperson.[12] A further 46 per cent are inactive and have either never switched or have done so only once and indicate that they are unlikely to switch again in the future.

[12] Ipsos-MORI Ofgem Customer Engagement Survey July 2008.

3.2. Those who switch reactively have tended not to make the optimal decision as they rarely compare deals from more than one supplier. More worryingly, we are aware that only around half (48%) of those who switch as a result of direct sales have saved money by doing so.

3.3. While we are keen to improve the quality of decisions made by those switching reactively. We are also anxious to encourage more people to switch at their own initiative. We are also aware that many customers currently do not want to switch. However, there may be a better deal available from their existing supplier. Our research shows that during 2007 only 8 per cent of people changed their tariff whilst remaining with their supplier. Nearly a quarter of customers (23%) pay by standard credit and these customers in particular are likely to be able to achieve a better deal even without changing supplier.

3.4. Based on our research, we believe that the following specific issues are part of the cause of the problems outlined above:

- many consumers find their bills difficult to understand;
- many consumers do not know the name of the tariff that they are on; their yearly consumption level; and/or their yearly expenditure. This makes it difficult to obtain accurate price comparisons from switching sites or direct from suppliers;
- consumers often do not know if they are a low, medium or high user. This makes it difficult for them to make switching decisions when using switching sites, or other comparison tools, that use such categories;
- many consumers do not know that they could save by paying by direct debit and/or managing their account on-line; and
- many consumers do not realise that they might be able to achieve a better deal with their own supplier.

3.5. Whilst nearly all consumers know that they can switch supplier, doing so is rarely a priority and the majority of consumers need a catalyst in order to consider switching.

3.6. The Initial Findings Report proposed that suppliers should be required to implement a number of improvements in the quantity and quality of information provided to their customers. It was suggested that this could include: clearer information on customer bills; an annual statement for each customer; and an annual prompt to all customers regarding their ability to switch supplier.

New evidence

3.7. Responses to the Initial Findings Report showed strong support for clearer information on bills, although suppliers were generally less supportive than consumer groups. Consumer groups were generally in support of an annual statement or prompt, although some wanted to see further research conducted.

3.8. We have subsequently tested proposals for making improvements to customer information from suppliers with our Consumer Panel[13] and with groups of vulnerable consumers.[14] We sought reaction to the inclusion of a range of information on bills and/or an annual statement and what actions consumers felt they might take as a result.

3.9. We also held a roundtable discussion in January 2009 with suppliers and consumer groups to discuss the proposals for improvements to customer information. This showed strong support from all for the addition of tariff name and annual consumption on bills. Views on an annual statement were mixed and suppliers were against providing a prompt giving information to their customers that they could switch supplier.

3.10. In their responses to our consultation, consumer groups also raised the issue of suppliers having 65 working days in which to notify their customers of adverse unilateral contract variations such as price increases. We subsequently issued an open letter seeking views as to whether we should consider changing the licence condition that relates to this.[15] Options explored included: reverting to the previous period of 10 days; requiring advance notice of any adverse changes; and a number of suggestions regarding good practice when notifying customers of changes.

Our proposals

3.11. Our aim is to increase the number of people engaging with the energy market and able to make well-informed decisions by:

- ensuring that consumers have readily accessible information that will make switching decisions easier;
- increasing awareness of the tariff options open to them (and associated costs e.g. the higher cost of standard credit versus direct debit, where applicable); and
- encouraging consumers to consider switching tariff and/or supplier (where it is in their interests to do so).

3.12. Improved consumer information is only part of our approach. The proposals outlined above should be seen alongside, in particular, the proposed changes to strengthen the regulation of sales and marketing activities, and to address tariff confusion. In considering consumer information remedies we have had regard to the Better Regulation Executive and National Consumer Council's five tests as a guide for policy-makers on when to use information.[16]

[13] Ofgem's Consumer Panel consists of 100 everyday domestic customers, recruited from five locations across Great Britain. The Panel meets at least three times a year to discuss key issues impacting on their participation in the energy market, as well as other key issues related to energy.
[14] Conducted by Opinion Leader during February 2009.
[15] Open letter on 65 day notice period for unilateral contract variations, 20 February 2009.
[16] *Warning: too much information can harm – a* report by the Better Regulation Executive and the National Consumer Council, November 2007

Billing information

3.13. We propose that on each bill each supplier is required to state in a clear and prominent manner:

- the full and exact name of the customer's tariff (e.g. to include the version of the tariff if there is more than one and the end date if it is a fixed-term product); and
- the customer's consumption for the last 12 months in pounds per year and kWh. Where this information is based on estimated usage this needs to be made clear. We will explore further the scope for this information to be supplied where a customer has been with the supplier for less than 12 months.

3.14. Where customers do not receive a regular bill (such as some PPM customers) then this information must be provided at least once a year in the form of an annual statement.

3.15. Overly complex bills may impede, rather than aid, consumer understanding. We are therefore limiting the additions we propose to those which research tells us that customers would most value and help them make better decisions regarding their energy supply.

3.16. By having both the exact tariff name and annual consumption on each bill, consumers will be more readily able accurately to use switching sites and compare deals from all suppliers. At present, research suggests that consumers may give up on using switching sites because they do not have the necessary information to make accurate comparisons. Consumers will also be able to use the additional information to make more informed decisions on switching in response to a direct sales approach.

3.17. Issues relating to sales and marketing activities are discussed in chapter four. Under the requirements of the Electricity and Gas (Billing) Regulations 2008[17], suppliers have already begun to provide comparisons between consumption in the current billing period compared with the previous year. Providing consumption for the previous year fits well with these requirements.

3.18. Our research shows that annual consumption given in pounds as well as units is most meaningful to consumers. We believe that expressing consumption in this way is therefore more likely to result in customers choosing to engage with the market and being able to do so effectively.

[17] These Billing Regulations modified the standard conditions of the Electricity supply licence by introducing standard licence condition 31A which, amongst other things, requires electricity suppliers to compare the domestic customer's electricity consumption for the period covered by the bill or statement of account with the customer's consumption for the corresponding period in the previous year (commonly referred to as "historic information").

Annual statement

3.19. The annual statement to each customer would comprise the following information:

- the exact tariff name;
- consumption over the last 12 months in pounds and kWhs;
- projected annual cost if the customer uses the same kWh over the next 12 months;
- details of any premium or discount that currently applies to the customer for: the means of payment or a 'premium' product such as green, fixed term or capped product; and
- a reminder that customers can switch supplier if they wish to do so and that this will not affect their supply.

3.20. The reason for requiring both regular bills and the annual statement to contain some of the same information is that consumers may be more likely to locate a bill if they are considering switching, while the annual statement will serve as an additional prompt to consumers to consider switching.

3.21. A statement of such information should be sent whenever the supplier notifies the customer of an adverse unilateral change in contract terms (such as a price rise) under the standard licence condition 23. The statement must include a very clear and prominent message notifying the consumer that they can switch and, in doing so, avoid the retrospective application of the contract variation. If no such unilateral notification is required during a consecutive 12 month period then the supplier must send an annual statement.

3.22. We have considered carefully whether to propose a requirement for suppliers to remind their customers that they are able to switch supplier. Whilst nearly all consumers (96%) say they know that they can switch supplier, a reminder may stimulate people into investigating whether other tariffs on the market might better suit their needs. There is already such a requirement when suppliers notify customers of an adverse unilateral contract variation and this will be strengthened by giving it equal weight to other information provided at that time and drawing customers' attention to the effect of the contract variation.

65 day notice period for unilateral contract variations

3.23. Following feedback from consumer groups in response to our Initial Findings Report, we reviewed the licence condition that currently allows suppliers a 65 working day period in which they can retrospectively apply contract variations. In an open letter, we asked for feedback on the following options:

- retain standard licence condition 23 as is with a 65 working day notice period;
- revert to the 10 day notice period that was in the previous licence;
- requiring advance notice of any unilateral contract variations; and
- change to any other notice period that might address the issues identified.

3.24. We also sought views on a proposal that that we would work with suppliers and the Energy Retail Association (ERA) to develop commonly applied good practice that could include:

- explanation of how any price increase will be apportioned in the quarter in which it applies;
- proactive encouragement to customers to provide a meter reading when a price notification is received; and
- the right to terminate the contract and switch supplier to be given in clear and understandable language and placed in a prominent position.

3.25. We also asked for other elements of good practice that could be considered.

3.26. In their responses, suppliers expressed concern that advance notification would inhibit their ability to respond to market movements. All used the current notice period to phase notification and manage calls into their customer service centre more effectively. Responses from consumers and consumer groups supported advance notification of price increases. Many supplier and consumer respondents supported our proposal to develop good practice for notifying price increases.

3.27. We are continuing to explore with suppliers whether the contractual provisions around notification of price changes are consistent with consumer legislation including the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). We hope to have a clearer view on this by the end of June. At this stage, based on the responses to our open letter, we propose to retain the 65 working day period but to strengthen the notification of the right to switch and avoid the application of the retrospective change with a statement as described above. This will make it very clear to the customer the effect of the change, including what the price increase is likely to cost them over the following twelve months if their usage remains as it was for the previous twelve months. We expect that this will act as a catalyst for people to consider switching as well as making the effect of the contract change clearer. We also propose to remove the right of suppliers to debt block anyone who chooses to switch supplier in response to an adverse unilateral contract variation.

3.28. Best practice is, in our view, to notify customers of an increase as soon as possible; 65 working days is a backstop. Under the existing licence condition suppliers can notify customers in advance and we would like to reiterate this point.

3.29. There is scope to develop best practice to ensure that suppliers comply with the spirit as well as the letter of the licence condition. We shall work with suppliers and the ERA to initiate a review of the way in which increases are communicated. We expect this to cover (among other issues) the clarity and prominence given to termination rights, the apportionment of increases, and the provision of meter readings. We will consider the best way to mitigate the effects of unexpected debt resulting from retrospective notification of price increases. If these discussions are unsuccessful we will consider whether to include explicit obligations within the licence condition.

Addressing tariff confusion

The problem

3.30. Many consumers are confused when comparing tariffs for a number of reasons including:

- lack of knowledge as to what tariff they were currently on;
- the wide range of different tariff structures on offer (e.g. with or without a standing charge, single or multiple unit charge tiers);
- the large number of tariffs to choose from, some of which are very similar; and
- the difficulty of understanding price comparison information.

3.31. In the Initial Findings Report, we proposed working with consumer groups and suppliers to explore the development of an easy-to-understand price metric to enable domestic consumers to compare prices quickly and easily. We suggested that this metric could be made available to customers on their bills and in any annual statements, and would be used by suppliers in all price quotations.

New evidence

3.32. In their responses to our Initial Findings Report, consumer groups generally supported the development of price metrics. They also asked whether a simplified overall tariff structure could be explored. In contrast, suppliers expressed concerns that such metrics could limit their ability to innovate and could limit consumer choice. They were clear that any metrics would need to take into account the diversity of products on the market.

3.33. Feedback from our Consumer Panel and other research indicates that an effective price metric would need to provide for comparisons that:

- are as simple as possible: easy to understand and relatively quick to make;
- are able to cope with differing consumption levels (and/or minimise the risk of inaccurate comparisons if a consumer is unsure of their consumption level);
- use units which a consumer can understand; and
- avoid an excessive number of tariff variants.

3.34. We developed a variety of possible templates for consideration which we tested with our Consumer Panel. Two of the examples discussed are shown below. The first presents information in a similar format to that used in the energywatch factsheets, and builds on an example provided by RWE npower.

Illustrative example 1

Energy Company 1	Payment Type: Standard Credit		
Region X	**Electricity Only**		
	Low User 1,650 kWh	Medium User 3,300 kWh	High User 4,950 kWh
	£190	£445	£790

Illustrative example 2

Region X	Energy Company 1 Super Tariff
p/kWh	14.5
Standing charge	10p/day

3.35. In general, members of the Consumer Panel found price metrics easier to understand when they did not have to do more calculations than necessary. Some were confused over units such as kilowatt hours (kWh), where they frequently did not have a clear concept of how much power a kWh represents in terms of appliance useage. Displaying the cost in pounds per year was popular, although there was some support for tariffs that include a standing charge, particularly from older people.

3.36. The Consumer Panel groups often favoured seeing a range of consumption levels as shown in example 1, i.e. prices for low, medium and high consumption. However, research also highlighted the need to consider carefully how these groupings should be presented (for example, to avoid confusion with implicit energy efficiency messages implied by the terms "low", "medium" and "high").

3.37. Research also highlighted that when using example 1, consumers often place themselves in the wrong consumption category thereby selecting a tariff that is inappropriate for them.

Our proposals

3.38. We propose "£ per year" as the basic metric for price comparisons. As noted in the earlier section on improving consumer information, we propose that "£ per year" be used as a key indicator for customers in both billing information and in annual statements. In chapter four, we propose that information given to consumers on the doorstep is also expressed using the "£ per year" format. By using this indicator consistently across different information sources consumers should have a clear and easily understandable basis upon which to make effective comparisons between tariffs.

3.39. We are conscious of the fact that, in some cases, relatively accurate consumption data may not be available to consumers when they are making price comparisons. Similarly, consumers may make comparisons "on paper" rather than online, or with the help of a sales agent with access to calculators that can estimate an annual bill based on bespoke consumption data. For these reasons, we consider that having an additional, simplified form of tariff presentation (which can take at least some account of consumption levels) will provide a useful "back up" for consumers, and could be used by organisations such as Consumer Focus.

3.40. While there are advantages and disadvantages to the illustrative examples we provide above, our preference for a "£ per year" metric suggests that something similar to example one above is likely to be the most useful comparison tool for consumers. However, this format is not without its drawbacks. For example, since the tariff bands would only provide a rough approximation of a customer's actual consumption level, they would only ever provide an approximate guide as to the most appropriate tariff for an individual consumer. For this reason, we consider it very important that both suppliers and consumers use the most accurate tariff information available to them when comparing tariffs. We also acknowledge that this format may be complicated for certain groups of consumers to understand (for example, particularly for dual fuel consumers where the table would be more complex).

Other options considered

3.41. We also considered options to simplify the array of tariffs that consumers have to compare when selecting the tariff that is most appropriate for them. This included:

- preventing firms from offering tariffs with certain, more complex, structures;
- restricting the number of tariffs suppliers can offer; or
- having core benchmark tariffs upon which comparisons could be focussed.

3.42. These approaches raise a number of concerns. First, they could limit suppliers' ability to respond to their customers' preferences by offering innovative tariffs. This could be a particular issue when smart meters are installed widely in homes and there is a greater focus on offerings that promote energy efficiency and integrated energy services. Second, any initiatives that limit suppliers' flexibility to structure tariffs could jeopardise within-tariff cost reflectivity. Third, we would need to consider carefully the proportionality of such an approach.

3.43. We consider that the overarching standards of conduct set out in chapter two should provide an effective route to help tackle consumer concerns regarding tariff complexity, in particular the proposed overarching standard that suppliers "must not offer products that are unnecessarily complex or confusing".

3.44. For these reasons, we are not minded to to pursue options that would involve direct restrictions on the number or structure of tariffs.

Simplifying the switching process

The problem

3.45. The Initial Findings Report proposed to consider whether there is scope to improve the supplier switching process, in order to identify possible simplifications to the domestic customer switching experience.

3.46. The Probe found that 58 per cent of non-switchers worry that things will go wrong if they switch suppliers, yet 77 per cent of those who have switched are either very or fairly satisfied with the experience. A further 7 per cent said they were neither satisfied nor dissatisfied (which suggests they did not have any problems). Only 9 per cent of switchers were dissatisfied in some way. There is no evidence as to the precise nature or cause of the dissatisfaction.

3.47. Our working assumption, based in part on the results of the qualitative research undertaken for the Probe, is that the concerns of the non-switchers are with problems they may have to face and solve when switching (e.g. billing, setting up accounts and having to deal with suppliers) rather than the speed of the process or more technical considerations (e.g. ensuring that gas and electricity transfer on the same day).

3.48. Smart metering offers a real opportunity to achieve major improvements to the switching process through the use of an actual opening and closing meter reading and ready access to metering technical details direct from the meter. However, the widespread introduction of smart metering and the related systems needed to secure these benefits are likely to take some years. The industry's present customer switching processes are complex, with separate processes operating in gas and electricity. Consultation respondents broadly considered that there was little to be gained from significant changes to these systems and processes in advance of the widespread introduction of smart metering.

3.49. In any case, the central industry systems are only partially to blame for errors. Performance varies considerably between suppliers and it is reasonable to conclude that suppliers' own systems, their business practices and the performance of their staff are a major contributor to whether or not customers enjoy a smooth transfer or experience problems.

New evidence

3.50. The Big 6 suppliers, through ERA, have signalled that they recognise the issues raised in the Probe concerning the switching process and intend to take the initiative in seeking to address them. They consider that there are steps that they could take to build consumer confidence in switching energy supplier.

3.51. The ERA have also indicated that they are preparing a joint approach to introduce information for consumers on how to switch supplier. They also propose to introduce a 'peace of mind guarantee' that they will support consumers through the switching process and resolve any problems that occur in a timely and effective manner. A similar approach has been taken by the high street banks who operate the Banking Code, which, among other things, commits banks to enable consumers to switch current accounts safely.

3.52. The ERA have placed information on their website[18] and are considering what further steps they will take to develop the commitment and promote it to consumers. The ERA have stated that the will be discussing their proposals with Consumer Focus and that suppliers who are not members of the ERA are welcome to join the scheme.

[18] On the *Switching Supplier* pages.

Our proposals

3.53. We propose to encourage the Big 6 suppliers to introduce a customer switching guarantee as soon as possible. We consider that there could be immediate benefits if suppliers made a clear and robust commitment to consumers that switching supplier is a safe process. We would also wish to see non-ERA suppliers support such an approach.

3.54. The Big 6 suppliers have indicated that they are willing to take the initiative on this and to introduce measures quickly. Whilst we do not have clear sight yet of their final proposals, they have assured us that they intend to liaise with Consumer Focus and to launch their initiative with adequate publicity, given the objective of increasing consumer confidence in the process of switching supplier.

Other options considered

3.55. In advance of the widespread roll-out of smart metering, we do not consider that there is a case for a radical overhaul of the existing systems and processes that support customer switching. Where parties identify specific issues with the existing arrangements, these can be dealt with through the established modification processes to the existing industry codes and agreements.

Reviewing debt blocking arrangements

The problem

3.56. The Initial Findings Report highlighted specific concerns about the ability of vulnerable consumers to engage effectively with the retail energy supply market and benefit from the best deals available. The current debt blocking arrangements were identified as one of these barriers to effective participation. Many vulnerable consumers, particularly those on low incomes, are in debt and therefore usually unable to switch supplier until the debt is cleared.

3.57. Under their licences, suppliers can block domestic customers from switching when an amount remains outstanding on their account, 28 days after it has been formally demanded.[19] The Debt Assignment Protocol (DAP) allows PPM customers with debt below £100 to switch supplier and transfer their debt to their new supplier. Since its introduction in 2004, the arrangements under the Protocol has been used very rarely by consumers.

3.58. Debt blocking was last examined as part of Ofgem's Supply Licence Review in 2007. This concluded that the existing debt blocking provisions should be retained but that they would be kept under review to ensure that they are operating in the best interests of consumers. A new licence condition was also introduced to prohibit suppliers from blocking token meter customers where the debt had accrued as a result of the delayed re-calibration of the meter.

[19] This is allowed for Standard Licence Condition 14 of the electricity and gas licences, available on our electronic public register.

3.59. The Initial Findings Report proposed to reconsider the current automatic right to block switching by customers who are in debt as it is currently being applied by suppliers.

New evidence

3.60. Our proposal to review the current debt blocking arrangements was welcomed and supported by the consumer groups who responded to our consultation.

3.61. On the other hand, the Big 6 suppliers opposed any removal or dilution of their automatic right to debt block, arguing that this would substantially increase their risk of bad debt. They highlighted a number of consequences: increased use of credit checks and requests for security deposits; the installation of PPMs when customers switched (to secure the debt up front); and more aggressive debt collection activity. The increased costs of these actions would be borne by customers (reflected in higher tariffs) and the increased use of credit checks and security deposits would make it much more difficult for all customers to switch but in particular those with a poor credit history.

3.62. At the end of 2008, 1.3 million electricity customers (4.8%) and 800,000 gas customers (3.7%) were repaying a debt.[20] One million of these were PPM customers. In practice, the number of customers who could potentially be blocked for debt is likely to be much higher given how debt is defined for the purposes of Ofgem reporting. Historically, we have seen little change over time in the number of customers repaying energy debt. However, the amount of debt owed per customer has increased significantly in real terms in recent years for both electricity and gas. In 2008, around 60 per cent of electricity and gas customers repaying a debt owed under £100.

3.63. In February 2008, we sought views from suppliers and consumer groups on possible changes to the debt blocking arrangements. We also asked suppliers to provide further data to clarify the scale of debt blocking as a barrier to switching and to help us assess the feasibility of these possible changes.[21]

3.64. Suppliers' data suggests that the number of domestic customer transfers being objected to for debt reasons has increased over recent years. In 2008, debt blocking affected around 6 per cent of all domestic customer transfers.[22] Objections on the grounds of debt account for the vast majority.

[20] For these purposes, "debt" refers to customers who either have their PPM set to collect a debt or customers who are on a debt payment arrangement scheduled to last longer than 91 days. A debt payment arrangement is a specific arrangement to repay outstanding arrears. The only direct debit customers to be included would be those who have specifically joined the scheme to repay a debt.
[21] Responses to our consultation on proposed changes to debt blocking arrangements are summarised in Appendix 5.
[22] These figures exclude, where possible, multiple registrations and small non-domestic customers. Data for the total number of transfers completed in December 2008 is not yet available.

3.65. We also asked suppliers to provide information on how many debt blocked customers subsequently went on to switch supplier. Four of the Big 6 suppliers were able to provide this information. For 2006-08, the data suggests that, on average per year, around 38 per cent of debt-blocked customers subsequently repaid their debt and switched supplier. Two suppliers reported that the vast majority of customers who repay and switch do so within three months of being blocked. Another supplier reported from a sampling exercise that 25 per cent of debt-blocked customers repaid their debt within six weeks of the objection.

3.66. Of those customers who are debt blocked, a substantial percentage appear subsequently to repay their debt and switch shortly thereafter. For the vast majority of customers, debt blocking is therefore not a major barrier to switching. However, vulnerable, low-income customers may well be disproportionately affected by debt blocking and their situation may well worsen given the current economic climate and rising energy debt levels.

Our proposals

3.67. We do not believe it is appropriate to implement major changes to the debt blocking arrangements. However, there may be scope in the future for further, more substantial change better to support market engagement for vulnerable and indebted customers. We recognise the risks associated with removal of the right to debt block and note the new evidence that many customers do succeed ultimately in switching. Nevertheless, there are incremental improvements that could be made now to the current regime that would facilitate greater engagement in the market by vulnerable and indebted customers. We propose the following changes to the current debt blocking arrangements:

- when suppliers object to a domestic transfer for debt, they must offer debt, tariff and energy efficiency advice to customers at the point of objection;
- removal of the ability to debt block where the debt has accrued, or is a result of, supplier error;
- increase the DAP threshold to £200 to test whether customers with high levels of debt (which would be harder to repay in the short term) might be more inclined to make use of the DAP; and
- prevent suppliers from debt blocking where a customer would avoid the retrospective application of an adverse unilateral contract variation by switching (in accordance with standard licence condition 23).

3.68. In addition, through our debt and disconnection work we will be encouraging suppliers to introduce the following measures to improve the transparency and customer awareness of debt build-up and the debt blocking arrangements:

- customers' bills and statements should indicate clearly any outstanding amounts or debts accrued, even where this has not been formally demanded;
- customers should be made aware that any debt on their account may prevent them from switching supplier;
- PPM customers should be advised (at least once a year) of the DAP arrangements, including clear information about the process, eligibility criteria and customers' continuing obligation to repay the debt (this information could be combined with the annual statement);

- where the blocked customer may be able to move to a lower tariff, the objection notification letter to the customer should include clear information about how to obtain advice on other tariff and debt management options and energy efficiency advice; and
- clear information about suppliers' right to object and debt block (as well as any rights or obligations of the customer) should be incorporated into all domestic contractual terms and conditions.

3.69. In this review, we have sought to alleviate the extent to which the current arrangements present a barrier to market engagement, although recognising the potential detriment to consumers, associated with an increase in suppliers' exposure to bad debt. We will monitor the impact of these changes to help inform our thinking on the scope for further proposals. In particular, we wish to explore further with stakeholders, whether the DAP could be opened up to customers using other payment methods, and the feasibility of recasting the existing licence condition to replace the current 'automatic' element of the objection right with a more conditional provision. Any future changes could potentially dovetail with our ongoing monitoring and review work on suppliers' debt and disconnection practices.

Other options considered

3.70. We also considered a number of other options as part of our consultation but concluded that the risks of more aggressive action by suppliers to protect their revenues if the right to debt block were curtailed or removed are sufficient to reject these options:

- remove the automatic right to debt block for specified consumer groups;
- remove the right to debt block for all customers with debts below a fixed threshold;
- open up the DAP to all customers; and
- remove the automatic right to debt block.

Promoting confidence in price comparison and switching sites

The problem

3.71. The Probe found that energy switching figures compared favourably with other retail services in the UK. Nevertheless, only a third (36%) switched as a result of making their own enquiries rather than in response to being approached by a salesperson and only 30 per cent considered deals offered by more than one supplier. Price comparison websites are the main source of information for consumers who investigate deals from more than one supplier before switching yet only 18 per cent of people who switched during the preceding year consulted a price comparison website. This in part reflects that some consumers do not have access to the internet. It also reflects a lack of confidence that the sites will give unbiased information. Indeed, our research suggests that some consumers believe that switching sites are biased by the receipt of commission from suppliers. This perception can be reinforced by the experience (either directly or by word of mouth) of different switching sites giving different results.

3.72. Consumer Focus runs an accreditation scheme for switching sites through the Confidence Code[23] designed to make consumers more confident about the independence and impartiality of switching sites. Our research has highlighted that awareness of the Code is not widespread and it therefore does not provide peace of mind to most potential users. While the Code was generally well accepted by consumers as a sign of credibility, impartiality and an indicator of quality, both suppliers and site providers have raised concerns about the timeliness and variety of information being updated. Such factors clearly influence consumers' confidence in the sites.

3.73. The use of comparison and switching sites is an important part of consumer engagement with the market. The Initial Findings Report proposed that a programme to promote confidence in price comparison and switching sites was needed. We also recommended that switching sites extend their scope, in particular to enable prepayment switching and switching among low income and vulnerable groups who do not have internet access.

New evidence

3.74. Respondents to our consultation broadly supported the proposal to promote confidence in comparison sites and recognised the benefits of extending their scope to low income and vulnerable consumers. In particular, a number of respondents felt that the sites provided a very useful service, which should be promoted more widely. One supplier suggested the creation of a flagship 'not for profit' price comparison site, possibly under the auspices of Consumer Focus.

3.75. The Fuel Poverty Summit, chaired by the Ofgem Chairman in April 2008, resulted in a number of actions to promote switching sites to vulnerable consumers. These actions included commitments from switching sites to promote their telephone services; and from switching sites and suppliers to enable more PPM switching and to include specific support for vulnerable consumers. Responses from suppliers and price comparison providers reflected their commitment to these actions. Four suppliers said that they now provide the option for PPM switching and many price comparison services do offer a telephone service that they promote widely in their advertising.

3.76. One consumer group felt that suppliers should be required to sign up to a set of standards that oblige them to represent their offers fairly on comparison sites. Another said that short notice of new tariffs and frequently changing tariffs were detrimental to consumer confidence.

3.77. There was concern among switching sites and Consumer Focus about suppliers' practices in some areas. For example, one supplier's tariffs can take up several of the top positions in a price comparison. This may affect consumer confidence in the switching site (leading them to think sites are biased toward suppliers who pay higher commission) and limits the choice that consumers think is available.

[23] *The Consumer Focus Confidence Code*

3.78. Other problems raised include suppliers sometimes withdrawing the ability of consumers to switch to the best deals through switching sites. Instead, in some cases, consumers are being directed to the supplier site where they may be shown different deals. Two suppliers argued that ultimately it was for them to decide whether to advertise on switching sites and incur the resultant cost.

3.79. Suppliers and switching sites expressed concerns about the lack of profile given to the Confidence Code and feedback from our Consumer Panel shows that accreditation is not widely recognised.

3.80. Consumer Focus hosted a seminar on the Confidence Code on 17 March 2009. The numerous suppliers and switching sites attending discussed a range of issues relating to the Code, including:

- provision of tariff data by suppliers to service providers;
- the presentation of information;
- vulnerable consumers; and
- extending the Code.

3.81. Consumer Focus put forward a range of possible options for improving the functioning of the Code and fostering consumer confidence in switching sites. In the light of responses received, we understand that Consumer Focus plan to consult on proposals in June, with a view to taking decisions on changes to the Code in August.

3.82. The seminar also considered ways to raise awareness of the Code and improve confidence in switching sites. Suggestions included: making the Code more prominent and accessible on the Consumer Focus website; raising the profile of the Code with Government agencies (e.g. trading standards) and other consumer groups (e.g. Citizens Advice); and for Consumer Focus to emphasise switching sites when commenting publicly on, for example, price changes.

Our proposals

3.83. The Confidence Code itself is managed by Consumer Focus. Ofgem itself does not regulate price comparison or switching sites. Nevertheless, we will work with Consumer Focus and the industry to promote confidence in price comparison and switching sites.

3.84. There is significant value in having the Confidence Code in promoting consumer confidence in switching sites. However, there is scope to increase awareness of the Code and the guarantees that accreditation brings. We therefore welcome Consumer Focus' commitment to its further promotion.

3.85. Other changes we have proposed in relation to the information provided by suppliers to their customers so that all bills have the exact name of the customer's tariff and their annual consumption – and the provision of annual statements – will help consumers more accurately to use switching sites and provide a basis for delivering more consistent results from the different sites. These measures should play their part in improving consumer confidence in accredited switching sites. We propose in the next chapter that suppliers signpost customers to independent sources of advice following a direct sale. This proposal should raise the profile of accredited price comparison and switching sites.

Other options considered

3.86. We have considered whether to propose requirements on suppliers regarding, for example, the way in which they provide information to switching sites. However, we are not considering this actively and are instead keen for suppliers and the site providers alongside Consumer Focus are able to resolve any issues themselves.

Raising consumer awareness

3.87. Through the package of Probe remedies, Ofgem will put in place a range of improvements to the information that consumers receive from their energy suppliers and at the point of sale. Consumers will become aware of how they can obtain better deals from suppliers through the introduction of better information on bills, annual statements, the ERA’s peace of mind guarantee, improvements to sales and marketing rules, and the overarching standards.

3.88. Consumer Focus has a role to inform and support consumer behaviour through a range of information and empowerment tools. The primary responsibility for providing intermediaries with the information they need to advise consumers also lies with Consumer Focus rather than Ofgem. We confirm our intention to work with Consumer Focus, the ERA, suppliers and intermediaries to ensure that there is a programme in place to raise customer awareness as to how they can make the most of the competitive market. This is likely to include media campaigns and ensuring that intermediaries such as the Citizens Advice, Age Concern and the Money Advice Trust have the information that they need. In particular, we will explore how these more vulnerable consumers are targeted with appropriate information, messages and advice.

3.89. The Energy Best Deal campaign being run by Citizens Advice and funded by DECC after the initial Ofgem/Citizens Advice pilot is also being evaluated. This will help Citizens Advice, potential funders and other intermediaries to decide on the continuation of this, or introduction of similar schemes.

3.90. We shall also work with the Financial Inclusion Taskforce to help them take forward some of their recommendations regarding initiatives to increase take up of direct debit as a means of payment where this is appropriate for the customer.

4. Helping consumers make well-informed choices

Whether consumers engage effectively with energy markets or engage only in response to direct sales approaches by suppliers, it is important that they are able to make well-informed decisions regarding their energy supply. This chapter considers the issues that may affect domestic consumer decision making, particularly in response to a direct sales approach. We set out our findings in this area and propose remedies to prevent misleading sales and marketing activities. Building on the measures proposed in the previous chapter to improve the quality of information provided to customers, we propose further measures to help consumers make well-informed decisions.

We propose that when attempting to sell on the doorstep suppliers must:

- provide the consumer with a written quotation;
- provide the consumer prior to any sale with a written quotation and, where appropriate, a written comparison with the consumer's current deal;
- provide additional information at the point of sale; and
- establish the basis for the customer's agreement post-sale.

We also propose to re-focus the marketing licence condition on delivering positive consumer outcomes.

Strengthening sales and marketing rules

The problem

4.1. Direct selling of gas and electricity, particularly on the doorstep, has an important impact on domestic consumers and on competition. Over half of switching takes place in response to direct sales activity, the majority of which takes place on the doorstep. Doorstep selling is also an important way in which the benefits of competition are drawn to the attention of lower income and disadvantaged groups.

4.2. The Probe revealed a number of serious issues that may lead to poor switching decisions by consumers in response to direct sales. The vast majority of consumers (85%) who changed supplier in response to direct sales did not investigate alternative deals in the market. Almost half of consumers who switched as a result of a direct sales approach did not achieve a price reduction. At the same time, 82 per cent of those who switched in response to a direct sales approach did so because the supplier that approached them claimed that they were cheaper than their current supplier.

4.3. There have also been continuing complaints about supplier behaviour on the doorstep. In recent years, we ourselves have investigated a number of suppliers, resulting in undertakings that performance would improve and, in a minority of cases, taking enforcement action resulting in a financial penalty. Most recently, an investigation into RWE npower resulted in a financial penalty of £1.8 million being imposed in January 2009.[24]

4.4. While enforcement action is available, there are certain weaknesses in the current marketing licence condition. In particular, it focuses on the issues that were the primary concern at the time of market opening, such as ensuring customers are aware that they are signing a contract and are content to do so. Current concerns are much more about whether the information consumers are given on tariffs and the savings they will make are accurate and adequate to enable well-informed decision making on the doorstep. The current licence condition also focuses on the inputs to the sales and marketing process such as training and recruitment rather than the outcomes for consumers. This leads to an asymmetry where that which is measured and regulated is not necessarily what delivers good outcomes for consumers.

4.5. The Initial Findings Report proposed strengthening the rules governing suppliers' sales and marketing activities. The expressed aim was to prevent misleading sales or marketing activity and to help consumers to make well-informed decisions in response to a direct sales approach. Options included possible obligations on suppliers to provide consumers with a written quotation and to provide a comparison with the consumer's current deal.

New evidence

Consultation responses to the Probe

4.6. In response to the Initial Findings Report, the majority of respondents acknowledged the case for strengthening the rules governing sales and marketing activity. One supplier argued that regulation in this area was already extensive and provided customers with adequate protection. Suppliers more generally stressed that care should be taken that changes do not end up adversely affecting the number of field sales. Consumer groups urged more rigorous enforcement of the rules, in particular to protect PPM customers on the basis that they are most likely to switch on the doorstep and also to switch inadvertently to a worse deal.

4.7. Respondents generally agreed that the information available to consumers needed to be more robust in order for them to make well-informed decisions in response to a direct sales approach and to prevent misleading marketing or sales activity. A number of suppliers felt that existing regulation was sufficient to protect consumers but that they would accept strengthening certain aspects as long as the outcome was not detrimental to sales activity.

4.8. Suppliers and consumer groups highlighted the importance of consumers having access to their own specific consumption data and the details of their current tariff in order to make like-for-like comparisons. As discussed above, the proposal to include

[24] Decision of GEMA, following an investigation into compliance by companies in the RWE npower group with Standard licence condition 25 of their gas and electricity supply licences, January 2009

the tariff name and annual consumption information on the bill and on annual statements should provide customers with the information they need. Where this information is not available, we encourage suppliers to think about practical options for improving the accuracy of the consumption data that they are able to use when generating quotations on the doorstep. We note that some suppliers have suggested that Estimated Annual Consumption (EAC) and Annual Quantity (AQ) values, which are ordinarily used for the purposes of estimating and settling their electricity and gas consumption in the wholesale trading arrangements, could be used to achieve this.

4.9. A wide range of respondents endorsed a requirement for written confirmation of quotes and argued that information passed on to consumers should be straightforward and transparent. One consumer group called for the key terms used by suppliers to communicate with consumers to be standardised.

4.10. One supplier suggested a 'sales fact sheet' as a means of passing on information to consumers at the point of sale, which it thought could improve credibility. This would include: advice that they should check that the product they have signed up to is best for them; a reminder that they have a cooling off period; details of where to go to obtain impartial comparison advice and information; and details of what the customer should do if they have any concerns. Two suppliers agreed that consumers should be signposted to sources of impartial comparison advice and information to help them check that they have made an appropriate decision.

4.11. Most suppliers felt that any proposals to improve sales and marketing governance would need to be considered in the light of cost and practicality, particularly in the case of a requirement to compare prices with other suppliers. Several suppliers suggested that the EnergySure Code would be a good forum in which to take forward any additional rules.[25]

4.12. In parallel with our own work Ofcom have also been looking at the problems of mis-selling in the telecommunications sector.[26] Although the specific issues in telecommunications are slightly different we note that they too are looking at a move away from requiring codes of practice based on inputs to an approach involving an outright prohibition on inappropriate sales and marketing activity.

Roundtable discussion

4.13. Ofgem hosted a roundtable with suppliers and consumer groups on 29 January 2009. The Probe recommendation to strengthen the rules governing suppliers' sales and marketing activities was discussed, and there was broad consensus on a number of measures, including:

- in quoting prices to consumers prior to a sale, these should be expressed in terms of the expected total cost for the first year;

[25] The Big 6 suppliers are all members of the Code, but some other domestic suppliers are not.
[26] *Protecting consumers from mis-selling of fixed-line telecommunication services*, Ofcom, 17 March 2009.

- materials left with consumers following a face-to-face sale should include the recommendation to the customer to check that the product is right for them and a telephone number to contact for independent advice if the customer has any concerns; and
- written "confirmation" should be provided promptly post sale to consumers who have signed a contract on the doorstep giving the expected annual cost under the contract based on the consumption information provided. However, there were mixed views on whether this should be on the doorstep or after the event.

4.14. However, there was strong resistance from suppliers at the roundtable to having to always provide a comparative quote at the doorstep. It was felt that this comparative quote would be costly and with the large range of specialised tariffs of each supplier, potentially more confusing for the consumer. Some suppliers pointed out that not all switches are made with cost savings in mind and that such a requirement might not be appropriate for some products, such as tariffs with a 'green' premium. Nevertheless, there was general acceptance that where comparative claims were made on the doorstep, these should be confirmed in writing and any assumptions made clear.

Our proposals

4.15. We propose to strengthen in a number of ways the licence requirements on suppliers in relation to their sales and marketing activity. These proposals are set out below.

Written quotation

4.16. We propose to introduce a requirement on suppliers to provide consumers with a written quotation in a clear and understandable format. There was broad agreement at the recent roundtable that this quote should be expressed in terms of the cost per year in pounds based, wherever possible, on information supplied by the consumer about their consumption level. As set out in chapter three, this is the simplest form of price metric and one which our consumer research tells us means most to consumers.

4.17. The written quote should be provided prior to any direct sale, with a record then left with the consumer. This could take the form of a handwritten quote on a proforma provided by the supplier, on which both it and the sales agent providing the quote are clearly identified. We believe that this will have the most impact on consumer decision-making and lead to better outcomes for consumers – in particular by highlighting the likely annual cost of the deal and by encouraging consideration of individual consumption.

4.18. There was broad endorsement of this option in responses to the Initial Findings Report and the roundtable. Some suppliers have in the past expressed concerns about the practicalities and costs associated with this sort of requirement. While some concerns remain there seems to be more acceptance among suppliers that written quotes would be feasible and could be achieved at a reasonable cost.

Comparison with consumers' current deal

4.19. We propose to require suppliers to provide consumers prior to a sale with a written comparison between their offer and the consumer's current deal. This requirement would apply in sets of circumstances:

- where a sales agent makes a comparative claim about the product they are offering (e.g. "we are cheaper"); or
- where the consumer is on a PPM.

4.20. Many consumers should benefit from the improved transparency this requirement would bring to the sales process, particularly for the 78 per cent of consumers whose main driver for switching is price.[27] Evidence suggests that suppliers often sell to consumers by making very specific claims to them, usually about price. Such a comparison would make clear to consumers whether they would be likely to save money by switching provider – and make it more difficult for suppliers to get away with making unsubstantiated claims. This measure would reduce the risk of consumers being misled by claims made by sales agents – and would provide a written record of claims made. As such, this should reduce instances of consumers switching inadvertently to more expensive deals. This approach would not preclude switching where the consumer's main driver is factors other than price.

4.21. PPM customers would also benefit from this measure given that our evidence suggests they are most likely to switch on the doorstep and also to switch inadvertently to a worse deal. They may also have less access to information about their current deal and to their consumption level. They are also very unlikely to be switching to a premium product such as a green or fixed price deal and we believe should always be given a quote comparing their current deal with the one they are being sold.

4.22. The practicalities of providing a comparison would depend on the circumstances and product offering. A comparison based upon the consumer's consumption would be dependent on the information (on consumption and their current tariff) being provided by the consumer at the time of the contact. Where the consumer is unable to provide their own consumption data, a suitable estimate could be used, but with the qualification that it is an estimate. The accuracy of the information presented will be dependent on the accuracy of the information provided by the consumer. We will explore with suppliers the practicalities of implementing this requirement.

Additional information at the point of sale

4.23. We propose to introduce a requirement on suppliers to provide consumers with a number of key pieces of information at the point of sale, building on the requirements already set out in the licence condition and the EnergySure Code.[28] All

[27] Ipsos-MORI survey, March 2008
[28] For example, standard licence condition 23.1 requires that suppliers must take all reasonable steps to bring the principal terms of a contract to the attention of a customer before it enters into that contract.

suppliers will be required to review their point of sale material and ensure that it provides consumers with the following information:

- an explanation of what happens next now that the consumer has signed a contract. This could include details of the 'peace of mind guarantee' being developed by the industry in relation to the switching process;
- a reminder for the consumer to check that the product they have signed up to is appropriate for them, including details of where to find impartial advice and information[29];
- a reminder of the relevant cooling-off period;[30] and
- details of what the consumer should do if they have any concerns, Including Consumer Direct's phone number.

4.24. Many consumers would benefit from additional fair, balanced and contextualised information, which would be useful irrespective of their level of knowledge about the energy market.

4.25. At the roundtable meeting, suppliers confirmed that they were broadly comfortable with this proposal. Many already provide a certain amount of this information at the point of sale, which could relatively easily be modified to add to existing materials.

Post-sale follow-up

4.26. The marketing licence condition currently requires suppliers to carry out post-sale follow-ups. This is aimed at alerting consumers to their cancellation rights and seeking limited confirmation that they are content with the sale. Strengthening this requirement – to require positive confirmation – would be consistent with the best practice now being adopted by a number of suppliers.

4.27. Such verifications could be extended to cover the additional requirements on suppliers regarding provision of information to consumers at the point of sale set out earlier. There is also scope to broaden the nature of management oversight expected beyond simply matters raised in direct response to the post-sale verification.

4.28. Suppliers have highlighted that there are different ways of achieving the post-sale verification and have suggested that any such requirement should take the form of a general principle, thereby leaving suppliers to decide how best to comply. We agree that this may be a more effective way of ensuring compliance in this area.

Recasting the marketing licence condition

4.29. We propose that the current marketing licence condition (standard licence condition 25) is redrafted and modified. At this stage, it is envisioned that the additional requirements proposed earlier take the form of licence requirements. As

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[29] For example, the Consumer Focus website and the Consumer Direct phone number.
[30] Regulation 7(2) of the Doorstep Selling Regulations already requires that written notice of the right to cancel the contract must be "given at the time the contract is made".

well as including these requirements, we propose to redraft the licence condition in order to:

- focus more on the outcomes for consumers that we want to achieve, rather than detailed provisions of 'inputs' – this includes provisions to make clear that persistent instances of mis-selling to customers by a supplier will constitute a breach, as opposed to inadequate management arrangements; and
- ensure that there are no regulatory 'gaps' in the condition – for example to include more effective post-sale follow up as noted above.

4.30. Our aim in strengthening the rules governing sales and marketing activities with the emphasis on outcomes for consumers is to:

- improve consumers' ability to make well-informed decisions in response to direct sales approaches from suppliers – and so reduce instances of consumers switching inadvertently to worse deals; and thereby to increase competitive pressure on suppliers;
- improve the regulatory framework in order to allow more effective enforcement of the rules governing sales and marketing activity; and
- build consumer confidence in the competitive market, given that for many consumers doorstep selling is their only engagement in the market.

4.31. In proposing to strengthen the regulation of sales and marketing activities, we are aware of a potential trade-off between:

- providing consumers with more and better information on which to make decisions about their energy supply; and
- placing additional responsibilities on suppliers that could lead to a reduced level of doorstep selling activity and, hence, less consumers switching to a better deal.

4.32. We recognise that doorstep sales is a channel through which significant numbers of consumers, particularly vulnerable consumers, engage with the competitive market. However, it is only a positive aspect of the market when consumers are saving money by switching, or otherwise obtaining a deal that is more suitable than their current one. We believe that it is the quality of switching activity – and not just the quantity – that is important in terms of the competitive pressure created by consumers.

4.33. Some of the proposals set out in the previous chapter should complement these measures. Better information provided to customers by suppliers should equip customers to make more well-informed decisions on the doorstep – particularly by making them more aware of their existing deal, consumption and other options available to them.

Other options considered

Industry self-regulation

4.34. We have considered the extent to which self-regulation by the industry is able to address the concerns identified in relation to sales and marketing activities. The

ERA's EnergySure Code mirrors many of the requirements of the marketing licence condition and, in some areas, exceeds them. However, it too is focussed on inputs and there is no onus placed on suppliers to consider whether the arrangements they have in place will actually prevent mis-selling or the provision of inaccurate quotations. Moreover, the enforcement arrangements within the Code are limited and this is an aspect that the OFT have highlighted as important in considering how far it is appropriate to rely on self regulation in particular markets.[31] Since it was introduced in 2003, there has been a significant decrease in the number of complaints about doorstep sales practices in the energy sector. However, while the volume of complaints has fallen, concerns about poor switching decisions by consumers on the doorstep remain and recent cases and allegations of mis-selling have been well publicised. We are therefore of the view that the Code alone cannot be relied upon in its current form adequately to regulate suppliers' sales and marketing activity.

Consumer protection legislation

4.35. The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) were introduced in May 2008 and apply to all sectors, including energy supply. The CPRs introduce general prohibitions on unfair commercial practices.[32] They remain untested, with only limited case law, making it more challenging for us to bring cases under them. The Enterprise Act 2002 allows the Authority to impose an Enforcement Order or seek undertakings from companies in relation to the CPRs. However, it does not allow the Authority to impose a financial penalty on a company. This is thought to be a considerable weakness in relying on the CPRs exclusively to regulate sales and marketing activities in the energy sector. Furthermore, the CPRs do not impose any proactive obligations to encourage more informed decision making.

4.36. We therefore believe that sector-specific obligations are required to protect consumers in relation to sales and marketing activities. We will continue to consider the potential use of the Regulations and will produce guidance on the application of the CPRs in the energy sector. We are in the process of drawing up some draft guidance on this.

4.37. In the medium term, it is possible that more effective industry self regulation, coupled with well established consumer protection legislation, may be sufficient to protect consumers in the context of the competitive market. We therefore propose to review any new licence condition on a regular basis.

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[31] See for example *Business Leadership in Consumer Protection* OFT 1058, March 2009.

[32] The Regulations prohibit businesses from misleading consumers through specified acts or omissions; or using aggressive commercial practices such as selling techniques using harassment, coercion or undue influence. The Regulations also expressly provide for vulnerable consumers who are often the target of unscrupulous traders. Ofgem is able to take enforcement action in relation to the Regulations as a designated enforcer under Part 8 of the Enterprise Act 2002.

5. Helping small business consumers

Many of the issues identified in the domestic market can also affect small businesses. These consumers often behave like domestic consumers, but are not subject to equivalent levels of protection. We have concerns about the provision, clarity and transparency of contract terms and conditions, and by how the objections process can be used to block customers from switching supplier. There are also issues around the quality of product and tariff information and the role of third party intermediaries. In this chapter, we explore these issues and set out a package of measures to address them.

We propose:

- to introduce a range of informational remedies aimed at improving small business consumers' ability to engage with suppliers and the energy market;
- to eliminate suppliers' ability automatically to roll small business consumers on to a fixed-term contract when their existing contract expires;
- to work with Consumer Focus towards expanding their accreditation scheme for switching sites to cover sites operating in the business-to-business market; and
- that third party intermediaries work with the Office of Fair Trading to develop a more robust code of practice to establish best practice among a wide membership.

The problem

5.1. Historically, non-domestic consumers have been presumed to be capable of engaging effectively with the energy market and negotiating prices and service options with energy suppliers, as they do for other business arrangements. This was, in part, a legacy of a gradual opening of the energy market. This view was questioned most recently by the Probe.

5.2. A higher level of protection for domestic consumers is consistent with general consumer protection legislation; in particular, it accords with the underlying premise that domestic consumers face a disparity in bargaining power, knowledge and sophistication when dealing with businesses.

5.3. The Initial Findings Report highlighted that many non-domestic consumers, particularly smaller businesses, are not able to engage effectively with the energy markets. Indeed, our research shows that some small businesses closely resemble domestic consumers in their attitudes towards energy procurement and their ability to influence supplier behaviour and product offerings. However, they are not afforded the same levels of protection as domestic consumers due to variances in licence conditions. This results in the small business market being subject to different dynamics than the domestic market.

5.4. The Probe identified the following concerns impacting small business consumers:

- The amount of information small business customers receive about contract terms and conditions can vary significantly depending on both the supplier and the sales channel. Full terms and conditions are not always provided in writing; this is particularly the case where contracts are agreed over the phone. When contracts are available, consumers often find they are not presented in a clear format and some exclude information on important terms and conditions.
- Small business consumers may not have the ability to negotiate - and influence - terms and conditions available from their supplier, and contract terms and conditions offered may not provide appropriate risk sharing between the two parties.
- Switching rates in the non-domestic market have been lower historically than in the domestic market. This is in part due to the prevalence of fixed-term contracts, but is also a result of many small business consumers finding it difficult to assess information on an increasingly complex range of offers. Compared to the domestic market, small business consumers do not have the same access to trusted, independent, unbiased online price and service comparison information. Also, very few providers serving business consumers offer self-guided, real time, switching sites.
- Third party intermediaries (TPIs) – e.g. energy brokers, agents and consultants – play a useful role in the small business market. However, we found that consumers are often unclear on how the TPIs are remunerated for their services, which suppliers they represent and the quality of information they provide.

5.5. The Initial Findings Report proposed the following measures to address the specific issues affecting the small business market:

- Increase the availability, clarity and transparency of contract terms and conditions via a requirement on suppliers to provide them clearly in writing to small business customers, including those related to switching and contract roll-over.
- Institute a code of practice to govern the objections and switching process to ensure greater uniformity in the arrangements for changing supplier and contract extension.
- An extension of the accreditation scheme for switching sites to cover those dealing with small business consumers.
- Strengthen the existing industry code of practice for TPIs with new provisions requiring them to disclose to consumers how they are remunerated and whether they provide information on all or only some suppliers.

New evidence

5.6. Respondents to the Initial Findings Report were mostly in support of the need for increased availability, clarity and transparency of contract terms and conditions. The Big 6 suppliers were mixed in their views; three suggested that the current framework is working and the current provisions are adequate, whilst the others agreed that there is room for improvement. Smaller suppliers favoured the proposal, indicating that it would aid consumer confidence, encourage switching and decrease barriers to entry into the non-domestic market.

5.7. Consumer groups voiced strong support for the introduction of cooling-off periods, which were not mentioned in the Initial Findings Report. Preliminary views from suppliers suggest that mandatory cooling-off periods within terms and conditions may be somewhat problematic for smaller suppliers, increasing costs and, hence, creating a barrier to entry.

5.8. A particular concern raised related to the practice by suppliers of automatically rolling a customer on to a new contract at the end of a fixed-term period. In these circumstances, the customer may find that they are locked into a further fixed-term contract (in some cases for a year or more) and that the supplier can enforce this through use of the objections process.

5.9. There was a general concern over the working practices and fairness of services offered by some TPIs, which had a negative bearing on consumer confidence in this sector. Responses to the Initial Findings Report clearly indicated that suppliers, consumers and consumer groups considered that there is a need for TPIs to adopt greater transparency in their dealings with small business customers, particularly in relation to how they are funded and whether the services they offer cover all of the market or only certain suppliers.

Our proposals

5.10. We propose to introduce increased regulatory protection for non-domestic consumers. In doing so, we have considered which parts of the non-domestic sector should be targeted. Evidence shows that smaller consumers, in particular, often find it difficult to engage with the energy market. We therefore propose to target our measures on this segment of the market and use the existing definition of a "micro business".[33] This definition is used to qualify consumers for protection under the Energy Supply Ombudsman scheme and the Complaint Handling Standards. Our proposals are set out below.

Increasing availability, clarity and transparency of information

5.11. We propose that suppliers provide their customers with timely, clear and understandable information regarding the terms and conditions of their contracts and their rights and responsibilities at the end of any fixed-term contract period. This would include the following elements:

- A full copy of contract terms and conditions should be provided to customers in writing each time a customer agrees a new energy contract.
- A clear summary of key terms and conditions should be provided to customers before a contract is agreed. This summary should include: information on pricing, whether the price is fixed or variable, the availability of cooling-off periods, the duration of the contract, key service provisions, rights and responsibilities around early termination and objection to transfer, what action is needed from customers

[33] A micro business is defined in Article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 as including businesses that employ fewer than ten people; or which use less than 200,000 kWh of gas per year or 55,000 kWh of electricity per year; or which have an annual turnover of less than 2 million euros.

toward the end of their contract and implications of inaction and what customers need to do if they would like to switch supplier.

- Suppliers should provide customers with advanced notification that their existing fixed-term agreement is about to expire. At this time, suppliers should also provide clear information about the actions that customers need to take to agree a new contract or switch supplier. We would expect suppliers to give a customer a minimum of one month to respond from the time they receive the letter; this will allow customers adequate time to consider their next contract. We also propose that renewal letters highlight the action a customer is expected to take.
- A timely notification should be provided to customers where an objection to transfer is raised. This should provide clear and understandable information as to the reason for the objection. The supplier should also include information on any follow-up options available to the customer that will enable the transfer to proceed.
- Once a fixed-term contract has expired, suppliers should communicate new pricing and service arrangements clearly to customers, while highlighting their rights and responsibilities (i.e. the right to agree a new fixed-term contract or move to a new supplier; and responsibility to communicate with the supplier during the notification period).

5.12. The aim of our proposals is to enable customers be in control of their contract, based on clear and timely information provided to them by their supplier. In the longer run, we believe that our proposals will result in better price and contract conditions for customers who chose to renew, and higher levels of consumer engagement with the market.

5.13. We are minded to propose a change to licences obliging all suppliers to adhere to the above measures in respect of micro-businesses. If the industry were to commit to the implementation of a self-regulatory solution, such as establishing an industry-wide code of practice, we would consider whether that approach would serve consumers better as an alternative to licence conditions. However, we would have to be persuaded that such a solution would be introduced in a timely and robust manner, and would be supported by the greater majority of suppliers.

Eliminate ability for contracts to be automatically rolled over

5.14. We propose the removal of suppliers' ability to automatically roll over fixed-term contracts. Once the initial fixed-term period ends, the customer should be free to stay with their existing supplier (and able to agree another fixed-term contract should they choose) or move to a new supplier. If a customer has not arranged a new contract at the end of their fixed-term period, suppliers would have the ability to set prices as appropriate. However, the customer would not be locked in, so would be able to agree a new contract or switch supplier at any point.

5.15. We recommend that once a fixed-term contract has expired, suppliers would need to communicate new pricing and service arrangements clearly to customers, highlighting their rights and responsibilities. More specifically, customers should be made aware that if they decide not to act at the end of their contract period, they may face higher charges than on their previous contract and/or than if they switch to another contract (with their existing or another supplier). This will protect customers from being automatically locked in to a long-term contract on unfavourable terms (including at uncompetitive rates).

5.16. Our main aim here is to address the concerns over customers being automatically locked into unfavourable long-term contracts without their consent, and thus provide higher levels of consumer confidence in, and engagement with, the retail energy market.

5.17. We propose a new licence requirement making clear the circumstances when a supplier should be permitted to object to a customer transfer after a fixed-term period is over. As outlined earlier, we recommend that this provision should apply to micro-businesses.

Accreditation scheme for non-domestic switching sites

5.18. We are keen to work with Consumer Focus towards extending its accreditation scheme (the Confidence Code) to include internet price comparison and switching sites for non-domestic consumers and will, if required, work with them to help develop this proposal. We would suggest having slightly different criteria tailored to reflect best practice in this market segment. We consider it especially important that there is a clear indication as to whether information on non-domestic comparison websites is complete and impartial.

5.19. We consider that an accreditation scheme would help to build consumer confidence in the use of these services as the small business market continues to develop, driven by an already notable consumer appetite for such tools. This view is supported by feedback from consumer representatives, which suggested consumers are more likely to use comparison sites if they are assured by a recognised and independent party such as Consumer Focus.

Strengthen code of practice for Third Party Intermediaries

5.20. Ofgem has no direct powers to regulate TPIs. However, we note there are a range of self-regulatory measures TPIs and others in the energy industry may explore to improve consumer confidence in the working practices and services offered by TPIs. We recommend that:

- TPIs seek guidance from the Office of Fair Trading (OFT) on developing the existing voluntary industry code of practice or create a new code of practice;[34]
- TPIs seek to promote the existing or a new code of practice to establish best practice among a wide membership and to build consumer confidence - in particular, by ensuring that TPIs accredited under any such code of practice are

[34] The OFT operates the Consumer Codes Approval Scheme for "approving and promoting business-to-consumer codes of practice in consultation with business and other stakeholders." Although only businesses serving domestic customers are eligible for the formal scheme and the TPIs concerned operate in a business-to-business market, we understand that the OFT would be willing offer advice on the development, implementation and operation of a code of practice on an informal basis. For details of the Consumer Codes Approval Scheme visit: http://www.oft.gov.uk/oft_at_work/consumer_initiatives/codes/quick-guide

required to explain before a customer signs any contract: (i) how they are funded, and (ii) which suppliers are covered by their brokering services; and

- customers and suppliers compare a TPI's practices prior to entering into a business arrangements with them. Suppliers and consumers both have a role to play in exerting pressure on TPIs to demonstrate robust and transparent business practices. We recommend that

5.21. We expect that our other proposed remedies, including those concerning clearer contract terms and conditions, may go some way towards improving the general visibility and transparency of products and services offered to small business customers, irrespective of whether they purchase energy directly from a supplier or via a TPI. However, we intend to pay particular attention to the progress made in this area. Should we continue to have significant concerns regarding the transparency of information available to small business customers using TPIs, we may revisit this issue and consider alternative routes, including legislative and enforcement routes open to ourselves or other bodies.

6. Promoting market transparency

This chapter considers the need for greater transparency on certain aspects of the market, to give consumers and firms confidence that the market is competitive and fair. It also considers the need for Ofgem to collect additional information to monitor the effectiveness of the package of remedies set out in the present document.

One area where market participants have wanted greater transparency is on the relationship between wholesale and retail energy prices. To help consumers better understand this link, Ofgem published the first of its Quarterly Wholesale/Retail Price Reports in March 2009.

A second area where there is need for further clarity is the relationship between the supply and generation activities of the large, vertically-integrated companies to give non-vertically integrated firms confidence that they can compete on fair terms.

We propose:

- to collect financial information from the Big 6 on an ongoing basis that will show the profits, underlying costs and revenues separately for their supply and generation businesses, for gas and electricity consumers and for domestic and non-domestic consumers; and to publish industry-wide information on an annual basis;
- to increase the depth of the monthly information that suppliers provide to us on switching and customer numbers, in particular by breaking this down by consumer groupings and, where possible, by tariff offerings;
- to continue publishing a quarterly report showing the relationship between wholesale and retail energy prices; and
- to continue promoting more liberalised European markets via the Third Package and other initiatives.

Improving transparency of supply and generation

The problem

6.1. The Probe highlighted the need for more transparency with regard to the relationship between the generation and supply activities of the large, vertically-integrated companies (the Big 6). While the Big 6 currently provide information on revenues, costs and profits of the integrated business in their financial accounts, not all of them produce separate information for their gas supply, electricity supply and electricity generation businesses. This makes it difficult for current and potential market participants to assess the profitability of these different activities. There is also little transparency on the terms under which the supply and generation businesses exchange wholesale energy (the transfer price), giving rise to concerns about cross-subsidisation. Furthermore, few details are available on non-energy related supply business costs.

6.2. Increased transparency on transfer pricing should enable existing and potential new entrants to better determine margins in different parts of the value chain.

However, differences in company structure and the way in which vertically-integrated firms operate make establishing an appropriate and easily comparable transfer price a key challenge for financial information reporting. For example, some Big 6 generators sell electricity directly to their supply business on more of a 'cost plus' basis, while others operate via an affiliated trading company that may operate a different charging policy, relying more on market prices.

New evidence

6.3. In response to our Initial Findings Report, small suppliers and consumer groups welcomed the proposals for more transparent financial reporting of the supply and generation activities of the Big 6. They argued that information on profitability in supply and generation businesses separately, and on the headline cost and revenues in these activities, would help existing small suppliers and potential new entrants assess the profitability in the two different activities. Some smaller suppliers made the point that while they supported the measures they would not have a direct commercial impact on their operational strategy as they face a very different set of costs and revenues. However, together with information on transfer pricing, this would help give the smaller and non-vertically integrated firms confidence that there is a level playing field between themselves and the Big 6.

6.4. While four of the Big 6 agreed that some further financial reporting would improve transparency, they all had concerns about specific requirements. On a general level, they argued that a requirement to provide separate supply and generation accounts and separate accounts for different parts of the supply business would entail a somewhat arbitrary allocation of some costs as our requirements would not necessarily reflect how they run their businesses. In addition, most argued that the structure of the relationship between the supply, generating and trading activities makes it very difficult to capture the terms at which the supply and generation businesses exchange energy in any simple metric. For instance, if companies reported the average price at which affiliated supply and generation businesses buy and sell energy on a quarterly basis and this was compared to average market prices over the same periods, these would be likely to differ. Such differences may be explained in part by the transfer pricing methodology and equally by differences in the hedging strategy (buying and selling over time). Hence, a simple metric would not necessarily capture the nature of the transaction.

6.5. The Big 6 also stressed the need to ensure proportionality between the cost of providing the information and the benefits of improved transparency. They expressed concerns that disclosing detailed cost and revenue information would be commercially damaging and/or could lead to anticompetitive behaviour as it would give the firms an opportunity to benchmark against each other. However, other respondents believed that better transparency on revenues, costs and profits (including transfer pricing) could encourage more effective competition between suppliers and between generators.

Our proposals

6.6. In considering the options for financial information reporting, our aim is to ensure a balance between the following factors:

- reliability of the information;
- consistency across companies and over time; and
- proportionality – in terms of the value of the information to the market, the cost to companies of providing it and the extent to which information may be commercially sensitive.

6.7. It is noteworthy that in seeking better information from the Big 6 there is a potentially marked difference between companies submitting information to Ofgem and information actually being made available to the market. Commercial sensitivities are likely to mean that we would be limited in the extent of the information we would be able to publish. It is likely that we would have aggregate information across companies limiting any improvement in market transparency.

6.8. We set out four options for financial information reporting.

Option 1

6.9. The first option would be to require the Big 6 to publish separate financial information on their gas supply, electricity supply and electricity generation businesses, at the same time as their statutory annual reports are published. Furthermore:

- the information relating to revenue, cost and gross profit should provide an accurate description of the profitability of the gas supply, electricity supply and electricity generation activities and the information should be clearly reconcilable to GB/UK group EBITDA.[35] In Ofgem's view, an accurate description of profitability would include a weighted average cost of electricity and gas bought by the supply business over the relevant period;
- the Big 6 would compile, publish and make the information readily available on their websites;
- all accounting policies (including transfer pricing) should be consistent with and reconcilable to the policies adopted in the production of the company's statutory accounts; and
- a broad description of the transfer pricing policy employed should be set out in notes to the accounts.

Option 2

6.10. The second option would be to require that the Big 6 submit financial information reporting templates to Ofgem. The information in these would include:

- profits and underlying revenues and costs separately for the supply and generation businesses;

[35] EBITDA: Earnings before interest, tax, depreciation and amortisation.

- profits and underlying revenues and costs separately for gas and electricity supply, and for supply to domestic and non-domestic customers;
- information on the volume and value of electricity traded directly between the supply and generation affiliates, and volume and value traded on the open market, for comparison. This would allow calculation of a simple 'average' transfer price (i.e. value divided by volume);
    - It is noteworthy that under current financial reporting structures some of the Big 6 do not distinguish between sales to own supply affiliates and to the open market. Requiring a split will therefore impose a cost on these companies. The alternative we propose is to allow these companies to provide this information without distinguishing transactions between their own affiliates and the open market.
- a subset of more detailed revenue and cost data. This would provide a sense check of the more aggregated figures and improve the monitoring information available to us. In addition, this data could be used to inform Ofgem's quarterly wholesale retail price report, and broader monitoring of revenues and costs in the gas and electricity markets.

6.11. Ofgem would publish aggregated figures on total revenues, costs and profits in supply and generation businesses, as well as those in certain parts of supply businesses (e.g. separating between gas and electricity in domestic and non-domestic supply). We would consider publishing these figures on an industry-wide basis to avoid disclosing commercially sensitive information.

6.12. The information would be reconciled to each company's statutory accounts (already provided by the companies to Companies House) and this reconciliation would be signed off by the company's Finance Director.

6.13. The structure of the companies, reflected in the differences in their existing financial reporting, poses a challenge to collecting some of the information, particularly separate revenue, costs and profit data for the supply and generation businesses (and the corresponding volumes). These figures depend crucially on the transfer pricing methodology. To strike the appropriate balance between the extent of the administrative burden and the benefits of transparency, this option would not require explicit disclosure of transfer price arrangements between the supply, generation and trading businesses.[36] Instead, it would require the Big 6 to treat the generation and supply businesses as separate entities in their reporting to us, and provide us with a broad description of their transfer pricing arrangements as under option 1.

6.14. Furthermore, we would work with the industry and transfer pricing specialists to design an appropriate and consistent methodology for dealing with transfer price components such as wholesale energy market trading risk.

[36] By not requiring explicit disclosure we mean that firms would not be required to make public their detailed transfer pricing memoranda.

Option 3

6.15. The third option would be to require the Big 6 to submit information to us as in option 2 but only information pertaining to the gas and electricity supply businesses. There are two mutually exclusive sub-options:

- A: Require information to be submitted on gas and electricity supply business costs (as specified in option 2), but exclude information on the weighted average cost of electricity and gas; and
- B: Only require information to be submitted on the weighted average cost of electricity and gas for the supply business.

6.16. Similar to option 2, Ofgem would publish aggregated figures on revenues, costs and profits in the supply businesses, including domestic and non-domestic supply. Again, we would consider publishing these figures on an industry-wide basis to avoid disclosing commercially sensitive information and that the information would be reconciled to each company's statutory accounts and that this reconciliation be signed off by the company's Finance Director.

Option 4

6.17. The fourth option would be to require companies to provide financial information as in options 1 and 2, but also require that the Big 6 compile financial information on the basis of a specified market-based transfer pricing methodology[37]. In defining this, we would require companies to produce revised revenues and costs and that this be signed off by the company's Finance Director.

6.18. While we acknowledge that there could be problems with a market-based transfer pricing methodology due to low levels of liquidity in some parts of the electricity market, we believe it would still represent the basis of a reasonable "arms length" pricing methodology.

6.19. Examples of the financial information that would be requested under each of these options are set out in Appendix 3.

6.20. All of the options outlined above would be implemented, where appropriate, in the electricity and gas supply licenses and electricity generation licences of the Big 6. We would expect the first set of financial information to be published in 2010 for the year 2009. We propose that information be published on an annual basis. However, in options 2, 3 and 4 we would require companies to provide the information to us broken down on a quarterly basis so we can publish annual data on a consistent basis across the industry (because companies' reporting years differ).

6.21. We invite views from stakeholders on:

- their preferences between the approaches set out above and their assessment of the trade off between improved market transparency, the consistency of data

[37] That is a marked to market as opposed to a cost based transfer price.

collected across the Big 6 and the cost to companies of compliance, as well as any other relevant factors;
- whether seeking transfer pricing information is realistic and practicable, and if so, exactly what this transfer pricing information should be and how it would achieve our objectives; and
- whether we should seek solutions via other Probe remedies and if so, how these remedies would better address the issues.

Enhancing market monitoring

The problem

6.22. Ofgem has general monitoring duties and keeps the operation of the GB retail energy supply markets under ongoing review. In addition, we have in the past routinely published reports on broad indicators of competition in the domestic market.[38] These have included total switching by gas and electricity customers, comparative prices across the major suppliers by payment method and fuel type, market shares by fuel type, and consumers' experiences.

6.23. Over the past few years, however, there have been a number of developments that have affected the gas and electricity supply markets, including rising energy costs, alternative energy sources and a rising 'green' agenda. Greater market segmentation has evolved as these developments initiated new tariff offerings (such as fixed and capped price tariffs, green products and online deals), changes in payment methods (direct debit payment is now the most popular, as are dual fuel contracts) and changes in switching patterns of customers.

6.24. The Probe found that while the competitive market is working well for most consumers, some customer segments are not yet fully benefiting. The additional data we collected as part of the Probe was key to us being able to understand this better – without this information it is not possible for us to obtain as full a picture of how the market is working. The need for monitoring of specific customer segments is particularly important in order to monitor the impact of our proposed remedies on particular groups. This suggests that our regular monitoring activity in the domestic market needs to provide more insight into the competitive forces within specific customer segments. We therefore need to pose additional questions, including:

- What is the extent of switching within specific payment and tariff types?
- What is the quality of switching within payment and tariff types?
- What are the market shares of different suppliers within payment types, including the dual fuel and electricity-only segments?
- How do the above issues affect the price and quality of service different customer segments receive?
- What is the perception of switching between different customer segments?

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[38] Domestic Retail Market Report - June 2007 (169/07), July 2007
Domestic Retail Market Report - March 2006 (110/06), July 2006
Domestic Retail Market Report - September 2005 (23/06), February 2006
Domestic Retail Market Report - June 2005 (24/06), February 2006
Domestic Competitive Market Review (78/04), April 2004

6.25. The Probe also identified a number of issues in the non-domestic market, particularly in relation to the ability of small business consumers to engage effectively in the market. The issues also suggest a need to expand our monitoring of this segment of the market.

Our proposals

6.26. Gas and electricity suppliers and electricity distributors currently provide Ofgem with monthly information on total customer numbers and total switching by fuel type and region. Suppliers also provide quarterly information on debt, payment type, installation of PPMs and disconnections. We now intend to ask domestic suppliers to provide more granular information. In particular, we will ask them for switching and customer number information to be broken down by customer segments and, where possible, by tariff offerings. This will help us to monitor the impact of our proposed remedies for the domestic market (see chapters three and four).

6.27. We also propose closer monitoring of the non-domestic market. The different segmentation within this market, the amount of innovation around product and service offerings, and the fact that non-domestic customers often have bespoke contracts with suppliers, means that the data on customer numbers, tariff offerings, prices, etc. are much less standardised than in the domestic market. This poses a number of challenges for data collection, but we have identified some key data that should be available from suppliers and other identified sources, including switching and objections data. More detailed information in this area will help us monitor the effectiveness of our proposed remedies to improve the level of engagement of small business customers in the market (see chapter five).

6.28. We are aware that asking suppliers to provide additional data in their regular monthly returns could be seen as increasing the administrative burden and that some requests may be difficult, depending on how suppliers' own information is captured. This may be particularly the case for non-domestic suppliers, given the greater number of smaller suppliers that service small businesses. For example, it may be more appropriate to collect certain data annually or bi-annually instead of monthly. We are discussing our proposals with companies to understand better what problems they may have with collating and sending though additional granularity in their data.

Examining the link between wholesale and retail energy prices

6.29. The Initial Findings Report set out analysis of the relationship between wholesale and retail energy prices. Market participants and other stakeholders subsequently called for greater transparency on this relationship. In response, Ofgem committed to produce regular information on the link between wholesale and retail prices and, in March 2009, published its first Wholesale/Retail Price Report.[39]

[39] *Quarterly Wholesale/Retail Price Report – February 2009* (15/09), 2 March 2009.

6.30. By updating the analysis from the Probe, Ofgem hopes that this report will help interested parties gain a greater understanding of the relationship between retail prices and wholesale energy costs. Ofgem is intending to publish the report on a quarterly basis. In addition, when appropriate, we may publish the report and related information outside of this time scale.

6.31. The reports will provide clearer information and analysis for customers who want to understand the relationship between wholesale and retail prices. The report will include information on forward wholesale gas and electricity costs, which make up the bulk of retail energy prices.

Improving EU energy market transparency

6.32. The proposals set out in this chapter are put forward in the context of broader developments in transparency in EU energy markets. GB wholesale prices are already linked to markets in North West Europe, particularly in gas, and this is likely to increase over time with new electricity interconnection being developed. Ofgem has been active in promoting transparency through the gas regional initiative, and the European Commission now publishes a quarterly review of wholesale and retail electricity prices across Europe, through its Market Observatory for Energy.[40]

6.33. With the implementation of the European Third Energy Package (3rd Package), a new Agency for Cooperation of Energy Regulators will be created, which will have responsibilities for market monitoring. The Agency will also develop Framework Guidelines, which will lead to binding cross-border codes intended to promote market integration in a range of areas, including transparency.

6.34. Greater clarity about developments in continental European markets will improve market understanding of the impacts on GB wholesale and, in turn, retail markets. The shortages of gas in central Europe in January as a result of the dispute between Russia and the Ukraine showed how impacts can be transmitted across borders. Further initiatives will come from the Commission's proposals for security of supply legislation this summer. The Agency's remit will also extend to monitoring retail markets, where there are new protections for customers through the 3rd Package and the Commission also remains active in investigating retail price controls, which remain in place in many European energy markets.

[40] http://ec.europa.eu/energy/observatory/electricity_en.htm

7. Next steps

7.1. We invite comments on the package of proposals outlined in this document. **We seek responses by the end of May 2009**. We particularly welcome views on the likely impact of the proposed measures, including the potential costs and benefits. We also welcome views on the specific questions set out in chapter six in relation to financial information reporting requirements.

7.2. Based on the package of remedies set out in this document, we will seek agreement with suppliers on the proposed reforms, modified as appropriate in the light of comments received from all stakeholders. In order for these measures to benefit consumers as soon as possible we intend to set a target for reaching agreement of the end of June. The Authority will aim to decide on the final package by July, so that these new measures can be implemented for autumn – ahead of next winter. As part of the process of seeking agreement we will share licence drafting with stakeholders on an informal basis as our thinking develops.

7.3. If agreement is forthcoming, then we will aim to issue statutory consultations on the range of licence modifications required to implement the package of retail measures by the end of July. These will be accompanied by a full impact assessment of the package.

7.4. Alongside pursuing licence modifications, we will engage with other parties – including Consumer Focus and TPIs – to explore our recommendations that relate to them.

7.5. If agreement is not forthcoming on an acceptable package of reforms, the Authority will consider making a market investigation reference to the Competition Commission.

7.6. We are also publishing today a consultation on our proposed licence conditions to: require suppliers to achieve cost reflectivity between payment methods; and to prohibit undue discrimination, along with draft guidelines that set out how Ofgem intends to interpret and enforce those new licence conditions. Depending on responses to consultation, we will bring forward licence changes as soon as possible. We would expect the new licence conditions to come into force at the end of the statutory consultation period.

Appendices

Index

Appendix 1 – Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document. We particularly welcome views on the likely impact of the proposed measures, including the potential costs and benefits. We also welcome views on the specific questions set out in chapter six in relation to financial information reporting requirements.

1.2. Responses should be received by 29 May 2009 and should be sent to:

Neil Barnes
Ofgem
9 Millbank
London
SW1P 3GE
020 7901 7000
energysupplymarketsp@ofgem.gov.uk

1.3. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.4. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

Appendix 2 – Responses to Previous Consultation

1.1. The Initial Findings Report sought the views of interested parties in relation to its findings and proposals. We received 67 responses. This appendix lists all those that responded and summarises their views.

List of Respondents

	Name
1	Age Concern
2	Andrew George MP
3	The Association of Convenience Stores (ACS)
4	Auditel UK Ltd
5	Bergen Energi UK
6	Bristol Trading Standards Service
7	British Chambers of Commerce (BCC)
8	British Energy Group plc [Confidential]
9	Centrica plc [Confidential]
10	Chartered Institute of Purchasing and Supply
11	Chemical Industries Association (CIA)
12	Citizens Advice
13	Consumer Focus
14	Consumer Focus Scotland
15	Consumer Focus Wales
16	Contract Natural Gas Limited [Partially confidential]
17	EdF Energy [Confidential]
18	E.ON UK plc [Partially confidential]
19	Enstra Consulting
20	ESRC Centre for Competition Policy, University of East Anglia
21	Federation of Small Businesses
22	First Utility Limited [Confidential]
23	Fuel Poverty Advisory Group (FPAG)
24	GB Innomech Limited
25	Hackney Liberal Democrats
26	Haven Power Limited
27	International Power plc
28	Jim Mather MSP, Minister for Enterprise, Energy & Tourism, Scottish
29	Macmillan Cancer Support
30-48	Members of the public [Confidential]
49	National Housing Federation
50	No Hot Air
51	Parliamentary Warm Homes Group

52	Per Pro Limited [Confidential]
53	Royal Borough of Windsor and Maidenhead
54	RWE npower
55	The Scottish Government
56	Scottish Power
57	Scottish and Southern Energy plc (SSE)
58	The Simplification Centre, University of Reading
59	TM & Co
60	Total Gas and Power Ltd
61	Transact: the National Forum for Financial Inclusion
62	Unite the Union
63	uSwitch.com [Confidential]
64	Utilita
65	Utilities Intermediaries Association (UIA)
66	W.E. Couplings Ltd
67	Which?

1.2. Responses that were not marked as confidential can be found on Ofgem's website (www.ofgem.gov.uk) and copies are also available from Ofgem's library.

Summary of Responses

1.3. The following is a summary of the responses we received. These are grouped in to the same five action areas that were set out in our Initial Findings Report:

Overview

1.4. The majority of respondents expressed support for our findings. In particular, our findings under Action 2 (helping consumers make well-informed choices) and Action 4 (helping small business consumers) were largely uncontested.

1.5. Our findings under Action 1 (promoting more active consumer engagement) and Action 3 (reducing barriers to entry and expansion) were less well received, predominately by industry participants. The Big 6 and some other market participants expressed concerns regarding our proposals in a number of areas: debt blocking; additional powers to guard against potential market abuses; simplifying the switching process. There was also some concern from energy suppliers surrounding our proposals that they should provide customers with annual statements and prompts setting out their consumption and switching options.

Action 1: promoting more active customer engagement

1.6. There was strong support from consumer groups for **clearer information on customer bills**. A number of ways that this could be delivered were identified. These included: a mandatory summary box on the face of bills setting out key information for the customer; the adoption by all suppliers of an existing best practice technical standard for customer billing[41]; or requiring that suppliers gain 'plain English' accreditation for the format of their bills.

1.7. Suppliers were less supportive of a regulated solution to billing. One suggested that any improvements could be taken forward under the existing self-regulated Billing Code. Several suppliers cited a pre-existing requirement to include consumption data on energy bills that took effect on 1 January 2009.

1.8. Consumer groups also broadly supported the idea of requiring that suppliers provide customers with an **annual statement** setting out details of their consumption and alternative tariffs, and an **annual prompt** reminding them of their rights to switch suppliers and/or payment methods (although one queried whether these approaches would be effective when applied to elderly and vulnerable customers). One consumer group suggested a more radical option whereby customers would have to annually renew energy contracts. It was also suggested that annual prompts should do more than signpost the existence of switching websites.

1.9. Suppliers were less supportive of these proposals. Several questioned whether the case for annual prompts had yet been made, and one Big 6 supplier argued strongly that this went beyond what is required in a competitive market. Notwithstanding this, some suppliers appeared content with the principle of annual prompts provided these took the form of a neutral reminder of the ability to switch, rather than an encouragement that the customer should do so.

1.10. Respondents were generally supportive of our proposal to **promote confidence in price comparison and switching sites**. Several highlighted the overlap between this and other informational remedies, stating that it was important that consumers understood the consumption of energy, actual or estimated, that was attributed to them in order to make full use of these sites.

1.11. A number of comments were made suggesting that switching sites are currently insufficiently inclusive, with several respondents suggesting that they neglected low income and other vulnerable consumers and one stating that dynamic tele-switched customers were not well served. There was considerable dispute as to whether PPM customers could already take advantage of these sites. There was also disagreement about the products that should be covered by switching sites. Two of the Big 6 suggested that it should be up to the supplier to decide whether to advertise on switching sites, whilst two of the remaining Big 6 suggested that customers should be able to compare all tariffs available from all suppliers. There was some support for the latter view from consumer groups.

1.12. Several respondents suggested that more could be done with the Consumer Focus Confidence Code, both to promote it and to enhance the assurance that it offers to consumers.

[41] British Standard 8436 'Specification for customer billing'

1.13. In the main, respondents considered that the switching process for both gas and electricity is complex and burdensome. A number suggested specific improvements that they thought would **simplify the supplier switching process**. For example, one considered that there would be benefits in aligning the timescales in the gas and electricity transfer processes. Another recommended expanding the information held in relation to metering points on the Electricity Central Online Enquiry Service (ECOES)[42] and introducing a similar system for gas.

1.14. However, neither consumer nor industry respondents saw significant benefits in a re-engineering of the industry systems and processes that support switching in advance of the widespread introduction of smart metering. Several noted that the industry had looked at switching issues in depth during the Customer Transfer Programme three years ago, and argued that this had delivered significant improvements but ruled out major changes to processes as being too costly.

1.15. Supplier and consumer respondents were largely polarised in their views on **debt blocking**. Strong views were expressed by many suppliers, including all of the Big 6, that removing debt blocking might leave the energy industry pursuing alternative strategies to mitigate debts that could actually be more detrimental to customers interests – such as more aggressive debt recovery; higher disconnection and litigation rates; applying price premiums to 'high risk' customers; installing more pre payment meters; and increasing their use of credit vetting and security deposits (such that it could become more difficult for some customers to switch). They argued that debt blocking is an essential protection for suppliers and that this is particularly crucial given current weaknesses in the wider economy. One supplier suggested that the costs of bad debts are essentially socialised across the remainder of its portfolio and that this burden on all customers would increase if some were able to evade their debts by switching supplier.

1.16. Some suppliers suggested approaches to mitigate these issues. A number favoured a focus on providing a more supportive approach to debt prevention and management (e.g. through trust funds and social tariffs, education and advice) rather than having to increase harsher debt collection practices across the board if debt blocking was removed. They suggested this would enable them to strike the right balance between "can't pay" and "won't pay" customers - supporting the former and applying good commercial practice to the latter. It was also suggested that indebted customers be prioritised in a national smart meter rollout and that we should start a review on customer reaction to prepayment offers when there is some experience of smart meter implementation. Two of the big 6 were open to a review of the debt assignment protocol.

[42] ECOES (www.ecoes.co.uk) is a website funded by electricity suppliers and distributors that gives a consolidated view of data for all metering points in the GB market, enabling suppliers to view data for all their customers from one location. Access is available to suppliers, distributors, supplier agents (e.g. Meter Operators and Data Collectors) and non-domestic customers. Some other parties may be granted access if approved by the Master Registration Agreement Development Board.

1.17. A number of consumer groups supported revisiting suppliers' automatic right to debt block. They felt that debt blocking is not only a barrier to competition but that it can exacerbate fuel poverty and delay debt repayment.

1.18. One respondent expressed concern that the emphasis of the debt blocking function provides suppliers with a "unique and privileged" debt recovery power that is inconsistent with the principles of competition and consumer protection. This respondent argued for a re-focusing on consumer protection and proposed that where a supplier exercises the right to debt block, the customer should be automatically switched to the supplier's cheapest tariff for a fixed period, while the debt is being repaid.

1.19. Another respondent focussed on the failure of the debt assignment protocol (DAP) and called for a more effective system to be implemented. A key objective in looking at debt blocking and the DAP should be to ensure that all customers with small debts (i.e. not just PPM customers) are able to access better tariffs. This response stressed the importance of having a system that is easy to use, and of customer awareness of its existence.

Action 2: helping consumers make well-informed choices

1.20. A range of practical issues were raised regarding how an **easy-to-understand price metric** would be developed. A number of suppliers cited issues around the comparability of data for different products and expressed some concern that this approach could encourage uniformity and restrict them from offering innovative products. One suggested that those providing consumers with information services, such as switching sites, do not currently take into account the diversity of products on the market and would need to do so. Several suppliers appeared concerned that this approach over-emphasised the role of price in consumer decision making, highlighting that it is not the sole factor in switching decisions.

1.21. Consumer groups generally supported the development of price metrics. They highlighted two key issues – that Annualised Percentage Rates (APRs) are not readily understood by consumers, and whether simplified tariff structures should be explored.

1.22. Our Initial Findings Report identified a number of issues around **suppliers' sales and marketing activities** and these were broadly recognised by both suppliers and consumer groups alike, although there was no agreement on whether solutions should be mandated. One consumer group was sceptical that meaningful comparisons could be made by doorstep sellers, whilst another thought we should provide more guidance on how the Consumer Protection from Unfair Trading Regulations 2008 should be applied, together with more robust policing of the industry-led Energy Sure Code. One supplier argued that post-sales verification would be a stronger tool than doorstep comparison of different products.

1.23. A number of suppliers and consumer groups suggested that for a like-for-like comparison to be meaningful consumers should have access to their own specific consumption data and the details of their current tariff.

1.24. One supplier stated that it already uses a ready reckoner to compare savings for consumers and that this approach was a core element of responsible sales activity. They felt that appropriate additional requirements aimed at bringing all suppliers up to this level would be beneficial. Another supplier raised concerns about cost and time to roll-out new technology.

1.25. Written confirmation of price comparisons was endorsed by one supplier and a number of consumer groups. One supplier stated that any information passed on to a consumer should be straightforward and transparent. Another suggested that key terms used by suppliers to communicate with consumers should be standardised.

1.26. One supplier suggested the provision of a 'sales factsheet' as a means of passing on information to consumers and that if it was endorsed by Ofgem and other stakeholders it could improve credibility. Another supplier suggested that consumers should be directed to obtain impartial comparison advice and information to help them make the best choice available to them.

1.27. Where a consumer enters into a contract, it was suggested there should be sufficient quality assurance such as follow-up phone calls, letters and confirmation of entering into a contract, including unit prices. The need for a sufficient cooling-off period after a contract has been signed was stressed by one supplier.

1.28. One supplier believed that the rules governing sales and marketing activity were already extensive and provided consumers with adequate protection.

1.29. The need to strengthen regulation was acknowledged by a number of respondents but it was stressed that care should be given to ensure the number of field sales were not adversely affected. One consumer group suggested more rigorous enforcement for the protection of PPM customers. This respondent suggested that there be a licence condition for these customers such that suppliers must advise a potential customer, in writing, if they will be paying more than their existing deal should the transfer proceed.

1.30. Most suppliers advised that any proposals to improve sales and marketing rules would need to be considered in the light of cost and practicality, particularly when trying to compare prices with other suppliers. It was recommended that suppliers have the opportunity to pilot test any proposals made, to ensure that the anticipated benefits to consumers are realised and unintended consequences avoided.

1.31. The vast majority of respondents supported our commitment to facilitate the efficient **roll-out of smart meters**. Several suppliers expressed a preference that this be done through the creation of regional franchises. A number of suppliers considered that the introduction of smart metering would create the opportunity to radically improve the customer switching process.

Action 3: reducing barriers to entry and expansion

1.32. Suppliers suggested a number of areas where we could **review regulatory obligations**. A number of these related to the licence-backed multilateral industry codes that set out the structure of the gas and electricity markets.[43] The complexity of these arrangements, and the market entry requirements of the various codes, were cited as problems. Some argued that there are too many industry meetings and that they are dominated by the Big 6 suppliers. Others suggested that the costs incurred in complying with the high competency aspects of the industry codes are not scalable and therefore add disproportionate overheads to small suppliers.

1.33. Suppliers expressed concerns around the uncertainty and/or volatility of some of the costs they face, including the socialised costs of system operation, the charges for using energy networks, social and environmental obligations and the roll-out of smart metering.

1.34. Respondents queried whether some network performance standards[44] were still needed or if they had been superseded by statutory complaints arrangements. Other areas where respondents expressed concern included: the burden of credit requirements on small suppliers; the availability of metering provision in certain areas; and the general burden of monitoring governmental and regulatory developments at both UK and EU level.

1.35. The majority of the Big 6 generally supported the proposal for **separate regulatory accounts** for both supply and generation businesses in some form. Four of them agreed this proposal would serve to improve transparency, and accepted the need for a level of consistency in reporting. In most instances, this was caveated with the need to ensure that any information requested is proportionate, costs of compliance are minimised and that publication is at an aggregated level.

1.36. However, two of the Big 6 expressed very clear objections to the proposal. Whilst they agreed that transparency was important, both argued that they do not run their supply and generation businesses separately. The need to report accounts separately would in their opinion require allocations (of costs and revenues) based on assumptions rather than reflect their true operations. Given this, one described the proposal to be of "limited value"; whilst the other felt alternative solutions should be explored. Both also argued that greater clarity was needed on the proposal's relevant objectives alongside the exploration of possible links with other suggested remedies.

[43] We are currently conducting a review of the code governance regime in order to address our concerns that weaknesses in these arrangements are preventing both consumers and industry from getting full value from them. Further information on this project can be found on the Ofgem website at the following location: http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Pages/GCR.aspx
[44] The Guaranteed Standards and Overall Standards of Performance (GS/OS).

1.37. Among smaller non-domestic suppliers there was general support for the overall package of recommendations to reduce barriers to entry. The majority agreed that separate published accounts to a prescribed content and format would serve to improve transparency of the value chain and provide greater visibility of the treatment of wholesale costs within vertically-integrated businesses. One suggested requiring the inclusion of a comprehensive and detailed description of the arrangements for transfer pricing between supply businesses and the other parts of these integrated companies.

1.38. Four consumer groups welcomed the proposal as a positive step towards opening up both supply and generation markets to potential new entrants.All four expressed the need to develop a standardised reporting template to ensure consistency of reporting. Two consumer groups shared the view that the successful achievement of the proposal would also serve to build consumer trust in energy companies and their charges to customers, so long as any publication by Ofgem was made easily accessible and comprehensible by non-industry participants and independent observers.

1.39. Whilst all Big 6 suppliers highlighted their support for moves towards increasing **wholesale market liquidity**, some questioned whether it was a serious problem, and compared the UK market favourably to European markets. Notwithstanding this, more than one respondent noted that there is an issue with the reliability of information on levels of liquidity in the UK market, making it difficult to reach conclusions. A number of responses from market participants outside the Big 6 suggested that they regard liquidity issues as severe and needing to be urgently addressed.

1.40. A number of respondents highlighted issues around the shape and granularity of traded products. One supplier suggested that we should take direct action in the electricity market, by increasing oversight of plant availability data and developing standard shape blocks for trading, which may encourage generators and suppliers to quote regular prices and reduce the exposure of traders to the balancing market. One small supplier suggested that a lack of product granularity was a key barrier to entry, arguing that they are unable to procure the shape and volumes required for a small customer base. They suggested that the creation of an independent (possibly government regulated) market maker would offer the 'greatest promise' of providing a solution to low liquidity, by addressing the problems of shape and collateral (i.e. credit) requirements. They also supported mandatory auctions, but argued that they would be of limited use to independent suppliers unless auctions were specifically held for low volume products. One respondent indicated support for testing of a mandate to release quantities of wholesale power to the market. Another respondent encouraged us to define liquidity in terms of being able to transact volumes and shapes as required at a fair price, rather than in narrow volumetric terms.

1.41. Several respondents suggested that difficulties of purchasing energy in the wholesale markets may be driven by problems with access to credit, rather than a lack of traded products. One supplier noted that they had not found a shortage of products being offered and that the key issue to small suppliers may be credit rather than liquidity.

1.42. There were mixed views on the extent to which vertical integration impedes or strengthens competition in energy markets. One respondent suggested that purchasing generation capacity was an alternative to participating in near real-time markets as a strategy for managing risk.

Action 4: helping small business consumers

1.43. Most respondents supported a requirement to inform small business customers clearly in writing of the key **terms and conditions** in their contracts (especially those related to switching and contract roll-over). Three of the Big 6 considered that they already fulfil this requirement and felt that current provisions were adequate. Other suppliers supported this proposal, citing concerns that some current practices are not conducive to competition. A number of consumer groups expressed strong support for such measures.

1.44. Three of the Big 6 considered that the current framework for **objections**, as set out in licences and industry codes, is working, and saw no need for further measures. Two of the Big 6 supported in principle the proposal to institute a code of practice governing the objections process, but expressed some concern about the practical details of how it would work and be policed. A number of small suppliers supported the introduction of such a code, suggesting that changes to the objections process may enable consumers to switch supplier more easily and allow the market to function more freely. They were keen that any measures applied to all suppliers in the market. Consumer groups strongly favoured introducing an objections code.

1.45. Five of the Big 6 supported the proposal to extend the **accreditation scheme for switching sites** to cover small businesses. Some smaller suppliers were also in support, but one felt that a voluntary scheme may not be effective as some suppliers may choose not to participate. Consumer groups and others were also in support.

1.46. Respondents were supportive of the proposal to strengthen the existing industry **code of practice for third party intermediaries** (TPIs) were supportive. Small suppliers in particular voiced their approval for such measures. They considered that it would help increase transparency in the market and allow customers more information on additional costs and charges attached to their bill (a point echoed by some consumer groups). A trade association representing intermediaries noted that such a scheme should be mandatory and that TPIs should be made to disclose when commission had been paid, but opposed a requirement on TPIs to disclose the fees involved.

Action 5: addressing concerns over unfair price differentials

1.47. A summary of responses to our proposals **on cost reflective payment types** and that there should be **a prohibition on undue price discrimination** was included in our consultation document 'Addressing unfair price differentials'.[45]

[45] Available here: http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Pages/Energysupplyprobe.aspx

Appendix 3 – Template for Financial Information Reporting

Option 1:

Financial information
prepared in accordance with SLC []

	Generation		Supply - Electricity		Supply - Gas	
	2009 £m	2010 £m	2009 £m	2010 £m	2009 £m	2010 £m
Total Revenue	-	-	-	-	-	-
WACO(E)/(G)[1]			-	-	-	-
TWh			-	-	-	-
Total Direct Costs	-	-	-	-	-	-
EBITDA	-	-	-	-	-	-
EBIT	-	-	-	-	-	-

Notes:
[1] Weighted Average Cost of Electricity or Gas respectively

Option 2:

ofgem

Generation Reporting

Reconciliation with Statutory Accounts

	Continuing operations	Q1	Q2	Q3	Q4	Annual
1	**Total revenue**	-				
2	Total revenue from power generation	-				
3	Total other revenue (Non power sales)	-				
4	**Total Direct costs of generation**	-				
5	**Gross profit**	-				
6	**Total Indirect costs**	-				
7	**Total Operating Costs**	-				
8	**EBITDA** (3)	-				
9	Depreciation and amortisation					
10	Other operating income – exceptional items					
11	**EBIT (Operating profit)**	-				

EBIT Reconciliation (Detail)

12	Description	Q1	Q2	Q3	Q4	Annual
	Total	0	0	0	0	0

	Revenues	Units	Q1	Q2	Q3	Q4	Annual Total
1	**Total revenue from electricity sales**	£					-
2	**Revenue from non electricity sales (Incl. ancillary services)**	£					-
3	Revenue from sale of EU-ETS allowances	£					-
4	Revenue from sale of non-carbon obligations (ROCs, LECs, SO_{2}...)	£					-
5	Other revenue	£					-
6	**Total revenue**	£					-

	Revenues	Units	Q1 A: Sold to affiliated supply business	Q1 B: Sold to non-affiliated businesses	Q1 Total	...	Annual A: Sold to affiliated supply business	Annual B: Sold to non-affiliated businesses	Annual Total
7	Total Revenue from electricity sales	£							

8. Other Revenue (Detail) - please list where relevant		Units
		£
		£
		£
		£

	Costs	Units	Q1	Q2	Q3	Q4	Annual Total
1	Cost of fuel used for generation	£					-
2	Cost of power purchases	£					-
3	Balancing costs (cash out/energy imblance charges)	£					-
4	BSUoS						-
5	Cost of EU-ETS permits used for generation	£					-
6	Cost of non-carbon obligations (ROCs, LECs, SO2….)	£					-
7	Other direct costs	£					-
8	**Total direct costs**	**£**					-
9	Salaries/Staff Costs	£					
10	Rates	£					
11	Repairs & Maintenance	£					
12	TNUoS	£					
13	TEC	£					
14	Other indirect costs	£					
15	**Total indirect costs**	**£**					-
16	**Total operating costs**	**£**					-

	Costs	Units	Q1 A: Sold to affiliated supply business	Q1 B: Sold to non-affiliated businesses	Q1 Total	…	Annual A: Sold to affiliated supply business	Annual B: Sold to non-affiliated businesses	Annual Total
17	**Total Direct Costs (as in 7 above)**	£							

	Costs (Detail)	Units	Q1 Coal	Q1 Gas	Q1 Oil	Q1 Nuclear	Q1 Renewable	Q1 Distillate	Q1 Other	Q1 **Total**	…	Annual Total Coal	Annual Total Gas	Annual Total Oil	Annual Total Nuclear	Annual Total Renewable	Annual Total Distillate	Annual Total Other
18	Cost of fuel used for generation (inputs by station prime fuel type)	£																

19. Other Direct Costs (Detail) - please list where relevant		Units
		£
		£
		£
		£

20. Other Indirect Costs (Detail) - please list where relevant		Units
		£
		£
		£
		£

ofgem **Supply Reporting**

INPUT SHEET 1: Supply Business - EBIT reconciliation

Users should enter data into the yellow shaded area

Reconciliation with Statutory Accounts

	Continuing operations	Q1	Q2	Q3	Q4	Annual (total)
1	**Total revenue**	-				
2	Supply sales	-				
3	Non supply sales	-				
4	**Total Direct costs**	-				
5	**Gross profit**	-				
6	**Total Indirect Costs**	-				
7	**Total Operating Costs**	-				
8	**EBITDA**	-				
9	Depreciation and amortisation					
10	Other operating income – exceptional items					
11	**EBIT (Operating profit)**	-				

EBIT Reconciliation

12	Description	Q1	Q2	Q3	Q4	Annual (total)
						0
						0
						0
						0
						0
						0
						0
						0
						0
						0
	Total	0	0	0	0	0

INPUT SHEET 2: Supply Business - Revenue, Direct & Indirect Costs

Users should enter data into the yellow shaded area

		Q1									
		BLOCK A				BLOCK B				BLOCK C	BLOCK D
Revenues		Electricity				Gas					
		Domestic	Non-Domestic		Total Elec	Domestic	Non-Domestic		Total Gas	Unallocatable	Total All
		£Ms	SME £Ms	I&C £Ms	£Ms	£Ms	SME £Ms	I&C £Ms	£Ms	£Ms	£Ms
1	Revenue from supply of:										
2	Other Revenue										
3	**Total Revenue**										

		Q1									
		BLOCK A				BLOCK B				BLOCK C	BLOCK D
Direct Costs		Electricity				Gas					
		Domestic	Non-Domestic		Total Elec	Domestic	Non-Domestic		Total Gas	Unallocatable	Total All
		£Ms	SME £Ms	I&C £Ms	£Ms	£Ms	SME £Ms	I&C £Ms	£Ms	£Ms	£Ms
4	Total Energy purchase										
5	EEC, CERT, ROCs,...										
6	DUoS (or gas transmission and distribution)										
7	BSUoS										
8	TNUoS										
9	**Total Direct Costs**	0	0			0		0			

		Q1									
		BLOCK A				BLOCK B				BLOCK C	BLOCK D
Indirect Costs		Electricity				Gas					
		Domestic	Non-Domestic		Total Elec	Domestic	Non-Domestic		Total Gas	Unallocatable	Total All
		£Ms	SME £Ms	I&C £Ms	£Ms	£Ms	SME £Ms	I&C £Ms	£Ms	£Ms	£Ms
10	Advertising, sponsorship and marketing (includes cost of sales/to acquire)										
11	Customer Service (including IT costs)										
12	Metering (see detail box below)										
13	Bad Debt										
14	Overheads										
15	Other										
16	**Total Indirect Costs**	0	0			0		0			

Detail:

		Q1									
		BLOCK A				BLOCK B				BLOCK C	BLOCK D
		Electricity				Gas					
		Domestic	Non-Domestic		Total Elec	Domestic	Non-Domestic		Total Gas	Unallocatable	Total All
Metering (detail)		£Ms	SME £Ms	I&C £Ms	£Ms	£Ms	SME £Ms	I&C £Ms	£Ms	£Ms	£Ms
17	Asset Provision										
18	Maintenance & Reading										
19	aggregation										
20	Other										
21	**Total Metering costs (as included in 12 above)**	0	0			0		0			

INPUT SHEET 3: Supply Business - Energy Volumes

Users should enter data into the yellow shaded area

	Energy Purchase - Electricity	Electricity			
		Q1	Q2	Q3	Q4
1	Volume of energy used in the period (GWhs)				
2	Total Cost of energy used in the period £Ms	0			
	Energy Purchase - Gas	**Gas**			
		Q1	**Q2**	**Q3**	**Q4**
3	Volume of gas used in the period (BCM)				
4	Total Cost of gas delivered in the period £Ms	0			

INPUT SHEET 4: Supply Business - Customer Numbers

Users should enter data into the yellow shaded area

		Q1								
		BLOCK A				BLOCK B				BLOCK C
	Customer Numbers	Electricity				Gas				
		Domestic	Non-Domestic		Total Elec	Domestic	Non-Domestic		Total Gas	Total All
		000s	SME 000s	I&C 000s	000s	000s	SME 000s	I&C 000s	000s	000s
1	At beginning of the quarter									
2	New customers gained in the quarter (show as positive)									
3	Customers lost in the quarter (show as negative)									
4	Total at end of the quarte	0	0			0		0		

...

		Annual Total								
		BLOCK A				BLOCK B				BLOCK C
	Customer Numbers	Electricity				Gas				
		Domestic	Non-Domestic		Total Elec	Domestic	Non-Domestic		Total Gas	Total All
		000s	SME 000s	I&C 000s	£Ms	000s	SME 000s	I&C 000s	000s	000s
1	At beginning of the year									
2	New customers gained in the year (show as positive)									
3	Customers lost in the year (show as negative)									
4	Total at end of the year	0	0			0		0		

Appendix 4 – Terms of Reference: Energy Supply Probe

1.1. The Terms of Reference for the Energy Supply Probe were set out in an Ofgem press statement of 21 February 2008:

"The investigation will cover:

- The customer's perspective and experience of the market including access to information and barriers to switching supplier;
- Suppliers' market shares, switching rates for different groups of customers (such as online, dual fuel, single fuel and pre-payment);
- The competitiveness of suppliers' pricing in the different market segments and customer movement between payment types as well as suppliers;
- The relationship between retail and wholesale energy prices; and
- The economics of new entry and the experience of companies trying to enter the energy market.

The investigation will cover markets serving domestic customers and small businesses."

Appendix 5 – Review of Debt Blocking Arrangements

1.1. In February 2008, we sought views from suppliers and consumer groups on a range of potential proposals to change to the debt blocking arrangements. Respondents views on each of the proposals are summarised below.

Proposal 1: *Introduce a requirement on suppliers to offer debt, tariff and energy efficiency advice to customers at the point of objection*

1.2. There was broad support for this option, both from suppliers and consumer groups. One supplier argued that this would be a natural complement to the existing requirement to provide energy efficiency advice. Where this advice enables a customer to access a cheaper tariff, it could result in an improvement in the customer's financial situation sufficient to facilitate earlier debt repayment and ability to switch.

1.3. Suppliers also advised that required amendments to their systems and customer correspondence would be relatively straightforward, and that the costs of introducing this requirement would be minimal. Some requested that the mechanism by which they would be required to fulfil this obligation should not be overly prescriptive.

Proposal 2: *Remove the right to debt block customers who are in debt as a result of billing or supplier error*

1.4. There was broad support for this option in principle from consumer groups and some suppliers, although there were concerns from suppliers around defining 'error' and the practicalities of identifying the point at which a dispute can debar an objection.

Proposal 3: *Increase the Debt Assignment Protocol (DAP) threshold to £200*

1.5. Consumer groups broadly supported continued use of the DAP to facilitate switching for indebted customers, although some concern was raised that this option does not address the structural problems with the DAP and that these should receive closer examination.

1.6. While suppliers expressed some anxiety about the risk of increased debt exposure with this option, a number of them expressed support for a re-examination of the design of the DAP. Four of the Big 6 suppliers indicated a willingness to accept customers with higher levels of debt where this is formally assigned.

Other options considered

Retain existing debt blocking and DAP arrangements

1.7. Suppliers supported this option, arguing that the removal or dilution of the automatic right to debt block would substantially increase their exposure to bad debt and that they would seek to mitigate this risk through tougher credit vetting, increased use of security deposits and PPMs, use of higher tariffs for 'high risk' customers and quicker, more aggressive debt collection activities. The related increase in costs would be significant and ultimately recovered from the generality of customers, potentially impacting most severely on poorer and vulnerable customers.

1.8. Consumer groups opposed this option, arguing strongly that debt blocking should be removed or restricted because it presents a genuine barrier to poorer customers' ability to access cheaper tariffs and mitigate the impact of fuel poverty.

Remove automatic right to debt block for specified customer groups

1.9. A number of suppliers and consumer groups responded that the customer groups outlined in this proposal (e.g. off gas grid and/or those on the Priority Services Register) are not necessarily a good proxy for those customers affected by debt blocking; this option would therefore not present an appropriately targeted remedy for those most likely to be affected by debt blocking. Both groups of respondents also argued that the practicalities of obtaining and managing relevant data would render this option impracticable.

Remove the right to debt block for all customers with debts below a fixed threshold

1.10. This option was widely held not to present any real benefit. Given that the majority of indebted customers have a debt below £100, suppliers argued that there would be little difference between this option and a complete removal of the right to debt block, in terms of increased risk of multiple debt accrual. One consumer respondent argued that this option would present little real benefit because the thresholds proposed did not reflect current average customer debt levels.

Open up the DAP to all customers

1.11. Suppliers argued that this option would involve significant implementation and ongoing administration costs for little benefit if the DAP remains underused. It was further argued that this proposal could increase exposure to a high instance of evasion of small debt through multiple switching. Consumer groups were more divergent on this option: one view was that the DAP with the increased threshold should be opened up to all customers; the opposing view was that to do this could present significant risks to consumers as suppliers implement measures to mitigate against the associated increased risk of bad debt.

Remove automatic right to debt block

1.12. All suppliers strongly opposed this option, arguing that it would substantially increase their exposure to bad debt. They argued that they would seek to mitigate this risk through a range of harsher debt prevention and recovery methods, the related increase in cost of which would be recovered from the generality of customers, potentially impacting most severely on poorer and vulnerable customers.

1.13. Consumer groups broadly supported this option, arguing that debt blocking presents a real barrier to poorer customers' ability to access cheaper tariffs and mitigate the impact of fuel poverty.

Appendix 6 – The Authority's Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.[46]

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly.[47]

1.4. The Authority's principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them[48];
- the need to contribute to the achievement of sustainable development; and
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.[49]

[46] Entitled "Gas Supply" and "Electricity Supply" respectively.
[47] However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.
[48] Under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.
[49] The Authority may have regard to other descriptions of consumers.

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed[50] under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and
- secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard to:

- the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation[51] and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

[50] Or persons authorised by exemptions to carry on any activity.
[51] Council Regulation (EC) 1/2003

Appendix 7 – Glossary

A

Annual bill

The amount that a customer would have to pay for gas and/or electricity over one whole year.

B

Barrier to entry

A factor that may limit a firm's ability to enter the market.

Barrier to expansion

A factor that may limit a firm's ability to increase in size.

BERR

The Department for Business, Enterprise & Regulatory Reform.

Big 6

The name collectively given to the six companies that supply most of the energy to domestic households in the GB market. They are: Centrica plc (three retail brands, British Gas, Scottish Gas and Nwy Prydain in England, Scotland and Wales respectively), E.ON UK, Scottish and Southern Energy (SSE), RWE npower, EDF Energy and ScottishPower.

C

Capped price tariffs

Guarantees that the price paid per kWh for gas or electricity will not rise beyond a set level for a given period of time.

Consumer Focus

Consumer Focus is a statutory organisation, created through the merger of three organisations – energywatch, Postwatch and the National Consumer Council (including the Scottish and Welsh Consumer Councils) – by the Consumers, Estate Agents and Redress Act 2007. It is an independent watchdog tasked with protecting and promoting the interests of all gas and electricity consumers.

Consumer Panel

Ofgem's Consumer Panel consists of 100 everyday domestic customers, recruited from five locations across Great Britain. The Panel meets at least three times a year to discuss key issues impacting on their participation in the energy market, as well as other key issues related to energy.

Cross-subsidisation

The part financing of one product or activity by another.

D

Debt blocking

This is when the transfer of a customer to a new supplier is prevented because of outstanding debt with the existing supplier.

Direct costs

In this document, wholesale energy purchase costs, network access and environmental costs.

Direct debit (DD)

A method of payment where a fixed or variable amount is taken from a bank account each month, quarter or year.

Domestic energy suppliers

Companies who sell energy to and bill residential customers in Great Britain.

Dual Fuel

A type of energy contract where a customer takes gas and electricity from the same supplier.

E

Energy Retail Association (ERA)

The ERA is the body that represents the Big 6 domestic electricity and gas suppliers in Great Britain.

energywatch

The independent gas and electricity watchdog, set up in November 2000 through the Utility Act, to protect and promote the interests of all gas and electricity consumers. From the 1 October 2008, energywatch merged with Postwatch and the National Consumer Council (including the Scottish and Welsh Consumer Councils) to form Consumer Focus, the new champion for consumers' interests in England, Scotland, Wales and, for post, Northern Ireland.

Evergreen offers

These are tariffs where prices may fluctuate but a customer can switch supplier at any time.

Ex-PES

The previous Public Electricity Supplier for one of the 14 electricity regions in England, Wales and Scotland. From privatisation in 1990 until 1998 the ex-PES had a monopoly of electricity supply and distribution in their designated areas. Local distribution is still a monopoly regulated by Ofgem, however, competition has been introduced in supply, and so these 14 suppliers (consolidated now into 5) are known as ex-PES suppliers. The 14 regions are detailed below, together with the name of todays' ex-PES company for each region.

<table>
<tr><td>REGION</td><td>SUPPLIER GROUP</td></tr>
<tr><td>London</td><td rowspan="3">EDF Energy</td></tr>
<tr><td>Seeboard</td></tr>
<tr><td>SWEB</td></tr>
<tr><td>East Midlands</td><td rowspan="3">E.ON UK</td></tr>
<tr><td>Eastern</td></tr>
<tr><td>Norweb</td></tr>
<tr><td>Midlands</td><td rowspan="3">RWE npower</td></tr>
<tr><td>Northern</td></tr>
<tr><td>Yorkshire</td></tr>
<tr><td>Scottish Hydro</td><td rowspan="3">Scottish and Southern Energy</td></tr>
<tr><td>Southern</td></tr>
<tr><td>Swalec</td></tr>
<tr><td>Manweb</td><td rowspan="2">ScottishPower</td></tr>
<tr><td>Scottish Power</td></tr>
</table>

F

Fixed price tariff

A tariff that guarantees that the price paid per unit of gas or electricity used will not change for a given period of time.

Former electricity incumbent

The previous Public Electricity Supplier for one of the 14 electricity regions in England, Wales and Scotland (see Ex-PES).

Fuel poor

Those households who need to spend more than 10% of their annual income on fuel to maintain an adequately heated home.

G

Green tariffs

An energy tariff which is marketed as having environmental credentials.

H

Hedging

Deals based on the future price of a good or service instead of dealings based on the daily price of a good or service. This enables those purchasing a good or service to reduce the risk of short term price movements.

K

kWh

Kilowatt-hour is a unit used to measure energy consumption in both electricity and gas.

M

Market share

In this report, this refers to the proportion of total customers (usually as proxied by the number of meter points) within a market that are registered to a particular supply group.

Market liquidity

The ease with which new entrants or small suppliers are able to secure wholesale gas and electricity supplies, for on-sale to retail customers

Market power

The ability of a company to influence (for example) prices in the market.

N

New entrant

An entrant that does not have an incumbent customer base.

Non-switcher

A customer who has never switched from their incumbent supplier.

O

Objection clauses

These are specific clauses within a contract between a customer and their energy supplier that legally allow a customer's current supplier to object and block the transfer of a customer to another supplier.

P

Prepayment meter (PPM)

These are meters that require payment for energy to be made in advance of use or they will prevent the supply of gas or electricity. A PPM customer pays for energy by inserting electronic tokens, keys or cards into the meter.

Price differential

The difference between two sets of prices. For example, the difference in the price charged by one electricity supplier to customers using different payment methods.

Price discrimination

Occurs when different prices are set for different consumers or groups of consumers for the same good or service for reasons not associated with the costs of production.

Proactive customers

Consumers who have either switched supplier as a result of their own enquiries during the last twelve months or who regularly check relative prices.

R

Reactive customers

Consumers who have switched supplier at least once, but do not regularly research the market and typically only switch in response to a call from a sales person.

S

Small suppliers

Suppliers which operate in the gas and electricity market but do not hold significant market share.

Small and medium enterprises (SME) sector

The SME sector includes a wide range of non-domestic consumers, from relatively large businesses for whom energy is a major cost to much smaller businesses that may closely resemble domestic consumers in their approach to energy procurement.

Smart meter

A generic term for innovative forms of metering that provide increased levels of functionality above that of a basic meter. It usually includes at a minimum the ability to read the meter remotely via a communication channel.

Standard Credit (SC)

A payment method where customers pay on receipt of the bill. This typically covers a wide range of payment mechanisms, including cash, cheque, credit card and standing order.

T

Third Party Intermediaries (TPIs)

TPIs help SME consumers to compare alternative offers available in the market, in much the same way that a consumer might use, for example, an insurance broker.

V

Vertical integration

Where one supply group owns two or more parts of the energy supply chain. For example, where the same supply group owns generation capacity and also supplies energy to the retail market.

Appendix 8 – Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to have your answers to the following questions:

- Does the report adequately reflect your views? If not, why not?
- Does the report offer a clear explanation as to why not all the views offered had been taken forward?
- Did the report offer a clear explanation and justification for the decision? If not, how could this information have been better presented?
- Do you have any comments about the overall tone and content of the report?
- Was the report easy to read and understand, could it have been better written?
- Do you have any further comments?

1.2. Please send your comments to:

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Consultation Co-ordinator
Ofgem
9 Millbank
London
SW1P 3GE
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