

Ofgem's domestic retail market review consultation 26 October 2012

RWE npower's response

As Ofgem has recognized in publishing our document which it requested for the October 2012 consultation, we have already implemented a number of changes which reflect themes of the RMR. Further changes aligned with RMR objectives are currently under way. This letter sets out the main areas where we believe Ofgem should reconsider aspects of its proposals.

Our comments on chapter 2 are set out in appendix 1 and answers to Ofgem's specific questions are set out in appendix 2.

The IT and process implications of these proposals are even more marked than for the probe remedies. As part of work to respond to Ofgem's information request, we are currently exploring the feasibility of meeting Ofgem's proposed timescales.

Executive summary

In general RWE npower supports the desire to work towards a more simple and transparent market for customers recognizing the need to balance this against the need for choice in a fully competitive market. We therefore do agree that some simplification of the energy retail scene would help customers navigate the market. However, given the importance of customer choice in the market and the benefits of innovation (both of which have been championed by Ofgem), we are surprised that Ofgem has opted to restrict choice so much by setting a limit of only four core tariffs and is proposing rules which will stymie the innovative propositions offered, for example, by Telecom Plus. In weighing the merits of simplicity against choice and innovation, we strongly believe that Ofgem is creating too much of a straightjacket which will prove detrimental to customers.

It is commonly asserted that there is insufficient competition in the energy retail market. Many of the themes are covered in chapter 2 of the consultation. However, this is not a characterization that we believe is supported by the evidence. In appendix 1 we have provided evidence which counter-balances many of the misperceptions.

In the context of moving towards a more simple and transparent market we do believe there is a serious issue of distortion of competition in the retail energy market which arises from the numerous and ever-increasing exemptions granted to small suppliers from social and environmental obligations. Our analysis indicates that the value of these exemptions markedly outweighs any large supplier economies of scale. A key concern of RMR is that it will reinforce the impact of the competitive distortions arising from

exemptions by undermining the scope of the larger suppliers to compete with smaller rivals.

We would stress therefore the importance of Ofgem working with Government to change the situation so that the exemptions given to small suppliers are reduced so that they no longer exceed any economies of scale benefit. It is a fundamental principle that the discrimination in favour of small suppliers should be objectively justified. It is our view that Ofgem cannot simply ignore the current unjustified discrimination in favour of small suppliers in the market when formulating its RMR proposals. In other words, recommendations designed to improve the comparability etc of competing prices should not be put forward at a time when there is such an unlevel playing field in favour of small suppliers

We foresee at least two malign potential consequences of these policies which could operate to the detriment of customers in the medium term:

1. The policies encourage inefficient new entry based on the short term cost advantage and risky business models. As we have seen in the past, new entrants often exit the industry when their cost base rises leaving other market participants and ultimately the customers of those other participants to pick up the tab.
2. Ofgem's consultation documents admit a degree of uncertainty as to whether its proposals will have the desired effect of engaging the least active customers. In effect, Ofgem is undertaking a very large and important real life experiment. One credible outcome is a migration of the more active customers towards low cost offerings by small suppliers leaving the least active and potentially more vulnerable customers to fund a disproportionate share of the cost of social and environmental programmes and obligations.

These outcomes are very real possible consequences of the combined effect of the government and Ofgem small supplier entry assistance policy.

Of course much of the current unfair benefit for small suppliers arises because of the exemption from and tapered introduction to the costs of ECO. We have proposed two possible solutions to mitigate this problem:

- 1) The average cost of ECO provision per customer being charged to the small suppliers on a customer basis.
- 2) A cap on ECO to fix the overall limit of the differential which we believe could be in excess of £100 per dual fuel customer.

Recognizing Ofgem's goal of further enhancing competition in the retail energy market, we would point out that the proposals in respect of White Label arrangements as currently drafted will have the, presumably unintended, consequence of undermining arrangements whose principal effect and objective is to provide a wholesale hedge for a small and innovative new entrant which facilitate innovative new entry. We believe that the arrangements which could be damaged by the White Label proposals are, in fact, a more effective way to resolve small supplier hedging issues than the various "Liquidity" proposals than Ofgem has canvassed. In appendix 3 we set out some licence drafting amendments which allow the retention of genuinely innovative arrangements providing

propositions which are demonstrably popular with customers whilst at the same time tackling basic White Label arrangements.

Other key observations are set out below:

Tariff simplification: there is a strong case for allowing at least six core tariffs plus one special slot for an innovation tariff. There should also be more scope to offer or charge cost reflective “bolt ons”, not least to encourage cost effective customer behaviour.

Prescription around bills and statements: We agree that customers would benefit from some standardization of communications (eg common terms and ion the annual statements). However, we believe energy suppliers are, by and large, better placed than the regulator to identify how to communicate with customers. Excessive prescription will undermine Ofgem’s objective of securing greater customer engagement by reinforcing a reported perception that “all suppliers are the same.” Our thinking will accompany our response to Ofgem’s comms information request.

Tariff Comparison Rate (TCR): Best buy tables currently available are already fit for the purpose attributed to the TCR. Our concern is that the TCR is complex, confusing and potentially misleading. It is more likely to discourage than to encourage engagement.

Direct debit reassessments as mutual variations: As well as adding unnecessarily to a supplier’s cost base, for those customers who failed to respond this proposal would significantly undermine customer experience in a way in which has historically attracted interest from Ofgem.

Standards of conduct: We support standards of conduct for treating customers fairly. However, Ofgem’s proposals for operationalizing its interpretation of the requirements require further development.

Supplier cheapest deal: Cheapest deal messaging needs careful consideration to avoid misunderstandings which could undermine customer trust. Unless the required availability criteria are scaled back, we fear customers may lose out through supplier reluctance to launch the most attractive products due to wholesale market exposure.

Market cheapest deal: There are a number of significant practical issues which would need to be resolved to avoid this proposal having an adverse impact on customer experience. Those who have moved tariff with their existing supplier should also be regarded as engaged customers. We suggest more effective ways of assisting vulnerable customers and helping them engage in the market. In outline, these are collective switching schemes and Warm Homes Discount both more actively linked to the provision of energy efficiency benefits.

1. *The restrictions on tariffs*

Number of core tariffs

Whilst we agree that there needs to be some reduction in the complexity of the market, we continue to believe that a balance needs to be struck in terms of retaining the scope for effective customer choice and for innovation. Our conclusion is that Ofgem's proposals have gone too far.

We can see a requirement for at least the following core tariffs:

1. Standard evergreen. Indeed this tariff is compulsory.
2. Green tariff
3. Fixed price tariff of various terms eg 1 or 2 years
4. Tracker tariff
5. Deemed tariff
6. Slot for an innovation tariff. We do not think it is reasonable to require suppliers to use one of the four tariff slots to trial an innovation as this effectively sterilizes 25% of the tariff options available under current proposals and would unreasonably restrict the main products a supplier can offer its customers, thereby putting it at a competitive disadvantage to rivals who show less innovative flair. This is the opposite outcome to that which one would expect in effectively competitive markets. In order to ensure that this slot is used for its intended purpose, it could be subject to restrictions for example on the number of regions in which it could be available or the period for which the tariff was open.

Our conclusion is that there is a strong case for allowing at least six core tariffs plus one special slot for an innovation tariff.

Surcharges

Surcharges have the advantage of targeting charges on those customers for whom the costs are specifically incurred on their behalf by suppliers. The alternative is likely to be smearing the costs across the whole product population thereby increasing the cost to all. As long as they are cost reflective, surcharges allow suppliers to focus these costs on customer driven behaviour (polluter pays principle) which should have the long term effect of incentivizing customers to avoid the charges. Consequently, overall product costs are driven down. Thus suppliers require flexibility to set & update surcharges cost-reflectively. They should not be restricted in the unit of charge or payment method. It should be sufficient that all surcharges are published in advance by suppliers with sufficient notice of change similar to the current arrangements for unilateral adverse variations.

We also have a number of specific concerns regarding the surcharge proposals as set out in the draft schedule to LC 22B:

- i) Ofgem has hardwired a number of charges into the definition of surcharges in the licence. Although S22B.1(k) appears to provide that new charges can be added to the list, there is little detail as to how this process would work and especially that it is sufficiently fast and flexible. Alternatively, we seek confirmation that if a surcharge is not included within the schedule that there are no restrictions on the charges that can be made. We continue to believe that surcharges could cover a number of features which

offer options valued by customers without undermining the simplification objective. One example would be a surcharge for green supply. Although green certification is now applied to specific tariffs, we understand that reconciling our proposal and green certification would not be insurmountable.

ii) Surcharges are required to be the same throughout Britain and expressed as £/annum or p/kWh. In our view, many of the surcharges listed in the schedule are bespoke items whose costs will vary with the individual circumstances of the case (for example, charges associated with moving meters) and certainly cannot be expressed in the terms specified in the schedule.

iii) There may be circumstances where we may wish to waive all or part of the charges. It is not clear from the licence drafting whether this is permissible.

2. White label arrangements

A number of Ofgem's proposals are targeted at white label arrangements. These include:

- White label counting towards 4 core tariffs
- Cheapest tariff being assessed over main supplier and its white label outlets.

We have a concern that as currently drafted, the proposal may have unintended consequences. We believe a distinction should be drawn between arrangements which do little more than stick a white label on a product and those which effectively create distinct and valued propositions for customers.

Telecom Plus (TP) is the prime example of the latter: It has:

- i) A unique place in the market in terms of its customer proposition. It provides access to multiple services across utilities with resultant discounts and offers customers one monthly bill for all their services;
- ii) Distinctly different business model and operating cost structure to npower as well as an independent cost base;
- iii) A separate billing system to npower and neither party has access to other's customer contact or consumption history.
- iv) De facto independent supplier characteristics in that it sets prices independently from npower and actively competes against npower such that customers go through Change of Supplier process when switching between the two companies.

In addition to TP's distinct identity, there are other benign aspects to this kind of arrangement which it would be perverse to stifle. The model:

- i) Allows a small supplier to manage its commodity risk: TP places its commodity risk on npower. It therefore provides a solution to a key issue to which Ofgem has devoted much attention through its various "Liquidity" proposals. It avoids the malign situation where small suppliers operate unhedged, but then go out of business when wholesale prices turn upwards, consequently imposing costs on more prudent suppliers and their customers. We would urge Ofgem to endorse

- this as a model for potential new entrants with expertise and innovative skills in terms of customer experience and service.
- ii) Provides the benefits for customers of a small supplier experience, but with large supplier support, for example the availability of Warm homes Discount, FITs and Green Deal.

If the RMR changes are implemented as currently proposed, key aspects will at best confuse customers and at worst fundamentally challenge the sort of offering provided by TP. For example, rather than simplifying tariffs, forcing npower and TP to connect their products will confuse each of their customers and indeed reinforce a view that “all supplier are the same” when currently TP offers something distinctly different, a proposition self-evidently valued by customers given its successful growth and performance in satisfaction surveys.

In Appendix 3, we set out some proposed drafting amendments to the definitions in licence condition 1 which would facilitate the retention of genuinely distinct and pro-competitive retail supply arrangements.

3. Prescription around bills and statements.

As with tariff simplification, we agree that there is scope for some standardization of communications (e.g. common terms; separate Annual Statement), but believe that these proposals go too far. As noted above, Ofgem’s own consultation identifies a perception that “suppliers are all the same”. As Ofgem is aware, npower has been conducting research and has proposals to improve our customer experience in part through the content of our communications. We would expect that other suppliers are doing the same. It is well understood that the competitive process in which suppliers strive to better meet the needs of customers than do rivals and where suppliers’ fortunes rise or fall depending on their success in meeting customer needs is more likely to flush out customer preferences than the actions of a single regulator who has no financial interest in the results.

There are also some examples in the RMR package where Ofgem’s proposals seem intended to deliver arrangements which Ofgem thinks customers ought to have rather than what customers want; a case in point is the requirement that annual statements should be two separate documents rather than a single dual fuel statement which some customers prefer.

We would therefore urge Ofgem to work with the grain of the market rather than to enforce total uniformity which is unlikely to respond to evolving market conditions as a less restricted approach would do. Enforcing uniformity also sits oddly with envisaged market developments which are aimed at promoting customer choices consistent with a sustainable energy market. Actual and prospective developments include the advent of smart metering, green deal and ECO.

Our conclusion is that Ofgem should not prescribe the exact content and, in many cases, the exact wording and layout of customer communications, but should focus on:

- i) Harmonizing key terminology;
- ii) Identifying current mandatory content which clutters the bill and would be better deleted;
- iii) Identifying the key purpose of each communication and ensuring that any prescribed content is consistent with that purpose.

We recently met with Ofgem and presented our thinking and research results on customer communications. We will be sending some notes on these points to accompany our response to Ofgem's information request on comms material.

4. The Tariff Comparison Rate (TCR)

We support any measure that will improve customer engagement with the energy market. However, we continue to believe that the indicated projection of cost (IPC) which already exists provides the best way for customers to make choices between products. At best the TCR is superfluous. At worst, it is confusing and misleading we do not believe the proposed TCR is more likely to undermine than to improve customer engagement. The reasons are as follows:

Superfluous

As noted above, the IPC already exists. The requirement to provide an IPC (which is being renamed a personal projection or Estimated Annual Costs (EAC) is being extended to include customers of less than 12 months' standing. It should now be readily available to all customers who will be able to compare it with alternative offerings based on their own recent consumption level.

EACs are published on every bill, annual statement and price increase notification. We do not therefore understand the assertion in paragraph 7.28 that 'customers may need to look through several past bills and annual statements' to find out how much they pay for energy each year

Ofgem's motivation for introducing the TCR is as a prompt to engagement. Ofgem does not intend the TCR to be used for actual switching decisions. However, Best Buy tables (on a £/annum basis) already exist to prompt engagement. A new version of a best buy table that incorporates the proposed TCRs is unlikely to significantly change the behaviour of those customers that are not engaged. But the greater complexity may increase confusion for already engaged customers as well as inducing them to make potential incorrect choices as a result of spurious indicated accuracy. These concerns are expanded below.

Confusing

Complexity

Layers of complexity within the detailed TCR proposals (particularly regarding Dual fuel tariffs, ToU tariffs, and bundling) contradict Ofgem's clear and simple objectives. This will lead to a significant quantity of TCRs circulating in the retail energy market.

For example TCRs will need to be calculated on the following bases:

- Four core tariffs
- Four TCRs per core tariff under the current DF proposal
- Three payment methods
- Three levels of consumption
- At least three meter types

Inclusion of bundled products adds another layer of complexity as these TCRs will be significantly different compared with unbundled products making comparison between the two types of product very difficult. If the intention was to compare only bundled with bundled should be separated into categories such as bundles including boiler cover, and bundles including an all encompassing energy service for example.

Mismatch between TCR and EAC

The inherent mismatch between the Personal Projection and the TCR is likely to cause disengagement. Customers may be confused by the relationship between the Personal Projection and the TCR, and not understand that the former is based on their own circumstances and the latter is based on averages and will necessarily be different. For example, an npower electricity customer in the Scottish Hydro area that uses 3300kWh would have a personal projection of £536.89. They would have a TCR of 15.6 and if they multiplied that by 3300kWh it would show an annual bill of £514.80. This will surely lead to phone calls to the customer service teams and potentially complaints to the media and other stakeholders.

In addition, the proposed SLC 31C.3(d)(vii) requires a licensee to include a TCR in any tariff comparison. This is likely to lead to a situation where a saving is claimed based on data from a personal projection but the TCR comparison may indicate that the tariff is actually more expensive. We suggest that this is likely to lead to customer mistrust and disengagement.

Format

In our opinion a £/annum unit is much more likely to engage a customer than the proposed unit of measurement (p/kWh) which has the potential to be confused with the unit rate of the tariff. Such confusion would promote customer dissatisfaction and potentially poor switching decisions.

In addition, the possibility of misinterpreting the TCR as the unit rate has the potential to drive perverse customer behaviour. Providing the TCRs at the three consumption levels may create the impression that, as energy consumption increases, the unit rate falls (in apparent contradiction to Ofgem's requirement for a single unit rate). This, in turn, may undermine customers' motivation to conserve energy.

Misleading

National basis

In most circumstances the TCR is presented on a national basis. Customers may switch to a product that could cost more if they act solely on the basis of this information. Whilst this risk exists with Best Buy tables, it is much greater with the TCR as the greater complexity is more likely to create a spurious impression of accuracy.

The national basis restricts targeting of specific regions. The proposed TCR would prevent suppliers from targeting specific areas with marketing messages. For example, a supplier trying to target an ex-incumbent competitor's customer base may have a higher national TCR than the competitor but a lower price for that region. We have identified real examples of where this is the case. This is likely to cause confusion with the customer and we expect that many would not believe the marketing message and remain with their incumbent supplier at a higher cost.

Achieving the TCR

Many consumers would not be able to achieve the advertised level of TCR. Using Ofgem's analogy with the savings market, when a representative APR is advertised by a lender, 51% of consumers accepted onto that product must receive that level of APR. This cannot be guaranteed with the TCR.

ASA requirements

For the tariff comparison rate to have any credibility in the eyes of consumers, it must stand up as a comparison tool in energy marketing where consumers gain much of their information about suppliers and their tariffs. In order to do so, comparisons in marketing must meet self-regulatory requirements that apply to marketing. In particular the Committee of Advertising Practice (CAP) Help Note guidance on price comparisons in energy marketing makes some relevant points. Applying that guidance, a claim that states or implies that all consumers will save, (for example "we're cheaper than supplier B" (Ofgem's example)), is unlikely to be acceptable in the case of challenge to the Advertising Standards Authority if any customer does not save. Such a claim is 'absolute' in that consumers are unlikely to think it subject to significant conditions; and in any event significant qualification might only contradict the claim. Ofgem's proposal that the TCR would substantiate the claim would not satisfy this self-regulatory test as substantiation in marketing must be factual and must apply to all potential recipients. As noted above, there are likely to be cases where for some consumers, supplier A is not cheaper than supplier B, notwithstanding the claim in advertising and marketing. Any such advertising and marketing will be misleading and not just in breach of self-regulation but also consumer law relating to misleading price claims. Any attempt to qualify the relative position under the TCR will only serve to confuse and dilute the message and thus undermine the credibility and reliability of the TCR.

Conclusion

Our conclusion is that the TCR contradicts a number of Ofgem's main objectives:

- It increases complexity
- It is likely to confuse
- It could potentially lead to disengagement of those who are currently active
- It could lead to poor switching decisions, thereby undermining attempts to build trust and confidence with customers

More specifically, it is poorly designed for the purported purpose, namely a high level prompt to engage. The extensive health warnings which would need to accompany the TCR would undermine the purported benefits. The overall conclusion is that there are negative benefits. These concerns around the TCR are reinforced by the potential costs of the number of operations required to calculate it and embed it in documents as well as the calls it could generate to resolve customer confusion. We will be submitting detail in relation to costs in our response to your information request.

5. Mutual variations applied to direct debit reassessments

We do not agree that a change to a customer's direct debit payment is a variation to the contract. Direct debit contracts explicitly provide that we will review their payments on a regular basis to ensure that they are not paying an excessive or too small amount.

In addition:

- Customers are provided protection through the Direct Debit (DD) Guarantee scheme in which we give at least 10 working days advance notice of changes (both increases and decreases) to their monthly payment;
- LC27.15 requires us to charge direct debit amounts based on up to date information;
- If a change in DD amount were to require explicit customer confirmation, this would be likely to result in a customer's DD's being amended less frequently, thereby building up more significant credit or debt balances on their account. This would be especially the case if customers forget to respond to the proposed variation. This proposal would therefore result in a degradation in customers' experience of their energy supply arrangements. It could also potentially put energy suppliers in breach of LC27 requirements as well as impose significant extra administrative cost.

6. Standards of conduct

We support the standards of conduct, both at the general level of treating customers fairly and in respect of the specific provisions. However, fairness like beauty is in the eye

of the beholder. And this raises special issues in the context of a legally enforceable licence condition in the energy sector for the following reasons:

Ofgem is aware of industry concerns about the scope for differing interpretations of this licence condition. It proposes to apply a test of what a reasonable person would have done to comply with the licence condition. However, this merely reframes the uncertainty from what is fair to what is reasonable. The potential exists for Ofgem's view of what is reasonable to vary depending on the composition of the Enforcement Committee and the external environment in which Ofgem is operating at the time. The importance of consistency in respect of standards of conduct is even more vital given that Ofgem is about to be given powers to award redress. And perceived breaches of the standards of conduct will presumably directly relate to customers and can therefore, in many cases, be expected to trigger calls for redress

The question is therefore what steps can Ofgem take to ensure consistency in its decision-making. We have a number of suggestions for consideration:

The first and most important suggestion is that Ofgem actively supports calls for its Enforcement decisions to be appealable to an independent appeals body. It is notable that the argument advanced for granting Ofgem redress powers was couched heavily in terms of similar powers existing for Ofcom. However, the proposals did not pick up the flip side of the proposal, namely that Ofcom's decisions are appealable to an independent body, namely the Competition Appeals Tribunal (CAT). The same is true of a number of other sectors). We note that the updated proposals in the Energy Bill provide that redress decisions should be appealable on grounds of reasonableness. Similar provisions are needed for the original enforcement decisions.

A second proposal would be for Ofgem to appoint an expert adviser to the Enforcement Committee and commit itself to following the advice of the adviser unless it publishes reasons why it has differed. A suitable adviser might be a judge or senior QC experienced in negligence cases where the reasonable person test is central to findings.

A third would be for Ofgem to publish a de minimis threshold based on demonstrated customer detriment below which it would expect to reject cases as vexatious or on administrative priority grounds.

7. *Cheapest deal.*

A major concern with this proposal is that the snapshot forward looking view of the cheapest tariff may well, in hindsight turn out not to have been the cheapest. Caveats will need to accompany messages to eliminate the potential for misunderstandings and perceptions of mis-selling. A similar reservation applies to market cheapest tariff proposals.

In addition, our customer research programme has suggested that customers don't only want to be made aware of the cheapest alternative tariff, but also other suitable tariffs. We advocate that although Ofgem may mandate highlighting the cheapest tariff (using

the wide and narrow definitions), suppliers should also be permitted to highlight other tariffs if they so wish.

Whilst we agree that customers must have a reasonable opportunity to sign up for the product that they are notified as the cheapest deal, we believe there may be unintended consequences arising from Ofgem's suggestion (para 6.12) that such tariffs must be open to an unlimited number of customers for at least four weeks from dispatch. This could expose suppliers to undue wholesale volume and price risk and impact on their willingness to offer certain products. Ofgem recognizes suppliers' market exposure in paragraphs 9.13 & 9.14, although particularly in the context of unexpected network charge variations. Commodity impacting world events, such as Fukushima, expose suppliers to significant risk if they do not retain the ability to withdraw products from the market which were costed on the basis of different market conditions. Our recommendation would be that the new Standards of Conduct licence condition is used to review any cases where there are concerns that an offer has been prematurely withdrawn with a presumption that any tariff which has been available for at least 7 to 10 days is compliant.

8. Market cheapest tariff.

Conceptually, this proposal is an affront to a competitive market. We are not aware of any other competitive market where a business is required to incur costs to promote its competitors' products. It is also counter-intuitive to the efforts of suppliers to build trust and relationships with their consumers (a prerequisite for the delivery of wider policy goals).

There are also a number of practical issues in addition to the mis-selling concern noted in section 7 above including:

i) The interaction with Warm Homes Discount (WHD). Suppose a small supplier is cheapest by £100. Under the market cheapest tariff proposal, one would expect that supplier to be recommended to a customer. However, if the customer were to receive a £130 WHD payment from a larger supplier, the cheapest market tariff may not represent the best deal for the customer. However, there is no clearcut way to resolve the issue as there is no one to one relationship between qualifying criteria for WHD and receipt of benefit.

ii) Errors in advice – suppliers would need to be indemnified against mis-selling claims by customers for mistakes made by the central agency making the recommendations

iii) Interaction with smart metering. By the time this proposal can be properly tested and then implemented, the industry will be well into the roll out of smart meters. This would radically complicate the production of market best deal advice by introducing a number of new parameters which would need to be captured and factored into the calculation. The risk of error increases disproportionately.

iv) An inherent lag within the mechanism for exchanging information, calculating the cheapest tariffs and conveying the information to consumers. Consumption could be

based on estimated readings, prices may change and products close to new applicants. These are further reasons why there would be scope for consumers to allege that they had been misled about potential savings. Any information provided to consumers could only provide an illustrative guide and a bespoke quote would need to be sought from the prospective supplier. These factors lead to an erosion in real value of the scheme and the potential for further confusion

v) Exit fees, if applicable, should be included in the calculation. This introduces complex timing issues especially given Ofgem's proposed 42 day penalty free switching window (See para 9.5 of the consultation). The market cheapest tariff recommendation could depend on the exact timing of the customer's switch which will be unknown to the recommending agent.

vi) A materiality threshold for any potential savings would also need to be considered. Firstly, in order to justify the cost of mailing consumers. Second, to ensure that consumers regard the benefit as sufficient to value the additional information and not regard it as junk mail. Third, as consumption may change year on year, a small financial advantage one year may turn into a financial disadvantage the following year. All estimates would need to document the assumptions on which they are based and carry a warning that a change in lifestyle or property may mean that savings are not delivered.

vii) There are also data protection issues. In our view, passing information to our customers about other suppliers' products would almost certainly be considered to be marketing both under the Data Protection Act and Privacy and Electronic Communications Regulations (to name two of the marketing requirements that will apply to any such information). As such, consumers would need to provide their active consent i.e. opt in to receive such information and we would be unable to provide the information in the absence of such consent. Ofgem would also need to determine whether supplier A was a "representative" of supplier B for the purposes of LC25.

We believe that alternative proposals may be more effective in targeting vulnerable customers. Firstly, an obligation could be imposed to offer the WHD to Affordable Warmth customers who receive measures under ECO, linked to the provision by the DWP and others of data so that such customers are identifiable by energy suppliers. This would be targeted therefore at those vulnerable consumers on the relevant qualifying benefits.

Secondly, we support the promotion of community based collective switching schemes for vulnerable customers, where suppliers work with local authorities, community groups or charities to help identify and engage with vulnerable consumers. A tariff discount could then be offered and this could also be linked to an ECO referral.

Both of these proposals would deliver a real solution by providing a cheaper tariff as well as energy efficiency measures, making an effective contribution to alleviating fuel poverty.

If notwithstanding these practical and conceptual concerns and our suggested alternatives, Ofgem decides to press ahead with this proposal, it will be important to apply an appropriate definition of a disengaged customer. Ofgem's proposal to include

all customers who have not switched in three years includes a large group who have demonstrated active engagement in the market by switching payment method or tariff with their existing supplier. We do not believe it is appropriate for this group to be included in proposals aimed at disengaged customers.