

BGL Group Limited (BGL)

Response to Ofgem's consultation on its Confidence Code Review 2016

Part I

1 Introduction

- 1.1 This document summarises BGL's preliminary views on Ofgem's proposed changes to Ofgem's Confidence Code for domestic price comparison services (the **Confidence Code**) in light of recommendations by the Competition and Markets Authority (**CMA**) set out in the CMA's Final Report¹ on its Energy Market Investigation.
- 1.2 The first part of this document (**sections 2 and 3** below) sets out BGL's general views with regard to Ofgem's proposed implementation of the CMA's recommendations. **Part II (section 4 onwards)** responds to Ofgem's more detailed questions; however, these responses should be read in light of the aforementioned general views.
- 1.3 BGL is interested in Ofgem's consultation because the Confidence Code has a direct and material impact on the activities and obligations of those price comparison websites (**PCWs**) undertaking energy comparison activities and BGL operates one of the UK's most popular PCWs in this space, Comparethemarket.com.
- 1.4 BGL has previously submitted views on aspects of the Confidence Code, notably the Whole of the Market comparison requirement (**WoM Requirement**), to the CMA as part of the Energy Market Investigation (as well as Ofgem as part of earlier consultations). This submission expands upon Ofgem's proposed implementation of the remedy associated with the removal of the WoM Requirement.

2 Executive Summary

- 2.1 In BGL's view, Ofgem's proposed implementation of the CMA's recommendation is inadequate. Although Ofgem's proposal would reverse unhelpful changes (requirements on default views etc.) to the Confidence Code introduced in 2015, the effect of which was to further reduce the incentive on PCWs to invest in energy comparison services and increase competition, it does not respond to the CMA's proposed remedy – the removal of the WoM Requirement – fully.
- 2.2 While Ofgem contemplates consulting on the removal of the WoM Requirement in full 'at a later date', it makes no firm commitment in this respect. Aside from the fact that this remedy ignores, at least partially, the CMA's recommendation, it offers no reassurance of a timetable or, indeed, that a further review will be undertaken at all.
- 2.3 The reasons given by Ofgem for proposing a diluted remedy are that:
- 2.3.1 The WoM Requirement is longstanding and would therefore be difficult to reverse.
- BGL disagrees with this justification not least because the longevity of a problematic market feature should not prevent it from being remedied.
- 2.3.2 The removal of the WoM Requirement would render auditing difficult.
- In BGL's view, this is a misplaced concern because provided a PCW is transparent about its market coverage, any auditing of the WoM Requirement would in many respects be redundant under the CMA's remedy.
- 2.4 BGL acknowledges Ofgem's desire to balance the need to incentivise PCWs to invest in energy comparison with its desire to engender customer trust; however, BGL does

¹ Published on 24 June 2016

not consider that retaining pre-2015 aspects of the WoM Requirement would strike this balance, particularly in light of other market features which the CMA has noted would compensate for its removal, for example, clearer PCW messaging about actual market coverage and Citizens Advice's market-wide non-transactional price comparison tool.

- 2.5 With these concerns in mind, while BGL agrees with Ofgem's proposed removal of the Confidence Code changes introduced in 2015, BGL urges Ofgem to fully adopt the CMA's WoM Requirement recommendation and remove the WoM Requirement in its entirety.

3 Initial Comments

- 3.1 The CMA's recommendation in respect of the Confidence Code and its WoM Requirement is unambiguous:

*To strengthen PCWs' incentives to engage customers, we are proposing to recommend to Ofgem that it **removes the Whole of the Market Requirement in the Confidence Code** and introduces a requirement for PCWs accredited under the Confidence Code to be transparent over the market coverage they provide to energy customers.[Emphasis added]²*

- 3.2 Ofgem has stated in its Confidence Code consultation that:

Ofgem is committed to acting on the CMA's final recommendations;³

and

Ofgem supports the CMA's final remedy package, and is committed to implementing it in a way that maximises benefits to consumers.⁴

- 3.3 BGL is therefore concerned that Ofgem's proposal does not, in fact, comprise the removal of the WoM Requirement. Instead, Ofgem appears to be proposing a partial or diluted remedy, which involves:

3.3.1 not consulting on full removal of the WoM Requirement at this stage;

3.3.2 instead, consulting on the removal of measures introduced in 2015 to strengthen aspects of the WoM Requirement in the Confidence Code; and

3.3.3 at some (unspecified) future date, possibly consulting on the full removal of the WoM Requirement.⁵

- 3.4 This approach is unexpected because the question of a partial adjustment to the WoM Requirement was considered by the CMA in its Final Report and, seemingly, discounted.⁶

- 3.5 It is clear that the CMA considers that amendments to the Confidence Code introduced by Ofgem in 2015 further undermined the incentives on PCWs to invest in domestic retail energy markets; however, its recommendations with regard to the WoM Requirement are significantly broader. It follows that confining any remedy to the reversal of these 2015 changes, while leaving other aspects of the WoM Requirement in situ (even as an interim measure), will not necessarily address the harm identified by the CMA.

- 3.6 The reasons given by Ofgem for its proposed partial or piecemeal approach to implementing the CMA's remedy are not, in BGL's view, credible. For example:

² Final Report – page 56, para. 239

³ Ofgem: Confidence Code Review 2016, page 2

⁴ Ibid, page 3

⁵ Ibid, page 5

⁶ Final Report – page 875, para. 13.270

- 3.6.1 Ofgem argues that the Confidence Code has required accredited PCWs to display a WoM comparison since Ofgem took over the Confidence Code from Consumer Focus⁷ and that:

*Removing the WoM Requirement is a big change to the Confidence Code as this has been a fundamental part of it for many years.*⁸

However, Ofgem only took over the Confidence Code in 2013, so the WoM Requirement is a more recent development than Ofgem's statement would imply. More importantly, Ofgem has proposed separately to completely remove various Standard Licence Conditions (as part of its implementation of the RMR Simpler Tariff Choices consultation), so any suggestion that removing the WoM Requirement in its entirety would be a more cumbersome remedy (and thus require a piecemeal approach) is exaggerated.

- 3.6.2 Ofgem also argues that:

*[the removal of the WoM Requirement] could potentially have far-reaching implications for price comparison websites, suppliers and consumers and will certainly require changes to the way in which Ofgem currently administers the Code, including audit. The current audit and accreditation process relies on being able to compare results across price comparison websites (a comparative audit approach). In the absence of WoM being displayed across sites, this audit approach would no longer be viable as there would be no guarantee that all sites would list all tariffs at any point in their consumer journey. The redesign of the audit and accreditation processes, the supporting approach to compliance, and the related contractual arrangements would be a significant task.*⁹

- 3.6.3 However, this statement disregards the CMA's recommendation. The need for audit in respect of the WoM Requirement is unnecessary if one accepts the CMA's recommendation, which Ofgem has approved. Moreover, according to evidence gathered by the CMA (including from Ofgem), PCWs cannot necessarily list all tariffs anyway and consumers also do not want or expect all tariffs to be listed, which belies the importance of any audit.¹⁰ The only aspect that requires audit is whether, in response to the CMA's other recommendation concerning the Confidence Code, PCWs are being *transparent over the market coverage they provide to energy customers* – an issue that is separate to the WoM Requirement.¹¹

- 3.6.4 Moreover, Ofgem's focus on requiring PCWs to list all tariffs has the capacity, aside from creating a disincentive on PCWs to invest in energy comparison¹², to confuse customers; indeed, the CMA has already argued forcefully that a focus on listing all tariffs is misplaced:

Ofgem told us that, in practice, PCWs do not provide comparisons that cover all tariffs available in the market. In particular, collective switching schemes hosted by a PCW may not be displayed in searches conducted by rival PCWs. We consider that the fact that this is the case, notwithstanding the Whole of the Market Requirement, is

⁷ Ofgem: Confidence Code Review 2016, page 12, para. 2.1

⁸ Ibid, page 15, para. 2.9

⁹ Ibid, page 15, para. 2.9

¹⁰ Final Report – page 365, para. 8.83

¹¹ See section 2.3.2 above

¹² As summarised in the Final Report – pages 670-671, para. 11.142

potentially confusing and misleading for customers and therefore has the potential to undermine the confidence of customers in PCWs.¹³

3.6.5 It follows that maintaining a market feature to allow Ofgem to audit such a requirement is entirely redundant, could exacerbate customer mistrust and compromises the effectiveness of a remedy designed to enhance competition.

3.7 BGL appreciates that the removal of the WoM Requirement (as envisaged by the CMA) represents a significant change to the Confidence Code; however, a radical remedy is necessary. This is because, as matters stand, current levels of advertising by PCWs relating to energy still appear to be very low relative to other sectors, which contributes to greater customer inertia. BGL would therefore urge Ofgem to revisit its implementation of this remedy and re-affirms its commitment to working with Ofgem to identify more proportionate solutions, which will drive greater transparency and customer trust while supporting further investment and new market entry.

Part II

4 Questions

1 Question 1: Do you agree that we should implement the proposed removal of some of the changes we made to strengthen the WoM requirement in the 2015 Code review? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

1.1 Please see BGL's comments in **Part I, sections 2 and 3** above.

1.2 BGL believes that the WoM Requirement in the Confidence Code has given rise to unintended adverse consequences and undermined PCWs' incentives to be active in retail energy markets.

1.3 Although, arguably, the WoM Requirement could facilitate, in the short term, some degree of new market entry, in the medium to long term such a requirement is not sustainable given its propensity to encourage free-riding (for the year to date, for example, the majority of the top three search results have been offline suppliers) and tariff manipulation on the part of suppliers and undermine the PCW model overall.

1.4 BGL also considers that the removal of the WoM Requirement supports other remedies proposed by the CMA, notably those relating to the removal of certain aspects of the simpler choices component of the RMR. In other words, if it remains, the WoM Requirement risks undermining other CMA remedies, for example, the ability and incentive on the part of suppliers and (accredited) PCWs to negotiate exclusive deals available via particular PCWs.

1.5 **The WoM Requirement creates a barrier and disincentive to investment. The risk of continued under investment in energy price comparison is partially addressed through the reversal of the 2015 changes to the Confidence Code (as envisaged by this Question 1); however, as indicated in Part I above, only the full removal of the WoM Requirement has the potential to result in changes to this broken market for the benefit of consumers.**

1.6 Nevertheless, BGL acknowledges the benefits of Ofgem's proposal to remove some of the changes it made to strengthen the WoM Requirement in the Confidence Code 2015 review. Indeed, in a market characterised by obvious market power on the part of the Six Large Energy Firms the WoM Requirement, which undermined the negotiating position of those best placed to enhance competition, namely PCWs, was increasingly unsustainable.

¹³ Final Report – page 875, para. 13.271

- 1.7 It follows that any adjustment to the WoM Requirement may bring greater market balance and may encourage PCWs to innovate further in product development leading to less customer inertia and more customers getting a better deal. Measures which reduce the risk of energy suppliers being able to free-ride at the expense of other providers, which has undermined the appetite and ability of PCWs to develop and grow their retail energy comparison proposition, will deliver positive effects (even if those positive effects are significantly less pronounced than those expected as a result of a full/broader interpretation of the removal of the WoM Requirement).
- 1.8 BGL accepts that the changes envisaged by Ofgem currently may create conditions which make it even easier for smaller suppliers or new market entrants, which may be more reliant on PCWs to advertise their tariffs than the Six Large Energy Firms, to grow. Further, in combination with the removal of the simpler choices component of the RMR rules, the removal of aspects of the WoM Requirement could engender greater competition between PCWs themselves. For example, it would give PCWs scope to negotiate exclusive tariffs with energy suppliers, which should place downward pressure on tariff prices (and commissions received from suppliers), which of itself is likely to make more customers pursue better savings.
- 1.9 That said, Ofgem's proposed changes do not go far enough. In BGL's view, if one accepts the rationale of the CMA's findings, the full removal of the WoM Requirement will prompt greater customer benefits (than the piecemeal approach adopted by Ofgem). Ofgem's proposed changes would, in principle and at best, only improve recent market trends, whereas a more comprehensive adoption of the CMA's recommendation could be a catalyst for more radical market improvements, PCW investment and customer engagement.

2 Question 2: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the partial default view? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

- 2.1 BGL agrees that current arrangements regarding default views are problematic and should be addressed; however, it would refer Ofgem back to the comments outlined above.

3 Question 3: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter choice? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

- 3.1 BGL agrees that allowing accredited sites to pre-tick filter options (i.e. to return to the position before the implementation of the 2015 Confidence Code changes) would limit supplier's ability to free-ride on the investment of PCWs; however, such a change would not address this risk entirely and could prompt customer confusion. In BGL's view, Ofgem should grasp the nettle and, rather than seeking to fine tune the WoM Requirement, accept that it does not work and focus on greater transparency around market coverage instead.

4 Question 4: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter wording/testing? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

- 4.1 BGL is fully committed to delivering clear and fair messaging/signposting to its customers. With this in mind, it would be happy to share its methodology with Ofgem

and it agrees with Ofgem's rationale and proposed policy changes around the WoM filter wording/testing.

5 **Question 5: Do you agree that sites should test the prominence, clarity and intelligibility of their messaging with consumers and that Ofgem should monitor this? If not, please:**

- **explain why**
- **suggest and explain any alternative proposals**

5.1 BGL agrees that PCWs should test the prominence, clarity and intelligibility of their messaging with consumers and that Ofgem should monitor this. In particular, as regards the introduction of a requirement for PCWs accredited under the Confidence Code to be transparent over the market coverage they provide to retail energy customers, BGL considers that it already meets high standards, but looks forward to working with the CMA or Ofgem to improve its offering and ensure consistent, user-friendly messaging, which should enhance the trust customers place in its platform, and that of other responsible PCWs.

6 **Question 12: Do you believe there are any other initiatives we should be keeping abreast of to ensure a joined-up approach to our policy development work?**

6.1 BGL believes that the CMA and Ofgem should consider sensible and proportionate measures to ensure that customers become aware of the benefits of these changes (i.e. the removal of the WoM Requirement) through appropriate and targeted communications.

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