

The Role of Demand-Side Remedies in Driving Effective Competition

A Review for Which?

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The views and statements expressed in this Review, however, reflect the author's own independent views, and do not necessarily represent the views of any of Which? or any other organisation.

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Executive Summary

This Review was commissioned by Which? to examine the available evidence on the role and effectiveness of demand-side remedies.

Demand-side remedies are regulatory interventions which are intended to enhance competition by helping the demand-side of markets – that is, customers – to work more effectively. This is typically done, in principle at least, by helping consumers to improve their consumer decision-making, such that they are more likely to purchase more suitable products or services for their needs. This should enhance firms' incentives to compete to serve these customers, in turn driving up value for money, productivity and innovation.

Over the past 15 years, there has been a growing focus on such demand-side remedies as an important element of competition policy. While regulation is sometimes seen as an alternative to competition, or even as a barrier to competition, regulation of this sort is designed to provide a framework within which competition can thrive.

This Review examines the available evidence to date: what has been tried, what works, and what doesn't? The evidence is primarily drawn from the UK, and comprises existing evaluations and reviews, as well as relevant academic research. Although the evidence base is limited, and thus any conclusions must necessarily be somewhat tentative, the Review sets out some thoughts on how the design and use of demand-side remedies might be improved in order to enhance their effectiveness.

Types of demand-side remedies

The Review identifies three core categories of demand-side remedies, each of which has a variety of sub-categories.

- a) *Disclosure remedies*: These involve requiring suppliers to provide consumers with information about their products or services that is relevant for consumer decision-making. They include:
 - Disclosure remedies to purely address asymmetric information
 - Disclosure remedies to facilitate consumer awareness and understanding
 - Disclosure remedies to facilitate comparison across products
 - Disclosure remedies to prevent consumers being misled
 - Disclosure remedies to aid decision-making when consumers are already using a product or service.
- b) *Shopping around remedies*: These can involve the collation of information to facilitate search and comparison, for example through a one-stop shop or PCW. They can also involve nudges or triggers designed to encourage consumers to shop around, as well as the removal of specific factors that might inhibit shopping around. They include:
 - Remedies that instigate or enhance collation of information to facilitate search and comparison
 - Remedies that impose access to personal information to facilitate comparison
 - Remedies that trigger or require shopping around
 - Remedies that otherwise de-risk or facilitate shopping around.
- c) *Switching remedies*: These effectively involve making switching less costly, quicker, more reliable, and easier, or the removal of specific factors that might inhibit switching. They include:
 - Switching remedies that involve changing contractual restrictions.
 - Remedies that make switching quicker, easier, more reliable or more attractive.

This Review describes examples of each of these categories of remedy, and how each was intended to enhance consumer decision-making and thus competition. It also considers briefly an alternative category of remedy: 'outcome control' remedies. These are supply-side remedies, albeit responding to demand-side problems, which more directly specify what outcomes we should see in the market. This stands in contrast to the core demand-side remedies discussed here, which endeavour to achieve good market outcomes through improving consumer decision-making.

Findings

The evidence presented in this Review shows that a number of demand-side remedies, of various sorts, have had beneficial effects. However, many have not been as effective as intended, and a few may even have had unintended negative consequences.

The Review also finds that the approach of the regulators (including competition authorities) to demand-side remedies has clearly changed over time. Prior to 2008-10, there was a good understanding of the importance of asymmetric information issues and the importance of search and switching for driving effective competition. This was, however, effectively aligned to a view that, if these could be improved, then markets would work better. Demand-side remedies were focussed on providing information, easing search, and easing switching, with a view to these being the key barriers to an effective demand-side.

There was an expectation that consumers, if these barriers were removed, would make sensible decisions and drive competition. During this time, the focus of demand-side remedies was thus effectively on *empowering* consumers.

A growing focus on behavioural economics 2008-10 led to a gradual rethink around demand-side remedies. This was also informed by evaluations of markets in which past demand-side remedies had clearly been ineffective or not fully effective. In some cases, this was due to poor implementation of the remedies, or patchy compliance. However, even where compliance was not an issue, there was a realisation that, while the earlier demand-side remedies may have been good in themselves, and indeed may even have been *necessary* for the demand-side to work effectively, they were not *sufficient* for improving consumer decision-making.

This has led to change in emphasis in remedy design - with a refocus on *engaging* customers. This involves thinking carefully about how consumers really behave, and the more psychological factors that might limit search and switching, with a view to designing remedies that are more specifically targeted at enhancing consumer decision-making and addressing the problems identified.

There remain potential downside risks to demand-side remedies, but this doesn't imply that the use of demand-side remedies to drive competition should necessarily be abandoned. Rather, it highlights that it can be complex to design and implement effective demand-side remedies, and packages of complementary remedies may be required rather than 'single bullet' remedies.

Drawing on the available evidence, it is possible to draw a number of tentative lessons for improving remedy effectiveness. These relate both to the substance of demand-side remedies and to the remedies process.

Improving remedy effectiveness – Lessons on substance

i. Pure information asymmetry and real search and switching costs do matter

While the early demand-side remedies were perhaps overly focussed on overcoming asymmetric information and reducing search and switching costs, the importance of such measures should not be understated. A number of remedies addressing pure asymmetric information and real costs of search and switching have been found to have been powerful in improving consumer decision-making. In particular, where switching is found to be limited by contractual restrictions, requiring changes to such restrictions can be very effective.

With the growing focus on behavioural economics, it is important that this basic finding is not forgotten.

ii. The ‘EAST’ mnemonic is valuable when designing demand-side remedies

Where behavioural biases are an important factor, the UK Behavioural Insights Team has useful guidance on what is needed to really change consumer behaviour. They argue that interventions have to make such change Easy, Attractive, Social and Timely, and they suggest the acronym EAST as a memorable mnemonic.¹ Many of the findings in this Review support this view.

First, it is clear that making things ‘easy’ for consumers is very important. For example, this is clear from the success of various switching remedies which are focussed on removing the ‘hassle’ factor, the fact that consumers don’t use price comparison websites (PCWs) if they offer poor functionality, and the problems that arise if disclosures are not easily accessible. It is also clear that added complexity can lead to issues of information overload, which means it can sometimes be better to require less disclosure, not more.

A corollary of the importance of ease is that consumer decision-making can potentially be altered by making certain undesirable options more difficult. For example, the recent ban on the opt-out selling of additional products makes it slightly harder for consumers to choose the additional product and thereby requires that this be an active choice, rather than a default unintended option. Likewise, the bans on automatic rollover contracts in energy and telecoms mean that consumers are required to make an active choice if they wish to enter another fixed term contract with associated termination fees.

Second, the evidence in this Review supports the view that consumers will only be drawn to decision-making tools if they are sufficiently *attractive*. The under-use of a number of PCWs and also the Current Account Switching Service can partly be pinned down to a lack of consumer awareness or unwillingness to try the tools. Where this is an issue, it may be necessary for regulators to mandate that promotion of the tools occurs, or to set clear outcome targets in terms of usage. It can also be important that tools remain in the public eye for a prolonged period if they are to generate real behaviour change.

Third, it is clear that *social* interactions can impact on consumer decision-making. The human factor can have a clear *negative* role in consumer decision-making, for example due to consumers placing too much trust in advisers or succumbing to pressure selling. In such cases, the regulator may need to think hard about *who* is involved in remedies, for example who is required to make disclosures. This issue can also feed into switching processes. For example, the recent decision by Ofcom to switch to gaining provider led switching in broadband was partly driven by the preference of customers not to have to face the discomfort of speaking to the supplier they were leaving.

There has been less work done so far on how *social* interactions can play a positive role in helping improve consumer behaviour. Public awareness and attitudes can change over time and that this can have a big impact on the behaviour of both consumers and firms. For example, in some of the cases discussed above, significant changes in fact occurred during investigation. This suggests that publicity and increased consumer awareness are important drivers of changing behaviour. Regulators could potentially do more to harness this form of ‘people power’.

1. See footnote 12

It is also clear that consumer understanding and behaviour can be strongly influenced by family and friends. Again, there may be creative ways to harness this to drive behaviour change more effectively, for example by developing ‘memes’ that are designed to be shared on social networks.

Last, it is clear that interventions need to be *timely* if they are to be effective. The available evidence shows that relatively small differences in timing can have a big impact on consumer behaviour. The key is to ensure that consumers receive the information when it is mostly likely to be salient for their decision-making.

iii. Enhancing the role of commercial solutions can be valuable

Given the importance of ensuring that decision-making tools are both easy and attractive for consumers to use, there are clear benefits to be gained from utilising commercial tools to solve identified problems, where possible, rather than regulators endeavouring to provide these tools themselves or mandating their existence. This reflects a growing understanding that regulators may be poorly placed to develop attractive solutions that are easy to use and build on the latest technological developments.

Where there is the potential for market solutions to solve demand-side problems in this way, interventions may work best by facilitating their development and effectively making companies the ‘owners’ of the remedies. The CMA’s requirement that suppliers of payday loans provide data to at least one FCA-authorized PCW is one example of such a remedy, as are the measures being taken to stimulate the development of PCWs in SME banking.

Where reliance is placed on commercial tools, it is important to recognise that firms’ commercial incentives may not be fully aligned with consumers. In such circumstances, there may be a role for additional rules, either in the form of regulation or through accreditation. In imposing such rules, however, it is important that they are designed carefully, to ensure that commercial incentives to maintain, enhance and innovate the tools are preserved.

iv. It is important to consider supply-side responses to interventions

There is evidence in this Review of suppliers readjusting their pricing in ways that have unintended consequences, or even of suppliers seeking to undermine remedies. Over-interventionist remedies can potentially also have negative effects in terms of crowding out commercial solutions or disincentivising innovation.

It can be hard to second-guess the reactions of suppliers. In particular, they are not easy to test through empirical techniques such as RCTs. In some cases, it may be possible to model supplier reactions. Even where this is not possible or proportionate, however, it is still important to keep supplier incentives in mind when designing remedies.

v. It is important to be aware of distributional effects of interventions

Demand-side remedies can have winners and losers. This should not necessarily deter regulators from intervention. If canny consumers have effectively been benefiting, through lower prices, from the less sophisticated behaviour of others, who pay high prices, then intervention to address this issue may not be considered to raise significant distributional concerns.

On the other hand, the Review identifies examples whereby demand-side remedies could potentially harm more vulnerable consumer groups. For example, the greater use of PCWs may drive down online prices, but drive up offline prices, and this may be detrimental for those who do not use PCWs, perhaps because they do not have easy access to the Internet.

In such cases, even if regulators do not have explicit objectives relating to equity or fairness, they may wish to give special consideration to the problems faced by particular groups of consumers, rather than considering consumers as a single group. Recent examples include the most recent CMA market investigations, which specifically considered the issues facing pre-payment customers (in energy) and customers with overdrafts (in retail banking).

Improving remedy effectiveness – Lessons on process

A key finding of this Review is that the remedies process can be very important. There are various elements to this.

i. Remedy design

In terms of remedy design:

- First, it is important that remedies are given early consideration in any market review. In the past, remedies have sometimes been considered quite late on in the process, with primary focus being placed on diagnosing problems in a market. While good diagnosis is crucial, it is important also to recognise that it takes time to design effective remedies. This should not be considered as an after-thought.
- Second, in designing remedies, it is important to be as precise as possible about the problems that consumers face. In particular, the evidence in this Review shows that it can be a mistake to assume that reducing the search and switching costs faced by consumers will straightforwardly act to improve consumer decision-making and enhance competition. The factors preventing effective consumer decision-making can be less obvious and more behavioural.
- Third, remedies can benefit from being relatively precise. For example, remedies that require disclosure in a standardised – and potentially simplified – format will typically need to be tightly defined. On the other hand, there can also be benefits from setting out clear principles for the remedy, ideally also alongside measurable desired outcomes, and then allowing firms themselves to work out the details. It can be difficult in any specific case to determine where the line should be between precision and flexibility of remedy.
- Fourth, given the complexity of the issues arising in many of the markets examined here, it is unlikely that any one remedy will provide a complete solution. Rather, effective remedy design may require regulators to develop a package of complementary remedies, which work together to achieve their objectives. We should not be surprised to see remedy packages that include a mixture of disclosure, search, switching and even outcome control remedies.
- Finally, since many demand-side remedies draw on technology to enhance consumer decision-making, it is important that regulators are at the forefront of market and technological developments. This is particularly valid today, with the rapid development of digital comparison tools, the move towards mobile apps, and the growth of ‘big data’. In this new environment, factors like ensuring open APIs and access to data may become far more important than in the past.

It is also important, though, that regulators are appropriately humble about their ability to predict the future. Some of the above examples of weaker remedies, in particular around PCWs, reflect the actions of forward-thinking and innovative regulators, which nevertheless failed to ensure sufficient flexibility to fully ‘future-proof’ these interventions.

ii Remedy testing

Advance testing is not always feasible, and this may be especially true where remedies involve significant market-transformation rather than consumer nudges. Where possible and proportionate, however, it can be very useful to test remedies in advance.

This can be done in a variety of ways, from discussion with consumer focus groups, to laboratory experiments, to randomised controlled trials (RCTs). Of these, RCTs can be particularly valuable, since they demonstrate how real interventions impact on real consumers, who are not aware that they are part of an experiment. It should, though, be highlighted that any such testing can be time-consuming. In addition, RCTs typically require active participation by companies, which is not always easy to arrange.

There are two important implications here.

- First, effective remedy testing can be compromised by overly tight timetables. It is noteworthy, in this context, that the CMA did not endeavour to carry out RCTs itself in its recent energy and retail banking market investigations, given the tight statutory deadlines it faced, but rather recommended that the respective regulators (FCA and Ofgem) carried out such work. While this strategy to overcome tight deadline constraints can work in markets where there are existing regulators, it would be more problematic in unregulated sectors.
- Second, if RCTs are to be employed, it can be useful where possible to impose requirements on firms to engage with the testing process. Even where companies are willing to engage voluntarily, there is a risk that they may then try and influence the choice of remedies to be tested, as a condition of taking part. It is noteworthy that the CMA has imposed just such a participation requirement on firms in respect of its energy and retail banking remedies.

iii. Remedy implementation

The evidence reviewed for this Review highlights a number of instances of poor implementation of remedies, leading to poor compliance or even attempts by parties to stymie the intention of the remedies. There are useful lessons here.

- First, it is important to consider carefully the details of implementation. This can include ensuring that the process of implementation has effective governance around it.
- Second, it can also be important to think about governance over the longer term, since with effective governance and a clearly stated intention for the intervention, remedies can potentially be flexed over time to remain true to the original remedy intention, in the face of market changes or technological developments.
- Third, and more generally, even after implementation has occurred, ongoing compliance matters. A number of remedies in this Review were less effective than expected partly because compliance was patchy. With careful thought upfront, it may be possible to ensure long-term compliance through, for example, reporting requirements.
- Finally, where the authority is putting in place a package of remedies, it may be valuable to retain the ability to revisit the package during the testing or implementation phase, since if one element of the package proves ineffective or impracticable, this may potentially have implications for other elements.

iv. Monitoring and review

Reviewing the effectiveness of remedies over time is also valuable. Remedies may be less effective than intended, or may become less effective as market circumstances change over time. Ensuring that remedies are monitored or revisited can allow regulators to revise them if necessary. Some of the examples in this Review demonstrate that it can sometimes take several attempts for regulators to make remedies effective. Knowing that there will be future revisiting of remedies may also enhance the incentives on business to make the remedies work in the first place.

Utilising sunset clauses can provide a commitment device to such remedy review, as can commitment to the ongoing monitoring of measurable outcomes or an effective programme of ex post evaluation. In some cases, a process of ongoing review, accompanied by small changes, may also be valuable for getting a remedy to work as well as possible.

Finally, at the point of remedy design, it can also be useful to consider the need for later evaluation. Staggered implementation can provide valuable information on remedy effectiveness. Likewise, regulators may not have the power to require relevant data from companies for evaluation unless this power has been specified as part of the original remedy.

Conclusion

This Review sets out a number of ways in which the design and implementation of demand-side remedies might be more effective. However, it is important to be circumspect. Getting these remedies right is difficult. We can sometimes predict how consumers will act on the basis of past experience, but often we cannot.

Overall, it is important to recognise that we do not exist in a world of first-best solutions. In the sorts of markets considered here, with limitations on the demand-side, there is almost bound to be detriment of one sort or another. There may also be limits to what can realistically be achieved in markets through demand-side remedies, especially when one considers reactions of both firms and consumers to such remedies, the implementation costs of the remedies, the risks of unintended negative consequences, and the fact that there may be winners and losers.

In such situations, regulators face difficult choices. Do they focus on demand-side remedies, step back from intervening at all, or adopt more interventionist outcome control remedies, bearing in mind that the latter bring their own concerns? This Review cannot answer these difficult questions. However, it should help to inform the regulatory decision-making around them.

Introduction

- 1** This Review was commissioned by Which? to examine the available evidence on the role and effectiveness of demand-side remedies.
- 2** Demand-side remedies are regulatory interventions which are intended to enhance competition by helping the demand-side of markets – that is, customers – to work more effectively. This is typically done, in principle at least, by helping consumers to improve their consumer decision-making, such that they are more likely to purchase more suitable products or services for their needs.
- 3** Over the past 15 years, there has been a growing focus on such demand-side remedies as an important element of competition policy. While regulation is sometimes seen as an alternative to competition, or even as a barrier to competition, regulation of this sort is designed to provide a framework within which competition can thrive.
- 4** This Review examines the available evidence to date: what has been tried, what works, and what doesn't? The evidence is primarily drawn from the UK, and comprises existing evaluations and reviews, as well as relevant academic research. Although the evidence base is limited, and thus any conclusions must necessarily be somewhat tentative, the Review also sets out some thoughts on how the design and use of demand-side remedies might be improved in order to enhance their effectiveness.
- 5** **Section 1** provides an introduction to the role of demand-side remedies in facilitating effective competition in markets, and how this role is influenced by the existence of consumer behavioural biases. This section also summarises some potential downsides of demand-side remedies, and the legal framework underpinning their use.
- 6** Three key categories of demand-side remedies are identified: disclosure remedies, shopping around remedies, and switching remedies. These are then considered in turn in **Sections 2 to 4**. Each of these sections sets out what sorts of remedies have been observed, and how these were intended to work, before examining how they have worked in practice and drawing some possible lessons for the future.
- 7** **Section 5** turns briefly to a fourth category of response to demand-side problems: remedies which directly control outcomes. **Section 6** concludes and draws together the lessons identified throughout the Review.
- 8** This work has been done with the support of Which? and the Centre for Competition Policy (CCP) at the University of East Anglia. It builds on a 2008 research study in this area carried out by colleagues at CCP for the UK Office of Fair Trading (OFT).² Thanks are also due to the UK regulators who have provided many useful comments. However, all views (and any errors) are my own.

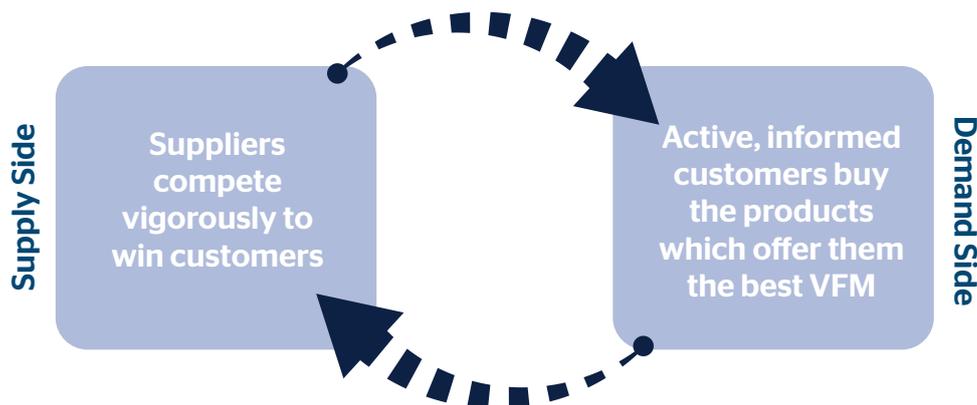
2. Office of Fair Trading (2008). "Assessing the effectiveness of potential remedies in consumer markets" by Luke Garrod, Morten Hviid, Graham Loomes and Catherine Waddams Price. OFT994. See: http://webarchive.nationalarchives.gov.uk/20140525130048/http://www.of.gov.uk/shared_of/economic_research/oft994.pdf.

1. The role of demand-side remedies: An introduction

- 1.1** When a credit card company provides you with key information in a summary box, or when you find it quicker and easier to switch bank than you might have expected, you are benefiting from a form of regulatory intervention termed a 'demand-side remedy'. Such remedies are designed to enable the demand-side of markets – customers – to seek out the best suppliers and products for their needs, and in doing so help to drive competitive markets.
- 1.2** Over the past 15 years, there has been a growing focus on such demand-side remedies as an important element of competition policy. While their most immediate aim is to improve consumer decision-making, their crucial second objective, enhancing competition, stands to benefit both consumers and the wider economy. Such regulatory interventions reflect the important role that the demand-side of the market plays in driving effective and valuable competition. While regulation is sometimes seen as an alternative to competition, or even as a barrier to competition, regulations of this sort are designed to provide a framework within which competition can thrive.
- 1.3** This section provides an introduction to the role of demand-side remedies in helping to drive effective competition in markets, and how this role is influenced by the existence of consumer behavioural biases.
- 1.4** As competition-focussed demand-side remedies have become more prevalent, though, they have sometimes received criticism. While they are typically well-intentioned, it is clear that some have been ineffective and some may even have had unintended negative consequences. This section summarises the potential downsides of demand-side remedies. It also discusses the legal framework underpinning their use.

1.1 How demand-side remedies can affect competition

- 1.5** Demand-side interventions can have a variety of objectives. For example, creative approaches to food labelling can promote healthier eating, comparative information on energy usage can promote greater energy-efficiency, changing default options around pensions can dramatically increase pension saving, and improving complaints procedures and rights of redress can help consumers to ensure they are treated fairly by suppliers.
- 1.6** In this Review, the focus is on demand-side remedies which are primarily motivated by competition considerations. These typically constitute part of a general Government-backed strategy to ensure that markets work well and deliver benefits for both consumers and the wider economy.
- 1.7** Why is the demand-side so important for effective competition? To consider this question, it can be useful to think of a competitive market as a virtuous circle, as depicted in the figure below, with suppliers on one side of the circle and consumers on the other.
- A competitive *supply-side* will comprise firms who are seeking to win customers from each other and design their product offerings with this objective in mind. Standard antitrust law primarily focusses on ensuring that this side of the market works well, for example by preventing anti-competitive mergers, collusion amongst firms or the abuse of substantial market power.
 - If the *demand-side* of the market works well, then these competing firms will win consumers only if, relative to their competitors, they provide them with the products that they most want, at the best possible value for money (VFM). This in turn requires active consumers on the demand-side who make well-informed and rational consumption decisions.



1.8 This process, of profit-seeking competitive firms seeking to win engaged and well-informed customers, should act to drive up VFM, productivity and innovation, as well as enhancing investment and consumer confidence. But what happens to this virtuous circle of competition if the demand-side of the market works less well? This can change the incentives of firms and can lead to a less rosy picture in three somewhat distinct ways:

- First, if consumers do not readily search out and switch to the best deals, then this can weaken competition. A firm which offers a better deal will only win a proportion of those customers who would rightly prefer that deal. This in turn can reduce the disciplining effect that consumers have on supplier behaviour and thus limit the competitive incentives of that firm to make such an offer.
- Second, given that reduced search and switching can weaken competition, firms may have an incentive to do what they can to make such search and switching difficult. Possible examples include firms' obfuscating prices or product characteristics, refusing to supply information to price comparison websites (PCWs), or imposing exit fees on consumers who wish to switch.
- Third, if consumers make choices on a basis that doesn't reflect their true preferences, then firms may compete to win customers on this 'wrong basis'. For example, if consumers choose a supplier solely on the basis of the salient upfront price, and ignore quality or any 'hidden' fees that may be levied at a later stage, then firms may compete by setting poor quality, or the most egregious 'hidden' fees they can, so that their upfront price can be as low as possible. This form of competition can potentially still work to dissipate upstream rents, but it may nevertheless create detriment to the extent that it leads to distorted consumer choices.

1.9 Demand-side remedies can potentially address all three of these possible concerns, and so improve consumer decision-making and drive effective competition on the dimensions of the product offering that really matter to consumers. In order to be successful, they need to ensure that consumers access the key relevant information, assess that information effectively, and then act on that information. These three elements are reflected in the "Access, Assess, Act" framework developed by the OFT for assessing consumer decision-making.³

3. Office of Fair Trading (2010). 'What does Behavioural Economics Mean for Competition Policy?'. OFT1224. See: <http://webarchive.nationalarchives.gov.uk/20140402142426> http://www.offt.gov.uk/shared_offt/economic_research/oft1224.pdf

- 1.10** Broadly, these three elements can be linked to three core categories of demand-side remedy:
- a) *Disclosure remedies*: These involve requiring suppliers to provide consumers with information about their products or services that is relevant for consumer decision-making.
 - b) *Shopping around remedies*: These can involve the collation of information to facilitate search and comparison, for example through a one-stop shop or PCW. They can also involve nudges or triggers designed to encourage consumers to shop around, as well as the removal of specific factors that might inhibit shopping around.
 - c) *Switching remedies*: These effectively involve making switching less costly, quicker, more reliable, and easier, or the removal of specific factors that might inhibit switching.

1.11 Sections 2-4 of this Review considers each of these categories of demand-side remedies in turn, examining both the rationale for the remedies and the available evidence on their effectiveness. It has not always been easy to allocate a remedy to a particular category, as there are significant overlaps in their objectives. A timely disclosure remedy, designed both to inform and to trigger shopping around and switching, could arguably fit under any of them. Nevertheless, the categories seem helpful in building understanding as to how these remedies are intended to function.

1.12 It should be noted that these remedies usually involve requirements being placed on suppliers (or sometimes third parties), not consumers themselves. Although the objective is to change consumer behaviour, this is typically done by putting in place measures which enable or trigger consumers to change their behaviour, rather than forcing them to do so. This line is, however, blurred in that remedies can sometimes require suppliers to force consumers to do things. For example, recent UK legislation requires that pension providers must ensure consumers have taken independent financial advice before they cash in a defined benefit pension worth more than £30,000. Consumers have no choice in this matter if they wish to pursue the transaction.⁴

1.13 In designing demand-side remedies, it is useful to recognise that there are effectively three main underlying drivers for why the demand-side of the market may not work as well as it might.

- a) First, there may be *asymmetric information* between suppliers and consumers about the various product offerings available in the market. Disclosure remedies are clearly targeted at this sort of problem.

Whilst it is clearly unrealistic to assume that consumers would ever know about all aspects of all the product offerings available to them, such perfection is not crucial. For markets to work reasonably well, consumers typically only need to know about the key aspects of those products which are likely to be amongst their most suitable choices. Even this more limited set of information can prove elusive, however.

- b) Second, consumers may face real costs of *information acquisition (search) and switching* in engaging with the market. For example, information about product offerings may be readily available in the market, but costly to seek out. It may also be costly to switch supplier.

Such costs may be financial (for example where switching supplier involves paying an exit fee to an existing supplier) or they may involve time, energy and (potentially) frustration. They can have the effect of deterring consumers from learning about the key aspects of product offerings, from searching, or from switching. Even where these costs are low, consumers may perceive that they are high and so not engage. For example, if consumers overestimate the time needed to switch provider, they may not bother to explore alternative offers.

Disclosure, shopping around and switching remedies may all be relevant in reducing such costs, or changing perceptions of them.

4. UK Government (2015), "Section 48 of the Pension Schemes Act 2015", at <http://www.legislation.gov.uk/ukpga/2015/8/section/48/enacted>.

c) Third, as is described further below, consumers face significant *thinking costs*, which can in turn give rise to *behavioural biases*.

Careful, rational decision-making is both time-consuming and tiring for consumers. As such, consumers may have a natural aversion to carefully accessing, assessing and acting on relevant information to ensure good outcomes. They may not be inclined to make the effort to collect the requisite information, and even if they do they may find this information hard to understand, digest and make reasonable judgments upon. This can in turn lead them to exhibit behavioural biases, for example their behaviour may be overly affected by some types of information and too little influenced by others.

Disclosure, shopping around, and switching remedies can again address these more behavioural aspects of consumer decision-making. However, they require more careful design and work in two somewhat distinct ways. They can either seek to ensure that they address the real underlying drivers of consumer behaviour which are limiting consumer understanding or action, or they can accept these limitations and instead alter the choice architecture facing consumers with a view to nudging them towards better choices.

- 1.14** There are clear interlinkages between the three drivers above, and all can have the effect that consumers do not engage sufficiently in the market. However, they are worth delineating because they can have different implications for the design of demand-side remedies.
- For example, requiring a supplier to disclose information about a particular product offering (on the basis that there is asymmetric information) may be a *necessary* pre-condition for better consumer decision-making. However, it may not be *sufficient*, and may even be distortive, if consumers face prohibitive costs in seeking out this information or if they can't understand the information once they have it.
 - Likewise, a PCW can reduce information acquisition costs by presenting relevant information in an easily comparable form on a readily accessible website. But this may have no real impact if consumers don't in fact visit the PCW, or if they do but give up on the process because they aren't easily able to click through and complete a purchase.
- 1.15** A key finding of this Review is that regulators (in the broadest sense⁵) have not always been clear about which of the above drivers is in fact relevant, and that this has led to poor remedy design. In this context, it may be appropriate to distinguish two different periods in the recent history of designing demand-side remedies.
- 1.16** In the period to 2008-10, there was a good understanding of the importance of asymmetric information issues and the importance of search and switching costs in limiting effective competition. This was effectively aligned to a view that, if these could be improved, then markets would work better. There was an expectation that consumers, if given the right tools, would make sensible decisions and drive competition. As such, it is probably appropriate to describe the 2001-2010 focus of demand-side remedies as being on *empowering* consumers.
- 1.17** As a result, while demand-side remedies have long been relatively prevalent in the UK (and internationally in Financial Services regulation), they have historically been focussed on providing information, easing search, and easing switching, on the basis that these are barriers to an effective demand-side.
- 1.18** Around 2008-2010, the regulators started to develop a deeper understanding of behavioural economics and its potential implications for the demand-side of markets. While behavioural economics is relatively old, it garnered renewed interest following the 2008 publication of the book "Nudge" by Richard Thaler and Cass Sunstein.

5. To help with conciseness, throughout the rest of this document, the term 'regulators' is typically considered to include not only sector regulators, but also competition authorities and other bodies that might impose demand-side remedies.

This led to the development of specialist teams across Government, competition authorities and economic regulators, as well as a number of Reviews about the implications behavioural economics might have for competition policy and regulation.⁶

- 1.19** Since that time, behavioural economics has played a growing role in the design of demand-side remedies, reflecting the importance of achieving behaviour change by real consumers and the potential to do so by altering the choice architecture they face. It may be appropriate to describe the focus of demand-side remedies over this more recent period as being about engaging consumers, in the sense of seeking tools that really change consumer behaviour.

1.2 Key relevant behavioural biases and implications for remedy design

- 1.20** So what are the key behavioural biases that can result in consumer behaviour diverging from what we might expect of 'perfectly rational' consumers? And what implications do they have for remedy design?
- 1.21** A compelling and influential theory of behaviour, popularised by Daniel Kahneman (2011), is that humans exhibit two types of mental process. System 1 refers to cognitive processes that are fast, automatic, and unconscious. System 2 thinking, in contrast, is slow, deliberative, and conscious. In consumer terms, a System 2 purchasing decision might involve the careful collection and weighing up of different options before making an active choice. A System 1 purchasing decision might involve more reliance on intuition, rules of thumb, or acceptance of default suggestions.⁷
- 1.22** If there were no cost to System 2 thinking, then it would of course be ideal if all consumers employed this form of mental process when making consumption decisions. However, System 2 thinking is both effortful and time-consuming. And as such, real people – who have limited energy and time – naturally fall into System 1 processes.
- 1.23** These processes can simply involve not bothering to gain relevant information or make relevant decisions at all. For example, when downloading new software online, Bakos et al (2014) find that only 1 in 1000 people even click open the terms and conditions ('T&Cs') for more than 1 second, even though consumers are required to tick a box stating they have read them.⁸ They simply tick the box saying they have read the T&Cs, without thinking much about it. It is clearly unrealistic to assume that consumers are systematically and comprehensively reviewing these contracts.
- 1.24** However, System 1 thinking can also involve the use of intuition and rules of thumb. In many situations these work perfectly well. Many of us are able to buy exactly the morning cup of coffee we most want without thinking too hard about what we are doing. However, in some cases, System 1 thinking will introduce 'behavioural biases', or ways in which our decision-making diverges systematically from what we might consider to be more 'rational' (that is, closer to what we might choose if we were utilising System 2 thinking).

6. The OFT set up a specialist behavioural economics team in 2008. The UK Behavioural Insights Team was created by Government in 2010. The FCA also has a specialist team. Relevant Reviews include: Office of Fair Trading (2010), "What does Behavioural Economics mean for Competition Policy?"; See footnote 3; Ofgem (2011) "What can behavioural economics say about GB energy consumers?" at <https://www.ofgem.gov.uk/ofgem-publications/75192/behaviouraleconomicsgbenergy.pdf>; and Financial Conduct Authority (2013), "Applying behavioural economics at the Financial Conduct Authority", Occasional Paper 1, at <https://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-1.pdf>.

7. Daniel Kahneman (2011) "Thinking, fast and slow".

8. Yannis Bakos, Florencia Marotta-Wurgler, and David R. Trossen (2014) "Does Anyone Read the Fine Print? Consumer Attention to Standard Form Contracts", *Journal of Legal Studies*, Vol. 43, No. 1, 2014; NYU Law and Economics Research Paper No. 09-40. See: <http://ssrn.com/abstract=1443256>.

1.25 A variety of such behavioural biases have been identified in the literature.⁹ Some of the most relevant and commonly discussed consumer biases likely to affect competition are:

- a) *Status quo bias and loss aversion:*** These effectively involve consumers giving disproportionate weight to maintaining the status quo. This can exacerbate any real costs that consumers face in switching.
- b) *Present bias, myopia, and hyperbolic discounting:*** These effectively involve consumers giving disproportionate weight to the present, and insufficient weight to the future. They may explain consumers' failures to allow for future fees and charges when making choices, and tendencies towards over-indebtedness.
- c) *Default bias, saliency bias, and other forms of framing bias:*** Consumers may apply rules to simplify their decision-making which involve them adopting the default option, focusing on the most salient or prominent aspects of the product, or focusing on other specific aspects of the decision such as how particular elements compare. All of these can involve them ignoring other (potentially important) aspects, and can incentivise suppliers to engage in 'shrouding' (making certain aspects of a product less visible/salient). Such biases may explain why consumer behaviour can be affected by the way in which prices are framed, or what default options they are given.¹⁰
- d) *Over-confidence:*** Consumers may feel more confident than is justified about their own future behaviour, such as around their ability to avoid going into an unarranged overdraft, to successfully pay off a debt, or to continue attending a gym. They can also be over-confident about wider issues, such as the likelihood of cheap products being high quality or of stock markets continuing to rise.
- e) *Limited memory:*** Although consumers can often learn from their mistakes, the extent to which this will protect them is constrained by their memory limitations. Such limitations may affect the extent to which consumers utilise cancellation rights or rights to terminate ongoing contracts.
- f) *Influence of other people:*** Given the difficulties inherent in decision-making, consumers will often be strongly influenced by what others tell them, especially if these others appear knowledgeable or trustworthy. Consumers may also actively seek to avoid conflict, for example by agreeing to purchase add-ons from pushy sales staff, or by not switching where to do so would involve contacting the current supplier.

1.26 Consumers will vary in the extent to which they exhibit these various biases, and the impact of these biases will also vary according to the context. However, it is important to remember that such biases do not imply stupidity or laziness, or even a special level of consumer vulnerability; all of us exhibit such cognitive limitations and biases, in one circumstance or another. While some of us may be more likely than others to rely on System 2 thinking in particular circumstances, there is no such thing as a consumer who makes decisions in a careful, contemplative, System 2 way at all times. Life is too short.

1.27 An important implication of the above is that consumer decision-making may be worsened if consumers perceive that the decision will be an especially hard or time-consuming one to make, if done with due care and attention. In such circumstances, they may revert to System 1 thinking. This in turn means that consumers may be more likely to make mistakes if they are given too much information (information overload), too much choice (choice overload) or too little time to make a decision.

9. The papers listed at footnote 6 provide useful discussions of the types of behavioural biases that can be relevant to consumer decision-making.

10. The power of default bias can be used positively as well as negatively. For example, under the 2008 Pensions Act, employees are automatically enrolled into their employers' pension schemes unless they actively opt out of this default, leading to a much-needed increase in pensions savings rates. See <http://www.legislation.gov.uk/ukpga/2008/30/part/1>.

1.28 When consumers are inclined towards system 1 thinking, there is a risk that the more traditional demand-side remedies - which lower the real costs of information acquisition, search, and switching - may have limited impact. Such remedies may be necessary for good decision-making, and may even make system 2 thinking a lower cost, and thus more attractive, option. However, to the extent that consumers continue to exhibit system 1 thinking, such remedies may not be sufficient. Additional remedies may be needed, which are attuned to real consumer behaviour and designed to catalyse or trigger behaviour change.¹¹

1.29 In many cases, such remedies are still designed to improve consumer decision-making by helping consumers to access, assess and act on relevant information, as described above, but allowing for the existence of real consumer decision-aversion and behavioural biases. However, some remedies are more paternalistic in that they are designed to nudge consumers towards behaviour which will generate better outcomes for both themselves and the market. Examples discussed in this Review include changing the choice architecture faced by consumers (and in particular their default options) and disclosures that are specifically designed to jolt consumers into action.

1.30 The UK Behavioural Insights Team (BIT) offers useful principles to guide regulators who are seeking to change the behaviour of real consumers.¹² These are that interventions should aim to make such change Easy, Attractive, Social and Timely. They suggest the acronym EAST as an easy to remember mnemonic. As will be discussed further in Section 6 below, many of the changes made to demand-side remedies in the period since 2010 reflect these sorts of intuitions.

1.31 The cost and energy involved in System 2 thinking, and consumers' tendency to revert to System 1 thinking, can potentially also be exploited strategically by suppliers, in order to further impair consumer decision-making and so restrict competition. For example, they may engage in deliberately obfuscatory behaviour such as misleading 'framing' of prices, or exploiting inertia by making contracts complex to cancel. Specific remedies may be required to address this sort of supplier behaviour and so protect effective competition. Examples of these are also discussed in this Review.

1.3 Empirical evidence on remedy effectiveness

1.32 The recent growth in regulatory focus on behavioural economics has coincided with a growing body of evidence on the effectiveness of past demand-side remedies. The evidence presented in this Review is primarily drawn from formal *ex post* evaluation work by regulators and competition authorities, but also derives from a number of 'repeat' regulatory reviews into markets which were already subject to demand-side remedies. Reference is also made to some relevant academic research and a small amount of new original research.

1.33 There are a number of limitations to this evidence. Developing *ex post* evaluation evidence takes time and can be costly. Thus, only a subset of existing remedies have been evaluated, and relatively recent remedies (which we might expect to have been better designed) are relatively less likely to have been evaluated yet. Even where evaluations have occurred, authorities sometimes have limited powers to require information from firms, and this can limit the empirical methods available to evaluators and the robustness of the conclusions drawn.

11. Bubb (2015) provides an interesting critique of disclosure remedies, highlighting that they are primarily focused on enhancing the ability of consumers to engage in effective System 2 thinking. This may not work, and may even be detrimental when consumers in practice engage in System 1 thinking. He argues that disclosure remedies need to recognise this if they are to be effective. Ryan Bubb (2015) "TMI? Why The Optimal Architecture of Disclosure Remains TBD", *Michelin Law Review*, Vol. 113.

12. Behavioural Insights Team (2014) "EAST: Four simple ways to apply behavioural insights". See: http://38r8om2xjhl125mw24492dir.wpengine.netdna-cdn.com/wp-content/uploads/2015/07/BIT-Publication-EAST_FA_WEB.pdf.

- 1.34** More generally, it is difficult to assess empirically how effective demand-side remedies are in enhancing competition, in terms of driving down prices, and driving up quality, as it can be hard to determine what would have happened absent the intervention. The best that can typically be done is to assess how effective the remedies have been in changing consumer behaviour in the intended direction, which would in turn be expected to drive stronger competition.
- 1.35** For the earlier remedies examined, the available evidence shows that there have been some positive outcomes, but also that many demand-side remedies have been less effective than hoped for. While some poor remedy effectiveness can be blamed on poor implementation or compliance, it is clear that some is also due to a failure by regulators to design remedies sufficiently carefully, taking account of real consumer behaviour, informed by behavioural economics. In addition, regulators may sometimes have had inflated expectations as to what can be achieved through such demand-side remedies.
- 1.36** Since around 2010, regulators have increasingly given more focus to remedies, considering them as early as possible within investigations (rather than leaving them to the end of the process), and examining more carefully their likely impact on real consumer behaviour. There has been far greater use of empirical analysis, including in particular laboratory experiments and randomised controlled trials (RCTs). These techniques have different pros and cons:
- Laboratory experiments use volunteers and ask them to act as consumers, in order to examine, in controlled conditions, how these ‘consumers’ react to particular circumstances. They can be powerful in demonstrating how consumer decision-making can be distorted, even when consumers are highly focussed on the issue at hand (as they typically are in the laboratory). However, laboratory experiments are sometimes criticised for being insufficiently aligned to real world decision-making.
 - RCTs involve applying different conditions to consumers making real decisions, who are typically not aware that they are part of an experiment. These can be powerful in showing how consumers really react, but are typically harder to organise than lab experiments, and require industry cooperation.
- 1.37** However, neither form of *ex ante* testing is necessarily a panacea. There will always be caveats to any such testing, for example in terms of the chosen experimental design and the fact that it is not usually possible to take account of supplier responses to remedies. In addition, for some remedies, it is simply not feasible to design any sort of *ex ante* test.
- 1.38** Nevertheless, where available, such empirical work can provide relatively strong *ex ante* evidence about likely remedy effectiveness. This is especially important for this Review, given that there has so far been limited evaluation of post-2010 interventions due to the limited time that has since elapsed. (Indeed, some of the more recent demand-side remedies described in this report are not yet finalised and/or implemented.)
- 1.39** Overall, though, there remains limited evidence on which to base firm conclusions. While this Review has sought to reach tentative lessons for the design of demand-side remedies, on the basis of the evidence currently available, it is clear that further empirical work would be valuable in confirming – or rejecting – these conclusions.

1.4 Potential downsides of demand-side remedies

1.40 The potential benefits of demand-side remedies for competition are set out above. But there are also a number of important potential downsides. Specific examples are provided in Sections 2-5, but in general terms:

i. Remedies can be unnecessary: A key concern sometimes raised about demand-side remedies is that they are unnecessary, since without them the market would solve the problems on its own. One possible argument here is that consumers may learn from their mistakes, if they are just allowed to make them. Indeed, it is true that both laboratory experiments and real life interventions provide plenty of evidence that consumer decision-making can improve over time as learning occurs.¹³

A second possible argument is that new business models may appear, on the supply-side, which solve the identified problem without the need for regulatory intervention. An obvious example has been the commercial development of price comparison websites (PCWs), which facilitate search and switching. There is a risk that the mandated introduction of such a PCW in a market could deter the development of a commercial alternative, which may in turn be more innovative in meeting consumers' needs.

ii. Remedies may be ineffective or only partially effective: Remedies are frequently often poorly designed, poorly implemented or poorly complied with. In each of these cases it is hardly surprising that they may be ineffective or only partially effective. However, even where remedies are designed and implemented as well as they can be, the difficulty inherent in trying to change real consumer behaviour means they may still be only partially effective. It may simply be impossible to ensure that consumers fully take in, digest, and act upon the relevant information in a way that significantly improves their decision-making.

Moreover, even if remedies improve engagement and decision-making for some consumers, they may have no impact on others. For example, there may be only partial take-up of price-comparison websites and switching facilities, due to lack of awareness, or alternatively lack of interest, amongst a subset of consumers.

This gives rise to a question of how widespread improvements in consumer decision-making need to be in order to improve competition in the market. The answer to this question may depend on the extent to which suppliers can discriminate between 'active' and 'unengaged' consumers in terms of the offers they provide.

13. For example, Ketcham et al (2011) analyse US data on drug insurance packages chosen by senior citizens. They find that many consumers overpay for the product when it is first introduced in 2006 but that 81 per cent successfully reduce their spend by the following year. Jonathan D. Ketcham, Claudio Lucarelli, Eugenio J. Miravete, and M. Christopher Roebuck (2012), "Sinking, Swimming, or Learning to Swim in Medicare Part D?", *American Economic Review*, at http://www.eugeniomiravete.com/papers/KLMR_PartD.pdf. See also similar findings in relation to the opening up of local telephone calls to competition in Kentucky, in Eugenio J. Miravete and Ignacio Palacios-Huerta (2014), "Consumer Inertia, Choice Dependence and Learning from Experience in a Repeated Decision Problem?", *Review of Economics and Statistics*, 96 (3), pp 524-537, at <http://www.eugeniomiravete.com/papers/EJM-IPH.pdf>. In a laboratory experiment context, Huck et al (2010) also find learning effects in the context of responses to price framing. See Office of Fair Trading, (2010), "The impact of price frames on consumer decision making", Research Paper by Steffan Huck and London Economics, OFT1226, at http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/economic_research/OFT1226.pdf.

In simple terms, without discrimination, increased shopping around and switching by active consumers, or increased numbers of active consumers, may be expected also to intensify competition amongst suppliers and so improve the position of unengaged consumers.¹⁴ With discrimination, this may no longer be true. Competition for the active consumers may become more intense, but the position of the unengaged may be unchanged or could even be worsened.¹⁵

iii. Remedies can be disproportionately costly: Linked to the previous point, it may sometimes be possible to make a demand-side remedy more effective, but only by incurring a disproportionate cost. For example, following its market investigation into payday lending, the UK Competition and Markets Authority (CMA) did consider whether improved education on personal finance might be a suitable remedy. It concluded that this could have clear benefits, but that a more targeted remedy would be a more cost-effective solution to the harm identified.¹⁶

iv. Remedies can potentially make consumer decision-making worse: Well-meaning, but badly designed, demand-side remedies can even have negative effects on consumer decision-making and thus competitive outcomes. For example, as mentioned above, if consumers are given too much information or too many options, they may become confused and make worse choices.

There is also a risk that demand-side remedies, by protecting consumers from their mistakes, may disincentivise consumers from taking responsibility for their own decisions. At worst, such remedies could make consumers more credulous, over-confident, and susceptible to other forms of supplier exploitation.

v. Supply-side reactions to demand-side remedies can reduce their effectiveness or even make them harmful: It is also important to bear in mind the potential supply-side reactions to the introduction of demand-side remedies. These can act to limit or negate the intended positive impact or can even lead to unintended detriment.

If suppliers believe they can get away with it, they may not comply with the remedy, or comply only partially. Alternatively, suppliers may comply with the letter of a remedy, but find ways to circumvent it to limit its effectiveness. Over-prescriptive remedies can potentially lead suppliers to adopt a 'tick-box' approach to compliance with regulations, rather than seeking approaches that more effectively improve consumer decision-making. Overly flexible remedies can fail to pin firms down sufficiently.

14. Note that the terms 'active' and 'unengaged' are used for simplicity here, but these terms do not convey the many different factors which can in fact affect whether consumers shop around or switch and the spectrum of variations across consumers. For example, consumers may be engaged in general but lack the incentive or ability to shop around or switch in a particular market, perhaps because they don't have Internet access, live in temporary accommodation, or are not in a position to take on a direct debit commitment. They may also be initially engaged but then pull back due to information or choice overload.

15. Note that such 'discrimination' need not involve explicit price discrimination, whereby suppliers set different prices for different consumers for the same product. The same result can emerge where suppliers set lower margins on those products which are bought by the most price-sensitive and active customers and higher margins on those products that are only bought by customers who are less likely to switch. Examples might include high margins on unarranged overdrafts or on add-on travel insurance. Armstrong (2015) provides a theoretical analysis of this situation. He finds that the incentives of savvy customers and suppliers may well be aligned against any regulation that would improve the situation of naive customers, in that the former both profit from the poor purchasing decisions of the latter. Mark Armstrong (2015) "Search and Ripoff Externalities" Review of Industrial Organisation, Vol 47. For a working paper version of this paper, see: <http://www.economics.ox.ac.uk/materials/papers/13378/paper715.pdf>. See also: Xavier Gabaix and David Laibson (2006) "Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets" *Quarterly Journal of Economics*, 121(2). See: <http://pages.stern.nyu.edu/~xgabaix/papers/shrouded.pdf>.

16. Competition and Markets Authority (2015) "Payday Lending Market Investigation: Final Report", Para 9.409. See: https://assets.publishing.service.gov.uk/media/54ebb03bed915d0cf7000014/Payday_investigation_Final_report.pdf.

Supply-side reactions can, however, be more subtle. Grubb and Osborne (2015) model an interesting example, which relates to the US Federal Communications Commission's 2013 introduction of 'bill-shock' regulation for mobile phone operators.¹⁷ This requires operators to send a text alert to consumers who are about to go over their free text/call limit and so incur 'overage' charges. Grubb and Osborne find this intervention to have positive first-order effects, as consumers react to the overage charges in the expected way. However, they then consider the impact of the consequent reduction in overage charges on operators' pricing decisions. At equilibrium, they find that operators lower their overage charges but increase their standard charges. The overall effect, in this particular situation, is that consumers end up worse off as a result of the intervention, once supply-side reactions are taken into account.^{18, 19}

In markets characterised by embedded incumbents, which have a substantial proportion of loyal customers, another effect has been identified. In such markets, increased search can result in these incumbents pulling away from competing for new customers (because competition for these becomes too intense) and instead focussing on their loyal customer base, who are willing to pay higher prices. This can potentially have the perverse effect that making search easier raises average prices.²⁰

vi. Demand-side remedies can create losers as well as winners: A final concern around demand-side remedies is that, while they may benefit some consumers, they may harm others. It is argued that it is not the role of competition authorities and regulators to be making distributive choices.

Such a rebalancing can occur where a remedy acts in a way that improves the decisions of some consumers better but makes those of others worse. This is a risk when designing choice architecture, such as the default options that consumers face. The change in defaults may suit some customers' preferences but not others.

For example, in 2009, following its market investigation into Payment Protection Insurance (PPI), the CC imposed a point of sale ban on selling PPI and a requirement that suppliers leave 24 hours before re-contacting customers.²¹ The intention was to overcome the default bias of consumers towards buying PPI – which was often unwanted and/or unsuitable – at the point of sale of the associated credit. This remedy was appealed by Barclays Bank to the Competition Appeals Tribunal on the basis that this remedy could – effectively by altering the default bias – lead to under-purchase of PPI by people who would genuinely value it.

17. Michael D. Grubb and Matthew Osborne (2015), "Cellular Service Demand: Biased Beliefs, Learning, and Bill -shock", American Economic Review, at <https://www2.bc.edu/michael-grubb/GrubbOsborneAER2015.pdf>.

18. Note that this finding depends on the precise characteristics of consumers assumed, and in particular that they have unbiased expectations of their own usage. An earlier paper by one of the same authors finds that if consumers systematically underestimate their own demand, bill-shock regulation will save consumers money, even after supplier reactions are considered. See Michael D. Grubb (2013), "Consumer Inattention and Bill-Shock Regulation", Review of Economic Studies, pre-published version at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1983518.

19. Further recent theoretical and empirical economic literature confirms the point that enhanced search and switching can potentially be harmful for competition (and so consumers), once supply-side responses are taken into account. It is beyond the scope of this paper to review this literature in detail, but two relevant papers are Luis Cabral (2015), "Dynamic Pricing in Customer Markets with Switching Costs", Working paper, <http://luiscabral.net/economics/workingpapers/scostsMar2015.pdf>, and Jean-Pierre Dubé, Günter J. Hitsch and Peter E. Rossi (2009), "Do Switching Costs Make Markets Less Competitive?", Journal of Marketing Research, at <http://faculty.chicagobooth.edu/jean-pierre.dube/research/papers/43038368.pdf>.

20. The theoretical possibility of such an 'inverted U' relationship between search and prices as first identified by Stahl (1979) and Janssen and Moraga-González (2004). Such a relationship has recently also been demonstrated empirically, for the German energy market, by Gugler, Heim and Liebensteiner (2016). C.W. Janssen and J.L. Moraga-González (2004) "Strategic Pricing, Consumer Search and the Number of Firms". Review of Economic Studies, 71(4), 1089-1118; D.O. Stahl (1989) "Oligopolistic Pricing with Sequential Consumer Search". American Economic Review, 79(4), 700-712. Klaus Gugler, Sven Heim and Mario Liebensteiner (2016) "Non-Sequential Search, Competition and Price Dispersion in Retail Electricity", Department of Economics Working Paper No. 225. See: <http://d.repec.org/n?u=RePEc:wiiw:www:wp225&r=com>.

21. Competition Commission (2009), "Market investigation into payment protection insurance – Final Report", at http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/542.pdf.

The CAT took this concern sufficiently seriously to remit the case to the CC.²² The CC eventually demonstrated that this risk of under-purchase was not a significant issue in this case, allowing it to finalise the remedy.²³ However, it is clear from this example that a detrimental impact of this sort could potentially arise in different circumstances.

Supply-side reactions to demand-side remedies can also create losers as well as winners. Consider a market in which suppliers tend to offer engaged customers, who search and switch, better deals than loyal non-switchers. A natural remedy to consider in such circumstances is one which will increase switching amongst the latter 'loyal' category. If this remedy is successful, it should lower the price paid by those previously 'loyal' customers who now switch. However, there must be a risk – under this remedy – that those customers who do not now switch reveal themselves as being 'super-loyal' and are charged even more on this basis.

1.41 Several examples of these various downsides are provided through this Review. It should be emphasised, though, that this negative evidence doesn't imply that the use of demand-side remedies to drive competition should be abandoned. Rather, it highlights that it can be complex to design and implement effective demand-side remedies, and packages of complementary remedies may be required rather than 'single bullet' remedies. There may also be limits to what can realistically be achieved in markets through demand-side remedies, especially when one considers reactions of both firms and consumers to such remedies and the risks of unintended negative consequences.

1.42 This gives rise to difficult choices. Where there is a limit what can feasibly be achieved through demand-side remedies, is it better simply to accept the outcomes of the resulting flawed market? Or is there merit in imposing an outcome control remedy which directly restricts the selling of the product in some way? Outcome control remedies are discussed briefly in Section 5. They can, for example, limit where, when, how and/or to whom products can be sold, or can even involve directly regulating prices.

1.5 The legal framework for demand-side remedies

1.43 Finally, this introductory section looks at how demand-side remedies are implemented in practice. Although enhancing competition is a key objective of most such interventions, they are not usually put in place through pure antitrust enforcement, which tends to have a supply-side focus as discussed above.

1.44 There are exceptions to this. For example, in December 2009, having accused Microsoft of leveraging its position in Windows PC operating system into the market for internet browsers, under Article 102 TFEU (then Article 82 EC Treaty), the European Commission accepted a commitment which was effectively a demand-side remedy and drew on behavioural economics. The remedy was designed to overcome the default bias which led users of Windows to remain with the browser which came in the Windows package (MS Internet Explorer) even though it was free and easy to install an alternative. Microsoft was required to offer all Windows users a choice screen, requiring them to make an active choice from the 12 most widely-used web browsers that ran on Windows.²⁴

22. See Competition Appeals Tribunal (2009) "Barclays Bank PLC v Competition Commission" Case 1109/6/8/09. See: <http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.catribunal.org.uk/237-3732/1109-6-8-09-Barclays-Bank-PLC.html>.

23. Competition Commission (2010), "Payment protection insurance market investigation: remittal of the point-of-sale prohibition remedy by the Competition Appeal Tribunal" at <https://assets.digital.cabinet-office.gov.uk/media/5519489040f0b61401000159/report.pdf>.

24. European Commission memo, "Commission accepts Microsoft commitments to give users browser choice - frequently asked questions", 16 December 2009. See http://europa.eu/rapid/press-release_MEMO-09-558_en.htm.

- 1.45** More usually, though, demand-side remedies – in the UK at least – are put in place by a competition authority under its market investigation powers, by a sectoral regulator using its regulatory or competition powers, by Government through legislation, or by industry itself, sometimes through trade bodies or industry codes. In these latter cases, the remedies have often been recommended by the UK competition authority, following analysis through a market study, even if actual implementation of the remedy is carried out by a third party. Such market-specific remedies provide the core focus of this Review.
- 1.46** It is noteworthy that some of the market-specific demand-side remedies discussed below could be alternatively categorised as consumer protection policies. There is indeed substantial overlap between the objective of empowering and engaging consumers in order to drive effective competition, and the consumer policy objectives of protecting consumers and empowering them to protect themselves. Many interventions will – if effective – achieve both ends. Moreover, market-specific remedies are sometimes superseded by general economy-wide consumer protection legislation, because the issues are identified as being of wider significance.²⁵
- 1.47** Given this close link between interventions that are designed to ensure effective competition and those that are designed to protect consumers, it is clear that general consumer protection policy can itself play an important role in driving competition, alongside its core role of ensuring the fair treatment of consumers. Elements of consumer protection policy are therefore also considered in this Review, albeit the focus here is on their competition benefits.²⁶
- 1.48** It is worth noting, however, that there is not always complete congruence between competition and consumer protection objectives. Remedy choices may be somewhat different if the core aim is to protect consumers than if it is to enhance competition. Quantitative restrictions around the licensing of taxis provide an example of regulation which may have been motivated by consumer protection concerns but has in fact been found by competition authorities to create disproportionate harm to competition.²⁷

25. For example, the OFT's intervention on payment surcharges for airlines was superseded by the Consumer Rights (Payment Surcharges) Regulation 2012. See footnotes 56 and 57.

26. Note that this focus on competition means that redress has not been covered. While redress is an important element of consumer protection policy, its implications for competition are only indirect. (For example, the threat of redress can provide a useful tool for ensuring compliance with competition-focussed remedies. Also, the promise of redress if things go wrong can potentially enhance consumer confidence and thus engagement in the market).

27. For example, Office of Fair Trading (2003), "The regulation of licensed taxi and PHV services in the UK", OFT676, at http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/reports/comp_policy/oft676.pdf

2. Disclosure remedies

- 2.1** As discussed in Section 1, effective competition relies on consumers having information about the products and services available in the market and being able to assess that information in a way that drives effective decision-making. Disclosure remedies can play a valuable role in supporting this process.
- 2.2** This section examines a variety of types of disclosure remedy and the use of these in practice. It then considers the evidence available to date on their effectiveness, with a view to drawing tentative lessons for the future use and design of disclosure remedies, and for demand-side remedies more generally.
- 2.3** We note the existence of an excellent recent review of disclosure remedies in financial services markets, carried out by Oxera for the Financial Conduct Authority (FCA).²⁸ This Review cannot attempt to cover the issues in the same depth, and thus these two reports should be seen as complementary, rather than substitutes.

2.1 Types of disclosure remedy and their use

- 2.4** Five inter-linked forms of disclosure remedy can be distinguished and are discussed below:²⁹
- i. Disclosure remedies to purely address asymmetric information
 - ii. Disclosure remedies to facilitate consumer awareness and understanding
 - iii. Disclosure remedies to facilitate comparison across products
 - iv. Disclosure remedies to prevent consumers being misled
 - v. Disclosure remedies to aid decision-making when consumers are already using a product or service
- 2.5** These are discussed in turn below:

i. Disclosure remedies to purely address asymmetric information

- 2.6** The most conceptually straightforward form of disclosure remedy is one which simply involves putting into the public domain relevant information which was previously not available to consumers. Such remedies directly overcome an asymmetric information problem, between suppliers and consumers. They typically relate to information about the quality of the available product or service, but can also relate to price, or the terms of sale.

- 2.7** Examples include:

- **Quality disclosure:**
 - *Care homes*: Following a market study into care homes, the OFT recommended that homes should make their past inspection reports available to potential customers.³⁰
 - *Ticket agents*: Following a market study into ticket agents by the OFT, the UK Government introduced guidance stating that consumers must be informed if a seat has a restricted view.^{31,32}

28. Oxera (2014), "Review of literature on product disclosure – Prepared for Financial Conduct Authority", at <http://www.fca.org.uk/static/documents/research/review-of-literature-on-product-disclosure.pdf>.

29. Although this section is on disclosure remedies, some forms of disclosure remedy are primarily focused on triggering shopping around and switching. While there is necessarily a somewhat blurred line between these various categories of remedy, these latter remedies are considered in later sections, rather than here

30. Office of Fair Trading (2005) "Care Homes for Older People in the UK: A Market Study", OFT780. See http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/reports/consumer_protection/of780.pdf.

31. Office of Fair Trading (2004) "Ticket Agents in the UK", report on the market study, OFT762. See: <http://webarchive.nationalarchives.gov.uk/20140525130048/http://www.of.gov.uk/OFTwork/markets-work/ticket-agents#named3>.

32. Department of Business, Innovation and Skills (2010) "Pricing Practices Guide: Guidance for traders on good practice in giving information about prices". See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31900/10-1312-pricing-practices-guidance-for-traders.pdf.

- *Private healthcare*: The CMA's market investigation into private healthcare found there to be a lack of publicly available information on the fees and performance of private healthcare providers. To address this, the CMA required that information on fees and patient episode data be provided to an independent information organisation, in a specified standardised format.³³
- **Price disclosure:**
 - *Care homes*: For care homes, the OFT also recommended that customers be provided with detailed price lists, prior to their decision to enter a home.
 - *Private dentistry*: The UK General Dental Council (which regulates dentistry) imposes Standards of Conduct which set out that dentists must provide patients with written treatment plans, setting out clearly the full cost, and that they must receive valid consent to this prior to treatment commencing.³⁴ In its 2003 market study into dentistry, the OFT noted that these were potentially valuable, but that there was poor compliance. It therefore recommended that they be more effectively monitored and enforced.³⁵
 - *Domestic bulk LPG*: Following its investigation into bulk LPG, the CC required suppliers to provide prices over the phone or internet, without requiring a visit, and also to provide on invoices the amount of LPG delivered in litres and the price paid in price per litre.³⁶
- **Terms of sale disclosure:**
 - *Doorstep selling*: Following a 2004 OFT market study into doorstep selling, the Doorstep Selling Regulations were amended in 2008 to require sellers to give consumers notice of their cancellation rights.³⁷

ii. Disclosure remedies to facilitate consumer awareness and understanding

2.8 Putting information in the public domain is clearly a necessary condition for it to be useful to consumers. However, it may not on its own be sufficient. Even if information is already in the public domain, consumers may not be aware of it or – even if they are – they may not make appropriate use of it.

2.9 As discussed above, it takes time and energy to collect and assimilate information and consumers know this. Consumers are therefore naturally averse to doing this, and are likely to be more so when they perceive the decision-making process to be complex. This means that disclosure can potentially reduce the quality of consumer decision-making. With too much information to digest, consumers may abandon the attempt to carry out a careful (System 2) evaluation of the evidence and instead employ their (System 1) intuitions and rules of thumb, with their associated biases.

2.10 Once one allows for these behavioural biases, the impact of information on consumer decision-making becomes even less obvious. Small changes in how information is presented can dramatically alter its effect, even down to font size and colour, or how the information is laid out on a page. Information disclosure therefore needs to be designed carefully if it is to affect consumer decision-making positively.

33. Competition and Markets Authority (2014) "Private Healthcare Market Investigation: Final Report". See: https://assets.publishing.service.gov.uk/media/533af065e5274a5660000023/Private_healthcare_main_report.pdf.

34. General Dental Council (2013) "Standards for the Dental Team", Standards 2.3-31. See <http://www.gdc-uk.org/Dentalprofessionals/Standards/Documents/Standards%20for%20the%20Dental%20Team.pdf>.

35. Office of Fair Trading (2003) "The private dentistry market in the UK", OFT630. See: http://webarchive.nationalarchives.gov.uk/20140525130048/http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft630.pdf.

36. Competition Commission (2006) "Market investigation into supply of bulk liquefied petroleum gas for domestic use", Final Report. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2006/fulltext/514.pdf

37. Office of Fair Trading (2004) "Doorstep selling: A report on the market study", OFT716. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft716.pdf. For change to legislation, see para 79 in http://www.legislation.gov.uk/uksi/2008/1816/pdfs/uksem_20081816_en.pdf. Note that this requirement has been retained with the move to the new Consumer.

2.11 Reflecting this, most disclosure remedies go beyond the pure requirement that previously private information be placed in the public domain, and focus on how the information is provided, with a view to facilitating consumer awareness and understanding. Their aim is to ensure that information is provided in a way that makes it both less costly and easier for consumers to access, assess and act on the relevant information in their decision-making.

Such remedies are designed to enable consumers to help themselves, making it more feasible to leave consumers with the core responsibility for making the demand-side of the market work effectively and for protecting their own interests.

2.12 Some such remedies attempt to achieve this by setting out the key principles to be achieved, for example that the information provided should be *clear*, *comprehensible* and *prominent*, and are not specific as to how this is to be achieved in practice. For example, in 2009, following its review of personal current accounts (PCAs), the OFT left industry with substantial discretion as to how to achieve agreed transparency initiatives around providing greater prominence for the costs incurred by consumers in using PCAs, and in particular greater prominence to the fees incurred through unarranged overdrafts.³⁸

2.13 Such principles-led remedies are broadly in line with more general consumer law. For example, the Consumer Rights Act 2015 requires that consumer contracts are transparent (plain and intelligible, and legible where written) and prominent (brought to the consumer's attention in such a way that the average consumer would be aware of it). If these criteria are not met, the contract terms can be assessed for unfairness.

2.14 However, disclosure remedies can also be relatively specific in terms of specifying the precise form or format in which information is provided. For example:

- *Store cards*: Following its 2006 market investigation into store cards, the UK Competition Commission (CC) mandated substantial additional provision of relevant information in consumers' monthly statements. In doing so, it was explicit that the font size used 'must not be less than the largest font size used for transaction and balance details' and that the current annual percentage rate (APR) applicable to purchases must be shown in bold.³⁹
- *No Claims Bonus (NCB) protection*: Following its market investigation into private motor insurance, the CMA determined that consumers faced an acute lack of information when purchasing add-on insurance cover providing NCB protection. The CMA required that, at the point of purchase, consumers must be given a tightly specified set of information to aid their decision-making.⁴⁰ This was required on the basis of qualitative consumer testing of different possible ways of providing relevant information.⁴¹

38. Office of Fair Trading (2009) "Personal Current Accounts in the UK: A Follow-Up Report", Chapter 4. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/personal-current-accounts/OFT1123.pdf.

39. Competition Commission (2006) "Store Cards Market Investigation", Final Report, Para 30. See: http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2006/fulltext/final_report.pdf.

40. Specifically, suppliers must provide information on the implied price of the NCB protection, the average NCB discount according to the number of NCB years, and the 'step-back' procedure (that is, what would happen to the consumer's number of NCB years with and without NCB protection in the event of one or more claims). Competition and Markets Authority (2014) "Private Motor Insurance Market Investigation - Final Report", Para 51. See: https://assets.publishing.service.gov.uk/media/5421c2ade5274a1314000001/Final_report.pdf.

41. GfK (2014) "Survey of Private Motor Insurance Policyholders: Qualitative Research Findings". See: https://assets.publishing.service.gov.uk/media/53a9492840f0b610b4000001/GfK_Report_Qualitative_Research_Findings.pdf.

2.15 Disclosure remedies can also be specific in terms of where and when information must be given, or even online how many ‘clicks’ away a piece of information should be.⁴² For example:

- *Extended warranties*: Following its investigation into extended warranties for domestic electrical goods, the CC imposed an order requiring retailers to display the price, duration and optional nature of warranties directly next to the price of the primary product.⁴³
- *Cash savings*: For cash ISAs, following a super-complaint, the OFT secured agreement from industry that relevant interest rates would be published clearly on the face of customers’ cash ISA statements.⁴⁴ Following a later market study into cash savings, the FCA put in place new rules setting out that the relevant interest rates should be displayed prominently. The rules specify relatively tightly what this means, including that (online) the information should be no more than ‘one click away’ from the customer’s online banking home page.⁴⁵

iii. Disclosure remedies to facilitate comparison across products/suppliers

2.16 As will be discussed further in Section 3, an effective demand-side requires consumers to be able to make comparisons across different products and suppliers. This can be facilitated by disclosure remedies which mandate that relevant information is made available by suppliers in a standardised (and often also simplified) format to aid such comparison.

2.17 Such remedies often involve information that would have been available anyway, albeit in a less accessible and easily comparable format. For example:

- *Credit cards*: Following recommendations arising from an OFT investigation into credit card comparisons, the industry agreed to use new summary boxes to present fees and charges. These were designed to ensure that information was presented in a consistent way across suppliers, including using a tabular format which OFT testing had found consumers to prefer.⁴⁶ The intention was both to improve consumer understanding and ease comparison, so as to enhance search and switching.
- *Packaged Retail and Insurance-based Investment Products (PRIIPs)*: Under the new EU PRIIPs Regulation, which will be directly applicable in the UK, suppliers offering PRIIPs to retail investors must provide them with a ‘Key Information Document’ (KID). This is tightly specified with the aim of helping consumers in both understanding and comparing PRIIPs.⁴⁷ The rules around the KID were finalised following extensive consumer testing.⁴⁸

42. In another context, the UK Behavioural Insights Team has found that one additional click can have a significant impact on consumer decision-making. In that case, an email link taking consumers straight to a relevant HMRC form led to a response rate 4 percentage points higher than an email link that took consumers to a page on the HMRC website but where one more click was needed to get to the form. See: <http://bi.dpc.nsw.gov.au/assets/Behavioural-Insights/Library/Dr-David-Halperns-Presentation-Behavioural-Insights-Breakfast-Forum.pdf>.

43. Competition Commission (2005) “The Supply of Extended Warranties on Domestic Electrical Goods Order 2005”. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_of/monopolies/extendedwarrantiesondomesticelec.

44. Office of Fair Trading (2010) “OFT secures improvements for cash ISA customers following super-complaint”, Press Release 69/10, 29 June 2010. See: <http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/news-and-updates/press/2010/69-10>.

45. Or alternatively on the first personalised page. Financial Conduct Authority (2015) “Policy Statement PS15/27: Cash savings remedies”. See: <https://www.fca.org.uk/static/documents/policy-statements/ps15-27.pdf>.

46. Office of Fair Trading (2008). “Credit card comparisons”, OFT987, at http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_of/reports/financial_products/oft978.pdf. The summary box has since been somewhat revised, see: <http://www.lendingstandards-board.org.uk/wp-content/uploads/2016/06/Credit-Card-Summary-Box-Final-Vesion-July-2012.pdf>.

47. European Commission (2016) “Commission Delegated Regulation (EU) supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents”, C(2016) 3999 final. See: http://ec.europa.eu/finance/finservices-retail/docs/investment_products/20160630-delegated_regulation_en.pdf.

48. European Commission (2015) “Consumer testing study of the possible new format and content for retail disclosures of packaged retail and insurance-based investment products: Final Report”, MARKT/2014/060/G for the implementation of the Framework Contract n° EAHC-2011-CP-01. By London Economics. See: http://ec.europa.eu/finance/finservices-retail/docs/investment_products/2015-consumer-testing-study_en.pdf.

- *Cash savings*: The FCA recently ruled that the summary boxes used for cash savings should be standardised, to enable better comparability and so ease search.⁴⁹ Again the required design of the summary box was informed by consumer testing.⁵⁰
- *Mutual funds*: Full statutory prospectuses for mutual funds are long and complex. In the US, the Securities and Exchange Commission (SEC) found that they were read by only one third of mutual fund investors. In response to this, the SEC introduced a new 2-4 page document called a summary prospectus which contains key information about the mutual fund's investment objectives, strategies, risks, costs, and performance.⁵¹

2.18 Such remedies can, however, also involve creating new forms of information to aid comparability. Such information can be focussed on overall cost, but it can also relate to quality or value for money:

- *Consumer Credit*: The EU Consumer Credit Directive requires that suppliers of consumer credit include within promotional material a representative Annual Percentage Rate of Charge ("APR"). This is a single figure which represents the total cost of the credit, the calculation of which is based on a clearly specified set of rules, harmonised at EU level.⁵²
- *Energy tariffs*: Following its major Retail Market Review (RMR), Ofgem specified a set of information to be disclosed to consumers on their energy tariffs. This information was required to be provided in both monthly bills and annual statements in a standardised way, including using a standardised layout.⁵³

This information included a Tariff Comparison Rate (TCR), which is designed to allow easy comparison of tariffs across suppliers. This is intended to represent the charges faced by a 'typical' consumer, and is again calculated on a standardised basis, inspired by the APR concept. The RMR also required that energy suppliers use a 'Tariff Information Label' (TIL), a standardised format for presenting energy tariff features designed to help consumers understand all characteristics of a tariff and compare them across suppliers, similar to the credit card summary box and KID described above.

The various RMR disclosure requirements were informed by research work from semiotics experts, commissioned by Ofgem. This research concluded that a lack of standardised language across the energy industry further compounds the belief among consumers that the energy market is confusing. It also found that, in general terms, communications from suppliers are not consumer-friendly.⁵⁴

- *Printers and inks*: An OFT market study found that it was difficult for consumers to compare printers on the basis of their likely total cost, including ink cartridge refills. It therefore recommended that the industry develop a test standard against which the performance of inkjet cartridges could be measured uniformly, and that this information should be made available by retailers at the point of sale, to aid consumer choice.⁵⁵

49. See footnote 34.

50. Financial Conduct Authority (2015). "Cash Savings Remedies Consumer testing to inform the FCA's proposal for summary boxes to improve the provision of consumer information at or before the point of sale in the cash savings market", Research Report prepared by Sharron Worton and Rebecca Reynolds. See: <http://www.fca.org.uk/your-fca/documents/research/cash-savings-remedies-consumer-research>.

51. This policy is well described in John Beshears, James J. Choi, David Laibson and Brigitte C. Madrian (2014) "How does simplified disclosure affect individuals' mutual fund choices?", NBER Working Paper Series 14859. See: <http://www.nber.org/papers/w14859.pdf>.

52. Directive 2008/48/EC on credit agreements for consumers. See: http://ec.europa.eu/consumers/financial_services/consumer_credit_directive/index_en.htm.

53. Ofgem (2013) "The Retail Market Review - Implementation of Simpler Tariff Choices and Clearer Information". See: https://www.ofgem.gov.uk/sites/default/files/docs/decisions/the_retail_market_review_-_implementation_of_simpler_tariff_choices_and_clearer_information.pdf.

54. Specifically, the report finds that consumers cannot be relied upon to automatically know the meaning of kWh, unit rate, standing charge, or any other energy-related terminology that is not part of their day-to-day vocabulary. Lawes Consulting & Lawes Gadsby Semiotics (2011) "Retail Market Review - energy bills, annual statements and price rise notification advice on layout and the use of language - A research report for Ofgem". See: http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/Lawes_Language_Report.pdf.

55. Office of Fair Trading (2002) "Consumer IT Goods and Services", OFT610. See <http://webarchive.nationalarchives.gov.uk/20140525130048/http://www.of.gov.uk/OFTwork/markets-work/it-services>.

- *Unarranged overdraft charges*: In order to improve comparability of these charges across banks, the OFT agreed with industry that they would provide a summary disclosure setting out what their charges would be in six specified charging scenarios.⁵⁶
- *Retail banking*: A key finding of the CMA's recent banking investigation is that it is difficult for consumers to compare the quality of different banks. The CMA is therefore requiring banks to collect, and display prominently, a number of core indicators of service quality. It has also asked the FCA to specify additional objective measures of service performance for which disclosure will be required. All such information must also be made available on an open data basis to third parties such as price comparison websites (PCWs).⁵⁷

2.19 The remedies described above are primarily designed to facilitate comparison by consumers. However, there is another sub-category of disclosure remedy which are not designed to be consumer facing but rather to facilitate comparison by third parties, with the expectation that the latter will use this information to achieve some form of soft benchmark competition between firms, generated by peer review, risk of regulatory intervention and especially publicity. Suppliers don't want to be in the headlines for being worst on a given metric.

2.20 Such interventions are sometimes referred to as 'sunlight' or 'market transparency' remedies. Examples include:

- *Energy/telecoms*: The UK sectoral regulators Ofcom and Ofgem require suppliers of telecoms/pay TV and energy, respectively, to publish complaints data on a standardised basis. In both cases, the regulator then publishes the combined data on a quarterly basis, enabling the assessment of relative supplier performance.⁵⁸
- *Cash savings*: The FCA is trialling a 'sunlight' remedy, whereby all suppliers of cash savings accounts publish their lowest available interest rate on a savings product, and the regulator collates this and reports its findings publicly.⁵⁹
- *Add-on insurance*: Following a recent market study into general insurance add-ons, the FCA concluded that consumers had poor information on the value for money represented by such add-on products. It is currently trialling a proposed remedy under which suppliers publish scorecards which incorporate a number of measures of value (such as claims frequencies, claims acceptance rates and average claims payouts, potentially with the inclusion of an average premium metric). The FCA expects that the data will be used primarily by consumer groups, the financial media, firms and by the FCA itself, rather than directly by consumers.⁶⁰

2.21 The regular publication of results from such sunlight remedies may also generate continuing media interest. This should be useful for maintaining consumer engagement in the issue over time, which in turn may be important if consumer habits are to be altered.⁶¹

56. For example: http://personal.rbs.co.uk/content/dam/rbs_co_uk/currentaccounts/downloads/Reward/Personal%20and%20Private%20Current%20Account%20Terms.pdf.

57. Competition and Markets Authority (2016) "Retail Banking Market Investigation: Final Report". See: <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>.

58. See <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/complaints> and <https://www.ofgem.gov.uk/publications-and-updates/ofgem-makes-it-easier-compare-supplier-performance-resolving-complaints>.

59. See footnote 45.

60. Financial Conduct Authority (2016) "FS16/1: Feedback Statement on DP15/4 - General insurance value measures". See: <https://www.fca.org.uk/static/fca/documents/feedback-statements/fs16-01.pdf>.

61. A recent academic study in the context of energy conservation demonstrates the need for persistent prodding over time in order to change embedded consumer habits. By contrast, one-off interventions are seen to have an initial impact but then back-sliding is observed. Hunt Allcott and Todd Rogers (2014) "The Short-Run and Long-Run Effects of Behavioral Interventions: Experimental Evidence from Energy Conservation", *American Economic Review*, Vol. 104, No. 10. Working paper version available at: <http://www.nber.org/papers/w18492>.

iv. Disclosure remedies to prevent consumers being misled

2.22 As behavioural economics has become more firmly embedded in regulatory thinking, it has become better understood that information can be disclosed in a way that is in fact misleading and likely to worsen consumer decision-making.

2.23 For example, evidence shows that consumer can be influenced by the way in which prices (or other attributes of a product) are framed by suppliers. Laboratory experiments carried out for the OFT found that such price framing can affect search behaviour and overall prices paid relative to the situation with clear and transparent upfront pricing.⁶² ‘Drip pricing’, whereby incremental charges are added to an upfront price, such that the full price is revealed only late in the sales process, is found to have especially serious implications in terms of reducing search and raising prices. Consumer decision-making is also found to be adversely affected by ‘reference pricing’ (e.g. “Was £50, now £25”) and ‘time-limited promotions’ (e.g. “Price offered for a limited time only”).

2.24 More recent research work commissioned by the OFT reaches similar findings in respect of partitioned pricing (whereby prices are split out into multiple components). It also finds that changing the font size and position of the different elements of price can have strong effects.⁶³ The impact of partitioned pricing is also demonstrated in an empirical study by Woodward and Hall (2010) of the US mortgage market, which finds that mortgage brokers who are remunerated through a combination of a fixed fee and a percentage commission on the mortgage are able to charge consumers substantially more than those which charge either a fixed fee or a commission.⁶⁴

2.25 Where consumers are misled, consumer protection law may be applicable. For example, misleading actions and omissions are potentially breaches of the 2008 Consumer Protection from Unfair Trading Regulations (CPRs).⁶⁵ Where contracts are misleading as to additional fees to be charged, or potential price increases, at a later stage, they may be caught by the unfair contract terms provisions of the Consumer Rights Act 2015.

2.26 However, interventions against such misleading or unclear behaviour have been included in this Review because they can be seen as a form of demand-side remedy, and indeed are not always taken on the basis of consumer law. Consumers can only be expected to make reasonable decisions, and so drive competition, if they are not misled by suppliers. Examples of relevant interventions include:

- *Payment surcharges for airline tickets*: In 2011, Which? made a super-complaint to the OFT in respect of excessive surcharges being levied online at a late stage in the sales process.⁶⁶ While the OFT took direct action against this form of ‘drip pricing’ in respect of airline tickets⁶⁷, the Government brought forward more widely applicable legislation, the Consumer Rights (Payment Surcharges) Regulations 2012.⁶⁸

62. See footnote 13

63. Office of Fair Trading (2014) “Partitioned Pricing Research A behavioural experiment”, Research paper by Steffen Huck, Brian Wallace and London Economics, OFT1501A. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_of/economic_research/OFT1501A.pdf.

64. Susan E. Woodward and Robert E. Hall (2010) “Consumer confusion in the mortgage market: Evidence of less than a perfectly transparent and competitive market”, American Economic Review: Papers and Proceedings, 100, pp. 511-15. For working paper version of paper, see: <http://www.nber.org/papers/w16007.pdf>.

65. This UK legislation implements the EU Unfair Commercial Practices Directive. See Office of Fair Trading and Department for Business, Enterprise and Regulatory Reform (2008) “Guidance on the Consumer Protection from Unfair Trading Regulations 2008”. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284442/of1008.pdf.

66. Which? (2011) “Super-complaint: credit and debit surcharges”. See: <http://www.staticwhich.co.uk/documents/pdf/payment-method-surcharges-which-super-complaint-249225.pdf>.

67. Office of Fair Trading (2012) “Payment surcharges: Response to the Which? super-complaint”. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_of/super-complaints/OFT1349resp.pdf.

68. For relevant BIS guidance, see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452405/BIS-15-343-BIS-payment-surcharges-guidance.pdf.

This legislation bans traders from charging consumers more than the direct cost borne by them as a result of the consumer using a given means of payment, ensuring that any further charges are incorporated within upfront prices, and are therefore more easily compared by consumers.

- *Car rental:* Following an EU-wide review of consumer problems arising in the short-term car rental sector, led by the CMA, five leading car rental companies have agreed to increase upfront transparency for consumers when booking online. Changes include providing upfront information about optional extras and their prices and the ability to pre-book them online, and upfront information about key rental terms and requirements.⁶⁹ While this work was focussed on ensuring that consumers avoid nasty surprises, and drew strongly on the CPRs, the intervention should also facilitate better consumer decision-making and search and thus enhance competition.
- *Broadband advertising:* The UK Advertising Standards Authority has recently set out new expectations of broadband suppliers in respect of their advertising. These require them to show all-inclusive upfront and monthly costs – no more separating out line rental – and also to give greater prominence to contract length and any post-discount pricing.⁷⁰ These changes were based on research into the impact on consumer understanding of different ways of presenting broadband prices.⁷¹
- *Energy and telecoms restrictions on price variation clauses:* Another way in which consumers may struggle to take prices fully into account upfront is if the supplier retains the contractual freedom to vary prices during the course of a contract in a way that is hard to predict in advance. In order to address this concern, Ofgem has banned any price variation within fixed term energy contracts.⁷² Meanwhile, Ofcom has required that telecoms customers be allowed to exit the contract, without facing exit fees, if prices are raised mid-contract.⁷³
- *Special prefix phone numbers:* Ofcom has recently changed the rules around special prefix phone numbers, to ensure that the pricing is clear. Freephone (080) numbers now mean free, including from mobiles. Charges for service numbers (starting 084, 087, 09 and 118) will be made up of an ‘access charge’ going to the phone operators, plus a ‘service charge’ set by the service company being called.⁷⁴ These remedies address substantial consumer uncertainty around prices, as evidenced by Ofcom research.⁷⁵ They should also facilitate competition both between phone operators on access charges and between service companies on service charges.

69. Competition and Markets Authority (2015) “Short-term car rental in the European Union”. See: https://assets.publishing.service.gov.uk/media/55a3cdd940f0b62889000001/Short-term_car_rental_in_the_EU.pdf.

70. Advertising Standards Authority (2016) “Tougher approach to broadband price claims in ads”, Press Release. See: <https://www.asa.org.uk/News-resources/Media-Centre/2016/Insight-We-confirm-tougher-approach-to-broadband-price-claims-in-ads.aspx>.

71. Amongst other findings, this evidence showed that around one-fifth of consumers surveyed were unable to calculate the total cost of a package, based on an advertisement in which prices were partitioned, even with repeated views of the advert and when asked to focus on the price. Futuresight (2015) “Fixed Broadband Advertising of Prices: A Research Study. Final Report”. Prepared for Ofcom and the ASA. See: https://www.asa.org.uk/News-resources/Media-Centre/2016/-/media/Files/ASA/Reports/Ofcom%20Fixed%20BB%20Advertising%20of%20prices_Futuresight_Final%20Report_FINAL.ashx.

72. See footnote 53, paras 2.21-2.23.

73. Ofcom (2013), “Price rises in fixed term contracts – Statement”, at <https://www.ofcom.org.uk/consultations-and-statements/category-1/price-rises-fixed-contracts>.

74. Ofcom (2015) “Call charges clear From Wednesday”, Press Release. See: <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2015/call-charges-clearer-from-wednesday>.

75. Ofcom (2011) “Non-Geographic Telephone Numbers: Omnibus Survey”.

v. Disclosure remedies to aid decision-making when consumers are already using a product or service

2.27 Disclosure remedies are not always targeted at consumers' initial purchase decisions, but can also be directed at improving their decision-making once they are using a product or service, without involving any change in supplier. For example:

- *Unarranged overdraft charges*: Following pressure from both the OFT and UK Government, the major UK banks committed to offer the option of sending text alerts to customers who are about to go into unarranged overdraft (which can in turn incur substantial fees) and allowing them a 'grace period' in which to sort out the situation.⁷⁶ In addition, the OFT agreed with the banks that overdraft charges would be set out clearly in monthly statements, and also within a new annual account summary setting out the cost of the account.⁷⁷
- *Credit cards*: Following its market study into credit cards, which found significant over-borrowing and under-repayment by a subset of consumers, the FCA is currently testing empirically how best to use timely disclosures to remind consumers to consider how much they are borrowing and also regular disclosures (for example in monthly statements) to encourage faster repayment.⁷⁸
- *Mobile phone charges*: 'Bill-shock' regulation for mobile phones, as described on page 22 above, requires that mobile operators send customers text alerts when they are about to incur 'overage' charges (that is, usage charges beyond what is allowed for within their package). This is designed to enable them to better manage their spending.
- *Energy tariffs*: As part of its Retail Market Review remedies, Ofgem introduced a requirement for suppliers to provide 'cheapest tariff messaging' to inform consumers of how much they could save by switching to their current supplier's best tariff.⁷⁹ The intention of this measure was to help consumers avoid getting stuck on high price evergreen tariffs.

2.28 This sort of disclosure remedy need not necessarily affect the intensity of competition in the market, but can nevertheless be important in ensuring that competition occurs on dimensions that deliver real benefits to consumers, rather than firms competing for customers in order to then extract as much out of them as possible.⁸⁰ By making consumers more aware of the costs and benefits associated with the product or service, such remedies may also encourage shopping around, which will further enhance competition.

76. HM Treasury and Department of Business, Innovation and Skills (2011) "Consumer Credit and Personal Insolvency Review: Formal Response on Consumer Credit", Para 7. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225119/bis-11-1341-consumer-credit-and-insolvency-response-on-credit.pdf.

77. Office of Fair Trading (2010), "Personal current accounts in the UK: Update on unarranged overdraft charges", Para 4.2. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_offt/personal-current-accounts/oft1249.pdf.

78. Financial Conduct Authority (2016) "Credit Card Market Study: Final Findings Report", MS14/6.3. See: <https://www.fca.org.uk/publication/market-studies/ms14-6-3-credit-card-market-study-final-findings-report.pdf>. In respect of these concerns, the FCA is also testing the benefits of providing a wider range of pre-set repayment options and considering a requirement that consumers must opt in for credit limit increases.

79. See footnote 53.

80. Note that we also observe 'usage control' remedies, which enhance consumers' ability to control their usage of products. These can similarly aid consumer decision-making and thus help to ensure that competition occurs in the right dimensions. Examples include allowing consumers to use direct debits to pay off store card debt, to opt-out of unarranged overdrafts, or to choose a repayment rule for credit card debt (rather than being defaulted to a particular minimum repayment programme, as currently). This report does not cover such 'usage control' remedies in any detail.

2.2 Disclosure remedies: Evidence on their effectiveness

2.29 As discussed above, there is limited evidence available on the effectiveness of demand-side remedies generally, and especially those which have been put in place more recently. This section considers such evidence as does exist in respect of the interventions listed above, as well as some evidence from relevant research papers.

2.30 Overall, the evidence on effectiveness is mixed. A number of positive outcomes are observed. However, there are also a number of instances in which disclosure remedies were less effective than expected, or even ineffective. Examples are also provided in which disclosure remedies seem to have had detrimental effects on consumer decision-making.

i. Positive outcomes from disclosure remedies

2.31 We observe a number of positive outcomes from disclosure remedies in terms of improving consumer decision-making.

2.32 First, there is some evidence of benefits from remedies that purely overcome an asymmetric information problem, by requiring suppliers to put information into the public domain which would otherwise be difficult or impossible to access:

- *Domestic bulk LPG*: When the OFT reviewed developments in this market, within a wider market study into off-grid energy, it found that the vast majority (79 per cent) of customers now find it easy to compare LPG prices across suppliers and that a majority (57 per cent) compared prices always or sometimes when purchasing bulk LPG.⁸¹

2.33 Second, there is evidence of benefits from remedies which specify relatively precisely how and where information should be presented:

- *Store cards*: The CC's ex post evaluation found that store card usage, average store card APRs and outstanding store card balances had all fallen since the start of the CC investigation. It found that greater prominence of information on store card statements probably played a role in this. However, the evaluation also noted that a substantial proportion of the changes observed occurred during the CC's investigation. As such, they may have been at least partially influenced by the greater public awareness around store card charges, rather than the remedies themselves, with store card providers making a competitive response and anticipating the CC's interventions.

One remedy which appears to have had a clear and distinct effect is the CC's requirement that warnings must be given for store cards with an APR above 25 per cent. This remedy led to the proportion of store cards with an APR above 25 per cent falling significantly, from 70 per cent of all cards to 43 per cent.⁸²

81. Office of Fair Trading (2011) "Off-Grid Energy - An OFT market study", OFT1380. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/market-studies/off-grid/OFT1380.pdf.

82 Competition Commission (2011) "Understanding past market investigation remedies - Store Cards". See: http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/our_role/analysis/110301_store-cards_evaluation.pdf.

2.34 Third, there is evidence that disclosures that are designed to facilitate comparison across products can be effective:

- *Printers and inks*: Although there has been no formal evaluation of the OFT's decision to ask the industry to develop standards for calculating cost per page on a comparable basis, this initiative does seem to have been successful, and comparable print costs are now reported in consumer-focussed magazines and websites when judging, and making comparisons across, printers.⁸³ That said, these standardised print costs do not appear to be displayed prominently instore, which might have further strengthened their impact on consumer decision-making.

2.35 Fourth, there is evidence that disclosure can be valuable, if well designed, where consumers are purchasing an ongoing service:

- *Unarranged overdraft charges*: Taking advantage of a staggered roll-out, the FCA was able to carry out an empirical ex post evaluation of the introduction of text alerts for banking customers who are about to go into unarranged overdraft. These text alerts were found to be powerful in reducing both unarranged overdraft charges and current account balances, especially when consumers also have mobile banking.⁸⁴ Signing up to text alerts or mobile banking was found to reduce unarranged overdraft charges by 5 per cent to 8 per cent, while signing up to both services led to a reduction of 24 per cent.

Interestingly, the OFT's initial consumer enforcement case against unarranged overdraft charges also had a positive impact in reducing these charges, even though the case was eventually unsuccessful at the Supreme Court. It seems that the substantial media coverage which accompanied the case led to increased consumer awareness of the issue, and resulted both in consumers using their accounts more carefully and in banks reducing their charges.⁸⁵

On a less positive note, an evaluation by the OFT found that there was limited consumer awareness and take-up of the optional text alert service and recommended that the banks do more to promote it.⁸⁶ The latest CMA review of retail banking goes further still and recommends that that the opt-in nature of these provisions should be removed; all personal customers should benefit from such alerts (albeit with grace periods still available only on an opt-in basis).⁸⁷

2.36 While there have not yet been any formal evaluations, a number of more recent interventions have been based on more thorough upfront empirical analysis. This should give us greater confidence in their likely effectiveness. For example, the recent interventions on payment surcharges for airline tickets, which were based on laboratory experimental research, have dramatically lowered payment surcharges, and also broadly aligned them across suppliers, such that consumers should now be in a far better position to compare overall prices.

83. For example, Which? Magazine (2016) "Test Lab: Which printer should you pick?", August, page 60.

84. Text alerts and mobile banking also decreased average current account balances by 17 per cent to 24 per cent, as consumers (presumably) sought to reduce the opportunity cost of holding balances in accounts with no (or low) credit interest. Financial Conduct Authority (2015), "Message received? The impact of annual summaries, text alerts and mobile apps on consumer banking behaviour", Occasional Paper 10. See: <https://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-10.pdf>.

85. Office of Fair Trading (2013) "Evaluating the impact of the 2008 OFT market study and UTCCR test case into personal current accounts", OFT1005eval. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oftr/reports/financial_products/OFT1005eval.

86. Office of Fair Trading (2013) "Review of the Personal Current Account Market", Paras 5.29-5.33, OFT1005rev. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oftr/reports/financial_products/OFT1005rev.

87. See footnote 57.

ii. Less effective or ineffective disclosure remedies

2.37 There are, however, also a number of cases in which disclosure remedies seem to have been less effective than expected or even ineffective.

2.38 First, there are cases of limited compliance, which would in turn be expected to limit effectiveness. For example:

- *Extended warranties*: In 2008 the OFT evaluated the impact of remedies that had been imposed by the Competition Commission in 2005 in respect of extended warranties on domestic electrical goods.⁸⁸ This found only limited compliance by retailers with the CC's disclosure remedy requiring that the price, duration and optional nature of extended warranties be provided next to any domestic electrical good (DEG).⁸⁹
- *Private dentistry*: When the OFT revisited the dentistry market in 2012, it found very limited compliance with the GDC requirement that customers be given written treatment plans prior to treatment commencing.⁹⁰

2.39 Second, even where there is compliance, there is evidence of disclosure remedies having only a *limited* impact on consumer decision-making. In some cases, this may be primarily due to a lack of consumer awareness of the disclosure at all, but it can also be due to consumers making only limited (if any) use of the disclosure or due to the disclosure being over-complex:

- *Energy tariffs*: Consumer survey and panel work carried out for Ofgem found that just 18 per cent of consumers surveyed recalled seeing the tariff comparison rates, a lack of clarity amongst consumers as to how relevant the charges for a 'typical' consumer might be, and limited impact in terms of the measure being used in practice. The work found greater – but still limited – awareness and impact for cheapest tariff messaging, with 34 per cent of consumers surveyed recalling seeing this measure.^{91,92}

It is noteworthy that, following its recent energy investigation, the CMA has recommended that Ofgem engage in further empirical consumer testing – using RCTs, where appropriate – of its energy cost disclosures, to ensure that they truly enhance consumer engagement. It has also imposed a new licence condition on suppliers which requires them to cooperate with such research.⁹³

- *Care homes*: The OFT's ex post evaluation of this market study found that care homes had improved in terms of providing information on prices and also providing inspection reports on request.⁹⁴ Nevertheless, consumers were found to have only limited awareness of fees and the evaluation found no evidence of downward pressure being exerted on fees due to increased transparency.

88. Competition Commission (2005), see footnote 32. Office of Fair Trading (2008), "Evaluating the impact of the Supply of Extended Warranties on Domestic Electrical Goods Order 2005 – Prepared for the Office of Fair Trading by LECG", OFT1024. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/of1024.pdf.

89. See para 112: "In around 45 per cent of the DEG areas we visited retailers had not listed information about the price, duration and optional nature of extended warranties next to any DEG in the area, and in about 20 per cent of areas this information was listed next to only some DEGs".

90. Office of Fair Trading (2012), "Dentistry: An OFT market study", OFT1414, Para 16 "82 per cent of dental patients who recently received a course of dental treatment that incurred a charge did not receive a written treatment plan". See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/market-studies/Dentistry/OFT1414.pdf.

91. TMS BMRB (2015) "Retail Market Review 2015 Survey: Report prepared for Ofgem". See https://www.ofgem.gov.uk/sites/default/files/docs/ofgem_rmr_survey_2015_report_published.pdf.

92. Ipsos Mori (2015) "Ofgem Consumer First Panel: Exploring trust and some Retail Market Review remedies", See: https://www.ofgem.gov.uk/sites/default/files/docs/ofgem_consumer_panel_report_final_year_7_wave_1.pdf.

93. Competition and Markets Authority (2016) "Energy market investigation: Final report", Para 20.24. See: <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>.

94. A mystery shopping study, carried out for the evaluation, found that 90 per cent of callers were able to obtain information on fee levels, up from 60 per cent in 2005. Meanwhile, 84 per cent of care homes said that they provide new residents with the latest inspection report when moving into the home. Office of Fair Trading (2011) "Evaluating the impact of the 2005 OFT study into care homes for older people Prepared for the Office of Fair Trading by GHK", OFT1322. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/OFT1322.pdf.

As regards quality, consumers were found to be making little use of the inspection reports. The evaluation concludes that this is partly due to their being provided relatively late in the process, and also due to their not being made available by care homes proactively.

- *Unarranged overdraft charges*: In contrast with the FCA's finding on text alerts, a follow-on review by the OFT found that putting unarranged overdraft charges onto monthly bank statements had no discernible impact on customer awareness of these charges.⁹⁵ FCA analysis showed that the new annual account summaries also had no significant impact on the charges incurred.⁹⁶

Partly on this basis, following its recent market investigation into retail banking, the CMA has recommended that the FCA undertakes further work to identify, research, test and, as appropriate, implement measures to increase overdraft customers' engagement with their overdraft usage and charges. This will be facilitated by an Order to require banks to cooperate with the FCA in its research programme, including RCTs.⁹⁷

The recent CMA market investigation into retail banking also found that the standardised charging scenarios for unarranged overdraft charges did not give a full picture of how charges could be applied, due to their complexity. Moreover, relatively few consumers used these scenarios to choose between personal current accounts. The CMA found that some banks' scenarios were easier to locate online than others, but that it could take up to seven clicks from the current account home page to reach them.⁹⁸

Given this, the CMA is now requiring banks to set a maximum monthly charge (MMC) for unarranged overdrafts. The intention is that this figure will act as a point of comparison for consumers when choosing banks, and that competition between banks will thus act to protect consumers against excessive unarranged overdraft charges.⁹⁹

- *Cash ISAs*: When it evaluated the impact of the interest rates being published on cash ISA statements, the OFT found good compliance, but nevertheless no significant increase in consumer awareness around interest rates.¹⁰⁰ (In fact, awareness of interest rates appeared to be slightly lower. The OFT suggests that this may have been because interest rates were very low, leading to consumer disengagement.) This finding helped to motivate the revised interest rate disclosure remedies arising from the FCA's cash savings market study. (These are discussed in Section 3 below, as their primary intention is trigger shopping around).¹⁰¹
- *Credit cards*: When the FCA reviewed the market again in 2015, it found that, despite the introduction of the summary box, there was little competitive pressure on conditional fees and charges such as default fees, foreign exchange fees, or cash advance fees, as consumers pay little attention to these when choosing a provider, focussing instead on promotional introductory offers and rewards.¹⁰²

95. See footnote 86.

96. See footnote 84.

97. See footnote 57.

98. Competition and Markets Authority (2014) "Personal current accounts: Market study update", Paras 3.49-3.54. See: https://assets.publishing.service.gov.uk/media/53c834c640f0b610aa000009/140717_-_PCA_Review_Full_Report.pdf.

99. See footnote 57.

100. Office of Fair Trading (2014) "Evaluating the impact of the OFT's 2010 Cash ISAs: Response to super-complaint by Consumer Focus", OFT1523eval. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/OFT1523eval.pdf.

101. See footnote 45.

102. See footnote 78.

- *Mutual funds*: A similar story holds for the SEC's new summary prospectuses. A recent laboratory experiment by Beshears et al (2014) finds that these have no impact on portfolio choices relative to the previous statutory prospectuses. Indeed, investors are found to still make significant errors in their portfolio choices. The only significant benefit deriving from the summary prospectuses, at least within this experiment, is that investors don't have to read so much.¹⁰³

2.40 An academic experiment carried out by De Meza et al (2010) is also interesting here. This found that disclosure of claims ratios for insurance had no significant impact on consumer decision-making in a context where they meet with advisers face-to-face. Consumers apparently put undue trust in the adviser and ignore the disclosures.

iii. Disclosure remedies that make consumer decision-making worse

2.41 There is also evidence of disclosure remedies making consumer decision-making worse, albeit this is mostly from research studies rather than real life examples.

- *Mortgage broker commissions*: A well-known research study in which this result was identified, albeit in an experimental setting, was the investigation by the US Federal Trade Commission (FTC) into the impact of requiring mortgage brokers to reveal their commission.¹⁰⁴ The FTC asked 500 volunteers to act as 'customers' needing a mortgage. They were then offered a choice of two mortgages. In a subset of the cases, they were also told that the cheaper mortgage would involve the broker receiving a commission, and this fee was disclosed. Of course, all that matters in the end to the customer should be the total cost of the mortgage, not any commission. However, the effect of disclosing the existence and level of the broker commission was to increase customer take-up of the more expensive mortgage by 22 per cent on average! That is, on average, customers paid more when given more information.
- *Consumer credit scenarios*: Another example derives from a 2010 field study from South Africa.¹⁰⁵ A consumer lending company agreed to send letters to 53,000 former clients offering them loans. These letters differed in terms of the interest rates offered but also the format of the letter. The response rates to the different types of letter allowed the academics involved to calculate the impact of different letter format in terms of the average interest rate paid by respondents. This is a rich study, but one of the most interesting results was that including only one example loan in the letter, instead of four, increased take-up by as much as did a price reduction of 25 per cent (200 basis points). That is, consumers effectively paid 200 basis points more for the loan where four example loans were shown. This provides strong evidence of the potential impact on consumer decision-making of 'information overload'.
- *Doorstep selling*: An interesting UK example is the doorstep selling market. Following a 2004 OFT market study into this market, a number of changes were made to improve the rights and information available to consumers.¹⁰⁶ When the OFT evaluated the impact of its market study in 2012, this package of measures was found to have significantly raised consumers' awareness of their rights and increased their confidence in the market, as intended.¹⁰⁷

¹⁰³ See footnote 51.

¹⁰⁴ Lacko, J.M. and Pappalardo, J.K. (2004), "The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment", Federal Trade Commission Bureau of Economics Staff Report, at <https://www.ftc.gov/sites/default/files/documents/reports/effect-mortgage-broker-compensation-disclosures-consumers-and-competition-controlled-experiment/030123mortgagefullrpt.pdf>.

¹⁰⁵ Marianne Bertrand, Dean Karlan, Sendhil Mullainathan, Eldar Shafir, and Jonathan Zinman (2010) "What's Advertising Content Worth? Evidence From A Consumer Credit Marketing Field Experiment", Quarterly Journal of Economics, at <https://www.povertyactionlab.org/sites/default/files/publications/13%20Marketing%20Feb%2010.pdf>. Another noteworthy finding in this study was having a picture of a smiling woman on the letter also raised the average interest rates paid, with the increase for male customers being 300 basis points.

¹⁰⁶ See footnote 37.

¹⁰⁷ Office of Fair Trading (2012), "Evaluating the impact of the 2004 OFT market study into doorstep selling - Prepared for the Office of Fair Trading by GHK", OFT1413, at http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/of1413.pdf.

However, the proportion of customers making price comparisons before purchasing had actually fallen. This gives rise to the possibility that the interventions in fact created undue over-confidence in doorstep sellers, which in turn reduced search behaviour and thus competition. This was not the intended outcome.

- *Consumer credit*: APRs are now used across an array of consumer credit products, and in many situations are thought to do a good job in terms of providing illustrative guidance on the costs of credit. They are now calculated on a fully standardised basis, which helps guard against their being misleading.

However, they have not been free of criticism, on the basis of being both manipulable by suppliers and misleading to consumers.¹⁰⁸ A key problem is that APRs are by their very nature designed to simplify, in the face of complex detail, but sometimes it is the details that matter to people. For example, an experiment by Pete Lunn et al (2016) finds that consumers choosing between two long-term loans make significantly different choices depending on whether they are shown information on APRs, on monthly repayments, on the total cost of the loan, or full information (all three). In particular, this study finds that, when choosing between multi-year loans, consumers are more likely to choose a longer term loan (at a consequently higher total cost) when only shown APRs than they are when shown the total cost of the loan.¹⁰⁹

Concerns around the value of APRs have also been raised in the context of short-term credit, where the payback period is far shorter than annual. Recent experimental evidence produced for the FCA finds that consumers of payday loans make significantly better choices when given information on total amount payable (TAP) rather than when shown APRs.¹¹⁰ Similar findings are reached in a US academic study by Bertrand and Morse (2011).¹¹¹

This is partly why consumer credit law requires that interest rates and charges should be made clear, and not just the APR.¹¹² It is also why mortgage regulation requires disclosure of both total amount payable and monthly repayments, alongside the APR. The FCA has also recently proposed to dis-apply the requirement for a representative APR in financial promotions where the introductory APR is 0 per cent.¹¹³

- *Energy*: In its recent energy market investigation, the CMA has identified that cheapest tariff messaging may have the unintended impact of weakening competition. The concern here is that, if suppliers have to alert all consumers to any lower tariffs they make available, this may act to reduce their incentives to offer such lower tariffs.¹¹⁴

108. For example, see Michael J. Osborne (2013) "Is APR a Robust Measure of the Cost of Consumer Credit?". See: <https://www.sussex.ac.uk/webteam/gateway/file.php?name=is-apr-a-robust-measure-of-the-cost-of-consumer-credit.pdf&site=9>.

109. Pete Lunn, Marek Bohacek and Alicia Rybicki (2016) "An experimental investigation of personal loan choices". See: <https://www.wesri.ie/pubs/BK-MNEXT314.pdf>.

110. Financial Conduct Authority (2015) "High-Cost Short-Term Credit Price Comparison Websites: A behavioural study for the Financial Conduct Authority". Research by London Economics and YouGov. See: <http://www.fca.org.uk/static/fca/documents/consultation-papers/cp15-33-behavioural-study.pdf>.

111. Marianne Bertrand and Adair Morse (2011). "Information Disclosure, Cognitive Biases, and Payday Borrowing", *Journal of Finance* 66(6). For a working paper version, see: <http://faculty.haas.berkeley.edu/morse/research/papers/BertrandMorsePaydayFieldExpJuly2010.pdf>.

112. Under the EU Mortgage Credit Directive, the UK "Key Facts Illustration" will be replaced by the "European Standardised Information Sheet". However, both include the elements listed above. See Financial Conduct Authority (2015) "Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20 and final rules", <https://www.fca.org.uk/publication/policy/ps15-9.pdf>.

113. Financial Conduct Authority (2015) "Quarterly Consultation No11", CP15/42. See: <http://www.fca.org.uk/static/documents/consultation-papers/cp15-42.pdf>.

114. See footnote 93.

2.3 Disclosure remedies: Conclusions

2.42 In conclusion, while disclosure remedies can have valuable positive impacts on consumer decision-making, there is also evidence of their being ineffective or even harmful. This gives rise to a number of lessons:

a) It is important to ensure compliance with disclosure remedies (and demand-side remedies generally).

Compliance cannot be assumed. It may be limited if remedies are not given sufficient focus by the firms involved, whether this be deliberate or inadvertent. Examples include private dentistry and extended warranties. Unsurprisingly, limited compliance is likely to reduce the impact of the remedy. Possible methods for ensuring compliance are discussed further in Section 6, but effective monitoring and reporting can be crucial elements.

b) In ensuring that disclosure is genuinely clear and comprehensible, and in particular in ensuring that it is easily comparable across suppliers, rules around disclosure may need to be fairly prescriptive.

Providing more information to consumers will not enhance decision-making unless the information is genuinely clear and comprehensible. Interventions may therefore need to go beyond simply requiring suppliers to provide information in a clear and comprehensible way and dictate more precisely the format in which information is provided.

c) Consumer testing can be valuable in assessing how consumers really use information to make decisions and how disclosure can enhance this. If RCTs are to be used, there may need to be a requirement on firms to cooperate.

Information that is clear and comprehensible to a sophisticated reader (such as the firm or regulator) may not be so to the average consumer. In designing disclosure remedies, consumer testing can therefore be very valuable, as was done in designing the PRIIPS Key Information Document (KID).

In both the recent energy and retail banking market investigations, the CMA has directly recommended that the relevant regulator (Ofgem and FCA, respectively) engage in empirical consumer testing – using RCTs, where appropriate – of certain disclosures that are designed to enhance consumer engagement. Since industry engagement is important for the success of RCTs, in both of these cases the CMA has also required of industry that they must cooperate with this research.¹¹⁵

d) Consumer awareness of, and attention to, disclosure matters.

There is plenty of evidence of consumers having only limited awareness of disclosure remedies at the point of decision-making, or only limited understanding of how they are intended to help in the decision-making. Examples include energy (tariff comparison rates and cheapest tariff messaging), fees for care homes, unarranged overdraft charges and the inclusion of rates on cash ISA statements). As such, simple disclosure remedies may need to be supplemented with measures around the prominence and timeliness of the disclosure.

e) Consumer awareness and attention can be affected by who does the disclosure, where the disclosure appears, and the timing of disclosure.

In the case of doorstep selling, the improved disclosure required of the doorstep salesman appears to have acted to increase consumer trust, perhaps unduly. The experiment by De Meza et al (2010) found that the disclosure of insurance claims ratios had no effect in a face-to-face advice scenario. It can therefore be important in designing disclosure remedies to consider who does the disclosure.

¹¹⁵ See footnotes 93 and 57.

The timing of disclosure of care homes quality information was found to reduce the effectiveness of this remedy. In the cash savings market, it was considered important that the interest rates were disclosed no more than one click away from the customer's on-line banking home page.

f) *It can sometimes be helpful to disclose less, not more, to avoid information overload.*

Too much information can potentially make decision-making worse, as in the *mortgage disclosures* and *consumer credit scenarios* described above.

It is noteworthy that the FCA has a 'smarter consumer communications' initiative, whereby it is reviewing the information disclosures it requires firms to make in order to ensure that they are effective. This ongoing initiative has already identified disclosure requirements that can potentially be dropped. In most of these, the disclosures are merely considered ineffective and thus to impose an undue cost on business. However, in couple of cases, the FCA is concerned that its rules could harm consumer decision-making because they "create a risk that firms adopt a 'tick-box' approach to their disclosure obligations rather than designing an effective disclosure to help their target customers understand the scope and cost of their service".¹¹⁶

g) *It is important to consider the supply-side response to any disclosure remedy (or indeed any sort of demand-side remedy)*

In designing remedies, it important to recognise that suppliers may seek to work around the remedy, in order to make it less effective it, or even manipulate it to make consumer decision-making worse (as has been suggested for APRs). There is also a risk that remedies can change suppliers' incentives to offer lower prices (as the CMA suggests as a possible outcome arising from cheapest tariff messaging in energy).

h) *Consumer decision-making can sometimes be enhanced merely by carrying out an investigation, if this generates sufficient media pressure.*

For example, both consumers and firms respond positively to the CC's store cards investigation even before it was complete, and also to the OFT's consumer enforcement case against *unarranged overdraft charges* even though it was eventually unsuccessful.

2.43 Of course, many of the remedies discussed above originally date from prior to 2010, and thus were largely put in place before regulators gave greater prominence to behavioural economics and associated empirical techniques. In at least some of these cases, it seems likely that the impact of the intervention could have been enhanced with more careful design, with a focus on understanding how consumers really behave, and ideally advance consumer testing of remedies designed to change it.

116. Financial Conduct Authority (2015) "CP15/32: Smarter Consumer Communications: Removing certain ineffective requirements in our Handbook". See: <https://www.fca.org.uk/static/documents/consultation-papers/cp15-32.pdf>.

3. Shopping around remedies

3.1 Effective competition relies on consumers shopping around across products and across suppliers in order to make suitable choices for their needs. Competition can thus be enhanced by demand-side remedies that make shopping around easier or less costly, for example by making it easier to search for and compare products, or otherwise enhance the engagement of consumers in this process.

3.2 This section examines a variety of types of shopping around remedies and their use in practice. It then considers the evidence available to date on their effectiveness, with a view to drawing tentative lessons for the future use and design of shopping around remedies, and for demand-side remedies more generally.

3.1 Types of shopping around remedy

3.3 As discussed above, it has not always been easy to distinguish demand-side remedies between the categories discussed in Sections 2-4. For example, where the disclosure remedies discussed in Section 2 provide consumers with a clearer view of the true price or quality of a product, or require information to be provided in a standardised or simplified format, this may facilitate comparison across products. At the same time, some of the remedies discussed in this section involve disclosure requirements, of one sort or another, but they are included here because their primary aim is to facilitate shopping around.

3.4 Four interlinked forms of shopping around remedy can be distinguished:

- i. Remedies that instigate or enhance collation of information to facilitate search and comparison
- ii. Remedies that impose access to personal information to facilitate comparison
- iii. Remedies that trigger or require shopping around
- iv. Remedies that otherwise de-risk or facilitate shopping around

3.5 These are discussed in turn below.

i. Remedies that instigate or enhance collation of information to facilitate search and comparison

3.6 Where suppliers provide comparable information, for example as might result from some of the disclosure remedies described in Section 2, then it can be collated by third parties in order to facilitate search and comparison. In order for such collation to occur readily, it is important that the information is published openly, or made available electronically as open data, so that it is easily accessible to the third party collator, rather than simply provided to consumers at the point of sale.¹¹⁷

3.7 Such collation can take the form of one-stop shops which carry out a pure collation role, or price comparison websites (PCWs) which provide additional functionality to aid comparison and consequent purchase. (Note that the term PCWs is used here generically to mean all forms of digital comparison tool, but recognising that many such tools allow for the comparison of other aspects of the product as well as price, while mobile apps are now also used for this purpose.)

¹¹⁷ It is noteworthy, in this respect, that the FCA has been specific that the value measures for add-on insurance described above should be published, and not just made available to consumers at the point of sale. In the recent energy and banking market investigations, the CMA has also had a clear focus on making information available to third parties as open data – see further below.

3.8 In some cases, such tools emerge naturally if the relevant information is made available and easily accessible to them. However, the benefits that such tools can bring for competition have also led to regulators taking a more active role in their development. In some cases, this has involved remedies that recommend or require that a one-stop shop or PCW be developed. For example:

- *Care homes*: OFT recommended that Government should establish a central information source or 'one stop shop' for people to get information about care for older people.¹¹⁸
- *Home credit*: Following a market investigation into home credit, the CC required the industry to provide detailed data on prices and terms to an independent PCW. This PCW was appointed by the CC and funded by the largest home credit lenders.¹¹⁹
- *Credit cards*: Following its 2008 market study into credit card comparisons, the OFT recommended that the FSA introduce a PCW for credit cards, as part of its 'moneymadeclear' site. Although there were already third-party PCWs in the market, these did not provide for personalised comparisons and were considered insufficiently transparent about their commercial relationships with providers. The OFT considered that the FSA site would have the advantage of having almost complete market coverage, being run by a trusted organisation, and providing personalised comparison which allowed consumers to rank products by their 'cost of credit' based on their own typical usage.¹²⁰
- *Extended warranties*: Having reconsidered the market for extended warranties on domestic electrical goods, in 2012 the OFT accepted an undertaking offered by the two main retailers of domestic electrical goods to set up and promote an independent price comparison website. The expectation was that this would allow consumers more easily to shop around for alternative extended warranties, separately from their primary purchase of domestic electrical goods.¹²¹
- *Private Healthcare*: As well as requiring that private healthcare providers make information on fees and quality publicly available, the CMA required the industry to set up an independent, but industry-funded, information organisation, which would make the information available via a website in a format that permits patients to search and compare results easily.¹²²
- *Retail banking*: The new EU Payment Accounts Directive (PAD) requires member states to ensure that consumers have access, free of charge, to at least one independent PCW comparing fees charged by payment service providers for commonly used services.¹²³

3.9 While these remedies all mandate the creation (or existence) of a PCW or one-stop shop, there are significant differences across them in terms of governance requirements. In the case of *extended warranties*, unlike several of the other remedies, there was not even a requirement that the PCW be independent. By contrast, in *private healthcare*, the CMA put substantial thought into effective governance, requiring that the information organisation must have CMA-appointed directors, that it should publish its board minutes, and that it should produce an annual report setting out its progress against its five-year plan.

118. See footnotes 30 and 94. The original OFT report was not specific that this one stop shop should collate information about individual care homes. However, the resulting website 'FirstStop Care Advice' did provide a searchable database of care homes by local area for the whole of the UK, as well as providing clear and comprehensive information to assist prospective care home residents and their representatives with the process of moving into a care home.

119. Competition Commission (2006) "Home Credit Market Investigation", Final Report and associated 2007 Order, at: <https://www.gov.uk/cma-cases/home-credit-market-investigation-cc>

120. Office of Fair Trading (2008) "Credit card comparisons: A report by the Office of Fair Trading", OFT987. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_oftr/reports/financial_products/oftr978.pdf.

121. Office of Fair Trading (2012) "Extended Warranties on Domestic Electrical Goods - Final Decision on a Market Investigation Reference", OFT1417dec. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://oft.gov.uk/shared_oftr/markets-work/OFT1417dec_Extended_warrant.pdf.

122. See footnote 33.

123. European Union (2014) "Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features". See <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0092&from=EN>. UK implementation of this Directive has been through the Payment Accounts Regulations 2015. See: http://www.legislation.gov.uk/ukSI/2015/2038/pdfs/ukSI_20152038_en.pdf.

3.10 More recently, there has been a move towards remedies which are designed to facilitate the commercial development of PCWs, rather than explicitly requiring such a website to be created. For example:

- *Payday lending*: Following its market investigation into payday lending, the CMA required suppliers to provide their data to at least one PCW, which is both independent and FCA-authorized, in order to facilitate the commercial development of this service in the market.¹²⁴
- *SME banking*: Following its market investigation into retail banking, the CMA has given its backing to a proposal by the independent innovation charity Nesta to launch a 'challenge prize' to identify possible solutions to the problem of limited access by SMEs to information on banking services. In order to facilitate this, the CMA has required the major SME banking providers to provide product data and samples of customer transaction data to the developers of proposals for the Nesta challenge, and to support and fund the process and prize fund. The prize committee will include a CMA representative. The CMA has also put in place a backstop requirement that the industry set up a PCW if the Nesta process fails.¹²⁵

3.11 Even where information is collated, it may not facilitate effective consumer decision-making. The functionality and way in which information is presented can be crucial, and this provides further scope for valuable demand-side remedies. Mechanisms to enhance the performance of PCWs in improving consumer decision-making include: accreditation (as in the energy and telecoms schemes described below), direct regulation (as in the payday lending, credit card, general insurance, secondary ticketing and private motor insurance examples below) or the potential for enforcement (as in the fuel oil, private motor insurance and hotel online booking examples below).

- *Energy/telecoms*: Ofcom and Ofgem both run accreditation schemes for PCWs covering their respective sectors.¹²⁶ This partly reflects the fact that neither regulator has a remit to regulate PCWs directly. Accreditation effectively requires that comparison searches are accessible, accurate, up to date, transparent and comprehensive. Transparency requirements cover both the ranking methodology and the funding model, including any commission arrangements. Adherence to the rules is independently audited on an annual basis.
- *Payday lending*: Following the CMA's market investigation into this market, The FCA has imposed new rules for PCWs when comparing payday loans. These require that users must be able to search by amount and duration of loan, and that search results must be displayed in ascending order of total amount payable. The ranking must not be influenced by any commercial relationship. To enhance clarity around the extent of market coverage, PCWs must also state clearly in one place the brand names of lenders being compared.¹²⁷ The FCA's rules were informed by consumer testing, in the form of behavioural laboratory experiments.¹²⁸

124. Competition and Markets Authority, "Payday lending market investigation order 2015", at: https://assets.digital.cabinet-office.gov.uk/media/55c-c691e40f0b6137400001f/Payday_Lending_Market_Investigation_Order_2015.pdf.

125. See footnote 57.

126. See <http://stakeholders.ofcom.org.uk/consultations/ocp/statement/pricescheme/consumerfaq/> and <https://www.ofgem.gov.uk/information-consumers/domestic-consumers/switching-your-energy-supplier/confidence-code>.

127. Financial Conduct Authority (2016) "Policy Statement PS16/15: Feedback on CP15/33, Consumer credit: proposals in response to the CMA's recommendations on high-cost short-term credit", PS16/15. See: <https://www.fca.org.uk/static/fca/documents/policy-statements/ps16-15.pdf>.

128. See footnote 110.

- *General insurance*: When the FCA reviewed the market for PCWs in the general insurance sector in 2014, it concluded that PCWs were not providing information in a sufficiently clear and consistent way to enable effective consumer decision-making. They were found to be presenting the price of the core product more prominently than other relevant information, such as details of cover, additional fees, and eligibility information. Combined with an inherent behavioural tendency for consumers to over-focus on price, this was found to lead to a practice by providers of stripping out features from the core product in order to be price competitive and thus to appear at the top of the search rankings. Consumers were not aware of the extent of this stripping out, and could end with too little cover, with a policy on which they are ineligible to claim, or alternatively could end up paying far more than the headline price suggested.

The FCA also found that PCWs' business models were unclear and in particular some PCWs which were owned by, or owned, an insurer/broker had not disclosed their potential conflicts of interest.

In response to these findings, the FCA required that PCWs take reasonable steps to ensure that consumers are provided with appropriate information to make informed decisions, and also to make clear their role in the distribution of the product and the nature of the service they are providing.¹²⁹

- *Secondary ticketing*: In 2015, the CMA agreed undertakings with the four main secondary ticketing platforms (effectively, one-stop shops) on a series of measures to improve quality, including that they show clearly the face value of the ticket, any restrictions on the ticket, any additional charges, and whether or not multiple seats that are listed together are in fact located together.¹³⁰ These requirements fed into new legislation on secondary ticketing under the Consumer Rights Act 2015.¹³¹
- *Heating oil*: The OFT found that the three main heating oil "PCWs" were in fact vertically integrated with oil suppliers and effectively only 'compared' the prices of their own brands. The OFT required that the ownership position was made clear, and that if the sites continued to act as PCWs they should be clear as to how many suppliers were in fact being compared.¹³²
- *Private motor insurance*: Having reviewed the market for private motor insurance, the CMA banned wide 'price parity' or retail price 'Most Favoured Nation' ('MFN') agreements between PCWs and insurers which prevented insurers from making their products available more cheaply on competing PCWs. The CMA found that such agreements restricted competition between PCWs, to the detriment of consumers.¹³³
- *Hotel online booking*: Likewise, wide retail price MFN clauses have been identified as a concern in the market for *hotel online booking platforms* (which are essentially PCWs). Competition authorities in France, Italy, Sweden and the UK have all recently terminated competition cases only after such clauses were dropped by the platforms involved.¹³⁴

129. FCA (2014) "Price comparison websites in the general insurance sector", Thematic Review TR14/11. See: <https://www.fca.org.uk/static/documents/thematic-reviews/tr14-11.pdf>.

130. Competition and Markets Authority (2015) "Ticket buyers benefit from CMA action", Press Release. See: <https://www.gov.uk/government/news/ticket-buyers-benefit-from-cma-action>.

131. See: <http://www.legislation.gov.uk/ukpga/2015/15/part/3/chapter/5/enacted>.

132. Office of Fair Trading (2011) "Transparency of Heating Oil Price Comparison Websites". See: <https://www.gov.uk/cma-cases/transparency-of-heating-oil-price-comparison-websites>.

133. See footnote 29. Note that the CMA allowed the continued use of 'narrow' price parity/retail price MFN agreements, which only act to prevent insurers from pricing more cheaply on their own websites.

134. Autorità Garante della Concorrenza e del Mercato (2015) "Commitments Offered By Booking.com: Closed the Investigation in Italy, France and Sweden", Press Release 21 April 2015. See: www.agcm.it/en/newsroom/press-releases/22074779-commitments-offered-by-booking-com-closed-the-investigation-in-italy-france-and-sweden.html. Competition and Markets Authority (2015) "Hotel Online Booking Investigation: Case closure summary". See: https://assets.publishing.service.gov.uk/media/55f8404aed915d14f1000014/Hotel_online_booking_-_case_closure_summary.pdf.

3.12 Another solution to consumers finding it difficult to understand and compare information across products and suppliers is for them to use an adviser to do this on their behalf. In financial services, in particular, consumers use brokers to help them compare and choose mortgages and insurance and Financial Advisers to help them compare and choose investments.

3.13 While such market solutions typically occur naturally, regulatory intervention can be helpful for ensuring that the services provided help consumer decision-making in the desired way. For example:

- *Financial advice:* In 2010, as part of its Retail Distribution Review (RDR), concerns around the quality of independent financial advice led the Financial Services Authority (FCA's predecessor) to introduce rules that required Financial Advisers to hold certain professional qualifications and also banned them from receiving commissions from suppliers of investment products.¹³⁵ The intention of the latter was to remove any incentive for Financial Advisers to direct their clients towards products which might be less suitable but offered higher fees.

ii. Remedies that impose access to personal information to facilitate comparison

3.14 In order to provide effective price comparisons, it is sometimes necessary for a broker or PCW to have personal information about the consumer, or their past consumption patterns, either because their needs may be quite specific or because different consumers may be offered different prices or products (perhaps due to their credit rating). However, the most useful personal information is often not held by the consumer, but rather by his or her incumbent supplier. This informational advantage can inhibit effective price comparison and create an unlevel playing field between the incumbent supplier and potential competitors.

3.15 Over recent years, there has been increasing intervention in this area, to require incumbent suppliers to provide such information to consumers, to PCWs, or to other third party collator of information such as credit reference agencies. In particular, the Government has promoted a voluntary cross-sector 'midata' initiative, under which suppliers would provide consumers with information that they hold on their usage and transactions in electronic, machine-readable format. The philosophy underlying this is that the data rightly belong to the consumers involved. The economic intention is that this should make it easier for consumers to compare the different offers available to them and so enhance competition.¹³⁶

3.16 Examples of market-specific interventions of this sort include:

- *Home credit:* The CC required that the major home credit providers must share data on the payment records of their customers with at least two credit reference agencies, to improve the ability of potential competitors to form a view on a customer's creditworthiness.¹³⁷
- *Payday lending:* Following its recent market investigation, the CMA required payday lenders to make available to borrowers a statement summarising their borrowing history with that lender. The CMA also recommended that the FCA take further steps to promote real time data sharing between payday lenders and credit reference agencies.¹³⁸ Although the FCA has chosen not to impose any new rules on this, it is continuing to monitor progress closely.¹³⁹

135. Financial Services Authority (2010), "Distribution of retail investments: Delivering the RDR – Feedback to CPO9/18 and final rules", PS 10/06, at <http://www.fca.org.uk/static/documents/policy-statements/fsa-ps10-06.pdf>

136. Department for Business, Innovation and Skills and Cabinet Office Behavioural Insights Team (2012) "midata: Government response to 2012 consultation". See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43392/12-1283-midata-government-re-sponse-to-2012-consultation.pdf

137. See footnote 119.

138. Competition and Markets Authority (2015) "Payday Lending Market Investigation Order". See: https://assets.publishing.service.gov.uk/media/55c-c691e40f0b6137400001f/Payday_Lending_Market_Investigation_Order_2015.pdf

139. See footnote 122.

- *Energy*: As part of its Retail Market Review, Ofgem introduced a requirement for suppliers to provide 'personal projections', which use a consumer's actual or estimated consumption to estimate their projected cost for a particular tariff for the next year. The use of a standardised methodology was intended to facilitate personalised comparisons of tariffs across suppliers.¹⁴⁰

Alongside this, as part of the midata initiative, the UK Department for Energy and Climate Change (DECC) has been taking forward work on midata in energy. Phase I of this has allowed consumers to download their consumption data in electronic format from their supplier's website, for use on a PCW.¹⁴¹

- *Retail banking*: In an early intervention to enable better cross-provider personalised comparison of suppliers, banks agreed with OFT in 2009 that they would provide information to consumers on their average credit and average debit balances.¹⁴² Alongside this, as in energy, Government has also been promoting the midata initiative in banking, with a view to enhancing the ability of consumers to make personalised comparisons across banks.¹⁴³
- *SME banking*: The new Small Business, Enterprise and Employment Act 2015 includes the potential for regulation that requires banks and credit reference agencies to share data on SMEs.¹⁴⁴ The intention is that this should enable SMEs more easily to search for current accounts and credit.

3.17 Finally, a novel form of remedy currently under consideration involves requiring firms to tell consumers about the best option available for them across the whole market. For example:

- *Pensions*: The FCA is developing the details of a remedy which will require firms to provide a personalised annuity quotation ranking, so that consumers can easily identify if they could be getting a better deal by shopping around and switching provider.¹⁴⁵

iii. Remedies that trigger or require shopping around

3.18 While the shopping around remedies described above can be valuable for making search and comparison easier for those consumers which make the effort to search, they may not always be sufficient to trigger consumers into action in the face of consumer inattention or inertia. However, demand-side remedies can also be used to more pro-actively trigger or require shopping around (and potentially then switching) by consumers.

3.19 Most simply, consumer shopping around can potentially be triggered by a customer awareness campaign that simply reminds consumers about the benefits of doing so, and perhaps provides information on how to do so, or what to look for when doing so. The OFT itself has engaged in a number of campaigns of this sort, following some of its earlier market studies such as *new car warranties*¹⁴⁶, *private dentistry*¹⁴⁷ and *estate agency*¹⁴⁸.

140. See footnote 53.

141. Department for Business, Innovation and Skills (2014) "Personal Data: Review of the midata voluntary programme". See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327845/bis-14-941-review-of-the-midata-voluntary-programme-revision-1.pdf.

142. See footnote 38.

143. See footnote 136.

144. See: <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>.

145. Financial Conduct Authority "Retirement income market study: Final report - confirmed findings and remedies, MS 14/3.3. See: <https://www.fca.org.uk/static/documents/market-studies/ms14-03-3.pdf>.

146. Office of Fair Trading (2004) "New Car Warranties". See: <http://webarchive.nationalarchives.gov.uk/20140525130048/http://www.oft.gov.uk/OFTwork/markets-work/new-car-warranties>.

147. Office of Fair Trading (2003) "Private Dentistry". See: <http://webarchive.nationalarchives.gov.uk/20140525130048/http://www.oft.gov.uk/OFTwork/markets-work/private-dentistry#named3>.

148. Office of Fair Trading (2004) "Estate Agents In England and Wales". See: <http://webarchive.nationalarchives.gov.uk/20140525130048/http://www.oft.gov.uk/OFTwork/markets-work/estate-agents#named3>

3.20 Alternatively, suppliers can be required to provide alerts to consumers. A significant benefit of such alerts over general consumer awareness campaigns is that the information can be targeted at specific times and locations at which the information is most likely to be salient to the consumer, and thus mostly likely to have an impact. As discussed above, it is increasingly clear that the precise way in which information is provided to consumers can have a dramatic impact on how much effect it has on their behaviour. This form of remedy is sometimes referred to as a 'wake-up' letter or pack. Examples include:

- *Domestic bulk LPG*: The CC required suppliers to send consumers a 'wake-up' letter within one month of the end of any exclusivity period.¹⁴⁹
- *Credit cards*: FCA has agreed with the industry that credit card providers will notify all consumers two to three weeks before the expiry of their promotional offer. This notification is intended to ensure that consumers are aware of the expiry and to prompt them to consider shopping around.¹⁵⁰
- *Account statements*: Following the CC's study into home credit¹⁵¹, the OFT's study into *personal current accounts*¹⁵² and Ofgem's retail market review in *energy*¹⁵³, suppliers in these respective markets have been required to provide summary account statements (in the latter two cases on an annual basis). The new EU Payment Accounts Directive introduces an EU-wide requirement for annual statements of fees on personal current accounts.¹⁵⁴

Such statements provide useful personalised information to help consumers when searching the market. This is particularly important in the case of the energy market where seasonal variations mean that it can be difficult to estimate annual energy consumption on the basis of a single bill. However, these statements are also intended to provide a trigger for such search.

- *Cash savings*: The FCA recently imposed a requirement on providers of cash savings accounts that they must send out notifications to customers shortly before any interest change.¹⁵⁵ This was based on empirical RCT evidence demonstrating that notifications had a substantially higher impact on switching between suppliers when received before the rate change to that observed if received afterwards.¹⁵⁶
- *General insurance*: The FCA has recently imposed a requirement on providers of general insurance to include last year's premium when sending out renewal letters (or an annualised version of the existing premium, if there have been any mid-term adjustments).¹⁵⁷ This was again based on empirical RCT evidence demonstrating that inclusion of last year's premium led to increased switching, at least for home insurance and especially for those facing the largest price hikes.¹⁵⁸ In addition, for consumers who have been with their provider for five consecutive years, the FCA proposes that the renewal letter should include a statement about the benefits of shopping around.

149. See footnote 36.

150. See footnote 78.

151. See footnote 119.

152. See footnote 38.

153. See footnote 53.

154. See footnote 123.

155. See footnote 45.

156. Financial Conduct Authority (2015) "Occasional Paper No. 7: Stimulating Interest: Reminding savers to act when rates decrease".

See: <http://www.fca.org.uk/news/occasional-paper-no-7>.

157. Financial Conduct Authority (2016) "Policy Statement PS16/21: Increasing transparency and engagement at renewal in general insurance markets - feedback on CP15/41 and final rules and guidance". See: <https://www.fca.org.uk/publications/increasing-transparency-and-engagement-renewal-general-insurance-markets-ps16-21>.

158. Financial Conduct Authority (2015) "Occasional Paper No.12: Encouraging consumers to act at renewal: evidence from field trials in the home and motor insurance markets". <http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-12>

- *Pensions*: Consumers already receive at-retirement ‘wake-up packs’ from their provider. Following its recent market study, the FCA has proposed that these be clarified and simplified to help consumers exercise choice more effectively. Prior to any rule change, however, the FCA is carrying out RCTs in order to behaviourally test the effectiveness of variations to firms’ wake-up packs.¹⁵⁹
- *Extended warranties*: Retailers of domestic electrical goods hold a strong ‘point of sale’ advantage in the sale of associated extended warranties. The CC therefore required that such retailers make prominent the information that extended warranties do not have to be bought at the same time as the electrical good and can be obtained elsewhere.¹⁶⁰

3.21 If triggering shopping around is not expected to work, regulators can potentially go further and explicitly require customers to shop around:

- *Microsoft Internet Explorer*: As discussed in Section 1, the Microsoft Internet Explorer case was a rare example of a remedy recognising behavioural biases under core EC antitrust law. The concern was that consumers automatically adopted Microsoft Internet Explorer, which came free with Microsoft Windows, even though there were alternative free browsers available. The remedy required consumers to make an active choice of browser.¹⁶¹
- *Audit*: When the CC investigated the market for audit services supplied to FTSE 350 companies, it identified an unwillingness amongst companies to shop around. It therefore imposed a requirement on companies to put their statutory audit engagement out to tender at least every 10 years.¹⁶² This doesn’t mean they have to choose a new provider, but given that they have to go through the tender process anyway, it does make such a switch more likely.

3.22 In some situations, the choice architecture and circumstances that consumers face can potentially push them towards not shopping around. In this case, remedies can involve changing the choice architecture so as to require consumers to make a more positive choice.

3.23 For example, if a box involving an add-on sale is pre-ticked, consumers may be disinclined to untick it (‘opt out’), due to default bias, even if this means not shopping around for the said add-on. In such circumstances, default options can be changed to encourage consumers to think harder about their purchase, and ideally shop around if they still wish to purchase. Examples of recent interventions which do this include the following:

- *Opt-out selling provisions of the Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013*. This new legislation bans online sellers from opt-out selling of additional products or product attributes. The intention is that consumers should make an active choice in respect of these, rather than falling into buying them by default.¹⁶³ This remedy has the potential to enhance competition for these additional products, as well as generally enhancing consumer decision-making.
- *Add-on general insurance*. Additional sales made alongside financial services products are exempt from the consumer legislation in the previous bullet. The FCA has now (to some extent) filled this gap by introducing a similar rule in respect of sales of add-on general insurance.¹⁶⁴ This latter intervention was based on a range of empirical evidence including behavioural laboratory experiments.¹⁶⁵

159. See footnote 145. 160. See footnote 43. 161. See footnote 24.

162. Competition and Markets Authority (2014) ‘CMA finalises audit changes’, Press Release, 26 Sept. See <https://www.gov.uk/government/news/cma-finalises-audit-changes>.

163. Department for Business, Innovation and Skills (2013) ‘Consumer Contracts (Information, Cancellation and Additional Charges) Regulations: Implementing guidance’, at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/429300/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf.

164. Financial Conduct Authority (2015) ‘General Insurance Add-Ons Market Study – Remedies’. See: <http://www.fca.org.uk/static/fca/documents/policy-statements/policy-statement-15-22-general-insurance-add-ons.pdf>.

165. Financial Conduct Authority (2014) ‘Study into the sales of Add-on General Insurance Products: Experimental consumer research – A report for the Financial Conduct Authority’, Research by London Economics See: <https://www.fca.org.uk/static/documents/market-studies/gi-add-ons-experimental-consumer-research-report.pdf>

3.24 The situation can be very similar when retailers have a strong point of sale advantage in selling an add-on product, whereby consumers are disinclined to shop around for the add-on product. In such situations, intervention can potentially be used to separate the two purchasing decisions:

- *Guaranteed Asset Protection (GAP)*: This is typically sold alongside a car and covers the difference between the sale price of the car and its replacement value at the time of any insurance claim. When the FCA studied this market, it found that stand-alone GAP insurance was around half the price of its price when sold instore as an add-on. Nevertheless, more than half of the purchasers of this product had not considered buying it prior to purchase, and less than a fifth had shopped around.

The FCA did not consider that instore warnings (as required for extended warranties) would be sufficient to overcome its concerns in this case. Instead, the FCA imposed a four-day deferral period before any add-on sale could occur. The intention is that this should reduce the point of sale advantage, encourage consumers to make a more positive choice about the purchase, and give them a chance to shop around before doing so.¹⁶⁶

- *Payment protection insurance (PPI)*: The CC imposed a similar point of sale ban on selling PPI alongside loans, and a requirement that suppliers of the original loans leave 24 hours before re-contacting customers to sell PPI.¹⁶⁷ While this was a potentially powerful remedy, a separate redress exercise associated with the mis-selling of PPI has essentially led suppliers of loans to exit the PPI market. As such, the CC's remedy appears in practice to have had little to no incremental impact.

iv. Remedies that otherwise de-risk or facilitate shopping around

3.25 In some situations, consumers may be deterred from shopping around on the basis of a perception that to do so carries some risk.

3.26 For example, consumers may fear that the deal currently on offer may not be available if the consumer shops around and then chooses to return to the original supplier. Where this concern is significant, shopping around can potentially be de-risked by requiring suppliers to provide a written quotation that remains valid for a minimum period. For example:

- *Extended warranties*: As part of its remedy package in this market, the CC required that retailers provide written quotations for extended warranties, valid for 30 days, to allow shopping around without consumers fearing losing the deal they were originally offered.¹⁶⁸
- *Doorstep selling*: The OFT identified a similar need for written quotes in the market for doorstep selling, albeit it did not propose direct legislation on this point but rather included it as a requirement within the OFT-approved industry code of practice.¹⁶⁹

3.27 A similar risk arises in consumer credit markets, albeit for different reasons. The problem here is that the methodologies employed by credit reference agencies can mean that a consumer's credit rating is harmed by the act of shopping around. This concern has been identified in the *payday lending*¹⁷⁰, *credit card*¹⁷¹, and *SME banking*¹⁷² markets. The authorities are currently considering possible solutions to reduce or remove this risk, such as working with credit reference agencies to ensure that consumers can do 'soft searches' or 'quotation searches' which do not harm credit ratings in this way.¹⁷³

166. Financial Conduct Authority (2015), "Guaranteed Asset Protection insurance: competition remedy "Including feedback on CPI4/29 and final rules", PS15/13, at <http://www.fca.org.uk/static/documents/policy-statements/ps15-13.pdf>.

167. See footnote 21.

168. See footnote 43.

169. See footnote 37.

170. See footnote 16.

171. See footnote 78.

172. See footnote 57.

173. In addition, the FCA's credit card market study report references ongoing cross-sector work on this topic by the British Bankers' Association, the Finance & Leasing Association and the UK Cards Association. See footnote 67, para 4.8.

3.28 Finally, in some markets, there may be concerns that suppliers place undue pressure on consumers to buy a product quickly, and that this in turn limits shopping around. In such cases, shopping around can be facilitated by interventions which prevent the pressure selling. Indeed, pressure selling is now prohibited under the UK Consumer Protection from Unfair Trading Regulations 2008.¹⁷⁴

3.29 In addition, where pressure selling is a risk, cancellation rights and cooling off periods can be useful measures to allow consumers to change their mind once any pressure selling is over, also facilitating shopping around. For example:

- *Doorstep selling*: Given concerns about pressure sales techniques used in doorstep selling, legislation gives consumers the right to cancel within 14 days. This was recently extended from 7 days under the Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013.¹⁷⁵

3.2 The effectiveness of shopping around remedies

3.30 The previous section shows that shopping around remedies come in many different forms. As discussed in Section 1, there is limited evidence available on the effectiveness of such demand-side remedies generally, and especially those which have been put in place more recently. This section considers such evidence as does exist, in respect of the interventions listed above.

3.31 As in the previous section, the evidence on effectiveness is mixed. A number of benefits have been observed, but there are also a number of instances in which shopping around remedies have been less effective than was hoped, or even ineffective.¹⁷⁶

i. Positive benefits from shopping around remedies

3.32 Ex post evaluation and review shows that a number of the shopping around remedies listed above have had some positive impact. There is evidence of benefit arising from some *remedies that instigate or enhance collation of information to facilitate search and comparison*:

- *Care homes*: The one-stop shop remedy for care homes seems to have been beneficial. The FirstStop Care Advice service was set up by the not-for-profit sector in 2008 and has received Government funding. A 2011 evaluation commissioned by the OFT found that “early indications are that the UK-wide service is a success with increasing use of the service and high rates of satisfaction”.¹⁷⁷ A 2015 independent evaluation of the (now widened) FirstStop Advice service found that the website now receives 4 million visitors per year.¹⁷⁸
- *Financial advice*: The first independent post-implementation review of the Retail Distribution Review (RDR), commissioned by the FCA, finds a broadly positive picture in terms of removing bias and improving quality of independent financial advisers. In particular, it finds a decline in the sales of products which paid higher commissions pre-RDR.¹⁷⁹ This has coincided with a substantial upswing in the take-up of low fee index-tracking investments. Concerns have been raised about RDR leading to a lack of availability of high quality advice to those with smaller investment pots, as numbers of financial advisers have fallen. However, this concern – while valid – has wider drivers than just RDR, as discussed by the HM Treasury and FCA in their recent Financial Advice Market Review (FAMR).¹⁸⁰

174. See footnote 65.

175. See footnote 163. Legislation in this area was previously enhanced following an OFT market study, which recommended the extension of cancellation rights to solicited visits as well as unsolicited. See footnote 26.

176. Note that no instances have been identified in which shopping around remedies are thought to have had possible detrimental effects on consumer decision-making. However, taking into account the costs involved in implementing the remedies, even ineffective remedies may be harmful for consumers overall.

177. See footnote 94.

178. KHC Consultancy Limited (2015) “FirstStop Advice for Older People: An independent evaluation of local services”. See: <http://www.housingcare.org/downloads/kbase/3432.pdf>.

179. Financial Conduct Authority (2014) “Post-implementation review of the Retail Distribution Review – Phase 1”, Research by Europe Economics. See: <https://www.fca.org.uk/static/documents/post-implementation-review-rdr-phase-1.pdf>.

180. HM Treasury and Financial Conduct Authority (2016) “Financial Advice Market Review – Final report”. See: <https://www.fca.org.uk/static/fca/documents/famr-final-report.pdf>.

3.33 There is also evidence of beneficial remedies that are designed to trigger or require shopping around:

- Extended warranties: While the OFT's evaluation of the remedies imposed in this market found patchy compliance on a number of aspects (see Section 2 above), including the requirement to offer quotations, the message that consumers were free to shop around does seem to have got through. The evaluation found that 74 per cent of consumers realised that they did not have to make an immediate decision on extended warranties. Shopping around, while still low, increased significantly from 4 per cent to 15 per cent.¹⁸¹
- Microsoft Internet Explorer: The European Commission's forced choice remedy in the Microsoft Internet Explorer (IE) case seems to have been fairly effective. This can be seen by comparing the position of IE in the US and in the EU, where Microsoft was subject to the Commission's remedy, over the period March 2010, when the remedy was imposed, to November 2014 (when the ballot box was dropped). According to GlobalStats StatCounter¹⁸², Internet Explorer lost market share in both US and EU over this period. However, in the US its share fell from 53.6 per cent to 35.5 per cent, a fall of 18.1 percentage points. By contrast, in the EU it fell from 45.3 per cent to 17.5 per cent, a fall of 27.8 percentage points.

3.34 Detailed empirical analysis carried out in advance of implementing a number of recent remedies, such as those relating to *GAP insurance*, *payday lending*, *cash savings*, *general insurance renewals and pensions*, also provides valuable information on their likely effectiveness, even though these interventions are too recent to have been evaluated ex post.

3.35 Interestingly, an increase in switching was observed in energy during the recent CMA investigation.¹⁸³ This presumably reflects greater levels of shopping around, and further supports the finding in Section 2 that the existence of an investigation, through triggering extensive media coverage, can help to raise consumer awareness of an issue and in doing so can change consumer behaviour.

3.36 In terms of gaining compliance with demand-side measures, secondary ticketing is also of interest. The new legislation in this market, brought in as part of the Consumer Rights Act 2015, included a provision which required Government to review the measures imposed. The consequent independent review concluded that the legislation should remain unchanged, but that awareness and compliance with the law was too low and that this needed addressing through concerted investigation and enforcement.¹⁸⁴ The CMA is now engaged in a compliance review.¹⁸⁵ While this is not, so far, a positive story in terms of consumer benefit, this sort of prolonged focus on the issue should help to deliver the much-needed compliance which will in turn enable consumer decision-making to be improved.

181. See footnote 88. Note that mystery shopping carried out for the ex post evaluation found that quotations were only made available in around one-third of cases.

182. See: <http://gs.statcounter.com/>.

183. Ofgem (2016) "Switching increases as customers respond to savings of up to £325", Press Release 29 April 2016. See: <https://www.ofgem.gov.uk/publications-and-updates/switching-increases-customers-respond-savings-325>.

184. Michael Waterson (2016) "Independent Review of Consumer Protection Measures concerning Online Secondary Ticketing Facilities". See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525885/ind-16-7-independent-review-online-secondary-ticketing-facilities.pdf.

185. Competition and Markets Authority (2016) "Secondary Ticket Platforms Compliance Review". See: <https://assets.publishing.service.gov.uk/media/57601c4540f0b66bda000041/cma-compliance-review-of-secondary-ticket-platforms.pdf>.

ii. Less effective or ineffective shopping around remedies

3.37 However, there are also a number of cases in which the shopping around remedies evaluated to date have been found to be less effective than expected, or even ineffective, in enhancing consumer decision-making.

3.38 In respect of remedies that instigate or enhance collation of information to facilitate search and comparison, and PCWs in particular:

- *Home credit*: In 2013, the CC evaluated the remedies arising from its home credit investigation. Although the PCW that had been put in place (LendersCompared.org) had some positive impact, this was more limited than might have been hoped. The site was only used by 2 per cent of the market each month and usage was falling. It was also found that its impact was limited by a lack of 'click-through' functionality, both to and from lenders' websites.¹⁸⁶

Nevertheless, there are some positives arising from this PCW remedy. It was an early PCW remedy, imposed in 2006, at a time when most of the relevant suppliers didn't have any online presence and before the potential relevance of smartphone technology in this area was clear. As such, any remedy designed at that point could easily have become outdated and useless as technology advanced. In fact, the creation of this PCW as an independent entity seems to have been important in providing it with incentives to develop its service over time, in line with the remedy intention, including creating a mobile platform.

- *Extended warranties*: The PCW developed for comparing extended warranties provides a salutary reminder of the way in which suppliers may undermine the impact of a remedy through its implementation. While the two retailers involved may have stuck to the letter of their undertaking with the OFT when implementing this remedy, the resulting website (www.compareextendedwarranties.co.uk) is not in line with the spirit of what was intended. At the time of writing this Review, only four suppliers are included on the site, three of which are retailers. All three retailers only supply extended warranties if sold alongside the domestic electrical good. There is only one insurer on the site selling stand-alone extended warranty cover. As such, the website would seem to be of limited use, and no use at all for searching between providers of stand-alone extended warranty cover.¹⁸⁷
- *Credit cards*: It is not clear that the proposed independent PCW for credit cards was ever implemented. The FSA's 'moneymadeclear' site was taken over by the Money Advice Service in 2011, and the proposal may have been a casualty of this process. Third party PCWs have continued to develop in the market, but a recent FCA study again identified as concerns the lack of personalisation of search results, biased listing based on relationships, and lack of clarity as to the extent of coverage. This time around, the FCA has chosen to propose clearer standards, rather endeavour to create a new PCW. With the benefit of hindsight, having identified the same concerns, the OFT should perhaps have addressed these directly in the first place.¹⁸⁸

186. Competition Commission (2013), "Understanding past market investigation remedies – Home credit", at http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/assets/competitioncommission/docs/2013/remedies/130228_home_credit_evaluation.pdf

187. Moneysavingexpert.com also says of this PCW "Be very careful when using this site as it can be confusing in the way it lists policies. For some policies listed you pay monthly, but others are priced for three or five years. Check that the price - and the cover - are suitable for your needs. You can't click through from the comparison site to the provider, so you'll have to visit the warranty provider separately. Usually, you'll then need to call or visit a store as only a couple of providers allow you to buy online". See: <http://www.moneysavingexpert.com/insurance/cheap-free-warranties>.

188. See footnote 78.

- *Ofgem/Ofcom accreditation*: Accreditation can clearly bring benefits. However, in energy, the CMA has identified that the requirement in Ofgem's 'Confidence Code' that PCWs must be comprehensive, and show all rates available in the market, may have reduced incentives for accredited PCWs to engage customers.¹⁸⁹ Ofgem is now consulting on removing this 'whole of market' provision, recognising that Citizens Advice and Which? both provide a whole of market comparison site if consumers genuinely want this.¹⁹⁰

In telecoms too, Ofcom requires that PCWs provide a comprehensive view of the market. In this case, this does not quite equate to a full market coverage requirement but it does require that PCWs cover 90 per cent of the market and all major providers. This requirement could potentially be deterring PCWs from becoming accredited. It is noteworthy that only six PCWs have become accredited by Ofcom, none of which are the Big Four household names.¹⁹¹

- *Heating oil*: On the face of it, the OFT's intervention improved this market. The largest PCW, Boilerjuice, was sold off and is now independent of any fuel supplier.¹⁹² The second supplier-owned website was revised to make it clear it was not a PCW and the third appears to have come offline.¹⁹³ In addition, a number of other independent PCWs have emerged in the market.

That said, there is still a lack of transparency and functionality in the market. Two of the main independent PCWs currently in the market – Boilerjuice and Fueltool.co.uk – appear simply to provide a single 'best price' quote. They do not tell you which suppliers they have compared, or who the cheapest is. They just take direct orders and arrange delivery. Meanwhile, the third main independent PCW – Heatingoilshop – does list individual local suppliers, but does not in fact provide direct price comparison. It only allows you to use an online form to request quotes from the local suppliers you choose from the list.¹⁹⁴

3.39 In respect of *remedies that impose access to personal information to facilitate comparison*:

- *Home credit*: The CC's evaluation in this market found mixed views on the impact of the requirement for major home credit providers to provide information to at least two credit reference agencies (CRAs). Some lenders felt it had had a positive impact. However, others felt the impact was limited. This was due to a number of factors: the cost of obtaining data from CRAs, the fact that small lenders were excluded from the remedy, and some lenders also argued that this information was of limited value as past payment records are not necessarily a good predictor of future payment behaviour.¹⁹⁵
- *Energy tariffs*: Consumer survey and panel work carried out for Ofgem found that just 31 per cent of consumers surveyed recalled seeing personal projections, and a lack of awareness that these could be used to make comparisons across suppliers.¹⁹⁶

In addition, there has so far been limited take-up by consumers of the midata initiative in energy. Following its recent energy market investigation, the CMA has recommended that DECC make participation in midata Phase 2 mandatory for all energy suppliers, that the number of fields to be shared be expanded, and that the data be sharable directly with PCWs (with consumers' consent), rather than placing the burden of downloading (and then uploading) the data on consumers.¹⁹⁷

189. See footnote 93.

190. Ofgem (2016) "Confidence Code Review 2016". See: https://www.ofgem.gov.uk/system/files/docs/2016/08/whole_of_market_consultation.pdf.

191. See footnote 126.

192. See The Telegraph, 4 Oct 2011, "DCC to sell heating oil price comparison website Boilerjuice after OFT criticism", at <http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/8804763/DCC-to-sell-heating-oil-price-comparison-website-Boilerjuice-after-OFT-criticism.html>.

193. See <http://www.fuelfighter.co.uk/> and <http://cheapheatingoil.co.uk/>.

194. See <https://www.boilerjuice.com/>, <http://www.fueltool.co.uk/>, and <http://www.heatingoilshop.com/>.

195. See footnote 186.

196. See footnote 91 and footnote 92.

197. See footnote 93.

- *Retail banking*: As part of its recent investigation into retail banking, the CMA reviewed progress on the midata initiative in banking. As in energy, it found little impact so far. Confused.com is the only PCW so far offering midata-based comparisons of bank accounts. While midata-based comparisons now account for almost 20 per cent of Confused-com's current account comparisons, this still comprises a small proportion of the population. Consumers are found to be put off using midata by the cumbersome uploading and downloading process and the fact that it cannot be used with mobile devices.

As a result, the CMA is now requiring that the banks develop an 'Open API' banking standard and that consumer transaction data then be provided on this basis directly to PCWs, with consumers' consent. This Open API remedy is also applicable to the SME banking market.¹⁹⁸

In order to implement this remedy, the CMA is requiring the banks to set up an implementation entity, led by a suitably qualified independent trustee – approved by CMA – with a clear mandate to achieve the objectives of the project within an agreed timetable.

3.40 In respect of *remedies designed to nudge or trigger shopping around* (and potentially then switching), a number of findings are clear:

- *New car warranties*: Following its market study into new car warranties, the OFT carried out an information campaign, to make consumers aware of their new right to choose where to have their car serviced without the warranty being compromised. The ex post evaluation of this study found that, while the OFT campaign influenced the understanding of just over half the people who saw it, it only reached six per cent of new car buyers. The evaluation notes that it was a one-off campaign, using only leaflets and a video release.¹⁹⁹
- *Annual statements for personal current accounts*: Following recommendations arising from an OFT investigation into personal current accounts (PCAs) in 2009, the industry agreed to introduce annual summaries for consumers, setting out the total costs incurred over the year. These were designed to prompt consumers with significant costs to investigate whether to switch to another PCA, as well as contributing to changing consumers' behaviour in managing their existing PCA.²⁰⁰ In 2015, the FCA reviewed the impact of these annual summaries and found that they had had no measurable effect on consumer behaviour in terms of incurring overdraft charges, altering balance levels or switching to other current account providers.²⁰¹
- *Cash savings*: One of the FCA's proposed remedies, following its market study into cash savings, was the introduction of a 'switching box' which would advise customers about the potential benefits of shopping around, and act as a prompt to the customer to consider their choice of product and provider. This idea has not so far been implemented due to consumer testing showing it to be ineffective.²⁰² This is a good example of how empirical testing can prevent the imposition of ineffective remedies.

3.3 Shopping around remedies: Conclusions

3.41 In respect of *remedies that instigate or enhance collation of information to facilitate search and comparison*, it is clear that one-stop shops and PCWs can potentially be powerful ways of improving consumer decision-making, as is reflected by both their growing commercial prevalence and their frequent involvement in demand-side remedies.

198. See footnote 57.

199. Office of Fair Trading (2006) 'Evaluating the impact of the car warranties market study', OFT852. Evaluation by Europe Economics. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/about_of/oft852.pdf.

200 See footnote 38.

201. See footnote 84.

202. Financial Conduct Authority (2016) 'Cash Savings Market Study Update', MS14/2.4. See: <https://www.fca.org.uk/static/documents/market-studies/ms14-02-4-update.pdf>.

3.42 However, advances in technology have been important in this area. When the CC mandated the creation of a PCW for the *home credit* market, PCWs themselves were fairly new, and regulators naturally had only a limited understanding of how they might develop over time, for example how consumer data might be used to provide more accurate and personalised comparisons, or how mobile phone apps might start to play a role in helping consumers choose across products and suppliers.

3.43 This has a number of implications for the tentative lessons that can be drawn:

a) Regulators need a strong understanding of what can be achieved with relevant technology, and foreseeable likely developments, when developing this sort of remedy, while remaining humble about their ability to predict the future.

This makes remedy design in this area difficult, albeit potentially powerful if it can be done well. In this context, it can be important to retain sufficient flexibility to allow remedies to change with technological developments, without sacrificing effectiveness.

b) Regulators may well achieve better outcomes through finding ways to facilitate or trigger the commercial creation of PCWs, for example by requiring suppliers to make their products available through PCWs, rather than by mandating the existence of PCWs or creating them themselves.

The evidence suggests that mandated PCWs rarely appear to work that well. Suppliers' approach to implementation may undermine the effectiveness of the remedy, as in *extended warranties* and *heating oil*. Moreover, regulators are not necessarily good at ensuring sufficient public awareness of PCWs to make them effective, or at second-guessing what consumers really want, for example in terms of ranking options and click-through purchasing functionality. This is apparent from the *home credit* example above. Such aspects can anyway be difficult to specify upfront, given lack of knowledge about how consumers will use the site, and how technology will develop.

By contrast, commercial PCWs have a strong incentive to market their sites effectively and to make their sites as user-friendly as possible, including experimenting continuously to ensure that they are meeting consumers' needs effectively.

As such, if it is possible to enhance the role played by commercial PCWs, this can be the best remedy approach. Given that PCWs can help drive effective competition across suppliers, it may be that suppliers in some markets are unwilling to sell through PCWs. In this case, it may be necessary for the regulator to mandate, for example, that suppliers sell through one or more PCWs, as in *payday lending*. In order to ensure that such a remedy is effective in creating a true PCW, which compares across a variety of providers, it may be necessary to require that the PCW used is independent of the supplier, rather than vertically integrated.

c) Where the existence of a PCW is mandated, perhaps because a commercial PCW is unlikely to emerge, it is important to consider governance.

Good governance is important for achieving compliance. The poor quality of the *extended warranties* website may be partly explicable by the fact that this website was not independent of suppliers and that no governance requirements appear to have been placed around it.

Effective governance can also be useful in enabling the remedy design to be flexed over time, to reflect the remedy intention, rather than remaining static. This is important given the fast-changing nature of the relevant technology, as was found in *home credit*.

d) *The incentives of commercial PCWs may not be fully aligned with consumer interests. So there may be a rationale for regulating PCWs.*

Commercial PCWs have many of the right incentives in terms of providing an attractive, user-friendly experience. However, they can potentially have an incentive to distort decision-making, for example through biased rankings, or display thereof. This may be due to supplier commissions, vertical ownership links, or simply a desire to limit overly vigorous competition in order to make the PCW a more attractive outlet for suppliers.

Moreover, even without such incentives, PCWs may also simply offer a poor comparison service, for example by failing to update information promptly or by using ranking methodologies which fail to allow for consumers' personalised needs, as has been observed for *credit cards*.

PCW design can also impact negatively on supplier incentives. For example, if PCWs give heavy prominence to price, in order to simplify consumer decision-making, this can in turn induce suppliers to offer a stripped out offering in order to come top of the price-based rankings, as has been observed for general insurance.

Such aspects of PCW design can potentially be regulated, as in payday lending. Indeed, where regulators have the remit to do so, it may potentially be better to regulate these aspects directly than to rely on a requirement of transparency around the PCW's business model or ownership links. Consumers may not notice the business model information, and even if they do they may not be clear how this should affect their decision-making. However, any such regulation needs to be very carefully designed to ensure that it doesn't undermine the incentives of PCWs to experiment around how best to meet consumers' needs.

The potential for enhanced regulation of PCWs is within scope of the CMA's ongoing market study into digital comparison tools.²⁰³ In examining this issue, the CMA has stated that it will work with the UK Regulators Network (UKRN), and draw on a recent report by the UKRN into PCWs.²⁰⁴

e) *Accreditation can be a useful tool, but only if accreditation affects practice across the PCW market.*

Accreditation is potentially valuable, especially if direct regulation is not possible, but its impact may be limited if PCWs do not see sufficient benefit in joining the scheme, perhaps because consumers do not give any weight to the badge when choosing a PCW, and thus the rules fail to change practice across the market. One possible solution to this consumer perception problem might be a form of 'negative kite mark' scheme, whereby non-accredited PCWs are required to display clearly their lack of accreditation.

203. Competition and Markets Authority (2016), Digital Comparison Tools Market Study. See: <https://www.gov.uk/cma-cases/digital-comparison-tools-market-study>.

204. UK Regulators Network (2016) "Price Comparison Websites: Final Report". See: <http://www.ukrn.org.uk/wp-content/uploads/2016/09/201609027-UKRN-PCWs-Report.pdf>.

f) A requirement that PCWs provide clear information on market coverage is likely to be better than a requirement that they offer complete market coverage.

As the CMA found in the case of energy, a requirement for complete market coverage may lead to perverse unintended incentives for PCWs. Certainly, this does not seem to be necessary for searching the market. Consumers appear well aware that PCWs do not typically provide complete market coverage, as is demonstrated by evidence that consumers regularly use more than one PCW when shopping around online.²⁰⁵

There may, however, be merit in a requirement that information provided to one PCW can be readily transferred to another PCW without it all having to be re-inputted, so long as this doesn't increase competition between PCWs to such an extent that it undermines their viability. The midata initiative and other open data initiatives may achieve this, where they are employed.

g) It may be useful to provide clearer competition law guidance to PCWs around the use of price parities/retail price Most Favoured Nation (MFN) clauses.

Wide 'price parity' or retail price MFN agreements can limit competition between PCWs, to the ultimate detriment of consumers, as was found in private motor insurance and hotel online booking. Such agreements are likely to be covered by competition law, but their current position in law is arguably not fully clear.²⁰⁶

h) PCWs may not be used on a frequent basis (or at all) by some customers, and thus such remedies risk creating winners and losers

PCWs clearly require the use of the Internet. While increasing numbers of consumers do have Internet access, it is clear that there is a rump of consumers who are unlikely to use PCWs and thus will not gain from being better able to search out the best deals online. This may be of particular concern if a consequence of PCWs driving prices down online is that offline prices are raised.

Likewise, even where customers do use PCWs, they may not do so every year, and this can lead to suppliers adopting a business model whereby they set low prices online and then ramp up prices on renewal.

3.44 A difficult aspect in regulating in this area is how to ensure that consumer decision-making is enhanced without undermining the viability of PCWs. The evidence from the *financial advice* market suggests that banning commissions altogether can be very powerful in eliminating distortions arising from supplier commissions. However, extending such a ban to PCWs could potentially undermine their viability, resulting in the loss of a powerful tool for enhancing consumer search/comparison.

205. For example, a 2013 study by Consumer Futures found that 16 per cent of consumers used one site, 57 per cent used two to three, and 26 per cent more, before making a decision. Consumer Futures (2013) "Price comparison websites: consumer perceptions and experiences", Report by RS Consulting for Consumer Futures. See: <http://webarchive.nationalarchives.gov.uk/20140728011208/http://www.consumerfutures.org.uk/files/2013/07/Price-Comparison-Websites-Consumer-perceptions-and-experiences.pdf>. The Ofgem Consumer First Panel in 2016 established that energy consumers who used digital comparison tools had an underlying view that it was necessary to use multiple sites as they offered different ranges and may have commercial relationships with certain suppliers that would distort results. Ofgem Consumer First Panel (2016) "Reporting on the expectations of Price Comparison tools (PCTs)". See: https://www.ofgem.gov.uk/system/files/docs/2016/06/ofgem_consumer_panel_wave_3_pct_090616_final.pdf.

206. Note that the CMA is currently monitoring a range of pricing practices in the hotel online booking sector, in coordination with the European Commission and nine other competition agencies in the EU. This exercise could potentially result in greater legal clarity being provided on the issue of retail price MFNs. See: <https://www.gov.uk/cma-cases/online-travel-agents-monitoring-of-pricing-practices>.

3.45 Remedies that impose access to personal information to facilitate comparison are a relatively new phenomenon, but growing in prevalence. They have the potential to be highly valuable, including in overcoming informational barriers to entry. However, progress has been slow in this area, to date, giving rise to a number of tentative lessons:

a) These remedies are likely to work better when data is provided directly to PCWs, with consumers' permission, rather than requiring consumers to download and then re-upload the data.

Suppliers may have limited incentives to make the process of comparison easy for consumers, as has been the case (whether deliberately or accidentally) in *energy* and *retail banking* where the process of downloading and re-uploading data has been slow and cumbersome.

At the same time, if consumers are to take a more passive role in this process, it is crucial that the consumer's permission is clearly given, and that the use that the PCW may make of this data is clearly understood.

b) Some consumers may engage better with such search if it can be carried out on a mobile device, as opposed to requiring a PC.

This was found to be a barrier in *banking*.

c) Open APIs, whereby all PCWs can access data from all suppliers, are likely to be better than remedies which require data to be given by some suppliers to some collators.

In the case of *home credit*, one issue identified with the remedy was that only the largest suppliers were required to provide information and then only to two credit reference agencies.

d) It is important that PCWs do not have to pay a disproportionate (if any) fee to suppliers for this data.

Again, in the case of *home credit*, a stated problem with the remedy was that the amount credit reference agencies charged for the shared information was high relative to its respective benefit for potential competitors.

3.46 Finally, in respect of remedies designed to trigger or require shopping around, the evidence suggests the following tentative lessons:

a) Disclosures can be effective as triggers to shopping around, but it is clear that the precise design of the triggers matters a lot. Timing is especially important. RCTs can be invaluable in getting design right.

This is clear from the RCTs that underlay the FCA's recent remedies on *cash savings* and *general insurance renewals*.

By contrast, while annual statements may be useful in providing information when making comparisons across providers, they don't appear to work well as triggers for shopping around. Switching boxes also do not necessarily work that well, as was found in *cash savings*.

b) Remedies that require consumers to make a positive choice can be effective.

This is clear from the *Microsoft Internet Explorer* example as well as some of the lab experiments that preceded the FCA's recent ban on the opt-out selling of *add-on general insurance*.

That said, as discussed in Section 1, it is important to beware of unintended consequences, and in particular such interventions risk shifting consumers overall from a situation of over-purchase and too little shopping around to a situation of under-purchase. This issue was assessed carefully in the case of *payment protection insurance*.

c) Measures which keep issues in the public eye may be more effective over the longer term than one-off consumer awareness campaigns.

The relatively poor impact of authority consumer awareness campaigns may be partly due to the limited resources that are usually available for such campaigns. However, it is increasingly well understood that achieving real changes in behaviour often takes continuous action over time. As such, it may be important to keep issues in the public eye.

Suppliers can potentially use tools which benchmark supplier performance in this way, as has been done by Ofgem and Ofcom in comparing complaints statistics in *energy* and *telecoms* respectively, and as is being trialled by FCA in its *cash savings* 'sunlight remedy'. (See Section 2 for more details on these).

4. Switching remedies

- 4.1** Once consumers have shopped around, effective competition also depends on them acting on their preferences with their feet – or increasingly these days ‘with their fingers’ – by switching to the products and suppliers which offer them the best (or at least better) VFM. Improving comparability across providers will have no direct benefits for competition if it is then unduly costly for consumers to switch to their preferred provider.
- 4.2** As such, competition can be enhanced through remedies which make switching easier or less costly, or otherwise increase the likelihood that consumers will switch to their preferred product or supplier.
- 4.3** Note, though, that consumers need not actually switch in order to drive competition, and as such actual switching rates are not necessarily a good indicator of competition.²⁰⁷ What really matters for competition is that consumers have a realistic choice of switching and that enough of them engage with this option. Good market outcomes will only emerge if current suppliers face a real risk of losing their customers and alternative suppliers have a real opportunity to win them.

4.1 Types of switching remedies

4.4 In this section, two categories of switching remedy are identified, which are discussed in turn below:

- i. Switching remedies that involve changing contractual restrictions.
- ii. Remedies that make switching quicker, easier, more reliable or more attractive.

i. Switching remedies that involve changing contractual restrictions.

- 4.5** Especially in ongoing supply relationships (as opposed to one-off purchases), consumers are often required to sign up to a contract with their supplier. Such contracts, once in place, can potentially act to disincentivise consumers from switching in a number of ways.
- 4.6** First, and most simply, contracts may impose direct financial costs on consumers who switch, for example in the form of contract cancellation fees. Remedies can clearly address this barrier to switching by banning or limiting such costs. For example:
- *Energy*: For example, as part of its 2013 Retail Market Review, Ofgem banned termination fees for evergreen energy contracts, in order to facilitate consumers switching away from these highly priced default tariffs.²⁰⁸ Following its recent energy market investigation, the CMA extended this remedy to microbusinesses.²⁰⁹
 - *Home credit*: Following its investigation into the home credit market, the CC imposed a limit on the minimum level of early settlement rebate available to consumers wishing to pay off a home credit contract. This remedy was primarily aimed at ensuring consumers were treated fairly. However, the CC was explicit that the remedy could also act to reduce incumbency advantage by reducing switching costs.²¹⁰
 - *Mobile telecoms*: Ofcom has noted that 30-day notice periods within mobile contracts can mean that consumers ‘double pay’ for one month when switching provider. Such a cost might be expected to inhibit switching. Ofcom is thus currently consulting on proposals that would allow a switch to be requested but deferred for up to 30 days.²¹¹

207. For further discussion of the links between switching rates and competition, see David Deller, Morten Hviid and Catherine Waddams (2015) ‘Response to Department for Business, Innovation and Skills: Switching Principles – Call for Evidence’. See: <http://competitionpolicy.ac.uk/documents/8158338/8261716/CCP+Response+to+BIS+Switching+Principles+Consultation+v3.pdf/aa31f130-bf5e-4105-95d4-8b9431f7ddf1>.

208. See footnote 53.

209. See footnote 93.

210. See footnote 119, para 9107 of the final report.

211. Ofcom (2016) ‘Simpler, speedier switching for mobile customers’, at: <http://media.ofcom.org.uk/news/2016/switching-for-mobile-customers>.

- *Extended warranties*: As part of its remedy package in this market, the CC required that extended warranties should be fully cancellable, at no cost, with consumers given a pro rata refund for the remainder of the period covered by any pre-paid fee.²¹²

4.7 Second, where consumers buy a package from a supplier, they may face disproportionate costs if they wish to switch away from a supplier for just one part of the package. Under some contracts, such ‘split supply’ may simply not be allowed, meaning that consumers who wish to switch at all are required to switch the full package. Under others, consumers may be allowed to switch to an alternative supplier for part of the package, but if they do so they lose other benefits (such as the protection of the supplier’s warranty) on the part of the package that they don’t switch.

4.8 Again, remedies can address such contractual restrictions. For example:

- *Domestic bulk LPG*: The CC’s market investigation into domestic LPG required that the supply of LPG be decoupled from the ownership of the tank. This allowed customers to switch LPG supplier without changing their tank, which is in turn very costly. The CC also required that the duration of any exclusive supply agreements be limited to a maximum of two years, and thereafter required that consumers should face no fee for termination.²¹³
- *New car warranties*: Following a market study, the OFT gained agreement with major car manufacturers that that all new car warranties would lift their servicing restrictions, allowing consumers to shop around for their car servicing without compromising the warranty.²¹⁴
- *Printers and inks*: Likewise, following a market study into consumer IT services, the OFT required that warranties for computer printers should remain valid even when third party ink cartridges are used. This facilitated switching in the ink cartridge aftermarket without consumers incurring additional costs associated with their warranty expiring.²¹⁵

4.9 Third, even if there are no explicit costs of switching, suppliers can potentially design contracts strategically to exploit consumer behavioural biases and thereby inhibit consumers from exiting them. For example, if contract termination periods are long, then myopic consumers may decide not to bother switching. Likewise, consumers with memory limitations can inadvertently become trapped in contracts which require termination notice to be given within a short window, or by a specific date, and which otherwise renew automatically, perhaps with new cancellation charges then applying.

4.10 Again, these issues can sometimes be remedied through simple contractual changes. For example:

- *Domestic bulk LPG*: As part of its package of measures in this market, the CC imposed a maximum termination period of 42 days.²¹⁶
- *Energy*: When Ofgem introduced new Standards of Conduct for energy supply to small businesses, it banned the use of termination windows (a limited period during which notice of contract termination must be given), allowing suppliers to impose only a latest termination date.²¹⁷
- *Automatically-renewing contracts in energy and telecoms*: In 2011, Ofcom banned automatically renewing contracts (ARCs) in telecoms for both domestic customers and microbusinesses. The primary problem with such contracts was not the automatic renewal itself, but the high termination fees that were then imposed within the new contract. Ofcom’s ban was based on strong empirical evidence, developed by Greg Crawford, that such ARCs reduced switching.²¹⁸

212. See footnote 43.

213. See footnote 36.

214. Office of Fair Trading (2004) “Servicing ties removed from new car warranties”, Press Release 14 May 2004. See: <http://webarchive.nationalarchives.gov.uk/20140525130048/http://www.offt.gov.uk/news-and-updates/press/2004/85-04>.

215. See footnote 55.

216. See footnote 36.

217. Ofgem (2013) “New standards of conduct for suppliers – business consumers”. See: <https://www.ofgem.gov.uk/publications-and-updates/new-standards-conduct-suppliers-business-consumers>.

218. Ofcom (2011), “Automatically Renewable Contracts Decision on a General Condition to prohibit ARCs”, at http://stakeholders.ofcom.org.uk/binaries/consultations/arcs/statement/ARCs_statement.pdf.

In 2013, Ofgem followed suit by banning ARCs for domestic energy customers, and requiring that customers be put onto evergreen tariffs, which have no termination fees, at the end of a fixed term contract if they do not explicitly renew.²¹⁹ Following the CMA's market investigation, small business energy customers too will be protected from termination fees and no-exit clauses following any automatic rollover of a contract.²²⁰

ii. Remedies that make switching quicker, easier, more reliable or more attractive

4.11 Even if they face no contractual barriers to switching supplier, consumers can be disincentivised from doing so if the process is long, difficult, unreliable or otherwise unattractive. They may even be unengaged in the idea of switching at all. Remedies can be put in place which seek to address such concerns, with a view to encouraging or pro-actively triggering switching.

4.12 For example:

- *The Current Account Switch Service*: In 2013, in response to recommendations made by OFT (2009) and the Independent Commission on Banking (2011), the UK banks set up a 7-day Current Account Switch Service (CASS).²²¹ This was designed to ensure quicker and more reliable switching between banks. The new EU Payment Accounts Directive introduces an EU-wide requirement on banks to provide a current account switching service.²²²
- *Cash savings*: When the OFT first looked at the Cash ISAs market in 2010, it determined that the switching process for Cash ISAs needed to be speedier, and gained agreement from industry to reduce the switching time from 23 to 15 working days.²²³ Following its market study into cash savings, the FCA is working with industry to reduce this switching time to seven working days, and is also requiring suppliers to provide a prompt and efficient within-firm switching between cash savings accounts. In addition, the FCA is encouraging the more widespread use of electronic checks to verify a customer's identity. This would help reduce the perceived and actual inconvenience for customers involved in switching accounts.²²⁴
- *Telecoms - Gaining-provider led (GPL) switching*: In the landline and broadband markets, Ofcom has recently imposed a move to GPL switching, in place of losing-provider led (LPL) switching.²²⁵ This means that any consumer wishing to switch these services now only needs to contact the new supplier, and this supplier will do the rest.

219. See footnote 53.

220. See footnote 93.

221. Office of Fair Trading, see footnote 27. Independent Commission on Banking (2011) "Final Report and Recommendations". See: <http://webarchive.nationalarchives.gov.uk/20131003105424/https://hmt-sanctions.s3.amazonaws.com/ICB%20final%20report/ICB%2520Final%2520Report%5B1%5D.pdf>. HM Treasury and the Rt. Hon. George Osborne MP (2013) "Bank account switching service set to launch". News Release 10 Sept 2013. See: <https://www.gov.uk/government/news/bank-account-switching-service-set-to-launch>.

222. See footnote 123.

223. See footnote 44.

224. Financial Conduct Authority (2015) "Cash savings market study report: Part I: Final findings, Part II: Proposed remedies", MS14/2.3. See: <https://www.fca.org.uk/static/documents/market-studies/cash-savings-market-study-final-findings.pdf>.

225. Ofcom (2015) "Easier broadband switching from tomorrow", Press Release 19 June 2015. See: <http://media.ofcom.org.uk/news/2015/easier-bb-switching/>.

There will no longer be any need for consumers wishing to switch to call up the supplier they are leaving. This intervention, which is designed to enhance switching, is based on research carried out by Ofcom which found that consumers who changed suppliers under a GPL process were likely to be happy with the switching process and also that consumers did not like the pressure sales techniques employed by losing providers.²²⁶ Ofcom is now consulting on extending the requirement for GPL switching to mobile²²⁷ and Pay TV²²⁸.

- *Mobile telecoms – Number portability*: EU regulation mandates that mobile phone users can keep their number when they switch provider, reflecting the importance of this issue for consumers when considering switching.²²⁹ Ofcom in turn requires that porting the number takes no longer than one working day.²³⁰
- *Energy – Energy Switch Guarantee*: In response to the CMA's market investigation into energy, the industry has introduced an Energy Switch Guarantee, in order to enhance consumer confidence in the switching process. For suppliers that have signed up to this guarantee, consumers are promised no interruption to supply, a gaining-provider led switch that takes no more than 21 days, no double-billing, a final bill from the losing provider within six weeks of the switch, and a refund of any monies owed by the losing provider within 14 days of the final bill.²³¹
- *Energy – Collective switching*: As part of its Retail Market Review, Ofgem introduced measures to facilitate collective switching. This involves customers grouping together to buy their energy supply. Typically, customers register their interest with a collective switching scheme organiser. Suppliers then take part in a reverse auction, bidding to supply energy to the group of customers registered with the scheme organiser.²³²
- *Energy – Database remedy*: The CMA's recent market investigation into energy found that many customers remained disengaged from the market for prolonged periods, and consequently paid high prices for their energy. To remedy this issue, the CMA has taken a novel approach. It is requiring suppliers to provide Ofgem with details of any customer who has been on a default tariff for three or more years. It has then recommended that Ofgem retain, use, and disclose this data (via a centrally managed database) to rival suppliers. The intention is that this information will enable rival suppliers to target these customers in ways that engage them and make switching easier. The Disengaged Domestic Customers will have the option to opt out of the disclosure process at any point.²³³

226. http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-15/CER_2015_FINAL.pdf. An additional issue arising from LPL switching was that the losing supplier had a final chance to offer a low price to retain the customer. This had the potential effect of disincentivising entry by rivals, especially when one allows for the fact that the incumbent supplier may have better information as to which customers are the most attractive. The incumbent can be expected to make the best price offers to the most attractive customers, such that the rival knows that any customers who remain willing to switch are likely to be less attractive on average. See: Morten Hviid (2010) "Applicability of the literature on price guarantees to the PAC and MAC processes", Submission to Ofcom. See: <http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/annexes/paper.pdf>.

227. Ofcom (2016) "Simpler, speedier switching for mobile customers", Press Release 23 March 2016. See: <http://media.ofcom.org.uk/news/2016/switching-for-mobile-customers/>.

228. Ofcom (2016) "Making switching easier and more reliable for consumers: Proposals to reform landline, broadband and pay TV switching between different platforms". See: https://www.ofcom.org.uk/_data/assets/pdf_file/0030/58845/making-switching-easier.pdf.

229. Article 30 of Directive 2002/22/EC and amended by Directive 2009/136/EC.

230. Ofcom (2011) "Changes to the Mobile Number Porting Process Final Statement", at <http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/statement/mnp.pdf>.

231. See: <https://www.energyswitchguarantee.com>.

232. See footnote 53.

233. See footnote 93.

4.13 Finally, consumers may be deterred from switching if the package they end up with is less user-friendly in some way, for example because it is more complex to deal with multiple suppliers than with just one. Again, there may be possible remedies to address this concern:

- *Cash savings*: In its recent study, the FCA identified a tendency amongst consumers to hold cash savings accounts with their core personal current account provider, on the basis that they easily see the respective balances in one place, and make easy transfers between them. The revised EU Payment Services Directive (PSDII) introduces two new payment services: Account Information Services (AIS) and Payment Initiation Services (PIS). To facilitate the provision of these two new activities, any payment account provider offering online access to account holders will need to grant AIS and PIS access to a user's account in accordance with the user's explicit consent. The FCA identifies that one positive benefit of this may be that account aggregators emerge which allow consumers to see all of their accounts/pensions in one place, irrespective of who the supplier is. This would make it much easier to combine multi-provider supply with easy decision-making.²³⁴ The FCA is exploring how it might intervene further to help such aggregators emerge, as part of the PSDII implementation process.
- *Pensions*: The FCA is also aiming to achieve something similar with pension pots, by working with Government to create a 'pensions dashboard' which would allow consumers to see all of their pension pots in one place, regardless of the provider.²³⁵

4.2 Effectiveness of switching remedies

i. Positive outcomes from switching remedies

4.14 The available evidence suggests that switching remedies can be powerful in cases where switching had been limited by a clear contractual restriction, which the intervention removes. Examples include:

- a) *New car warranties*: An *ex post* evaluation carried out for the OFT found the removal of servicing restrictions from new car warranties to have had a very significant positive impact. Customer benefits from the removal of the warranty restriction, allowing the use of independent servicing providers, were estimated at around £66-81m per year, and these would have been higher with greater consumer awareness of their new rights.²³⁶
- b) *Printers and inks*: While there has been no formal evaluation of the OFT's intervention, press reports suggest that the third-party printer ink and toner market in the UK appears to be thriving, with remanufacturers reportedly gaining as much as a third of the market by 2013.²³⁷ A recent Which? survey of its members found that 54 per cent of printer users had bought third-party ink or toner at least once and 35 per cent typically use third-party ink or toner.²³⁸
- c) *Domestic bulk LPG*: When the OFT revisited this market as part of its market study into off-grid energy, it found that the CC's Orders appeared to have increased annual switching rates for individual tank customers (from 0.5 per cent at the time of the CC investigation to 3.7 per cent in 2010/2011). While this rate is still low, the CC's Orders had only recently been imposed at that time, and the rate was expected to rise further.²³⁹

234. See footnote 224.

235. See footnote 145.

236. See footnote 199.

237. Guardian (2013) "Printer ink cartridges: why you're paying more but getting a lot less". See: <https://www.theguardian.com/money/2013/feb/23/printer-ink-cartridges-paying-more-getting-less>.

238. Which? (2016) "Best Cheap Ink Cartridges". See: <http://www.which.co.uk/reviews/printers-and-ink/article/best-cheap-ink-cartridges> and Which? (2016) "Feeling the love for cheap printer ink". See: <https://conversation.which.co.uk/technology/cheap-third-party-ink-printers-photo-quality/>.

239. See footnote 81.

4.15 In addition, there is some evidence that remedies which make switching more attractive can work well:

a) *Mobile Number Portability (MNP)*: Two recent academic studies find strong empirical evidence that MNP intensifies competition, leading to an increase in consumer surplus. For the EU, Cho, Ferreira and Telang (2014) find that the introduction of MNP decreased mobile prices by 7.9 per cent on average.²⁴⁰ For the US, Park (2010) finds that the price effects are greatest for medium and high volume plans (4.8 per cent and 6.8 per cent, respectively).²⁴¹

4.16 As discussed above, there has been limited evaluation of more recent remedies, but the empirical analysis carried out in advance of implementing such remedies provides some useful information on their likely effectiveness. Examples here include the research that preceded Ofcom's interventions in respect of automatically-renewing contracts and gaining-provider led switching in telecoms.

ii. Less effective or ineffective switching remedies

4.17 There is, however, also evidence of switching remedies that have been less effective, or even ineffective, reflecting the fact that it can sometimes be hard to enhance switching behaviour:

- *Home credit*: On evaluation, the CC's required reduction in 'early settlement rebates' for home credit was found to have been successful in reducing charges, and thus a valuable remedy in terms of the fair treatment of consumers. However, contrary to what the CC had hoped, this remedy was found to have had no identifiable impact in on switching.²⁴²
- *Extended warranties*: Likewise, the OFT's ex post evaluation of the CC remedies in this market found that improved cancellation rights of extended warranties had been used by around 5 per cent of customers. However, it was not clear that any of these customers actually switched (i.e. took out a new extended warranty) having cancelled, rather than simply cancelling.²⁴³
- *Cash savings*: For cash ISAs, the OFT's evaluation found that the remedies had led to real improvements in the transparency and ease, speed and reliability of switching.²⁴⁴ However, there was no evidence of improved consumer awareness or of actual switching. The 2015 FCA market study into cash savings also found that consumers don't switch because of the expected hassle and low perceived gains.²⁴⁵ As a result, while the FCA has acted to speed up and ease the switching process still further, it has also put in place a wider set of remedies designed to enhance consumer engagement in this market (as discussed in previous Sections).
- *The Current Account Switch Service (CASS)*: While CASS is broadly seen as a high quality service and a highly positive development, a recent evaluation by the FCA found that awareness and confidence in CASS is lower than expected and that it has led to only a small increase in switching volumes.²⁴⁶ In addition, the FCA found a number of aspects of the process that may still be inhibiting consumers from switching banks.

240. Daegon Cho, Pedro Ferreira and Rahul Telang (2013) "The Impact of Mobile Number Portability on Price, Competition and Consumer Welfare". See: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2265104.

241. Minjung Park (2011) "The Economic Impact of Wireless Number Portability", *Journal of Industrial Economics*. For a working paper version, see: <http://faculty.haas.berkeley.edu/mpark/wnp.pdf>.

242. See footnote 186.

243. See footnote 88.

244. See footnote 100.

245. See footnote 224.

246. Financial Conduct Authority (2015), "Making current account switching easier - The effectiveness of the Current Account Switch Service (CASS) and evidence on account number portability", at <https://www.fca.org.uk/static/documents/research/making-current-account-switching-easier.pdf>.

Based on this evidence, and following its own market investigation into retail banking, the CMA is imposing a number of changes in respect of CASS. It is requiring that the governance of CASS be strengthened, and overseen by a regulator; that a long-term promotional campaign be undertaken to raise the public profile of, and consumer confidence, in CASS; and that the period of account redirection be extended indefinitely for customers that want this.²⁴⁷

The CMA is also requiring customers' previous banks to guarantee the provision of transaction history on the old account once an account is closed. This is considered particularly important for SMEs, for which loss of access to their previous transaction history following a switch of banks can make it harder (or at least it is perceived by SMEs that it can make it harder) to secure business loans.

- *Collective switch*: The CMA's market investigation into energy found that there has been significant growth in the number of collective switching schemes since 2012, but these have still been small in terms of the number of participants.²⁴⁸ The proportion of customer acquisitions made via collective switches was less than 2 per cent across the Six Large Energy Firms and the four largest of the Mid-tier Suppliers in 2014, except for E.ON. Moreover, even these levels may have been artificially inflated by the fact that collective switching tariffs were exempt from Ofgem's RMR restriction on suppliers to offer only four tariffs. This enabled suppliers to re-establish a degree of price discrimination between the more price-sensitive consumers (here, collective switchers) and their loyal customers by cutting prices only to the former.²⁴⁹

In carrying out its own review of collective switching, Ofgem also found some risks for consumers relating to transparency of process and clarity of offers, the handling of Warm Homes Discount and exit fees, and the provision of relevant information to inform decision-making. This has led Ofgem to introduce enhanced regulation, whereby suppliers can only sell through collective switching schemes which are accredited by Ofgem under the Confidence Code.²⁵⁰

²⁴⁷ See footnote 57.

²⁴⁸ See footnote 93.

²⁴⁹ See Section 5 for more details of this RMR restriction.

²⁵⁰ Ofgem (2014) "Protecting consumers in collective switching schemes". See: <https://www.ofgem.gov.uk/ofgem-publications/85960/collective-switchingfinal2correctedvers.pdf>.

4.3 Switching remedies: Conclusions

4.18 As identified above, a low level of actual switching in a market is not necessarily a problem. As long as consumers are shopping around and making broadly sensible decisions on the basis of the information they collect, then competition for these customers should be effective, even if limited switching is in fact observed. What is important is that switching is not constrained unnecessarily by either real or psychological barriers.

4.19 The evidence presented above provides a number of possible lessons in designing switching remedies:

a) Measures which are designed to overcome financial barriers to switching can be very effective in driving competition.

This is exemplified by the examples of *new car warranties*, *printers and inks* and *bulk LPG*, in which the remedies directly reduced the cost of switching.

b) Measures which reduce the 'hassle factor' involved in switching can also be powerful.

It is also demonstrated by the impact of *mobile number portability* in driving down prices. In this latter case, the identified costs of switching were non-pecuniary but still very real for consumers. Current moves towards using electronic identity checks when *switching cash savings accounts*, gaining provider led (GPL) switching in *telecoms*, and extended account redirection for *retail banking* could all be effective in reducing the hassle factor involved in switching. Likewise, the use of account aggregators (for example, in *cash savings*) could potentially make split supply far more convenient, facilitating partial switching.

c) Regulatory intervention can prevent suppliers from exploiting behavioural biases to limit switching.

The use of complex termination arrangements, especially if combined with contract auto-renewal (as in *telecoms* and *energy*), can make switching unduly difficult. Intervention can alter such arrangements.

d) Barriers to switching can derive from a lack of consumer awareness about the process, misperceptions about the difficulty of switching or other biases towards inaction. In this case, remedies need to be carefully designed.

While any reduction in switching costs is to be welcomed, this may be a necessary but not a sufficient condition for enhancing switching. In such circumstances, it may be necessary to take a more proactive stance, and require substantial promotion (as for CASS) or the facilitation of more direct marketing (as in energy).

e) It can take time - and frequent revisiting of the market - to make demand-side remedies as effective as possible. This is partly because it can take time to work out what factors are really limiting consumer shopping around and switching.

For example, the remedies in *cash ISAs*, *retail banking*, and *energy* have all been reviewed and refined over time.

5. Outcome control remedies to address demand-side problems

- 5.1** The demand-side remedies described in Sections 2 to 4 are designed to enhance the ability of consumers to make reasonable decisions in order to drive effective competition. There may, though, be circumstances in which it is unrealistic or disproportionate to drive competition in this way. Alternatively, if there is price discrimination in a market, certain groups of customer may not benefit (and may even be harmed), even if competition can be enhanced for other, more engaged, customers.
- 5.2** In such cases, there may be an argument for moving away from relying on consumers to take responsibility for driving effective competition, and towards interventions that more directly specify what outcomes we expect to see. Political and social pressures, in particular around equity and justice or the treatment of vulnerable customers, can potentially influence such decisions.
- 5.3** Such outcome control remedies are arguably better seen as supply-side remedies than demand-side. However, they are included in this Review – albeit briefly – because they are often motivated by demand-side problems. This stands in contrast to the more well-understood standard antitrust issues which are motivated by supply-side issues. Outcome control remedies may be considered alongside the demand-side remedies discussed previously as either alternative or complementary options.
- 5.4** Outcome control remedies are sometimes thought to work against natural market forces and as such there is a view that they should be avoided unless the case for them is overwhelming. While there is some merit to this argument, there is an alternative way of viewing these interventions, at least when they are designed well. By placing boundaries around what suppliers are, and are not, allowed to do, they can play an important role in ensuring that competition drives positive consumer outcomes.

5.1 Types of outcome control remedies

5.5 Examples of outcome control interventions to address demand-side problems include:

- *Rules around how a product is sold:* If consumers can't be relied on to seek out the information they need to make reasoned choices, or if they face behavioural biases that may distort their choices, then it may be possible to require suppliers to *'take up the slack'*, in terms of providing advice or assessing need, or alternatively to limit the conditions under which sales can be made.

For example, under FCA rules, suppliers of both mortgages and consumer credit are required to carry out affordability assessments before making loans. This reflects the fact that myopic and over-confident consumers may otherwise have a tendency towards taking on unaffordable levels of debt and that firms may compete to provide such debt, leading to competition effectively occurring on 'the wrong basis'.^{251, 252}

- *Rules around who a product is marketed or sold to:* In some situations, it may be appropriate to distinguish different sets of customers, by level of sophistication, and to restrict suppliers from marketing or selling to the relatively unsophisticated.

For example, under FCA rules, suppliers of unregulated collective investment schemes (UCIS) are not allowed to promote their products to 'ordinary retail investors', who find it difficult to properly assess these complex investments, but may do so to 'high net worth individuals' and 'sophisticated investors'.²⁵³

251. Financial Services Authority (2012), "Mortgage Market Review – Feedback on CP11/31 and final rules", PS12/16, at <https://www.fca.org.uk/static/documents/policy-statements/fsa-ps12-16.pdf>.

252. Financial Conduct Authority (2015), "Consumer credit – Feedback on CP15/6 and final rules and guidance", PS15/23, at <https://www.fca.org.uk/static/documents/policy-statements/ps15-23.pdf>.

253. Financial Conduct Authority (2013), "Restrictions on the retail distribution of unregulated collective investment schemes and close substitutes – Feedback to CP12/19 including final rules", PS13/3, at <https://www.fca.org.uk/static/documents/policy-statements/ps13-03.pdf>

- *Restrictions on price discrimination:* Customers in some markets vary in terms of their propensity to search and switch supplier. Where suppliers can price discriminate between customers, this can result in competition being more vigorous for some customers, generating lower prices for these customers, leaving others paying higher prices. In such markets, restrictions on price discrimination have sometimes been imposed.

An example is the Ofgem non-discrimination requirement in energy. There were two elements to this: a ban on price-discrimination between customers on the basis of payment type and a ban on geographic price discrimination. The latter was designed to prevent energy suppliers from charging higher mark-ups to consumers in their home regions – where they still had a high proportion of loyal customers – than in other regions. This 2009 intervention came out of Ofgem’s Energy Supply Probe, which identified price differences which were not cost-reflective between both regions and payment types. Equity considerations, as well as competition concerns, seem to have played a role in this remedy.²⁵⁴

- *Restrictions on product characteristics/variety:* Ofgem’s geographic non-discrimination clause in energy was not renewed after its initial three-year period. However, as part of the Retail Market Review, Ofgem imposed an alternative ‘simpler tariffs’ requirement that energy suppliers offer no more than four energy tariffs, and to avoid the use of ‘complex tariffs’. The rationale for this was that the multiple tariffs available in the market, especially if complex, made consumer decision-making overly difficult.²⁵⁵
- *Price regulation:* In standard utility markets, price regulation may be adopted if there are few suppliers, with market power, who would otherwise set exploitative prices. However, prices can also be set at exploitative levels, even if there are plenty of suppliers, if the demand responses of consumers are weak. Just as in the utility sectors, price regulation can potentially be used to limit such exploitation.

Such concerns have recently led the CMA to re-impose price regulation on annual bills paid by prepayment energy customers (if only for a short period until the end of 2020).²⁵⁶

Excessive pricing can also occur in respect of charges that are hidden within the small print of a contract, or imposed for defaulting on a contract. Consumers may fail to take the latter fully into account, even if they are transparent, due to systematic myopia or over-confidence.

Payday lending provides a recent example. The high charges levied on consumers in respect of payday loans led to Government placing a duty on the FCA to introduce a price cap for the industry. In 2014, the FCA imposed a total cost cap (including interest and charges) of 100 per cent of the loan, a maximum daily interest and fees charge of 0.8 per cent of the loan and a maximum default charge of £15.²⁵⁷

254. Ofgem (2009) “Energy Supply Probe”. See: <https://www.ofgem.gov.uk/electricity/retail-market/market-review-and-reform/retail-market-review/energy-supply-probe>.

255. See footnote 53.

256. See footnote 93.

257. Financial Conduct Authority (2014), “Detailed rules for the price cap on high-cost short-term credit Including feedback on CP14/10 and final rules”, PS14/16, at <https://www.fca.org.uk/static/documents/policy-statements/ps14-16.pdf>.

5.2 Effectiveness of outcome control remedies

5.6 Outcome control interventions can be very powerful. For example:

- *Payday lending*: The various interventions put in place in this market have recently been reviewed by Citizens Advice. This review finds that there is still room for improvement on a number of aspects. However, the picture is more positive in respect of the price cap. The review finds good compliance by lenders with the cap, that borrowers are less likely to get into extreme difficulty using payday loans than previously, and in particular that significantly fewer borrowers are getting into repeat lending cycles.²⁵⁸ The FCA has also been successful in its objective of setting the cap at a level which allowed the market to continue to exist, given that this is a product that some consumers clearly value.
- *Unregulated Collective Investment Schemes*: Likewise, although there has not been any explicit evaluation, the rules around the provision of UCIS are thought to be broadly positive and have already led to a number of regulatory actions against suppliers.

5.7 Nevertheless, there is also evidence available of outcome control remedies being harmful or even anti-competitive, in that they can limit supplier options and can limit the development of innovative new products or sales methods. For example:

- *Energy - Non-discrimination rule*: Academic work by Waddams and Hviid (2012) found that margins went up and switching went down after the non-discrimination rule was introduced.²⁵⁹ This reflected a move by the Big 6 incumbent suppliers to focus on the loyal customers in their home regions, who remained willing to pay higher prices, rather than risking cannibalising their margins on these customers in a bid to win customers elsewhere.
- *Energy - 'Simpler tariffs' rules*: In its recent market investigation into energy, the CMA found Ofgem's ban on complex tariffs and restriction to four core tariffs failed to reduce complexity to a level that overcame the need for PCWs to help make choices, but at the same time limited useful tariff innovation. The CMA has therefore recommended that Ofgem remove these requirements.²⁶⁰

5.8 It should be noted, however, that – as for the demand-side remedies discussed previously – the impact of outcome control remedies will depend on the specific market circumstances.

5.9 For example, in respect of price regulation, Oren Bar-Gill (2015) finds that price regulation can be positive if consumers misperceive prices and/or utility. His theoretical model relates to a multi-price market where a price cap on one dimension can lead to adjustment away from the efficient level also on other price dimensions. He finds that the precise form of the price cap needs to reflect the extent and type of consumer misperception. He also finds greater scope for welfare-enhancing price caps in markets characterised by price underestimation and utility overestimation. Note that this arguably reflects the payday lending market well.²⁶¹

258. Citizens Advice (2016) "Payday loans after the cap: Are consumers getting a better deal?". See: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Payday%20Loan%20Report%202.pdf>.

259. Morten Hviid and Catherine Waddams Price (2012) "Non-Discrimination Clauses in the Retail Energy Sector", *The Economic Journal*, 122.562. See Working Paper version: http://competitionpolicy.ac.uk/documents/107435/107587/CCP_Working_Paper_10_18.pdf. This finding also fits with the economic literature discussed at footnote 20. Ofgem implemented this condition formally for UK energy suppliers in 2009, see <https://www.ofgem.gov.uk/electricity/retail-market/market-review-and-reform/retail-market-review/energy-supply-probe>.

260. See footnote 82.

261. Oren Bar-Gill (2015) "Price Caps in Multi-Price Markets," *The Journal of Legal Studies* 44, no. 2 (June 2015): 453-476. See: https://dash.harvard.edu/bitstream/handle/1/17741708/Bar-Gill_833.pdf?sequence=1.

5.10 Likewise, the impact of non-discrimination clauses will tend to depend on whether firms agree on which markets are 'strong' and 'weak', in the sense that higher prices can be sustained in the strong market. In the UK energy market, the history of regional incumbency implies that firms have asymmetric views about which geographic markets are strong and which weak. In such circumstances, firms exhibit 'best response asymmetry' and – in the face of geographic non-discrimination rules – they will tend to retrench to their own strong markets, as described above, leading to higher prices overall.

5.11 As Hviid and Waddams Price (2012) point out, however, the situation might be expected to be very different in respect of the rules on non-discrimination by payment method, given that firms might be expected to have similar views of consumers across the different payment methods. In the presence of such 'best response symmetry', it is far less likely that non-discrimination clauses would lead to higher prices overall (albeit they may raise prices for some, and thus may give rise to winners and losers).

5.3 Outcome control remedies: Conclusions

5.12 It is clear that outcome control remedies, as outlined in this Section, can potentially be harmful for competition and consumers, rather than delivering the hoped-for benefits. Nevertheless, there is also evidence of these remedies being effective, when the market circumstances are appropriate. As such, it is useful to keep them in reserve, as possible remedies, when the demand-side remedies discussed previously are likely to be ineffective, on their own, in delivering desired consumer benefits through driving effective competition.

6. Conclusions

- 6.1** This section draws on the discussion in previous sections to develop some overall conclusions. These broadly cover all sorts of demand-side remedies, and address both the substance and process around such remedies.
- 6.2** As discussed above, the evidence currently available on the effectiveness of demand-side remedies remains limited, and thus the conclusions are necessarily somewhat tentative and merit further appraisal. Nevertheless, they may prove useful. Indeed, many will not be new to the regulators and may even reflect latest best practice.

6.1 A changing approach to demand-side remedies over time.

- 6.3** As discussed in the introductory section, there has clearly been a changing approach to demand-side remedies over time.
- 6.4** Prior to 2008-10, there was a good understanding of the importance of asymmetric information issues and the importance of search and switching for driving effective competition. This was, however, effectively aligned to a view that, if these could be improved, then markets would work better. Demand-side remedies were focussed on providing information, easing search, and easing switching, with a view to these being the key barriers to an effective demand-side. There was an expectation that consumers, if these barriers were removed, would make sensible decisions and drive competition. During this time, the focus of demand-side remedies was thus effectively on empowering consumers.
- 6.5** A growing focus on behavioural economics 2008-10 led to a gradual rethink around demand-side remedies. This was also informed by evaluations of markets in which past demand-side remedies had clearly been ineffective or not fully effective. In some cases, this was due to poor implementation of the remedies, or patchy compliance. However, even where compliance was not an issue, there was a realisation that, while the earlier demand-side remedies may have been good in themselves, and indeed may even have been *necessary* for the demand-side to work effectively, they were not *sufficient* for *improving consumer decision-making*.
- 6.6** This has led to change in emphasis in remedy design - with a refocus on engaging customers. This involves thinking carefully about how consumers really behave, and the more psychological factors that might limit search and switching, with a view to designing remedies that are more specifically targeted at enhancing consumer decision-making and addressing the problems identified.
- 6.7** So where are we now? The remainder of this section first summarises the conclusions in Section 2-4 before considering what broader lessons can be drawn for improving remedy effectiveness, across all types of demand-side remedies, in terms of both substance and process.

6.2 Summary of conclusions from Sections 2-4

6.8 For ease of reference, the following table summarises the conclusions reached in Sections 2-4 above.

Type of remedy	Lessons for future remedy design
Disclosure remedies	a) It is important to ensure compliance with disclosure remedies (and demand-side remedies generally).
	b) In ensuring that disclosure is genuinely clear and comprehensible, and in particular in ensuring that it is easily comparable across suppliers, rules around disclosure may need to be fairly prescriptive.
	c) Consumer testing can be valuable in assessing how consumers really use information to make decisions and how disclosure can enhance this. If RCTs are to be used, there may need to be a requirement on firms to cooperate.
	d) Consumer awareness of, and attention to, disclosure matters.
	e) Consumer awareness and attention can be affected by who does the disclosure, where the disclosure appears, and the timing of disclosure.
	f) It can sometimes be helpful to disclose less, not more, to avoid information overload.
	g) It is important to consider the supply-side response to any disclosure remedy (or indeed any sort of demand-side remedy).
Shopping around: Collation remedies	a) Regulators need a strong understanding of what can be achieved with relevant technology, and foreseeable likely developments, when developing this sort of remedy, while remaining humble about their ability to predict the future.
	b) Regulators may well achieve better outcomes through finding ways to facilitate or trigger the commercial creation of PCWs, for example by requiring suppliers to make their products available through PCWs, rather than by mandating the existence of PCWs or creating them themselves.
	c) Where the existence of a PCW is mandated, perhaps because a commercial PCW is unlikely to emerge, it is important to consider governance.
	d) The incentives of commercial PCWs may not be fully aligned with consumer interests. So there may be a rationale for regulating PCWs.
	e) Accreditation can also work, but only if accreditation covers enough of the PCW market.
	f) A requirement that PCWs provide clear information on market coverage is likely to be better than a requirement that they offer complete market coverage.
	g) It may be useful to provide clearer competition law guidance to PCWs around the use of price parities/retail price Most Favoured Nation clauses (MFNs).
	h) PCWs may not be used on a frequent basis (or at all) by some customers, and thus such remedies risk creating winners and losers.

Type of remedy	Lessons for future remedy design
Shopping around: Personal data remedies	a) These remedies are likely to work better when data is provided directly to PCWs, with consumers' permission, rather than requiring consumers to download and then re-upload the data.
	b) Some consumers may engage better with such search if it can be carried out on a mobile device, as opposed to requiring a PC.
	c) Open APIs, whereby all PCWs can access data from all suppliers, are likely to be better than remedies which require data to be given by some suppliers to some collators.
	d) It is important that PCWs do not have to pay a disproportionate (if any) fee to suppliers for this data.
Shopping around: Remedies triggering or requiring shopping around	a) Disclosures can be effective as triggers to shopping, but it is clear that the precise design of the triggers matters a lot. Timing is especially important. RCTs can be invaluable in getting design right.
	b) Remedies that require consumers to make a positive choice can be effective.
	c) Measures which keep issues in the public eye may be more effective over the longer term than one-off consumer awareness campaigns.
Switching remedies	a) Measures which are designed to overcome financial barriers to switching can be very effective in driving competition.
	b) Measures which reduce the 'hassle factor' involved in switching can also be powerful.
	c) Regulatory intervention can prevent suppliers from exploiting behavioural biases to limit switching.
	d) Barriers to switching can derive from a lack of consumer awareness about the process, misperceptions about the difficulty of switching or other biases towards inaction. In this case, remedies need to be carefully designed.
	e) It can take time - and frequent revisiting of the market - to make demand-side remedies as effective as possible. This is partly because it can take time to work out what factors are really limiting consumer shopping around and switching.

6.3 Improving remedy effectiveness: Lessons for substance

6.9 While some of the above conclusions are specific to particular types of remedy, it is possible to draw from them, and from the wider discussion throughout this Review, a number of broader lessons about demand-side remedies. This section looks at the lessons for the substance of such interventions, while the next section considers lessons for the remedies process.

i. Pure information asymmetry and real search and switching costs do matter

6.10 While the early demand-side remedies were perhaps overly focussed on overcoming asymmetric information and reducing search and switching costs, the importance of such measures should not be understated. A number of remedies addressing pure asymmetric information and real costs of search and switching have been found to have been powerful in improving consumer decision-making. In particular, where switching is found to be limited by contractual restrictions, requiring changes to such restrictions can be very effective.

6.11 With the growing focus on behavioural economics, it is important that this basic finding is not forgotten.

ii. The 'EAST' mnemonic is valuable when designing demand-side remedies

6.12 Where behavioural biases are an important factor, the UK Behavioural Insights Team has useful guidance on what is needed to really change consumer behaviour, as discussed in Section 1. They argue that interventions have to make such change Easy, Attractive, Social and Timely, and they suggest the acronym EAST as a memorable mnemonic.²⁶² Many of the findings in this Review support this view.

6.13 First, it is clear that making things 'easy' for consumers is very important. For example, this is clear from the success of various switching remedies which are focussed on removing the 'hassle' factor, the fact that consumers don't use PCWs if they offer poor functionality, and the problems that arise if disclosures are not easily accessible. It is also clear that added complexity can lead to issues of information overload, and this means that it can sometimes be better to require less disclosure, not more.

6.14 A corollary of the importance of ease is that consumer decision-making can potentially be altered by making certain undesirable options more difficult. For example, the ban on opt-out selling of additional products makes it slightly harder for consumers to choose the additional product and thereby requires that this be an active choice, rather than a default unintended option. Likewise, the ban on auto-rollover contracts in energy and telecoms means that consumers are required to make an active choice if they wish to enter another fixed term contract with associated termination fees.

6.15 Second, it is also clear from the above that consumers will only be drawn to decision-making tools if they are sufficiently *attractive*. The under-use of a number of PCWs and also the Current Account Switching Service can partly be pinned down to a lack of consumer awareness or unwillingness to try the tools. Where this is an issue, it may be necessary for regulators to mandate that promotion of the tools occurs, or to set clear outcome targets in terms of usage. It can also be important that tools remain in the public eye for a prolonged period if they are to generate real behaviour change.²⁶³

²⁶² See footnote 12.

²⁶³ See footnote 61.

- 6.16** Third, it is clear that *social* interactions can impact on consumer decision-making. The human factor can have a clear *negative* role in consumer decision-making, for example due to consumers placing too much trust in advisers or succumbing to pressure selling. In such cases, the regulator may need to think hard about *who* is involved in remedies, for example who is required to make disclosures. This issue can also feed into switching processes. For example, the recent decision by Ofcom to switch to gaining provider led switching was partly driven by the preference of customers not to have to face the discomfort of speaking to the supplier they were leaving.
- 6.17** There has been less work done so far on how social interactions can play a *positive* role in helping improve consumer behaviour. Public awareness and attitudes can change over time and that this can have a big impact on the behaviour of both consumers and firms. For example, in some of the cases discussed above, significant changes in fact occurred during investigation. Examples include unarranged overdraft charges falling during the period the OFT was first working in this area, consumers reducing their use of store cards during the CC's investigation, and increased switching rates in energy during the recent CMA investigation. This suggests that publicity and increased consumer awareness are important drivers of changing behaviour. Regulators could potentially do more to harness this form of 'people power'.
- 6.18** It is also clear that consumer understanding and behaviour can be strongly influenced by family and friends.²⁶⁴ Again, there may be creative ways to harness this to drive behaviour change more effectively, for example by developing 'memes' that are designed to be shared on social networks. A recent example of innovative practice from outside the UK comes from the Australian Securities and Investments Commission, which has developed a comic that is specifically targeted at youngsters in the Maori community, and implicitly educates them about the risks around getting into debt. Substantial effort and consumer testing went into making this product as attractive as possible to its target audience and it is hoped that the comics will be passed around and discussed within the community.²⁶⁵
- 6.19** Last, it is clear from the evidence presented above that interventions need to be *timely* if they are to be effective. The available evidence shows that relatively small differences in timing can have a big impact on consumer behaviour. The key is to ensure that consumers receive the information when it is mostly likely to be salient for their decision-making. Increased focus on this aspect of remedy design has been clear in some of the recent remedies designed to trigger shopping around, such as in *cash savings* and *general insurance renewals*.

iii. Enhancing the role of commercial solutions can be valuable

- 6.20** Given the importance of ensuring that decision-making tools are both easy and attractive for consumers to use, there are clear benefits to be gained from utilising commercial tools to solve identified problems, where possible, rather than regulators endeavouring to provide these tools themselves or mandating their existence. This reflects a growing understanding that regulators may be poorly placed to develop attractive solutions that are easy to use and build on the latest technological developments.
- 6.21** Where there is the potential for market solutions to solve demand-side problems in this way, interventions may work best by facilitating their development and effectively making companies the 'owners' of the remedies. The CMA's requirement that suppliers of payday loans provide data to at least one FCA-authorized PCW is one example, as are the measures being taken to stimulate the development of PCWs in SME banking.

264. Although learning from friends' experiences can also be misleading. Bailey et al (2016) find that consumers' house purchasing behaviour is strongly related to the house price inflation experience of their friends, even where these friends live relatively distant and thus their experience may not be relevant. Michael Bailey, Ruiqing Cao, Theresa Kuchler and Johannes Stroebel (2016) "Social networks and housing markets", NBER Working Paper No. 22258. See: http://pages.stern.nyu.edu/~tkuchler/research/pdf/Social_Networks_Housing_Markets.pdf

265. See: <https://www.moneysmart.gov.au/media/173826/to-the-max.pdf>

6.22 Where reliance is placed on commercial tools, however, it is important to recognise that firms' commercial incentives may not be fully aligned with consumers. In such circumstances, there may be a role for additional rules, either in the form of regulation or through accreditation. In imposing such rules, however, it is important that they are designed carefully, to ensure that commercial incentives to maintain, enhance and innovate the tools are preserved.

iv. It is important to consider supply-side responses to interventions

6.23 There is evidence in this Review of suppliers readjusting their pricing in ways that have unintended consequences, or even of suppliers seeking to undermine remedies. Over-interventionist remedies can potentially also have negative effects in terms crowding out commercial solutions or disincentivising innovation.

6.24 It can be hard to second-guess the reactions of suppliers. In particular, they are not easy to test through empirical techniques such as RCTs. In some cases, it may be possible to model supplier reactions, as done by Grubb and Osborne (2015).²⁶⁶ Even where this is not possible or proportionate, however, it is still important to keep supplier incentives in mind when designing remedies.

v. It is important to be aware of distributional effects of interventions

6.25 Demand-side remedies can have winners and losers. This should not necessarily deter regulators from intervention. If canny consumers have effectively been benefiting, through lower prices, from the less sophisticated behaviour of others, who pay high prices, then intervention to address this issue may not be considered to raise significant distributional concerns.

6.26 On the other hand, examples are given above whereby demand-side remedies could potentially harm more vulnerable consumer groups. For example, the greater use of PCWs may drive down online prices, but drive up offline prices, and this may be detrimental for those who do not use PCWs, perhaps because they do not have easy access to the Internet.

6.27 In such cases, even if regulators do not have explicit objectives relating to equity or fairness, they may wish to give special consideration to the problems faced by particular groups of consumers, rather than considering consumers as a single group. Recent examples include the most recent CMA market investigations, which specifically considered the issues facing pre-payment customers (in energy) and customers with overdrafts (in retail banking).

6.4 Improving remedy effective: Lessons for process

6.28 The final key finding of this report is that the remedies process can be very important. There are various elements to this.

i. Remedy design

6.29 First, it is important that remedies are given early consideration in any market review. In the past, remedies have sometimes been considered quite late on in the process, with primary focus being placed on diagnosing problems in a market. While good diagnosis is crucial, it is important also to recognise that it takes time to design effective remedies. This should not be considered as an after-thought.

6.30 Second, in designing remedies, it is important to be as precise as possible about the problems that consumers face. In particular, the evidence in this Review shows that it can be a mistake to assume that reducing the search and switching costs faced by consumers will straightforwardly act to improve consumer decision-making and enhance competition. The factors preventing effective consumer decision-making can be less obvious and more behavioural.

²⁶⁶ See footnote 17.

- 6.31** Third, remedies can benefit from being relatively precise. For example, remedies that require disclosure in a standardised – and potentially simplified – format will typically need to be tightly defined. On the other hand, there can also be benefits from setting out clear principles for the remedy, ideally also alongside measurable desired outcomes, and then allowing firms themselves to work out the details. It can be difficult in any specific case to determine where the line should be between precision and flexibility of remedy.
- 6.32** Fourth, given the complexity of the issues arising in many of the markets examined here, it is unlikely that any one remedy will provide a complete solution. Rather, effective remedy design may require regulators to develop a package of complementary remedies, which work together to achieve their objectives. We should not be surprised to see remedy packages that include a mixture of disclosure, search, switching and even outcome control remedies.
- 6.33** Finally, since many demand-side remedies draw on technology to enhance consumer decision-making, it is important that regulators are at forefront of market and technological developments. This is particularly valid today, with the rapid development of digital comparison tools, the move towards mobile apps, and the growth of ‘big data’. In this new environment, factors like ensuring open APIs and access to data may become far more important than in the past.
- 6.34** It is also important, though, that regulators are appropriately humble about their ability to predict the future. Some of the above examples of weaker remedies, in particular around PCWs, reflect the actions of forward-thinking and innovative regulators, which nevertheless failed to ensure sufficient flexibility to fully ‘future-proof’ these interventions.

ii. Remedy testing

- 6.35** Advance testing is not always feasible, and this may be especially true where remedies involve significant market-transformation rather than consumer nudges. Where possible and proportionate, however, it can be very useful to test remedies in advance.
- 6.36** This can be done in a variety of ways, from discussion with consumer focus groups, to laboratory experiments, to randomised controlled trials (RCTs). Of these, RCTs can be particularly valuable, since they demonstrate how real interventions impact on real consumers, who are not aware that they are part of an experiment. It should, though, be highlighted that any such testing can be time-consuming. In addition, RCTs typically require active participation by companies, which is not always easy to arrange.
- 6.37** There are two important implications here. First, effective remedy testing can be compromised by overly tight timetables. It is noteworthy, in this context, that the CMA did not endeavour to carry out RCTs itself in its recent energy and retail banking market investigations, given the tight statutory deadlines it faced, but rather recommended that the respective regulators (FCA and Ofgem) carried such work. While this strategy to overcome tight deadline constraints can work in markets where there are existing regulators, it would be more problematic in unregulated sectors.
- 6.38** Second, if RCTs are to be employed, it can be useful where possible to impose requirements on firms to engage with the testing process. Even where companies are willing to engage voluntarily, there is a risk that they may then try and influence the choice of remedies to be tested, as a condition of taking part. It is noteworthy that the CMA has imposed just such a participation requirement on firms in respect of its energy and retail banking remedies.

iii. Remedy implementation

- 6.39** The evidence reviewed for this Review highlights a number of instances of poor implementation of remedies, leading to poor compliance or even attempts by parties to stymie the intention of the remedies. There are useful lessons here.
- 6.40** First, it is important to consider carefully the details around implementation. This can include ensuring that the process of implementation has effective governance around it. The CMA's requirement that the banking industry set up an implementation entity, led by an independent trustee, to implement its open API remedy, would seem to be good practice.
- 6.41** Second, it can also be important to think about governance over the longer term, since with effective governance and a clearly stated intention for the intervention, remedies can potentially be flexed over time to remain true to the original remedy intention, in the face of market changes or technological developments.
- 6.42** Third, and more generally, even after implementation has occurred, ongoing compliance matters. A number of remedies in this Review were less effective than expected partly because compliance was patchy. With careful thought upfront, it may be possible to ensure long-term compliance through, for example, reporting requirements.
- 6.43** Finally, where the authority is putting in place a package of remedies, it may be valuable to retain the ability to revisit the package during the testing or implementation phase, since if one element of the package proves ineffective or impracticable, this may potentially have implications for other elements.

iv. Monitoring and review

- 6.44** Reviewing the effectiveness of remedies over time is also valuable. Remedies may be less effective than intended, or may become less effective as market circumstances change over time. Ensuring that remedies are monitored or revisited can allow regulators to revise them if necessary. Some of the examples in this Review demonstrate that it can sometimes take several attempts for regulators to make remedies effective. Knowing that there will be future revisiting of remedies may also enhance the incentives on business to make the remedies work in the first place.
- 6.45** Utilising sunset clauses can provide a commitment device to such remedy review, as can commitment to the ongoing monitoring of measurable outcomes or an effective programme of *ex post* evaluation.
- 6.46** In some cases, an ongoing review of effectiveness, accompanied by small changes to the remedy, may also be valuable. The US Consumer Financial Protection Bureau provides an interesting approach to testing and refining a demand-side remedy. In setting up their advice page for consumers signing up a mortgage, they continued to examine over time the way in which users were clicking, in order to make the page more user friendly over time.²⁶⁷
- 6.47** Finally, at the point of remedy design, it can also be useful to consider the need for later evaluation. Staggered implementation, as occurred for text alerts around unarranged overdraft charges, can provide valuable information on remedy effectiveness. Likewise, regulators may not have the power to require relevant data from companies for remedy evaluation unless this power has been specified as part of the original remedy.

267. See <http://www.consumerfinance.gov/owning-a-home/closing-disclosure/>. There has in fact been some criticism of this intervention for over-simplifying what is an inherently complex decision. However, the concept of continuous design improvement seems a good one

6.5 Conclusion

- 6.48** This Review sets out a number of ways in which the design and implementation of demand-side remedies might be more effective. However, it is important to be circumspect. Getting these remedies right is difficult. We can sometimes predict how consumers will act on the basis of past experience, but often we cannot. As a simple example, when the FCA carried out an RCT to assess how best to design a letter to consumers offering redress, it found that women were less likely to respond if the letter was signed by the CEO than if it was simply signed by the more generic 'Customer Team'.²⁶⁸ This was entirely unexpected and remains difficult to explain.
- 6.49** The stance taken by different stakeholders towards demand-side remedies will partly depend on their wider views around the philosophy of intervention, which are beyond the scope of this Review. These include questions of paternalism: How much should regulators seek to protect consumers if they fail to protect themselves despite being given appropriate tools to do so? They also include questions around the role of markets: To what extent can we expect commercial solutions to emerge to solve some of these issues, without intervention, and to what extent can poorly designed intervention damage market forces, creating inefficiency and harming innovation?
- 6.50** Overall, it is important to recognise that we do not exist in a world of first-best solutions. In the sorts of markets considered here, with limitations on the demand-side, there is almost bound to be detriment of one sort or another. Even where demand-side remedies can have a net positive effect, they are unlikely to solve all issues in the market, or for all customers. There may be winners and losers from an intervention. In such situations, regulators face difficult choices. Do they focus on demand-side remedies, step back from intervening at all, or move to more interventionist outcome control remedies, bearing in mind that the latter bring their own concerns (see Section 5)?
- 6.51** This Review cannot answer these difficult questions. However, it should help to inform the regulatory decision-making around them.

²⁶⁸ Financial Conduct Authority (2013) "Encouraging consumers to claim redress: evidence from a field trial", Occasional Paper No. 2. See: <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-2.pdf>.