Which?, 2 Marylebone Road, London, NW1 4DF
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Consultation response

loyaltypenalty@cma.gov.uk

Summary

Which? welcomes the opportunity to respond to the CMA's investigation of the issues raised in the Citizens Advice September 2018 super-complaint. Which? believes that there are pricing practices in some markets that rely on lack of consumer engagement and clear action is needed to stop consumers from being harmed. Nevertheless price discrimination itself can be essential to markets functioning effectively and can deliver direct benefits to consumers.

We consider that intervention is warranted and necessary where price discrimination and lack of consumer engagement is the result of:

- companies making engagement unnecessarily difficult;
- vulnerable customers being unable to fully engage;
- companies exploiting consumers' behavioural biases; and/or
- consumers being unaware that company "loyalty" is not always rewarded with lower fees and charges.

These cases significantly reduce the extent to which markets deliver the full benefits of competition to consumers and they undermine trust in markets more generally.

Price discrimination

Which? believes that price discrimination is essential to some markets functioning effectively and can offer benefits to consumers. For example: by enabling more consumers to access products; more products being available to consumers; and by increasing competition and innovation. If companies were asked to charge the 'same' price to all their customers, consumers would have fewer incentives to engage and companies would have fewer incentives to compete for those customers, as they would not shop around. It would prevent companies offering new consumers lower prices to try a new product and might hamper product innovation.

However, some price discrimination can also cause harm. For example: when firms use it to harm competition by eliminating rivals; when it targets vulnerable consumers (including those who are not online and therefore find it harder to 'shop around'); and when consumers are unaware it is occurring and believe they are being offered a competitive price, and therefore do not think to 'shop around'.

Different cases will require different types of remedies or a package of complementary remedies including supply-side and demand-side remedies.

Sectoral evidence

Which? evidence supports the need for further intervention in some sectors, including where company practices target vulnerable consumers, where there are unnecessary barriers to switching and where demand-side intervention could make a positive impact for consumers.

An overarching theme across all sectors is that reform has been slow, even when the relevant regulator is aware of a particular issue. Many proposed changes are vehemently opposed by industry, and particularly by incumbent companies who seek to maximise profit through unnecessary barriers to switching and low consumer engagement. This may mean that many changes need to be realised through legislative means rather than relying on industry goodwill.

Mobile[1]

- Research conducted by Which? in its 2018 mobile satisfaction survey found low levels of switching. When asked if they had switched mobile phone providers in the last 2 years, only 29% of respondents said they had done so. Furthermore, when breaking this down into different types of plans, only 25% of those with a contract including a handset reported having switched in the last two years, compared to 35% of those on a SIM only plan and 27% of those on PAYG (with no handset).
- Ofcom research has shown that 63% consumers aren't using all of their data allowance, rising to 75% for customers over 45 - meaning consumers, particularly older consumers, are likely to be paying more than they need to.
- Which? has long been calling for handset charges to be transparent on a customer's bill, and for these charges to be dropped automatically when the handset is paid off. We welcome Ofcom's current consultation on this, and hope the changes will now be made swiftly; we first drew attention to this practice in 2014.
- Which? welcomes Ofcom's consultation on end-of- and out-of-contract notifications, but Ofcom must ensure this change is properly tested so that it has the desired effect.
- Which? has long been calling for a Gaining Provider Led switching system in telecoms. Eliminating the unnecessary barrier of consumers having to engage with their current supplier to switch might encourage more people to switch and may encourage companies to put more effort into retaining customers throughout their journey, rather than just at the end.

Broadband[2]

- More than half of the TV and broadband bundle customers we surveyed in July 2018 had never switched. Three quarters of customers are paying more than £50 a month for their bundle, and a fifth of Sky/Virgin customers are paying more than £100 a month. The most expensive introductory offer available was just £40 a month.[3]

[1] https://www.which.co.uk/campaigns/mobile-phone-deals/know-the-issue/, https://www.which.co.uk/policy/utilities/3076/telecoms-consultation-responses, https://www.ofcom.org.uk/__data/assets/pdf_file/0025/91834/mobile_switching_quantitative_research_feb16.pdf

[2] Which? Money magazine September 2018, October 2018

[3] https://www.which.co.uk/news/2018/09/over-a-quarter-of-sky-customers-pay-more-than-100-per month-for-tv-broadband/

- Our survey found that just 14% of people who had switched found the process difficult. This suggests that in this market, there are other factors at play that result in new customers paying significantly less than those who have been with the same company for longer. This could simply be that the company attracts new customers with special offers, and then those customers are happy to stay with the company because they feel they offer something exceptional (faster speeds, better pay-TV options) and are happy to pay more for the service.

- However, our survey also showed that customers who haggle over the price of a broadband only or broadband and pay-TV package saved an average of £120 and £216 a year respectively - and around 90% of customers who haggled received some discount, incentive or better deal. This may indicate that customers who do not haggle believe they are on the most competitive rate and that companies are exploiting this. This is an area that the CMA/Ofcom should look into to determine if intervention is required.

Current Accounts[4]

- The significant consumer detriment arising from unarranged overdrafts is another example of essential markets not working for all consumers. Overdrafts can provide a potential means for consumers to make up what would otherwise be a shortfall of funds, alongside other potential sources of emergency funds, such as payday loans.
- However, as we have highlighted in our longstanding campaign, excessively high unarranged overdraft fees and charges cause significant consumer detriment to a group of consumers who are clearly identifiable as being financially vulnerable.
- Interventions in this area to date (such as the Monthly Maximum Charge) are insufficient to protect vulnerable consumers. Which? research has shown that some unarranged overdraft fees are almost 7.5 times higher than payday loan fees.
- Which? has previously called on the Financial Conduct Authority (FCA) to ensure the prices of arranged and unarranged overdrafts are aligned, with any differences limited to significant and reasonable differences in the cost of providing the credit.
- Banks would still set their own charge caps, but would be prevented from targeting the most disengaged and financially vulnerable customers, who are least likely to switch, with disproportionately high punitive charges.
- We are also supportive of all three of the FCA's proposed options to simplify prices for overdrafts: banning fees, requiring a single interest rate, and requiring a representative annual percentage rate (APR) to be shown for arranged overdrafts. The FCA should, in addition, require an APR to be shown for unarranged overdrafts if this is different from the corresponding arranged overdraft rate. And the FCA should consider extending its proposed ban of fees to include refused payment fees, subject to a review of actual costs.
- The FCA originally said it would be looking to consult on remedies in Spring 2018, however, this has now been pushed back to the end of this year, meaning that any remedies will only be implemented in mid-2019 at the earliest.
- This lack of action is in strong contrast to their work on payday loans several years ago, where the regulator introduced a price cap. In light of such strong evidence, the FCA must act now to crack down on exorbitant fees.

[4] Which? Consultation Response *High-cost Credit Review: Overdrafts* August 2018

Savings accounts[5]

- Which? has previously campaigned to 'Scrap the Savings Trap' to put an end to consumers being dumped into poor value saving accounts and ISAs at the end of fixed terms as firms take advantage of consumer inertia to reduce interest rates. Rates continue to fall the longer the account is held and the FCA has identified price obfuscation as a driver of harm.[6]
- In July 2014 we estimated there to be a difference of £4.3bn a year between the interest currently being paid to UK savers in instant access and notice savings accounts and Cash ISAs compared with the interest they would earn in an equivalent Best Rate account.
- Following its 'Cash Savings Market Study' in 2015, the FCA implemented demand side remedies, but has since decided that these have been an insufficient remedy. The FCA is now consulting on a Basic Savings Rate that will reduce price discrimination by account age and Which? welcomes this willingness to take regulatory action where demand-side remedies have proven ineffective while noting the time it has taken to

address the harm.

Mortgages[7]

- A recent Which? survey has found that one in three (33%) homeowners with a mortgage do not know what rate they are on, and four in ten (41%) of those on a standard variable rate (SVR) mortgage said they would be unlikely to switch even if they came across a cheaper deal.
- The survey also found that borrowers with an average-priced home could end up paying as much as £347 a month (over £4000 per year) more if they lapse onto their lender's SVR - with costs rising to potentially more than £720 per month - over £8500 per year for those in London.
- We have asked the FCA to undertake further work to understand the characteristics of those mortgage holders who could potentially switch, but do not do so, and to design and test potential remedies tailored to these different groups of consumers.

Insurance[8]

- In home insurance, Which? research has found that the longer customers have owned their policy, the greater the disparity between what they pay and what a new customer with the same cover would pay. On average, people who had been with their insurer for more than a year paid £75 more than new customers for combined policies.
- In addition, we found that one in six (16%) of those aged over 75 in our survey had the same policy for more than 10 years, compared to just 5% if those under 45. This

[5]https://www.which.co.uk/policy/money, Which? *The Savings Trap* July 2014, Which? Consultation Response *Cash Saving Remedies* October 2015

[6]https://www.fca.org.uk/publications/discussion-papers/dp18-6-price-discrimination-cash-savings market

[7] Which? online, available from 13 October 2018, https://www.which.co.uk/policy/money/3123/the fcas-mortgages-market-study

[8] Which? Money magazine September 2018, https://www.which.co.uk/news/2017/12/which-research reveals-loyal-customers-being-ripped-off/, https://press.which.co.uk/whichpressreleases/loyal-home insurance-customers-exploited-with-excessive-premiums/

suggests that people who are older (and potentially more vulnerable and less able to compare policies online) are more affected by price discrimination in this area.
- A case study in our September 2018 Money magazine highlighted that some companies offer discounts on home insurance, but only if the customer specifically asks (or haggles) for this.
- The Association of British Insurers (ABI) and the British Insurance Brokers Association (BIBA) have committed to publishing a report on the issue of existing home insurance customers being overcharged at the expense of new customers in two years time. Which? feels that this time frame is too lengthy for an issue that is already costing consumers, that more could be done sooner to ensure that consumers are not being exploited, and that price discrimination is disproportionately affecting vulnerable consumers. This has been a recognised and persistent problem over the past few years and we note that industry is taking too long to address the harm consumers are suffering.

Energy[9]

- Which? research shows consumers could save up to £378 a year by switching from the most expensive Big Six default tariff to the cheapest on the market. While the price cap is estimated to help many consumers on the most expensive tariff, we remain concerned about the unintended consequence of this intervention and note it is time-limited.
- Ofgem's latest State of the Market report shows that many consumers in vulnerable circumstances are still likely to be paying over the odds for their energy.
- Ofgem's recent collective switching trials showed promising results at reaching disengaged consumers, and we are pleased these trials will continue. We have

also suggested that Ofgem carry out behavioural research on renaming default tariffs to make it clearer to customers when they could be on a more competitive rate.

- Alongside these trials, unnecessary barriers to switching must also continue to be addressed, such as automatic compensation when things go wrong and next-day switching. Ofgem has been aware of these barriers for many years now and must take all reasonable steps to ensure they are addressed as quickly as possible.
- We are working with Ofgem and BEIS on the implementation of midata. This could help address some of the barriers to switching, as well as encourage new business models that make it easier for consumers to engage in the energy sector.

Conclusion

It is clear that in some sectors there is a history of companies treating consumers unfairly and that the interventions to date have not fully addressed the underlying issues.

In mobile, the example of continuing to charge consumers for handsets even after they have been paid off shows that companies in this sector do not have a good track record in treating their customers fairly.

In broadband there may be a case for some price differential between new and existing

[9]https://www.which.co.uk/policy/utilities/3054/energy-consultation-responses,
https://campaigns.which.co.uk/fair-energy-prices/, https://www.which.co.uk/news/2017/12/which
research-reveals-loyal-customers-being-ripped-off/

customers; however, the discounts offered after a customer haggles suggests that the least engaged, and potentially more vulnerable customers, are subsidising more active consumers.

There continues to be severe detriment for customers using unarranged overdrafts, meaning that further intervention in the banking sector is warranted. Like in the mobile sector, banks do not have a good track record at treating their customers fairly.

For mortgages, our evidence shows that engagement is low enough that consumers are missing out on better deals, but we do not have evidence as to whether this is due to apathy or structural barriers.

In insurance, it is promising that the ABI and BIBA are looking into price differential issues, but more needs to be done sooner to examine potentially unfair pricing practices. In particular, the CMA should consider whether haggling is a desirable feature of this and other markets.

Additionally, there are still unnecessary barriers to switching in many sectors and these should be corrected as soon as possible.

Which? supports further investigation of these issues and calls on the CMA to ensure that the issues highlighted in this submission are addressed swiftly. Many issues will need to be addressed through a sector-specific lens, but a cross-sectoral approach to sharing the lessons learned from demand-side remedies, removing barriers to switching, and other forms of best practice would be beneficial. Additionally, the CMA should look at whether or not it is the same group of consumers being affected across different markets. This would strengthen the case for a cross-sectoral approach.

About Which?

Which? is the largest consumer organisation in the UK with more than 1.3 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers. We are funded solely by our commercial ventures and receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Caroline Normand, Director of Policy, Which?, 2 Marylebone Road, London NW1 4DF Caroline.Normand@which.co.uk 020 7770 7534