Ofgem's collective switching trial and possible application in New Zealand

Stephen Littlechild•

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1. New Zealand's Electricity Price Review (EPR) *Options Paper* (18 February 2019) suggests as Option C6 the possibility of helping non-switching customers to find better deals by means of a regulatory facilitated bulk switching deal. It says that this scheme could be modelled on a recent trial by Ofgem in the UK, involving 50,000 customers, in which 22.4% of them subsequently switched and saved an average of £298.
2. The purpose of this paper is twofold. First, to explain in a little more detail what Ofgem has been doing in the way of such trials, and why it has adopted this policy. Second, to reflect on this approach and its pros and cons and possible application in New Zealand. The paper does not seek to argue for or against this approach, but rather to highlight some factors that would need consideration in deciding whether and how to apply it.

Opt-in or opt-out deals?

3. First a clarification. The EPR describes its proposal as follows. "The Electricity Authority or a contracted agent would negotiate a bulk deal for consumers who had not switched retailers for many years. Consumers could evaluate the savings of such a deal and opt out if they didn't want to switch." But is this really intended to be an opt-out deal? Or an opt-in deal?
4. Annex One to the present paper reproduces the section of the EPR paper that discusses Option C6. The EPR says that "Such a scheme could be modelled on a recent trial in Britain – a suggestion raised by distributor Vector."
5. This suggestion is in a report by Axiom Economics attached to Vector's submission. Axiom says that disengaged customers could be presented with an alternative offer, and this option could be on either an opt-in or opt-out basis. Axiom's discussion is under the heading "Auctions for passive customers". Ofgem's collective switching trial is used to substantiate the claim that "The concept of auctioning electricity retail customers is neither new nor unprecedented."
6. This could be misinterpreted. Ofgem's collective switching trial did indeed involve an auction carried out *for the potential benefit of* passive customers, if they opted to take advantage of it. But it did not involve auctioning electricity retail customers themselves, as would be the case with an opt-out deal.
7. For the Ofgem trial in question, customers were advised individually that the trial would take place and were given the option not to receive further details if they did not wish to learn more. Only 0.1% of customers opted out at this stage. Subsequently, for those customers that did not opt out of receiving details, the actual switching was on an opt-in basis. Eventually, 22.4% of customers either opted-in to accept this deal or actively chose another tariff available in the market or actively chose another tariff with their existing supplier. The remaining 77.6% of customers stayed on their existing tariff with their existing supplier.
8. Thus, the Ofgem trial did not involve customers opting out if they didn't want to switch. Rather, customers could opt out if they didn't want to receive details of switching. They had to opt-in to switch. As explained below, the CMA Energy Market Investigation that

• Emeritus Professor, University of Birmingham, and Fellow, Judge Business School, University of Cambridge. Research on this paper was supported by Meridian Energy of New Zealand, which has submitted the paper to the ongoing New Zealand Electricity Price Review.

recommended Ofgem take action did consider and explicitly rejected an opt-out collective switch, although it was silent on opt-in collective switching.

9. It is assumed in this paper that the EPR wishes to consider an opt-in switch along the lines of the Ofgem trial.
10. If the EPR nevertheless does wish to consider an opt-out switch, such switches have not been trialled in the UK energy sector. However, there is experience in the US, particularly in the state of Ohio, which has been studied.[1] Providing permission has been granted, municipalities there can negotiate collective deals with competing suppliers, and a residential customer in such municipalities is then automatically supplied on the negotiated terms unless that customer opts out. In practice, over 90% of customers typically accept the negotiated deal and under 10% opt out.
11. However – and it is a significant however – municipal aggregation with opt-out switching is only allowed in municipalities that have previously put this proposal to electors in a primary or general election, and have received majority support for it. As of 2006, for example, 207 out of 1054 communities in Ohio had voted to pursue municipal aggregation. A few other US states have pursued municipal aggregation, notably Illinois, but the majority of states have not done so.
12. Opt-out negotiated deals are obviously more significant than opt-in deals, in a number of respects. (In particular, the majority of customers tend to accept the fall-back position rather than actively opting in or out.) The present paper does not discuss opt-out negotiated deals (except in the sense that some of the trials enabled customers to opt-out of receiving further information about available deals).

I OFGEM'S TRIALS AND RELATED POLICY

Origins in the CMA analysis and recommendations

13. Ofgem's policy is largely inspired by the CMA Energy Market Investigation, *Final Report*, 24 June 2016. This described what the CMA diagnosed as a problem of weak customer response in the domestic (residential) market. The CMA concluded that, for various reasons, not all customers were sufficiently engaged in the market to enable effective competition. In particular, not enough of them considered switching supplier. The CMA's aim was to increase customer engagement. It had two remedies particularly relevant to the present paper, namely *(1)* the establishment by Ofgem of a programme to provide customers – directly or through their own suppliers – with information to prompt them to engage; and *(2)* creating an Ofgem-controlled database of 'disengaged customers' on default tariffs, which could be made available to rival suppliers so that they could prompt these customers to engage in the retail energy markets. [2]

[1] Stephen Littlechild, "Municipal aggregation and retail competition in the Ohio energy sector", *Journal of Regulatory Economics*, 34, 2008, pp 164-194. See also David Deller et al, *Collective Switching and possible uses of a disengaged customer database*, CCP and University of East Anglia, August 2017 (a report commissioned by Ofgem), esp s 3.3 on US experience.

[2] The CMA also had some additional remedies for the retail market. It recommended substantial withdrawal and/or modification of Ofgem's "simple tariffs" restrictions, greater ability of Third Party Intermediaries to promote customer engagement, greater use of principles rather than prescriptive rules in addressing supplier behaviour, and a cap on Prepayment Meter (PPM) tariffs because of particular obstacles to competition associated with metering. Ofgem implemented that cap and then extended it to other (vulnerable) customers.

14. The CMA discussed the nature and implementation of these remedies in considerable detail. It placed emphasis on trials to see what worked and what didn't work. As regards the provision of information by suppliers, the CMA recommended that Ofgem "*(a)* establish an ongoing programme to identify, test (through randomised controlled trials (RCTs), where appropriate) and implement (for example, through appropriate changes to standard licence conditions) measures to provide domestic customers with different or additional information with the aim of promoting engagement in the domestic retail energy markets; and *(b)* introduce (following a consultation) a licence condition to require suppliers to participate in the Ofgem-led programme." (CMA *Final Report*, June 2016, para 13.20)
15. The CMA also recommended that Ofgem test aspects of the marketing communications by rival suppliers (e.g. as to form and frequency) in the context of the database remedy.

Database remedy

16. Following the CMA *Final Report*, on 3 August 2016 Ofgem published for consultation its proposed Implementation Strategy. On 9 November 2016 Ofgem confirmed its *Remedies Implementation Plan*.[3] On 30 January 2017 it introduced a new licence condition SLC 32A: Power to direct suppliers to test consumer engagement measures.[4]
17. Taking first the database remedy, the *Remedies Implementation Plan* proposed to "design, test and deliver a secure database service by April 2018". There were to be three phases: Alpha phase by February 2017, Private Beta phase by August 2017 and Public Beta phase by April 2018, with fully tested working service ready for national go-live in April 2018.
18. In July 2017 Ofgem announced a deferral of the Database target roll-out date until later in 2018.
19. On 13 November 2017 Ofgem asked suppliers to be ready to transfer data to it by April 2018. It planned to issue a Notice of Direction to large suppliers with over 250,000 customers on default tariffs for more than 3 years.[5] The aim was to provide adequate notice because this would entail "a significant data cleanse process for large suppliers". Ofgem was considering extending the Notice to smaller suppliers in summer 2018.
20. In October 2018 Ofgem is cited as planning "to publish the Directions relating to the implementation of the Disengaged Energy Customer Database before December 2018".[6] In the event, these Directions were not published in 2018, or to date in 2019. As of mid-March 2019 there seems to have been no further announcement about the Database.

The Government later required Ofgem to put in place a cap on Standard Variable Tariffs (SVTs) and default tariffs.

[3] https://www.ofgem.gov.uk/system/files/docs/2016/11/cma_remedies_implementation_plan.pdf

[4] "The scope can be summarised as: • the broad power to direct suppliers to test or evaluate (including via RCTs) any type of consumer engagement measure in a manner and timescale decided by Ofgem; • in the context of trials of consumer engagement measures, the power to direct suppliers to provide information to domestic consumers in a manner and timescale decided by Ofgem; • the power to direct suppliers to produce and submit a plan for conducting trials for engagement measures; • the broad power to direct suppliers not to comply10 with any relevant licence conditions, with or without enforceable requirements to comply with any alternative/replacement obligations relevant to the same subject matter (derogation power); and • the broad power to direct a supplier to provide Ofgem (or any other person) with information about the results of the trial (including underlying data)." (Ofgem Statutory Consultation, 19 October 2016, p 5)

[5] https://www.ofgem.gov.uk/system/files/docs/2017/11/20171113_open_letter_cma_database_remedy.pdf

[6] CMA, *SSE Retail and nPower, a report on the anticipated merger*, 10 October 2018, Appendix B *Customer Engagement*, para 76.

21. I understand that suppliers are required to have formulated the data but have not yet been required to send it to Ofgem. Could the database be made available later in 2019, and used as the basis for a major customer engagement and switching programme following completion of the various trials described below? If so, this would represent a merging of the two separate remedies recommended by the CMA, and the use of the database for a purpose not envisaged by the CMA – indeed, a use about which the CMA expressed reservations? This is discussed further in Section II below.
22. As of today, however, it is unclear whether or when such a database will be established and made available to other suppliers, and if so on what basis.[7] It is also unclear what powers Ofgem has, if any, to use the Database for purposes of large-scale collective switching exercises.

Database Trial

23. In late 2016, Ofgem carried out qualitative panel research looking at how customers might react to a database remedy. On 1 November 2017 it reported on the findings of that research.[8]
24. In late 2016 and early 2017, Ofgem conducted a small-scale Database Trial to test the effectiveness of such a remedy. It published the results on 1 November 2017.[9] The Database trial involved 2,400 customers (1200 from each of two suppliers) who had been on default tariffs (SVTs) with those suppliers for at least three years. Each customer was sent either (a) up to six marketing letters from other suppliers (generally two letters from at most three suppliers), as the CMA had envisaged under the 'Database Remedy'; or (b) one Best Offers Letter (BOL) from Ofgem, presenting three cheaper tariffs to them. There was also a control group that received no letters.
25. Customers (other than the control group) were notified on 23 November 2016 that they could opt out of receiving communications on energy deals. 2% of customers did so. Those who didn't opt out received the Best Offers Letter on 6 January 2017 or suppliers' marketing material throughout January.
26. The trial resulted in an increase in engagement for customers receiving marketing letters or Best Offers Letters: 6.8% of the control group switched supplier or tariff, 13.4% of customers receiving marketing letters from rival suppliers switched supplier or tariff, and 12.1% of customers receiving an Ofgem Best Offers Letter switched.
27. Ofgem noted that, in this trial, switching internally (i.e. to a new tariff with the same supplier) was more common than external switching. For example, in the group receiving marketing letters from suppliers, where 13.4% of customers switched supplier or tariff, 5% switched supplier and 8% switched tariff with their existing supplier. Ofgem conjectured that the letters prompted some customers to look on Price Comparison Websites [PCWs] or call their supplier to negotiate a cheaper tariff.

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[7] Interestingly, although Ofgem at one time highlighted collective switching, both the chairman and the CEO of Ofgem made speeches at Ofgem's Future of Energy Conference on 10 January, and neither of them mentioned the database, or this work programme generally. Nor did the new executive director for consumers and markets, in a keynote speech on 20 November setting out Ofgem's future energy vision. It has been suggested to me (not by Ofgem) that there may be a concern about legal challenge, including on data protection law. (See below)

[8] *Research paper on customer reactions to the database remedy*, at https://www.ofgem.gov.uk/system/files/docs/2017/11/ofgem_consumer_first_panel_wave_one_report_pdf.pdf

[9] Small scale Database trial, Summary of Findings, November 2017, at https://www.ofgem.gov.uk/system/files/docs/2017/11/small_scale_database_trial_slidepack_pdf.pdf

28. Ofgem commented that "Switching rate in the control group (6.75%) was higher than expected, and higher than recent market trends. This may be because of external factors: there was a well-publicised price increase during the trial and also there was a programme on energy prices by Martin Lewis (an influential TV journalist and consumer champion)." Ofgem also noted that "a price increase notification issued by both suppliers during the trial may have also caused subsequent switches".
29. Note that these switching rates refer to switching either supplier or tariff, and more of these customers switched tariff than supplier. Thus, the (nearly) 7% switching rate for the control group comprised about 2% switching supplier and 5% switching tariff with the same supplier. For the other two groups, about 5% switched supplier and 7-8% switched tariff.
30. To put the external switching rates in context, the average annual switching rate in the market as a whole increased gradually from about 16% in 2004 to a high of 20% in 2008, fell gradually to half that level (10%) in late 2013 then increased gradually to about 15% by December 2016 and 20% by December 2018.
31. It is not known what level of switching the control group exhibited over a whole year. The switches in the months immediately preceding and following the trial seem to have amounted to roughly half the level during the trial. In the weeks just before and just after that, switching was negligible. So the rate of external switching (i.e. switching suppliers) was around 3% over that period, and may not have been much above that for the year as a whole. This is not implausible given that these customers had not switched externally for at least three years, possibly much longer.
32. Energy prices had been generally declining from 2014 to end 2016. But on 16 December 2016 EdF announced an 8.4% increase in electricity prices to take effect in March 2017, albeit accompanied by a 5.2% cut in gas prices. It was forecast to be "the first of many" price increases. Then on 3 February 2017 NPower announced a higher increase, which got much media coverage.

> Energy regulator Ofgem has said Npower must "justify" to its customers why it is introducing one of the largest energy price rises for years. The government also said it was "concerned" by the increase, while a former boss of Npower called the rise "shocking". The company will raise standard tariff electricity prices by 15% from 16 March, and gas prices by 4.8%. A typical dual fuel annual bill will rise by an average of 9.8%, or £109. Npower said the changes would only affect about half of its customers. The other half are on fixed-term deals and will see no price rise. The rise in electricity prices is thought to be the largest since 2008, when some suppliers increased charges by up to 19%. Some gas prices went up by a similar amount in 2011. Comparison website Uswitch said the rise for dual fuel was the largest for a big six supplier since 2013.[10]

33. The remaining large suppliers followed suit: Scottish Power on 10 February (effective 31 March), E.On on 7 March (effective 26 April), SSE on 13 March (effective 28 April) and British Gas in August 2017.

Initial trials (CMOL and CYED) of provision of information by suppliers

34. Turning now to the customer engagement programme, the *Remedies Implementation Plan* said that an initial series of randomized control trials would be completed by September 2018, after which Ofgem would "learn lessons and establish forward plan". On 8 June and 2 July 2017 Ofgem gave Notice of Direction to certain suppliers that it intended to carry out a series of

[10] "Npower facing backlash over energy price rises", https://www.bbc.co.uk/news/business-38852517, 3 February 2017

trials, to which end the suppliers would be required "to carry out and refrain from certain activities". Details of these activities have not been published. On 14 August 2017 Ofgem invited thoughts as to how to engage customers and carry out the trials. It also issued guidance on supplier-led trials. A series of trials has since been carried out.

35. A Cheaper Market Offers Letter (CMOL) Trial, with 75,000 customers from each of two large suppliers, was completed in summer 2017 and Ofgem reported results on 24 November 2017.[11] Briefly, this trial found that, when customers were sent a letter from their supplier or from Ofgem, with details of lower offers in the market, an average of 2.9% of customers switched supplier (compared to 1% of the control group that did not receive such a letter).
36. A 'check your energy deal' (CYED) trial took place in August 2017 and Ofgem reported results in February 2018.[12] Over 10,000 customers within the Northampton area were invited to see the three cheapest energy deals available to them based on their energy consumption. Trial customers could then switch by a dedicated CYED website or were given guidance in how to do so. The trial doubled switching rates compared to the control group, from around 2.6% to around 4.8%. Customers who switched after using the CYED service saved an average of £261.

The Collective Switch Trial

37. The Collective Switch Trial cited by EPR was initiated in February 2018.[13] Ofgem reported early findings in August 2018. [14] An extract from Ofgem's summary is reproduced in Annex Two to this paper.
38. Briefly, 50,000 disengaged customers of one large supplier (Scottish Power) were randomly selected. These customers had been on a Standard Variable Tariff with the same supplier for at least three years. On average they had been with their current supplier for six and a half years.
39. All customers in the trial were sent an Announcement letter about the collective switch. These customers could then opt-out of receiving details of the offer. Only about 0.1% of customers opted out from receiving such details.
40. Provided they did not opt out, these customers were sent details of an exclusive tariff negotiated by an Ofgem-appointed independent price comparison service (Energyhelpline). Unlike other switches, customers did not need to enter their existing tariff details in order to have their personal savings from switching calculated. Ofgem required that Energyhelpline be given all the participating customers' consumption data (plus name and address), so that it could thereby compare each customer's expected annual cost under the existing tariff and under any new tariff. (Consistent with standard Ofgem-guided practice, this assumed that tariffs and usage remain unchanged.) Customers received letters showing how much they could save by moving to the collective switch tariff.
41. Customers could contact Energyhelpline online or by phone to discuss any issues, and could also receive information about potential savings from other deals across the market. I understand that Energyhelpline's costs were paid by the suppliers gaining customers, under a deal negotiated by Ofgem.
42. A third and final communication was a reminder letter to all customers.

[11] Cheaper market offers letter trial, at https://www.ofgem.gov.uk/system/files/docs/2017/11/cmol_report_0.pdf
[12] Check your energy deal, Final Findings, November 2018, at https://www.ofgem.gov.uk/system/files/docs/2018/12/cyed_final.pdf
[13] Active choice collective switch, February 2018, at https://www.ofgem.gov.uk/system/files/docs/2017/11/cmol_report_0.pdf
[14] https://www.ofgem.gov.uk/system/files/docs/2018/08/open_letter_collective_switch.v3finalnowm.pdf

43. This trial had more striking results than previous ones. In total, 22.4% of trial participants opted to change their energy tariff. Over a quarter of these were over 75 years of age. This switching rate was over eight times higher than the switching rate of the trial control group of 2.6%.
44. Participants changed their energy tariff in one of four different ways. Customers who switched to the Collective Switch tariff saved on average £261 a year. Customers who stayed with their present supplier but switched to a different (fixed) tariff saved on average £239 per year. The largest savings in the trial were made by customers who undertook an open market tariff search and switched through Energyhelpline, saving on average £352 a year. The average saving over these three modes of switching tariff was £298. A fourth group of customers switched to another supplier without going through Energyhelpline (so-called external direct switches). The average savings made by this group of customers is not yet public.
45. To put these savings in perspective for non-GB readers, the average annual dual fuel bill for an average customer (using 3100 kWh electricity and 12,000kWh gas per year) was a little over £1000 during this period.
46. The proportions of customers switching supplier versus switching tariff with their existing supplier is again important. Ofgem says "Approximately half of the switchers chose the collective switch tariff with another 40% moving to cheaper deals in the open market. Approximately 10% of this group [presumably, the group of switchers] chose another tariff with their existing provider." No information has been provided about the different kinds of switching of the control group.
47. Customers in this trial were contacted in three different ways. One set of customers (one "arm" of the trial) received the offer and reminder from Ofgem. The second arm received the offer from Ofgem and the reminder from the customer's own supplier that participated in the trial. The third arm received both the offer and reminder from the participating supplier. Customer switching rates differed markedly: on average 15.0% in the Ofgem-only arm, 18.5% in the Ofgem-supplier arm, and 26.9% in the supplier-only arm. This suggests that customers place value on evidence of approval or cooperation by their present supplier.

The Active Choice Collective Switch Autumn Trial

48. Ofgem's plans for further trials after the first Collective Switch Trial can be pieced together from information on its website and in the December 2018 High Court judgment described below. It seems that Ofgem originally envisaged "three trials of 100,000 [customers] each with two trials to be before the price cap". This refers to the Government's default tariff cap to be introduced on 1 January 2019. In August 2018 Ofgem announced that it "is planning a larger collective switching trial involving over 200,000 customers later this autumn". There was no reference to the third trial.
49. Then the timing of the two trials was modified. "The change was then to two waves of 100,000 customers to be conducted in the autumn trial, one to be before the price cap and one after. When it became apparent that the price cap level would not be [set?] until at the earliest early November 2018, it was concluded that the first test should be in 2018 before the price cap, and one following the introduction of the price cap in early 2019."[15]

[15] December 2018 High Court judgment (see below) para 43.

50. The first of these next two collective switch trials took place from October 2018 to March 2019. Only brief details are presently available.[16] Ofgem says "we are testing whether we can achieve the same results on a larger scale and with more suppliers".
51. Ofgem continues: "Alongside this, we are also testing the open market comparison service without an exclusive tariff. We want to test how much impact the inclusion of an exclusive tariff has vs an open market search only. Both parts of the trial will show customers the personalised projected savings available to them. The results of the trial will inform our next steps, including our ongoing policy development process, which could include considering how we might bring the benefits of this approach to a wider range of disengaged energy consumers."
52. The results of the Autumn Collective Switch Trial have not yet been announced. Nor are there any details about the "next steps".

II REFLECTIONS ON REGULATORY FACILITATED BULK SWITCHING

Is the CMA analysis persuasive and applicable in New Zealand?

53. Ofgem's policy of facilitating bulk switching is claimed to address what the CMA diagnosed as the problem in the GB retail energy sector. The CMA concluded that weak customer response had an Adverse Effect on Competition, and that this imposed a customer detriment averaging £1.4bn per year (and £2bn in 2015). But is such a detriment plausible?
54. I have elsewhere challenged the CMA's diagnosis.[17] Briefly, there was no evidence that customers were less engaged in energy than in other sectors; the savings allegedly left on the table by disengaged customers depended greatly on what range of options were assumed acceptable to customers (e.g. ability and willingness to change payment method) and were lower for what seem more reasonable assumptions; the calculation of customer detriment used a hypothetical efficient and equilibrium benchmark inconsistent with the CMA's *Guidelines* that preclude using perfect competition as the benchmark; and the detriment calculation largely reflected the higher costs of the larger suppliers (which might have reflected their more onerous obligations and customer profiles relative to smaller suppliers) rather than any finding that they made excessive profits, which is inconsistent with previous practice by the UK competition authority. My critique therefore challenges the claim that GB customers are somehow unwilling to engage and were being taken advantage of, and need to be prompted to be more engaged in the energy market.
55. For New Zealand, a question is whether there is a competition problem in the retail energy sector of the nature and magnitude of the problem that the CMA perceived in GB. The EPR indicates that the situation in New Zealand is not as problematic as the CMA alleged in GB: "evidence shows New Zealand is more competitive than most [countries], including Australia and Britain" (p. 13) and "retail competition is working more effectively here than in Australia and Britain" (p 17). If this is the case, does New Zealand need this particular remedy that Ofgem has adopted?

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[16] https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/how-switch-energy-supplier-and-shop-better-deal/ofgem-disengaged-customer-database

[17] E.g. Stephen Littlechild, "Retail lessons for New Zealand from UK regulation and the CMA's Energy Market Investigation, including a critique of Professor Cave's analysis", 8 October 2018, as submitted to the EPR by Meridian and published with their submission. file:///C:/Users/user/Downloads/meridian-energy-electricity-price-review-first-report-submission.pdf

Are there downsides to the facilitated bulk switching remedy?

56. Ofgem presents facilitated bulk/collective switching as a consequence of the CMA report recommendations. But closer inspection suggests that this was not what the CMA had in mind, and indeed the CMA had reservations about this approach.
57. The CMA recommended that Ofgem "establish an ongoing programme to identify, test (through randomised controlled trials (RCTs), where appropriate) and implement (for example, through appropriate changes to standard licence conditions) measures to provide domestic customers with different or additional information with the aim of promoting engagement in the domestic retail energy markets". The CMA's focus here was on information that a supplier should provide to its own customers about its own tariffs in the normal course of its business.
58. The CMA did not suggest that the supplier should be required to provide information about the tariffs of other suppliers. Indeed, the CMA had earlier indicated why it thought this would be undesirable. It rejected the suggestion that suppliers be required to inform their customers of the cheapest tariff in the market (across all suppliers) on two grounds.

> "140. … First, we were concerned that by forcing energy suppliers to share detailed pricing information, this remedy may weaken competition and encourage or facilitate some form of (tacit) coordination between suppliers. As a result, this remedy could have the opposite effect from that intended, resulting in increased prices for customers. 141. Second, we considered that requiring suppliers to advertise competitors' tariffs would not provide customers with the correct incentives to engage effectively in the market in the longer term, as they could rely on their supplier to conduct a search on their behalf and provide them with the results. This could encourage customers to remain relatively disengaged in the future, undermining our other remedies to facilitate widespread consumer engagement." (CMA, *Notice of Possible Remedies*, 7 July 2015)

59. In contrast, providing information about the tariffs of other suppliers is precisely what Ofgem has required a succession of participating suppliers to do in its various trials.
60. The CMA did recommend that Ofgem test aspects of the marketing communications by rival suppliers (e.g. form and frequency). But this was explicitly in the context of the database remedy (*Final Report* para 13.23). The recommendation was not in the context of the remedy requiring suppliers to provide appropriate information to their own customers.
61. The CMA did not endorse the concept of a collective switch. It did not discuss an opt-in switch but it explicitly rejected a remedy based on an opt-out collective switch, and its arguments to some extent apply to opt-in switches too. Thus, the CMA acknowledged that "143. … the competitive auctioning process should push down prices to the competitive level, realising the benefits of competition without requiring customer engagement", and that such a process would avoid certain problems associated with price regulation. But it had a major reservation.

> "144. However, we concluded that this remedy suffered from several important weaknesses in the context of the GB energy retail market, including: (a) The collective switching of large numbers of accounts at a single point in time could create significant confusion and disruption for customers. In particular, we were concerned that the number of erroneous transfers and delays in transferring customer accounts could increase significantly, resulting in material detriment; and (b) By specifying the type and quality of service to be offered to customers in advance, this type of scheme may limit innovation as energy suppliers are unable to test and refine different products with customers. Overall, we considered that these negative

potential effects meant that this type of remedy would not be effective and proportionate." (CMA *Notice of Possible Remedies* 2015)

62. The CMA does not seem to have envisaged that its two remedies – the provision of information by a customer's own supplier and the provision of the disengaged customer database - should be combined. Yet it seems possible that this is what Ofgem envisages, at least if it is to extend its trials to reach all the customers that the CMA considered to be disengaged.
63. Ofgem's approach to facilitated/bulk collective switching thus seems to be at variance with, or at least goes beyond, what the CMA recommended. This is not necessarily a concern for New Zealand, except insofar as it indicates that a collective switch is by no means a policy option on which GB competition and regulatory authorities deliberated and came to unanimous agreement. This policy option emerged despite, rather than because of, the CMA's recommendations.
64. Since the Energy Market Investigation, the CMA seems to have changed its mind and become more enthusiastic about collective switches.[18] Perhaps it now saw this as the only plausible remedy for the large customer detriment that it had identified
65. A question for New Zealand is therefore how to balance, in the context of the New Zealand market, the potential advantages of collective switching against the reservations that initially led the CMA Energy Market Investigation not to pursue it, viz, the possibilities of encouraging tacit collusion by suppliers, reducing customers' incentives to engage in the market, causing confusion and disruption for customers, and limiting innovation by suppliers.

What are the limits to regulatory involvement and collective switching?

66. Against the CMA's concerns just cited, it might be argued that Ofgem's opt-in trials have not created significant confusion and disruption for customers. But those trials that have so far been reported involved at most 50,000 customers. If 22.4% of those customers accepted the offered deal or another one, that is less than 12,000 customers changing supplier.
67. The Autumn trial involved 100,000 customers. There have been no reports of confusion and disruption associated with it, although the host supplier itself objected to the legality and scale of the trial, as noted below. At the previous switching rate, a trial of that size would mean up to 24,000 customers changing supplier.
68. In the second High Court case (see below), Ofgem referred to the possibility that "a collective switch be rolled out as a steady policy intervention". (para 50) The judgment says that "Ultimately, if there was customer switching and the data were sufficiently rigorous to have confidence in the results, Ofgem would then be able to scale up the intervention to millions of customers." (para 118) The CMA estimated that there were up to 10 million disengaged customers on SVTs that might go on to its proposed database. (CMA *Final Report* para 11.135)
69. How might this scaling up work? Deller et al (2017) have some discussion of such issues when using a database for collective switching. They note that, in the Big Switch exercise, winning supplier Cooperative Energy imposed a limit of 30,000 new customers. Hence they suggest

[18] In the NPower legal challenge to Ofgem (see below), the December 2018 High Court judgment explains that the CMA argued that "where a potentially effective intervention has been identified (such as the collective switching that was the subject of the Scottish Power trial) then the testing of that intervention should progress expeditiously". (para 82) Also, "it is unwarranted and premature to draw the conclusion … that no useful steps towards implementing a collective switching measure such as that tested in the Scottish Power trial could take place now". (para 90).

"Assuming a block size of 25,000 households is reasonable, the initial stock of disengaged consumers would need to be split into 400 blocks." (p 31) They have some discussion of implementation issues, including whether to have frequent or infrequent auctions. Importantly, however, they assume a single offer put to these customers as a result of an auction: they do not provide for assistance by a consumer partner such as Energyhelpline, assisting with switching and explaining other offers on the market. This seems to have been fairly integral to the latest Ofgem collective switch trials, insofar as alternatives to the negotiated collective switch accounted for half of all the stimulated switches.

70. Suppose, instead, that Ofgem were to proceed with a customer partner, but in increments of 100,000 customers as per its latest trial. That would require 100 collective switching exercises. Assuming each one takes about 3 months to run, that would be 4 exercises per year. At that rate, it would take 25 years to approach all 10 million disengaged customers.
71. Could the size of each exercise be increased? This is not obvious: evidence was given in the same High Court case that "it was clear that there was no capacity [on the part of consumer partner Energyhelpline] to deal with a trial of more than 100,000 customers at one time". (para 43) Suppose instead that, say, 5 consumer partners could be appointed to operate simultaneously. (There are 11 Ofgem-accredited price comparison websites, presumably some have to be left to cope with the usual flow of non-collective switching.) That would enable 20 exercises per year, making offers to (5 x 4 x 100,000 =) 2 million customers per year, and transferring approaching half a million of them to a new supplier. It would still take 5 years to get round to all 10 million disengaged customers, transferring perhaps 2 million of them in the process.
72. Does spreading the collective switching program over five years adequately address the concern identified by the CMA and Ofgem? It would mean that only one fifth of the identified disengaged customers were actively approached in the first year. No less than 2 million such customers would remain unapproached for over four years.
73. But once the 10 million (or fewer) disengaged customers have been offered a collective switch, is that the end of the programme? If 22.4% of them switch, what about the 77.6% of them that decline the switch? If the competitiveness of the market depends on most customers being engaged, is it acceptable simply to abandon over three quarters of the initially disengaged customers? Should they not be approached again? And if necessary again and again?
74. Moreover, the definition of a disengaged customer seems to be one that has not switched supplier in the previous three years. This means that each year a whole new cohort of customers is redefined as disengaged, and needs to be approached.
75. The implication seems to be that, once Ofgem has embarked on this path, it must continue to organise collective switches on a very large scale and on a continuing basis. At least, it must do so until there is evidence that customers have changed their nature and/or habits, and have taken to regularly engaging and switching supplier.
76. Is it realistic to think that Ofgem could manage such a large scale and continuing programme? There are reasons to question this. Ofgem has not so far managed to construct and make available the promised database, and is presently nearly a year beyond its own target of April 2018 for doing so. Reasons put to me (not by Ofgem) include objections and changing views on the part of the Information Commissioner's Office (ICO) as well as the management and resourcing of the project at Ofgem.
77. A question for both GB and New Zealand is whether there are reasons to believe that a programme of comparable size and complexity could be managed and achieved without disturbing the smooth running of the present market and switching process? Or would it be

more prudent to target a smaller, more limited and therefore more manageable set of customers?

78. Taking the latter option, one priority might be disengaged customers that are vulnerable in some way, rather than customers that are able and affluent. Another priority might be customers that have not ever switched supplier rather than customers that have not switched in the last three years. On that basis, would it be possible to reduce the GB target customer base from some 10 million to, say, one million? And if it is further assumed that the main aim is to assist vulnerable customers to find a potentially more suitable supplier rather than to change customer behaviour to make them more engaged, that would correspondingly limit the need to repeat the exercise ad infinitum. Although the CMA and Ofgem seem attracted by the latter aim, the EPR seems to have taken a more pragmatic approach that could accommodate the former aim.

Costs and benefits: the Cheaper Energy Together schemes

79. There has been considerable discussion about the benefits of different schemes for encouraging customer switching, but little or no discussion of the costs. One report about some early Government-supported collective switching schemes does contain brief reference to both benefits and costs, and therefore seems worth noting. [19] The schemes are described as follows.

> "Through Cheaper Energy Together, the Department of Energy and Climate Change [DECC] supported the development of innovative collective switching schemes for energy, where consumers group together to negotiate a better deal with their gas and electricity suppliers. … Through the funding we aimed to support a variety of different approaches to test what was effective in engaging with consumers, particularly those who have not switched before and vulnerable households. …. Over the short period that this fund was available between December 2012 and March 2013, schemes succeeded in engaging over 190,000 households with over 21,000 households switching energy suppliers and saving an average of £131 on their bills." (p 5)
>
> "Individual schemes are usually organised by Local Authorities, community and third sector organisations and are often facilitated by a third party who negotiate a tariff with energy suppliers on behalf of the consumers All schemes supported by Cheaper Energy Together were required to have a focus on engaging with vulnerable consumers. Schemes were also asked to propose innovative approaches to collective switching in order to establish an understanding of which approaches were the most successful. Money was awarded to 31 projects, which together covered 94 local councils and eight third sector organisations in Great Britain. Funding was available in the financial year 2012/2013 and was awarded in December 20121. Therefore schemes had a 3 month timescale over which to deliver their projects, which represented a significant challenge." (p 6)

80. There were many interesting findings. For example, the average conversion rate of customers who registered and provided their full details was 11% but the range was 5.5% to 23.1%. There was a higher incidence of switching among direct debit customers than among standard credit or Prepayment Meter customers. Local authorities and third sector organisations were able to use their local knowledge to effectively identify and engage with vulnerable

[19] *Helping Customers Switch, Collective Switching and Beyond*, Department of Energy and Climate Change, 2013, p 5.

consumers, but "this is resource intensive since it often involves face–to-face contact, it takes time to explain schemes fully and assist consumers in finding the right information they need to switch". (p 12) "Most schemes offered additional benefits to consumers through cash-back offers." (p 12) The larger auctions were won by the larger suppliers, the smaller ones by smaller suppliers.

81. There was no formal cost-benefit analysis of these schemes, but it is worth noting the recorded cost of the policy. 21,641 customers are recorded as having switched supplier with expected financial savings averaging £131 per customer, yielding total savings of £2.7 million. DECC funding for this policy was £5 million. In other words, the cost to Government (taxpayers) was nearly twice the savings that these customers achieved.
82. Of course, there are many qualifications: the savings might have continued into later years, other costs might have been involved as well, this was an early experimental programme, the emphasis was on vulnerable customers, and so on. [20] The point here is simply that collective switching schemes have costs as well as benefits. They need to be assessed against other possible ways of engaging and protecting customers.
83. More generally, Amelia Fletcher gives a good recent account of "four overarching categories of engagement intervention", viz pure disclosure (of information), comparison tools (across different products), switching interventions (to enhance consumers' ability to act) and pure attention tools (to get consumers to engage).[21] The lessons she draws are 1) the importance of consumer testing via randomised control trials, 2) the importance of revisiting markets to carry out ex post evaluation of effectiveness, 3) don't blame customers for lack of engagement 4) engagement interventions are unlikely to be a panacea in all markets, given the costs and difficulties involved and the distributional consequences across consumers, 5) "there seems to be a consensus developing across UK regulators that interventions to change the choice architecture facing consumers can be more powerful in improving market outcomes than interventions involving disclosure"[22], and 6) regulators may face a difficult choice between imperfect engagement interventions and more interventionist measures such as price regulation which may weaken the incentive to engage.
84. For present purposes, the main lessons are that collective switching, as an engagement intervention, is unlikely to be a panacea; that it is important to estimate the costs and difficulties involved; and that it is important to estimate the distributional consequences across consumers, particularly via the impact on pricing by suppliers.

The need for trials

85. The EPR suggested that a bulk switching deal in New Zealand could be modelled on Ofgem's Collective Switch trial. This trial followed certain other smaller trials. However, it cannot be assumed that Ofgem has reached a situation where the "best" type of trial has now been identified and widely agreed upon, so that the Electricity Authority (for instance) could immediately proceed to negotiate such a deal.

[20] For further discussion of this and other schemes, see also David Deller et al, *Collective Switching and possible uses of a disengaged customer database*, CCP and University of East Anglia, August 2017 (a report commissioned by Ofgem), pp 12-14.

[21] Amelia Fletcher, "Disclosure and other tools for enhancing consumer engagement and competition", CCP Working Paper 18-13, University of East Anglia, 2018.

[22] "Changing the choice architecture" seems to mean either forcing a choice (e.g. requiring customers to make an active choice of browser instead of automatically accepting Microsoft Internet Browser), or altering the default options (e.g. banning opt-out selling online in the EU).

86. This is not only because Ofgem's subsequent collective switch Autumn Trial is still in process and results have not yet been reported. There are many different potential design factors to consider, and their interactions are not yet fully understood. The results of any trial depend on a variety of considerations that vary from one supplier to another. For example, the Collective Switch trials have been with two large suppliers that have relatively low proportions of long-standing SVT customers: would the responses be the same for large suppliers with relatively high proportions of such customers, suppliers who might argue they have more loyal customers?
87. Are there differences in customer response as between different parts of GB, or in rural versus urban areas? Are there differences by payment method, or by income or other socio-economic characteristics? How far was the customer response influenced by the recent price increases?
88. Changing information during the course of the trial could have an effect, and the extent of this could well be hard to measure. For example, it seems that the initial estimated savings for the various tariffs in the latest (Autumn) collective switch trial were on the basis of tariffs obtaining before the SVT Tariff Cap was set, and before suppliers announced their future prices. The follow-up letter incorporated revised and lower estimated savings assuming that the Tariff Cap would come into place and with revised tariff data. So the final customer response may have been be higher than it would have been had the (lower) estimated post-Tariff Cap savings been used in the initial letter (because the higher projected savings got more customers interested). But by how much is a matter of conjecture.
89. Other consequences of a bulk collective switch are not easily assessed via trials. For example, what impact would it have on prices in the market generally? Many suppliers have looked to their standard variable tariffs to substantially cover their overhead costs while pricing their fixed tariffs to attract new customers. If the switch substantially reduces the number of customers on standard variable tariffs, or reduces the average time they spend on it, suppliers might look to increase those tariffs to cover overhead costs. Also, if low fixed-price tariffs are used to attract new customers, with the prospect of them staying for some years on a higher priced standard variable tariff, then a shorter prospective stay on the standard variable tariffs will make it less attractive for the supplier to offer low fixed price tariffs.[23]
90. Another consequence of large scale bulk collective switches is not easily measured by trials. The more that a regulatory authority intervenes in the market to influence the nature and extent and direction of switching, the more risk and cost this imposes on market participants. This would be reflected in average price levels, and could impact on the willingness to invest and innovate, and on the ability to implement new or established programmes (e.g. for social and environmental purposes).
91. Most importantly, of course, all Ofgem's evidence about the impact of trials relates to GB. How far this carries over to New Zealand remains to be discovered. This means that if the EPR decides to recommend a bulk switching scheme, then the Electricity Authority (or some other agency) will first need to carry out its own substantial programme of trials of the kinds of parameters that Ofgem trialled.
92. New Zealand could with advantage carry out trials more extensively in certain respects. For example, there is scope to relate switch rates to demographic characteristics, consumption levels, and amounts saved. Tracking the behaviour of switchers over time could shed light on whether the availability of collective switches deters customers from subsequent individual

[23] Thus, "enhancing engagement amongst the already engaged can have the effect of increasing the difference between the engagement levels of these two groups. As prices fall for the engaged, the unengaged may see less benefit, no benefit at all or may even see their prices rise". (Fletcher op cit, p 5) For these and other related issues, see also Deller et al (2017) s 5.

engagement because they can get the best tariff without effort, or whether such switches stimulate more individual switching because they demonstrate how easy switching is. This seems rather important: if collective switches tend to discourage customers from individual engagement, when if ever does regulatory involvement in collective switching cease?

Concerns of suppliers

93. Valuable though trials can be, the concerns of those suppliers invited or required to carry them out should not be underestimated. On the one hand there are privacy laws, which would ordinarily preclude suppliers from making available many relevant customer details to other parties. The implications of such laws need to be explored, and perhaps refined. Where necessary assurance needs to be provided that participating suppliers are not breaking these privacy laws and thereby rendering themselves liable to prosecution.
94. On the other hand there are the commercial realities. Such trials are costly to put in place, in terms of information provision to the regulator and its agents, and communication with customers. They are also a commercial threat: the suppliers carrying them out are being asked to cooperate in facilitating the transfer of their customers to rival suppliers. In the Ofgem collective trial cited by the EPR, over one fifth of the customers left the participating supplier. In the High Court action preceding the Autumn Collective Choice Trial with 100,000 customers, it was estimated that NPower's loss of revenue would be about £30 million. At that rate, application of the process to all 10 million customers that the CMA referred to means that the six large suppliers might be expected to facilitate the loss of over two million of their long-standing customers with an aggregate loss of revenue of some £3 billion.
95. Not surprisingly, suppliers have expressed concerns about possible violation of the privacy laws in the UK and also about the size and nature of some of the trials. See for example NPower's legal challenge to Ofgem as summarised in the next section. Any programme of collective choice trials will therefore require careful consideration of the legal position, with respect to both privacy laws and obligations of suppliers. Even more is this the case with respect to the eventual implementation of a full collective choice process itself.

NPower's legal challenge to Ofgem

96. The information about NPower's challenge that has been available on Ofgem's website has been limited, but two High Court judgements now give a fuller picture. Briefly, in terms of the formal steps taken by the parties, on 31 August 2018, Ofgem issued a Direction requiring NPower to participate in a consumer engagement trial known as the Active Choice Collective Switch Autumn Trial. On 14 September 2018 NPower informed the Authority that it did not intend to comply with certain aspects of the Direction and on 20 September 2018 failed to send particular communications to a number of its customers. On 24 September Ofgem issued a Provisional Order requiring NPower to comply. On 2 October NPower applied to the High Court to quash the Provisional Order. Ofgem applied to enforce it. On 5 October the High Court gave its judgment. [24]
97. What were the issues here? On 12 July 2018 Ofgem informed NPower that two suppliers would be chosen from those suppliers with more than 500,000 customers on a standard variable tariff (that is, essentially the Big Six Large suppliers). Each supplier would identify 100,000 eligible customers. NPower initially argued that it should not be chosen because it had volunteered for an earlier trial and was also to be involved in the disengaged customer

[24] https://www.ofgem.gov.uk/system/files/docs/2018/10/gema051018app_NPower_judgement.pdf

database. NPower later accepted that it was fair that it was selected, but it was also concerned about the customer numbers. It considered that 100,000 customers should be viewed as more than a trial and expressed concern that it would suffer a significant financial detriment. It suggested a trial of 10,000 to 30,000 customers.

98. Ofgem explained "To take this option to the next level, we need to understand whether such a service is scalable. To do this we need to understand two things: (1) can call centres deal with the increase in the volume of the customers they will need to interact with; (2) what is the market appetite for bidders on the collective switch auction at larger volumes. Taking that all into consideration, we came to the conclusion that we need to ramp up the numbers to circa 200,000 customers. To limit the impact on the chosen supplier, we took the decision to split that between the two suppliers." (para 6)
99. On 14 September NPower indicated it was not comfortable with 100,000 customers: half that number would be acceptable but it was not willing to proceed with the larger number. Its reasons included that the direction could not be ordered under Standard Licence Condition SLC 32A, that Ofgem had not followed its own guidance, that Ofgem had not considered proportionality at all, in breach of public law, and that Article 1 of the first protocol to the Human Rights Act was engaged.[25]
100. The High Court judgement acknowledged that, "if NPower is required to comply with the Provisional Order then it is a practical certainty that it will suffer some loss, and potentially a significant loss. If the number of customers that choose to switch to an alternative supplier follows the trend in the Scottish Power trial then this is likely to be in the region of £30 million." (Para 20) But the High Court held that some loss was inherent in the concept of a trial.
101. Ofgem's governing body GEMA argued that the matter was urgent. "First, a market-wide cap is due to be introduced in January 2019, but on a temporary basis. While the cap is in place the nature of the market will be fundamentally different so the comparison with a Scottish Power trial would be impossible. GEMA needs to complete this trial before the introduction of the cap so that it has the evidence necessary to make decisions as to whether it should introduce market-wide customer switching provisions as an alternative to the cap in the future. Secondly, the timing of the trial is now at the very end of the possible window, because customer behaviour in the period immediately before Christmas changes (as it was put, switch rates fall in December) so that, again, a like-for-like comparison with the Scottish Power trial is damaged." (Para 28) NPower disputed the urgency and commented that the introduction of the cap as a reason for the trial taking place this autumn was only revealed to them in evidence served in this case. (Para 29) The High Court accepted that the matter was urgent.
102. The Judge commented that " I did canvass in the hearing the possibility that the fact that the cap is about to be introduced is, even now, something which means this trial would be distorted so as not to be a comparable trial with the Scottish Power trial. However, that is something that I am only in the position to speculate about, there being no evidence at all to that effect. It would be wrong for me to rely on such speculation over the considered views of Ofgem as to the worth of the trial that it has put in place." (para 37)
103. On 5 October the High Court issued a judgement requiring NPower to comply with the Order. But that was not the end of the matter. After further legal processes, on 31 October NPower applied for a judicial review to challenge the lawfulness of Ofgem's initial Direction. The

[25] "Article 1 Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

High Court judgement on 21 December 2018 throws further light on the issues and arguments.[26]

104. For example, NPower argued that "The only explanation for Ofgem continuing with the NPower trial in these circumstances is that it is doing so solely or materially for the purpose not of testing anything (more specifically, replicability) but rather to obtain a result: consumer switching. This is clearly beyond the scope of SLC32A – it [presumably SLC 32A] is a measure to trial consumer engagement measures to inform future policy interventions, it [is] not a regulatory tool to achieve a (direct) result." (para 42)
105. NPower also argued that "insofar as the rationale of Ofgem was commercial appetite for suppliers taking on large volumes on Commercial Switches, this fell outside the scope of the scope of the Energy Market Investigation". (para 54)
106. The High Court was not convinced. On 21 December it dismissed NPower's application to quash the Provisional Order and also dismissed the application for judicial review.
107. Nevertheless, similar concerns can be expected to surface in the industry if Ofgem were to decide to "take this option to the next level".

Is switching all about price?

108. The CMA assumption, broadly adopted by Ofgem, is that electricity is a homogeneous commodity and suppliers are essentially identical. On this basis, the level of tariff should be by far the main consideration for customers. The CMA argued that customers do not recognise this: they are not sufficiently engaged and hence need to be prompted to engage more regularly and more intensively. This is both for their own sake - to avoid passing up good opportunities to pay less for energy - and for the sake of others, because effective competition requires engaged customers to keep suppliers on their toes and stop them increasing prices.
109. In practice, the way of measuring and demonstrating this engagement is by the rate at which customers switch suppliers. Hence, lack of switching is a concern, and increase in switching is a measure of success. So, for example, Ofgem says that "The simplified collective switch trial … is the most successful trial Ofgem has completed to date" and "the most successful arm of the trial increased switching rates to 10 times the control group".
110. However, the underlying assumptions here – the view that electricity or energy is a homogeneous product, that customers are or should be primarily driven by price, and that lack of switching and money apparently left on the table indicate lack of engagement, and that the aim should be to increase switching - are increasingly subject to challenge.
111. Deller et al (2017) provide a good review of (mainly) the empirical literature on customer switching.[27] Their paper analyses decisions made by customers in The Big Switch organised by Which? in 2012, at that time the largest collective energy switching exercise conducted in the UK.
112. They find that "a range of non-price factors … are all associated with the switching decision", and that "most of the factors are consistent with consumers making a largely rational decision when choosing not to switch, even if this results in monetary savings being left on the table". Their survey respondent model "manages to predict, overall, more than 80% of the observed

[26] https://www.ofgem.gov.uk/system/files/docs/2018/12/NPower_v_gema_judgment_dated_21_december_2018.pdf

[27] David Deller et al, "Switching energy suppliers: It's not all about the money", Working Paper 17-5. Centre for Competition Policy, University of East Anglia, 2017

[Big Switch] decisions, suggesting that a rational model of consumer behaviour can go quite a long way to explaining why financial rewards alone may fail to induce switching".

113. They conclude that (1) "switching cannot be relied on to put all consumers on the cheapest deal for them"; (2) "consumers do not regard energy as a homogeneous product … [so] forcing consumers to switch to a particular supplier may reduce utility for at least some consumers"; (3) "opt-in collective switching processes …do not deliver a panacea in getting a wide variety of consumers to switch to cheap energy deals"; and (4) "policymakers should lower their expectations about the power of consumer engagement to promote competition".

Are customers choosing tariffs or suppliers? And what about customer loyalty?

114. Broadly consistent with this alternative view is the perception that many customers don't really want to spend time and mental effort engaging in the energy market and are therefore more concerned about the reliability and long-term price level of their supplier than the CMA allowed. Whereas the CMA considered that customers were choosing and changing tariffs, most customers think they are choosing and changing suppliers. Hence for these customers, a key question is whether a new supplier with a lower price today will be better or worse over time than their present supplier, with respect to future price, quality of service, and so on. So even though customers can see the alternative of a lower priced tariff today, can they trust the new and possibly unknown supplier when it comes to the future?
115. Consistent with this, there is evidence from Ofgem's trials and elsewhere that many customers prefer to switch to an established supplier that they recognise.[28]
116. The potential risks associated with low-price but unknown suppliers have become a particularly relevant concern in the UK. They may potentially be relevant in New Zealand. There were over 70 suppliers in the UK last year, most of them completely unknown to most customers and too small to be liable for the social and environmental costs borne by larger suppliers. Some suppliers increased their prices considerably or repeatedly. Some suppliers moved new customers on to much higher standard variable tariffs once their initial low priced fixed tariffs expired.[29] Some suppliers raised their Direct Debit levels significantly, some suddenly introduced higher direct debit levels in winter when consumption was higher. Some suppliers were inundated by complaints, and some were unable to cope with the volume of customers wanting to contact them by phone or online. In some serious cases Ofgem has stepped in to prevent suppliers from taking on new customers until they improve their customer service records. About a dozen of the new and small suppliers have gone bust over the last year, in default to their customers (albeit these customers were bailed out by other customers via Ofgem's procedures).

[28] With respect to Ofgem's Cheaper Market Offers Trial, "81. Ofgem noted that while only 7% of the tariffs on the letters were from the SLEFs [Six Large Energy Suppliers], the SLEFs gained 38% of switchers in the trial. This suggests that SLEFs received a disproportionately high number of switchers given their prices, and may indicate some preference for the SLEFs among customers. However, we note that SLEFs receiving 38% of switchers is broadly consistent with the more general evidence we have received on customer switching patterns (see Appendix H). 82. Ofgem noted that having an offer from a SLEF on the letter was not correlated with customers' propensity to switch, although it noted that some customers value switching to a brand they recognise. It noted that a lack of brand awareness was a barrier to switching to small suppliers for some customers." CMA, *SSE Retail and nPower, a report on the anticipated merger*, 10 October 2018, Appendix B *Customer Engagement*, paras 81-82.

[29] My previous paper submitted to the EPR (see above) gives some examples, many others could be cited.

117. Customers are plausibly concerned about such risks and are therefore more prudent than the CMA allowed. If there are risks, it may well be sensible for a customer not to switch immediately to the supplier that offers the lowest price at one moment in time, but rather to wait and gather more information. And whereas the CMA notes that certain sets of vulnerable customers are less than averagely engaged in the market, this too may be prudent insofar as such customers may be less able to deal with the possible adverse consequences of moving to an unknown supplier. Other customers, with higher incomes and educational levels and owning their own properties, may be better placed to take the risks of exploring unknown suppliers offering lower prices.
118. There is another important question. If customers are approached and encouraged by Ofgem to switch after three years with the same supplier, how does this square with the concept of customer loyalty? What is the point of a supplier trying to provide a consistently attractive product at a consistently good value price, if a regulatory-led policy is going to repeatedly require the supplier to invite and indeed encourage the customer to move to another supplier?
119. The CMA may not have attached much value to customer loyalty. It may have considered that customers of the former incumbent suppliers were simply disengaged rather than loyal. But is there no role at all for customer loyalty in the retail energy market?

Do switching customers get better suppliers – and which are they?

120. It was suggested earlier that the main aim of policy might be to find a better supplier for vulnerable customers rather than to make all customers more engaged in the market. Is there a supplier that they may prefer for reasons of price and/or service? Hitherto Ofgem seems to have taken the first approach whereas the EPR seems to have taken a relatively pragmatic view that would allow the latter approach.
121. If the latter approach is taken, then how in practice to identify better suppliers, that will not simply provide a lower price at the point of switching but that will also satisfy customers better over a period of time? Hitherto, Ofgem or its agents have been identifying customers and inviting and encouraging them to participate in collective switches. Have they been able, or are they able in future, to ensure that these customers end up with a supplier that not only offers a lower price today, but also is a supplier that the customers themselves continue to regard as better than their previous supplier?
122. To date, the main criterion in the Ofgem trials has been price. For example, in the Cheaper Market Offers Letter (CMOL) trial, tariffs had to be selected on the basis of lowest price (measured against customer's consumption in the last year), agnostic of supplier or tariff type.
123. But there are many different kinds of tariff on offer in the market – fixed for one year, eighteen months, two or three years, or of course variable. (Not to mention tariffs that track wholesale prices or offer opportunities to purchase packs of energy at discounted prices.) In the above CMOL trial in summer 2017, there were around 30 different tariffs on the various letters, 9 of which tariffs were variable and 21 were fixed.
124. Then there is quality of service. In the UK there are various measures of customer service (e.g. provided by Citizens Advice, Which?, Trustpilot and by the various Price Comparison Websites). They all differ to some degree. I have elsewhere proposed using an Overall Customer Service score that is an average of the first three of these measures.[30] Of course,

[30] Stephen Littlechild, "Savings available in the retail energy market and the Overall Customer Service score", University of Cambridge Energy Policy Research Group, at https://www.eprg.group.cam.ac.uk/wp-content/uploads/2019/02/S.-Littlechild_12-Feb-2019.pdf

what is considered as important or as good service may differ from one customer to another. And supplier prices and reputations can change over time, quite rapidly in some cases.

125. It is therefore not simply a question of picking the lowest bidder for a homogenous product. Someone, either the regulator or its agent appointed to implement a Collective Switch approach, is put in the position of (directly or indirectly) deciding what type and level of tariff customers should be offered and with what quality of supplier. The process thereby necessarily favours some suppliers relative to others.
126. Has there been any attempt in the Ofgem trials to ensure that the customers invited to switch did not land up with unsatisfactory suppliers? Or were they invited to switch to suppliers that were perhaps not competent or that later increased their prices or had high standard variable prices relative to their low fixed price tariffs, or were not likely to go out of business, or had good rather than poor customer service records?
127. On the basis of published information, the initial CMOL Trial and the Check Your Energy Deal are not said to have put particular obligations on the two participant companies to ensure that the offers placed before customers were from "better" suppliers as opposed to lower priced suppliers. This is not to say that no steps were taken: In the CMOL Trial, offers had to be from suppliers that had completed Controlled Market Entry.[31] But this is pretty minimal. Non-price considerations do not seem to have been identified as relevant or appropriate.
128. The Collective Switch trial reflected more awareness of customer service issues. "When selecting the collective switch tariff, Ofgem required Energyhelpline to choose a supplier that had a customer service rating of a least three out of five stars (according to Energyhelpline's ranking system)." In addition, "Energyhelpline also provided customer service ratings. This is important as customers should compare suppliers on their customer service performance as well as on the price of tariffs".
129. The above are all considerations to take into account ex ante, when a customer is deciding whether to switch and to which other supplier. What about ex post evidence on how well customers were satisfied with their new supplier?
130. None of the trials to date has provided any evidence of actual achieved savings as opposed to projected savings, nor of relative tariff levels after, say, one year, nor of customer opinions on customer service and other matters. I understand that some form of ex post assessment may be in process for some of these trials, but no information is available at present.
131. In at least one case non-price considerations subsequently surfaced as significant. Extra Energy was a supplier launched in the UK in 2014. It was then said to offer the best buy in the market and was soon reported to be taking over one third of all customers who switched energy supplier. In February 2016 it was chosen by the Sun newspaper as its Partner Provider for its People Power deal, said to save customers switching from a Big Six supplier an average of £358. But also in first quarter 2016 it reached what Citizens Advice said was "the highest complaints ratio ever recorded" in the five years of compiling complaints data league tables. Following concerns raised by Citizens Advice and The Ombudsman, in July 2016 Ofgem opened an investigation into whether Extra Energy broke rules relating to billing, customer service and complaint handling.
132. In May 2017, with these questions as yet unanswered, Extra Energy's tariff was one of three offered to customers in one of the letters sent to participants in one of the CMOL trials. Presumably some customers switched to it. In November 2018 Extra Energy ceased trading

[31]Controlled Market Entry is a probationary period during which the energy supplier must prove (to the industry body Gemserve) that it has in place the appropriate systems and processes to deal with the complexities of the market and that it is able to operate without disruption to other market participants.

(with over 100,000 customers). Ofgem revoked Extra Energy's licence and closed its own investigation, which had not then been completed, while indicating the extent of its previous concerns.[32]

133. If collective switch trials are the forerunner of a policy to influence the actions of a significant proportion of customers (up to 10 million disengaged customers in GB) and in turn to influence the pricing policies of competitive suppliers generally (to reduce tariff differentials), and if this might be a policy continuing over time, as long as not enough customers are sufficiently engaged in the market, then the possibility that the regulatory authority might be inviting or encouraging customers to switch to inappropriate suppliers becomes a more serious matter.

Concluding thoughts

134. This paper has sought to describe and explain Ofgem's present policy of regulatory-led collective (or bulk) switching, and to note some concerns and implications associated with it. The latest trial for which results are available suggests a significant (over 20%) response by disengaged customers to the collective tariff offered, and an average annual saving of £261 via that tariff. This was just after a widespread increase in tariffs, so customers were particularly sensitive (and arguably incensed!) at the time. Nonetheless, this seems to suggest that regulatory-facilitated collective switching could make significant savings for disengaged customers. It could also familiarise them with the process of changing supplier, even if it did not persuade them to become more engaged over the longer term.
135. There are, however, some reservations. First, the policy has been driven by Ofgem in response to the CMA's analysis and remedies. Even setting aside my own concerns about the validity of the CMA's analysis, there is a question whether energy markets in other jurisdictions are characterised by the same degree of problem as the CMA identified in the UK. The EPR seems to think this is not the case in New Zealand.
136. Second, the CMA was concerned that requiring suppliers to advertise competitors' tariffs could encourage customers to remain disengaged in future. Moreover, collective switching of large numbers of accounts could cause confusion and disruption for customers and could limit innovation by suppliers.
137. Third, there seem to be practical limits to collective switching. Is it actually feasible to offer collective switching to all the customers for whom this might be recommended? The burdens on regulatory agencies and on suppliers need to be considered. (To date, Ofgem's Disengaged Customer Database is not yet operational.) Also important is whether this is a one-off project or a continuing exercise. If it starts, when does it stop?
138. Fourth, the costs and benefits of such a policy need consideration. In the UK, the Cheaper Together policy of encouraging collective switching schemes cost nearly twice as much as the benefits secured from switching. More generally, collective switching schemes are unlikely to be a panacea.
139. Fifth, it is important to engage in trials before committing to a policy of collective switching. There is now some evidence from GB but how far this carries over to New Zealand remains to be discovered. And there are several respects in which GB evidence is lacking – for example, whether collective switching encourages or discourages subsequent individual switching.

[32] "We were investigating whether Extra [Energy] breached numerous licence conditions and Consumer Complaints Handling Standards relating to treating customers fairly, frequency of billing, timely provision of final bills, provision of annual statements, return of credit balances, handling meter readings appropriately, transfer blocking, and complaints and call handling." (Ofgem website)

140. Sixth, suppliers have legitimate concerns about collective switching. There are obvious concerns about violation of data privacy laws. Also, trials are costly, and require suppliers to invite their customers to leave. The latest (Autumn 2018) trial was estimated to cost the supplier £30 million in lost revenues. There has been one legal challenge to the trials, and other challenges to the implementation of policy cannot be ruled out.
141. Seventh, it might be assumed that energy and the suppliers are homogenous, so that switching is only about price. In the economics literature there are increasing challenges to this view. An analysis of the Big Switch in GB concludes that consumers do not regard energy as a homogenous product and that opt-in collective switching processes do not deliver a panacea.
142. Eighth, customers think they are choosing suppliers, not tariffs. Given the very different reputations of suppliers, customers may be more prudent than the CMA realised. Reputation and customer loyalty are important. A regulator facilitating the transfer of customers to another supplier would need to consider, in addition, the quality of service, reputation, and likely future prices that would be charged by this supplier.
143. Ninth, if customers value service and good performance over time, how is this best identified? There is limited evidence in the GB trials to date that this was a consideration in proposing alternative suppliers. In one case a proposed supplier had the highest complaints ratio ever recorded, and went out of business some 18 months after being put forward in an Ofgem trial.
144. Tenth, the impact on the market needs to be considered. For example, such a large scale transfer of a particular type of customers would likely have an impact on prices in the market. For some suppliers, fewer customers on standard variable tariffs could increase the level of those tariffs necessary to cover total costs, and a shorter duration of stay could reduce the viability of offering lower prices to attract new customers. How to reconcile facilitating large-scale collective switches for disengaged customers with encouraging customer loyalty to high quality and trusted suppliers? Bulk collective switches could favour suppliers able to absorb large quantities of customers at the expense of smaller or newer suppliers that are not able.
145. In sum, regulatory-facilitated bulk switching may sound attractive at first. And it can help some customers to find a preferred supplier. But is it a one-off remedy or a policy that never ends? There are some potentially important legal, organisational and economic issues that need further consideration if it is to be successfully implemented, both in GB and in New Zealand.

Annex 1
Extract from Electricity Price Review, *Options Paper*, 18 February 2019, pp 16-17

C6: Help non-switching consumers find better deals

The Electricity Authority or a contracted agent would negotiate a bulk deal for consumers who had not switched retailers for many years. Consumers could evaluate the savings of such a deal and opt out if they didn't want to switch. The Authority would need the power to require retailers to hand over information about long-term customers.

In New Zealand, between 400,000 and 750,000 households have never switched retailers since 2002 (when records began).(86) Some would have shopped around but not gone any further, or would have started to switch but accepted a win-back offer.(87) The high numbers strongly suggest many have never shopped around, despite efforts to simplify the switching process and campaigns to help consumers seek out better prices.

Such a scheme could be modelled on a recent trial in Britain – a suggestion raised by distributor Vector.(88) In early 2018, 50,000 British consumers took part in the pilot project, all of whom had not switched retailer for at least three years.(89) The British electricity regulator contracted a "consumer partner" to negotiate a bulk deal on behalf of the group, and to provide advice on alternative offers and savings by phone, email and internet.(90) In the trial, 22.4 per cent of consumers have switched, more than eight times the rate of a control group. These consumers saved an average of £298.(91) Almost a quarter of those who switched were over 75.(92) Only 0.1 per cent opted out of the trial, demonstrating that very few consumers are not interested in better power prices. Encouraged by these results, the regulator launched two larger trials in late 2018.

Based on the success of the British trial, we consider a similar scheme would help the same consumers here to get better deals.

We favour this option.

86 This is equivalent to between 23 per cent and 42 per cent of all residential consumers. First report, pg36.
87 Some of these consumers will also have benefited from a retention offer without switching retailer. First report, pg36.
88 Axiom Economics report, pp30-31, attached to Vector submission.
89 Consumers could switch to the collectively negotiated offer, or other competitive offers. See Ofgem's *Active Choice Collective Switch*, February 2018.
90 These included the collective switch tariffs and other offers in the market.
91 The report by the regulator Ofgem does not specify over what period the saving was made, or what percentage of a typical bill
it represented. But regardless, it is a not an insubstantial amount.
92 See Ofgem's *Active Choice Collective Switch Headline Results*, August 2018.

Annex Two

Extract from Active Choice Collective Switch Trial: Early Findings, Ofgem 20 August 2018

Collective Switch Trial Design

This Collective Switch was designed for customers who find it difficult or do not feel confident enough to navigate the complex range of tariffs available in the open market. It was designed to give a 'helping hand' and provide them with an exclusive tariff negotiated for them by an Ofgem appointed independent price comparison service, Energyhelpline. Ofgem also required Energyhelpline to consider customer service when selecting the winning collective switch tariff to offer customers. Around 50,000 disengaged customers were randomly selected to be in the trial.

Unlike other switches, customers did not need to enter their existing tariff details in order to have their personal savings from switching calculated. If a customer did not exercise their right to 'opt-out', they received letters showing how much they could save by moving to the collective switch tariff. Customers who contacted Energyhelpline online or by phone also received information about potential savings from deals across the market. They could then make an informed choice about whether or not to start a switch.

Trial Findings

Early findings indicate that the trial had a clear and substantial impact. Key points include:

- 22.4% of trial participants switched their energy deal;
- Almost a quarter of those who chose to switch via Energyhelpline were over 75 years of age;
- Phone switching was more popular than online; 71% of switches via Energyhelpline happened on the phone;
- Customers saved an average of around £300 a year ; and
- Total savings made by customers were approximately £3.3 million.

Switching rates

This is the highest switching rate achieved in our consumer engagement trials to date. This outcome is particularly impressive given that this group were amongst the most disengaged of energy consumers. On average, customers had been on a Standard Variable Tariff for six and a half years. The overall switching rate was over eight times higher than the switching rate of the trial control group of 2.6%.

The indications are that vulnerable customers also responded strongly. Customers on the Priority Services Register were almost as likely to switch their energy deal as anyone else, at 21.1%. Of the switches made through Energyhelpline, 24% were by participants over 75 years of age, with the oldest switcher aged over 100.

Customers switched to a range of tariffs through various routes. Approximately half of the switchers chose the collective switch tariff with another 40% moving to cheaper deals in the open market. Approximately 10% of this group chose another tariff with their existing provider.

Average savings

Customers saved an average of around £300 a year. The largest savings in the trial were made by participants who undertook an open market tariff search through Energyhelpline, saving £352 a year. On average customers who switched to the Collective Switch tariff saved £261 a year.

Trial features

We believe a number of key features led to these encouraging results:

- The trial offered customers a choice of routes to switch: giving customers the option to discuss their options with a person is likely to have helped with customer confidence about switching. The phone also provides a route to engage for the sizable group of disengaged customers who are not online, or only go online occasionally.

- Being able to switch via an intermediary rather than having to deal with suppliers directly was viewed positively. The lack of confidence that many disengaged consumers express about comparing and switching suggested that they might be more comfortable speaking to an intermediary, especially if they had queries or concerns. Switching levels were considerably higher than in previous trials where customers were advised to contact the supplier directly. Energyhelpline also provided customer service ratings. This is important as customers should compare suppliers on their customer service performance as well as on the price of tariffs.

- The trial was designed to take the hassle out of switching for disengaged customers. Customers received accurate savings calculations based on their own consumption information. Not only were they presented with an alternative tariff from a recognised energy provider, but the results show that it empowered consumers to investigate other options in the market.

- We gave customers the option to exercise their right to ‘opt out’ of participating in the trial and these were low at 0.1% of the eligible trial population.