Disclosure and Other Tools for Enhancing Consumer Engagement and Competition

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CCP Working Paper 18-13

Abstract

Finding ways to get consumers engaged in markets is a major current topic of debate. This article examines the important role consumer engagement plays in driving effective competition in markets. It then considers some key categories of intervention which can enhance consumer engagement, with a focus on the various roles that disclosure can play. Recent examples are provided from the UK, where many such engagement measures have been implemented. The article emphasises the importance, when policy-makers are designing such interventions, of understanding how real consumers truly behave. It also highlights the relevance to competitive outcomes of two further concepts: relative salience and relative consumer engagement. Finally, the article draws on both the successes and the failures of past interventions to identify some lessons for policy-makers when stepping into this area.

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ISSN 1745-9648

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Finding ways to get consumers engaged in markets is a major current topic of debate. This article examines the important role consumer engagement plays in driving effective competition in markets. It then considers some key categories of intervention which can enhance consumer engagement, with a focus on the various roles that disclosure can play. Recent examples are provided from the UK, where many such engagement measures have been implemented. The article emphasises the importance, when policy-makers are designing such interventions, of understanding how real consumers truly behave. It also highlights the relevance to competitive outcomes of two further concepts: relative salience and relative consumer engagement. Finally, the article draws on both the successes and the failures of past interventions to identify some lessons for policy-makers when stepping into this area.

[1] This work was supported by the Economic and Social Research Council [grant number ES/P008976/1]. Amelia Fletcher also acknowledges 2016 financial support of UK consumer organisation, Which?, in earlier work in this area. She thanks Bruce Lyons, Morten Hviid, James Edgar, Adam Land and Stefan Hunt for useful comments. A more comprehensive discussion of the demand-side interventions employed in the UK, and their effectiveness, can be found in Amelia Fletcher (2016) "The Role of Demand-Side Remedies in Driving Effective Competition: A Review for Which?", at https://www.staticwhich.co.uk/documents/pdf/the-role-of-demand-side-remedies-in-driving-effective-competition-456067.pdf. Amelia is also a Non-Executive Director on the Boards of the UK Financial Conduct Authority, Competition and Markets Authority and Payment Systems Regulator, and a decision-maker on enforcement cases at Ofgem. All views are, however, her own and do not necessarily reflect the views of any organisation she is associated with.

Introduction

Finding ways to get consumers engaged in markets is a major current topic of debate, and nowhere more than in the UK where the Government has recently published a Consumer Green Paper which focusses heavily on this issue.[2] But why is this such an important public policy issue, and what can be done about it?

This article first examines why consumer engagement is so important for driving effective competition in markets; that is, competition which delivers real benefits for consumers (Section 1). It discusses the relevance for competitive outcomes of two concepts: *relative salience* and *relative customer engagement*. It then considers four key categories of intervention which can help enhance consumer engagement, which include a variety of forms of disclosure (Section 2). It emphasises the importance, when policy-makers are designing such interventions, of understanding how real consumers truly behave, and the difficulties associated with getting consumers engaged at all. It describes a number of recent examples from the UK, which has a rich experience of implementing such engagement measures. Finally, the article draws on both the successes and the failures of past interventions to identify some lessons for policy-makers, when stepping into this area (Section 3).

The prior economic literature in this area is limited. There is a wide and fast-growing theoretical literature examining the implications of consumer behavioural biases for competitive market outcomes, which is well summarised in Heidhues and Böszegi (2018).[3] Some of these papers consider the likely market effect of specific interventions.[4] There is also a more nascent empirical economic literature examining real consumer decision-making behaviour, and the impact of particular engagement interventions. Some of these papers are cited below.

While this paper is related to that literature, its aim is rather different. It provides an overarching view of the role of engagement interventions in driving competition and derives policy implications.

[2] UK Department for Business, Energy and Industrial Strategy (BEIS) (2018) "Modernising Consumer Markets: Green Paper", at https://www.gov.uk/government/consultations/consumer-green-paper-modernising-consumer-markets.

[3] Heidhues, Paul and Koszegi, Botond (2018) "Behavioral Industrial Organization", CEPR Discussion Paper No. DP12988. Available at SSRN: https://ssrn.com/abstract=3198140.

[4] For example: Armstrong, Mark (2015), "Search and Ripoff Externalities", Review of Industrial Organisation, vol.47(3), pp 273-302.

1. Why is consumer engagement important for competition?

When Government or regulators intervene to enhance consumer engagement, the focus is often consumer protection. The underlying intuition here is that if consumers have the right tools to engage with the offers available on the market, then they will be better able to protect themselves and less at risk of exploitation by suppliers. Hence, when consumer law requires that suppliers provide information on their products, it is because this helps to ensure that consumers know what they are getting and aren't defrauded. Likewise, when consumer law requires that suppliers don't conceal key aspects of a product offering within the small print of a contract, this is important for ensuring that consumers don't inadvertently take on more risk than they intended.

However, it is increasingly well understood that consumer engagement also has a crucial role to play in driving competition. Engagement interventions are thus important tools within competition policy as well. In the simplest economic models, with a single-dimension product offering and a uniform market price, competition will typically be stronger the more that consumers engage in searching around for, and switching to, the best offering for them in the market. At an extreme, where consumer search is too limited, monopoly prices can arise even in the presence of multiple sellers.[5] This result has become known as the Diamond Paradox.

This finding shows, at the most basic level, how increasing consumer engagement in markets can help to drive more vigorous competition.[6] This will in turn be good for consumers in that it drives suppliers to lower their prices or otherwise improve their product offerings. Wilson (2012) shows that, while both search and switching costs are relevant, it is search costs which can have the more dramatic impact in restricting competition and increasing market power.[7]

But simply driving up engagement, in the form of consumer search and switching, is not necessarily the only thing that matters for competition. Competitive outcomes will also be affected by the extent to which consumers make choices that reflect their true preferences between product offerings. In general, firms compete to win consumers on the basis of their

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[5] Diamond, P. A. (1971) "A Model of Price Adjustment," *Journal of Economic Theory*, pp. 158-68.

[6] A variety of recent papers highlight that there may be circumstances under which lower search costs will in fact raise prices. For example, Armstrong and Zhou (2011) highlight that lower search costs will increase the incentive of firms to 'pay for prominence' for example in the form of a higher ranking on a price comparison website, and that these payments drive up overall prices. However, it seems reasonable in general to expect that increased consumer engagement will improve competitive market outcomes. Armstrong, M. and J. Zhou (2011) "Paying for Prominence", *The Economic Journal*, 121: F368-F395.

[7] Wilson, C.M. (2012) "Market frictions: A unified model of search costs and switching costs", *European Economic Review*, Volume 56, Issue 6, 1070-1086.

revealed choices not their unrevealed preferences. Two further concepts are relevant to this issue: *relative salience* and *relative consumer engagement*.

Relative salience refers to a situation where one aspect (or dimension) of a product offering is substantially more salient to consumers than other aspects of the same product offering. Where this is the case, saliency bias will tend to result in consumers engaging far more with the most salient aspect, and far less with other dimensions. A number of recent papers consider the impact of such saliency bias on competition.[8] A key finding, which is intuitive, is that where consumers engage primarily on one dimension that is most salient to them, then competition will tend to be focused on this salient aspect. By contrast, suppliers are in a position to act in a more monopolistic manner on the less salient aspects of the product offering.

Where salience differs across various aspects of quality, this can lead to heavy competition on one quality dimension and more monopolistic behaviour in respect of others. However, in a number of markets, it may be price that is the most salient aspect of a product offering, or more specifically the upfront price. Moreover, this relative salience of upfront prices over other aspects of the product offering can be accentuated, for example through the use of price comparison websites (PCWs), which are often specifically designed to make upfront prices highly salient. This may be good for the most part, but there is a downside risk. While we may expect PCWs to increase competition on upfront prices, this may be accompanied by weaker offerings in terms of quality or less salient aspects of the sales contract such as follow-on charges.[9] Moreover, the stronger the competition on the more salient aspects, the worse the offering may become on the less salient.

This suggests that, as well as increasing engagement, it can be important to think about the form such engagement takes, and where possible to help consumers to make more holistic decisions. An example might be rules which require (or facilitate) enhanced salience of quality information on comparison websites. This issue could even justify the introduction of direct regulation around some of the less salient aspects. Examples observed in practice include minimum rules around product safety or around the small print in contracts, both of which it can be hard for a consumer to observe, let alone focus on.[10] Absent such regulation, suppliers could even have an incentive to reduce the salience of certain aspects of the product offering, where feasible, with a view to limiting competition on such aspects.

[8] For example, P. Bordalo, N. Gennaioli, and A. Shleifer (2016) "Competition for Attention", *The Review of Economic Studies*, Volume 83, Issue 2, 1 April 2016, Pages 481–513.
[9] See Helfrich, M. and F. Herweg (2017) "Salience in Retailing: Vertical Restraints on Internet Sales". CESifo Working Paper Series No. 6615. Available at SSRN: https://ssrn.com/abstract=3035729.
[10] NB There may also be other rationales for such rules, such as the efficient avoidance of the costs that would be involved in every consumer reading small print carefully or carrying out their own product safety testing.

Relative consumer engagement refers to a situation where different consumers vary in the extent to which they engage in a market. Where firms' product offerings (including price) are uniform across consumers, this is less important. Competition will tend to increase with the extent of engagement of the marginal consumers, and the unengaged will receive the competitive benefit of that engagement.

By contrast, where firms can vary their product offerings across consumers, relative consumer engagement can become important for market outcomes. For example, in an environment where suppliers can engage in price discrimination, we might expect them to set lower prices for the more engaged consumers, and higher prices for those consumers who are less engaged, in terms of putting little or no effort into searching or switching.[11] In such contexts, 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.

The overall effect on average prices paid, and thus on consumer welfare, is ambiguous in such circumstances. As is well understood, price discrimination can itself either limit competition or enhance it, depending on circumstances. However, these sorts of price differentials can also give rise to significant distributional concerns, with some consumers clearly not gaining benefits from, or even being harmed by, competition. This may be politically important, if nothing else, and especially so where the relatively unengaged are also more vulnerable, on average.

This can in turn result in a policy focus on reducing or eliminating differential treatment across customers. At a minimum, attempts may be made to increase the engagement of the relatively unengaged. In the most extreme situations, more paternalistic interventions can potentially be justified. These could involve changes of choice architecture, such as a change of default which ensures that that the least engaged are defaulted into a reasonably good option. Or they could even involve direct regulation of market outcomes, such as in the form of price caps. This issue is discussed further in the final section of this paper.

2. Interventions to enhance consumer engagement: Some key categories

So, what sorts of interventions might we expect to enhance consumer engagement? Bennett et al (2010)[12] argue that, in order to have an effective demand-side which acts to

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[11] For example, see G. Shaffer and J. Zhang (2000) "Pay to Switch or Pay to Stay: Preference-Based Price Discrimination in Markets with Switching Costs", *Journal of Economics & Management Strategy,* 9(3):397-424.

[12] Bennett, M, A. Fletcher, L. Hurley, and D. Ruck (2010) "What Does Behavioral Economics Mean For Competition Policy?", *Competition Policy International.*

help drive effective competition, consumers are required to engage with the market in three key ways:

1. They need to ***access*** information about the products (goods or services) available in the market.

2. They need to ***assess*** that information, in terms of making comparisons across the various products and determining which best suits their preferences.

3. They then need to ***act*** on that information, by purchasing (or in some cases, switching to) this product.

These three "As" of consumer decision-making provide a useful framework for thinking about possible interventions. For example:

1. Consumers can be helped to *access* information through placing simple ***disclosure*** obligations on suppliers, to ensure that key product information is in the public domain.

2. Consumers can be helped to *assess* that information through ***comparison tools***, which ensure that the format of any disclosure is standardised so as to be easily comparable across products, or require that disclosure is made to third parties who are able to facilitate consumer assessment.

3. Consumers can be helped to *act*, following these assessments, by ***switching interventions***, which make the purchasing process, or the process of switching, cheaper or easier.

However, before any of these choice enablers become relevant, another "A" is important; consumers have to ***attend*** to the market in the first place, at least some extent. If consumers are disinclined to engage at all, this can constitute a significant block to competition. Such consumer inattention seems to be especially common in markets where consumers are in an ongoing relationship with a firm, such that they face no loss of supply from being inactive. In identifying possible solutions to such inattention, it is useful to consider two categories of consumer inattention which could underlie it - conscious inattention and unconscious inattention. In any particular situation, consumers may exhibit elements of both. (This could be termed 'semi-conscious' inattention).

The first category, *conscious inattention* occurs where consumers make a conscious decision not to engage the market. This could be a broadly rational decision, reflecting their perception of the net benefit that such engagement will cost bring them, bearing in mind the associated costs of search and switching in terms of their time, effort or actual pecuniary costs.

However, behavioural factors can also play a role. For example, if engaging with the market is perceived to be costly in the short term, and to generate gains that emerge only over the longer term, then a consumer who is overly focussed on the present, for example as a result of hyperbolic discounting, may be especially disinclined to engage – or alternatively to leave any engagement to a later date. Likewise, a consumer with a strong status quo or endowment bias may be especially disinclined to consider switching to a new product or supplier; while a consumer with a strong default bias may be especially inclined to stick with the default product in the market, rather than engaging to find a better one. A consumer who struggles with numeracy or logic may be especially disinclined not to engage with a search process where those skills seem likely to be needed. Consumers who have never searched or switched before may also overestimate how difficult the process will in fact be and may be over-influenced by anecdotes from others who have had poor experiences.

In this context, any intervention which reduces the cost to consumers of accessing, assessing and acting on relevant market information, or otherwise raises their expectations of the net benefits likely, can help to tip the balance towards getting a consumer to engage with the market. As such, the types of intervention identified in the bullets above, may also act to reduce consumer inattention. However, depending on the strength of the consumer biases at play, it may be difficult to reduce these costs sufficiently to gain widespread, high quality, consumer engagement.

The second category, *unconscious inattention*, occurs where consumers do not consciously decide not to engage; they simply don't do so. This category of inattention is harder still to address through simply facilitating consumer decision-making.

Again, behavioural factors may be relevant here. Forgetfulness, for example. A working mother, who knows she is paying too much for her electricity, may have every intention of going home after work and looking online for an alternative supplier. But after cooking dinner, getting the kids to bed, and tidying up the house, she could be forgiven for collapsing onto the sofa and forgetting about her electricity search plans. Saliency can also be relevant. If the need to engage is not both obvious and pressing, it may not command a consumer's limited attention, however beneficial it might be for that consumer.

In such circumstances, interventions which act to increase consumer consciousness around market engagement can be valuable. These can take the form of triggers, which enhance the saliency of the decision, or changes in choice architecture which either alter the default option facing consumers or remove the default altogether, forcing consumers to make a choice.

In the following sections, therefore, I will look at four overarching categories of engagement intervention:

a) ***Pure disclosure:*** which is designed to enhance consumer access to relevant product information.

b) ***Comparison tools:*** which are designed to enhance consumer assessment across different products.

c) ***Switching interventions:*** which are designed to enhance the ability of consumers to act on their assessment.

d) ***Pure attention tools:*** which are designed to get consumers to engage with the market in the first place, one way or another, when other methods fail.

In doing so, I will provide a number of recent examples, primarily from the UK where consumer engagement has been a particular policy focus for some time. In legal terms, these interventions can arise in various ways, including through the application of consumer law, remedies within competition law, the use of regulatory tools, industry initiatives (sometimes after prompting by regulators), or Government legislation.

It is worth emphasising that, while the first category is termed pure disclosure, the other categories can also involve disclosure of various forms. I also emphasise below the importance, in developing these interventions, of really understanding consumer behaviour, and the role that empirical evidence can play in informing such policy design. This evidence can be relatively formal, such as derived from laboratory experiments or randomised controlled trials (RCTs, also known as field experiments). It can also be less formal, with the behavioural insights informing interventions frequently being based on survey information, lessons drawn from the *ex post* evaluation of past interventions, or a broad understanding of the nature and direction of likely behavioural biases.

It should also be noted that, although these interventions are designed to change consumer behaviour, it is not usually feasible to place regulatory burdens on consumers themselves. As such, these interventions typically involve requirements imposed on suppliers, which act to change the way in which suppliers interact with consumers, for example by requiring them to change what they disclose to consumers and how, with a view to this facilitating or triggering the desired changes in consumer behaviour.

a) Pure disclosure to enhance consumer engagement

The first category of engagement intervention listed above is 'pure disclosure'. At one level, it is obvious that consumers can only make reasonable purchasing decisions across products if they have relevant information on these products. As such, simple disclosure interventions, which are designed to overcome a core asymmetric information problem between suppliers and their customers, have long been an element of consumer-focussed regulation. A recent UK example has been a disclosure requirement on online platforms that resell secondary tickets for events to state clearly where the seat is and whether there are any restrictions on ticket resale.[13] This is relevant information for consumers, but it was not previously not made available by these websites on a systematic basis.

Over recent years, however, there has been a growing recognition – partly reflecting developments in behavioural science – that simply providing information to consumers may be not be enough to improve their decision-making. Indeed, many experiments have shown that they may potentially even make worse decisions if they feel overwhelmed by too much information; this is sometimes known as 'information overload'. For example, the morass of boring-looking paperwork which suppliers are required to provide to consumers in some financial services markets may not help consumers in their decision-making and may even discourage them from trying. It has even been suggested that firms may have an anti-competitive incentive to disclose too much.[14]

This has led to various alternative approaches to disclosure, which are more sensitive to behavioural factors. Three key categories are described below.

i. ***Disclosure requirements which go beyond simple information revelation to enhance consumer awareness and understanding of the information.***

It is well understood that the impact of disclosure on consumer decision-making can be greatly enhanced by presenting the relevant information in a user-friendly and attractive way.

Improving the effectiveness of disclosure can potentially be achieved through principles-based interventions such as the UK Consumer Rights Act 2015. This requires that consumer contracts are *transparent* (plain and intelligible and legible where written) and *prominent* (brought to the consumer's attention in such a way that the average consumer would be aware of it). The reference to the 'average consumer' here is intended to reflect the need

[13] "Secondary ticketing sites pledge overhaul", Competition and Markets Authority Press Release, 25 April 2018. See https://www.gov.uk/government/news/secondary-ticketing-sites-pledge-overhaul.
[14] Persson, P. (2018) "Attention manipulation and information overload," *Behavioural Public Policy*, vol 2(01), pages 78-106.

for suppliers to take account of the behaviour of real consumers, as opposed to some hypothetical super-rational ideal.

However, we also observe regulatory requirements which are very specific about the way in which information should be presented, based on behavioural evidence as to what works best in enhancing consumer attention and understanding. So, for example, when the UK Competition and Markets Authority (CMA), carried out an investigation into private motor insurance in 2014, it determined that consumers faced an acute lack of information when purchasing 'No Claims Bonus' protection as an add-on insurance product. As a remedy, the CMA required that consumers must be given, at the point of purchase, a tightly specified set of information to aid their decision-making.[15] This was required on the basis of qualitative consumer testing of different possible ways of providing relevant information.[16]

Likewise, following its 2015 market study into cash savings accounts, the UK Financial Conduct Authority (FCA) required not only that interest rates on such accounts should be displayed prominently, but more specifically that for online banking this information should be no more than 'one click away' from the customer's account home page.[17] This was based on evidence that consumers are typically unlikely to click through a longer sequence of links to obtain the relevant information.

In some cases, it can be better to provide less information, not more. For example, the FCA has recently been reviewing its disclosure requirements for financial services firms and has concluded that several are ineffective, and some could even harm consumer decision-making.[18]

ii. Disclosure requirements which are specifically designed to make certain aspects of the offer more salient.

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

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

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

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

As discussed above, consumers can easily become highly focussed on one particular dimension of a purchasing choice – such as the upfront price of the core product – and give less attention to other important elements such as quality or prices of add-on products. Such relative salience can in turn lead to excessive competition on the salient dimension and too little competition on the others.

As an example, the CMA recently intervened in the online car rental sector, to enhance upfront transparency about key – but less salient – aspects of the product, such as prices of optional extras, key rental terms and requirements, and any additional charges such as fuel surcharges, young driver fees and out-of-hours pick up charges.[19] This intervention, which requires online sites to show the total price payable for the full car rental package chosen, is expected to facilitate better consumer decision-making, and thus enhance the effectiveness of competition in this sector.

Likewise, following its 2006 investigation into store cards, the UK Competition Commission (CC) mandated substantial additional provision of relevant information in consumers' monthly statements. In doing so, it was explicit that the font size used 'must not be less than the largest font size used for transaction and balance details' and that the current annual percentage rate (APR) applicable to purchases must be shown in bold.[20] This reflected the concern that consumers were overly focussed on the purchasing power that store cards afforded them, while the costs involved were relatively less salient. The CC's *ex post* evaluation of this intervention, five years later, found that average store card APRs had fallen since the start of the CC investigation. [21] Interestingly, it also noted that some of the reduction occurred during the life of the investigation, possibly due to the extensive public debate, including across the media, which accompanied this ongoing investigation. This shows the positive impact that greater consumer awareness can have on market engagement, at least over the short term.

iii. Interventions to prevent misleading or obfuscating disclosures.

[19] "Car hire sites to provide full costs upfront after CMA action", Competition and Markets Authority, Press Release. 29 March 2018. https://www.gov.uk/government/news/car-hire-sites-to-provide-full-costs-upfront-after-cma-action. This enforcement action followed earlier undertakings received from a number of other car rental intermediaries. See https://www.gov.uk/cma-cases/short-term-consumer-car-hire-across-the-european-union-eu.

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

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

Suppliers are well aware of the difficulties that consumers can face in choosing between product offerings. Many responsible suppliers do their best to help consumers with this choice. However, it can also be in the selfish interest of less scrupulous suppliers to worsen consumer decision-making. This is clearly an attractive option for suppliers who are attempting to market weak offerings. However, the link with competition means that even suppliers with good products may have an interest in worsening consumer decision-making, if they can thereby weaken market competition and so raise industry profits.[22]

Preventing suppliers from making misleading or obfuscating disclosures to consumers can potentially be achieved through general rules which focus on the key principles at stake. For example, the 2008 Consumer Protection from Unfair Trading Regulations (CPRs) prohibits any sales practice which involves misleading actions or omissions, where these are defined in terms of whether they materially impair an average consumer's ability to make an informed transactional decision, and in doing so changes that decision.[23]

Whilst the 'average consumer' is taken here to be reasonably well-informed, reasonably observant and circumspect, the intention is that the law should allow for real consumer behaviour. Indeed, it is explicitly stated that, if a clearly identifiable group of consumers is particularly vulnerable to a trading practice (for example, because of age, infirmity or credulity) in a way that a trader could reasonably be expected to foresee, and if the practice is likely materially to distort decisions made only by that group, then the benchmark will be the average member of that group.

In some cases, more specific rules can also be valuable, which are designed to prevent identified instances of misleading disclosure. As an example, in 2012 the UK Office of Fair Trading (OFT) investigated the practice of 'drip pricing' in sales of airline tickets. This took the form airlines setting low upfront ticket prices but then imposing high charges on customers, at a late stage of the sales process, for using a standard payment card. The outcome of this investigation was an outright ban on payment charges for debit cards.[24] This intervention reflected evidence from laboratory experiments carried out on behalf of the

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[22] Spiegler (2006) provides a theoretical basis for this general finding. Spiegler, R. (2006) "Competition over agents with boundedly rational expectations," *Theoretical Economics*, Econometric Society, vol. 1(2), pages 207-231.

[23] This UK legislation implements the EU Unfair Commercial Practices Directive. See Office of Fair Trading and Department for Business, Enterprise and Regulatory Reform (2008) "Guidance on the Consumer Protection from Unfair Trading Regulations 2008". See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284442/oft1008.pdf

[24] Office of Fair Trading (2012) "Payment surcharges: Response to the Which? super-complaint". See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oft/super-complaints/OFT1349resp.pdf. This ban has since been extended to all retail payment instruments, under the 2017 Payment Services Regulations.

OFT which found drip pricing to have significant negative consequences in terms of reducing consumer search across suppliers and raising overall prices paid.[25] More recently, this ban has been extended across both credit and debit card payments and across all sectors, through the second EU Payment Services Directive (2015).[26]

b) Comparison tools to enhance consumer engagement

Even if consumers have plenty of relevant information, they may find it hard to make effective purchasing choices if this information is not easily comparable across products, given the computational complexity that can be required. Indeed, this may well deter them from even trying, resulting in low levels of search and weak competition.

As such, there has been substantial regulatory focus on interventions which are designed to help consumers make cross-product comparisons. Again, it is possible to identify a number of different policy approaches to this second category of interventions: tools to aid comparison and shopping around.

i. Disclosure requirements to enhance comparability of product offerings.

An obvious first step in facilitating cross-product comparisons is to require information to be provided in a systematic way across products, such that it is more easily comparable.

Such requirements have been imposed in a number of UK markets. For example, following an OFT investigation into credit card comparisons, the industry agreed to adopt new summary boxes to present fees and charges in a systematic way to aid comparability.[27] The tabular format used was consumer-tested and the intention was to both improve consumer understanding and enhance search and switching. Likewise, the FCA employed consumer testing in designing a new summary box to be provided for UK cash savings accounts.[28] This

[25] See Office of Fair Trading, (2010), "The impact of price frames on consumer decision making ", Research Paper by Steffan Huck and London Economics, OFT1226, at http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oft/economic_research/OFT1226.pdf.

[26] Implemented in the UK as the Payment Services Regulations 2017.

[27] Office of Fair Trading (2008), "Credit card comparisons", OFT987, at http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oft/reports/financial_products/oft978.pdf. The summary box has since been somewhat revised, see: http://www.lendingstandardsboard.org.uk/wp-content/uploads/2016/06/Credit-Card-Summary-Box-Final-Vesion-July-2012.pdf.

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

newly required standardised disclosure is again intended to facilitate comparison across such accounts.

In these examples, the information provided was already available. The regulatory intervention simply required it to be set out in a systematic way. However, interventions can sometimes require the creation of new forms of information.

For example, an OFT study in 2002 found that it was difficult for consumers to compare printers on the basis of their likely total cost, including ink cartridge refills, as there was no information available to consumers that would allow them to estimate their likely usage of additional cartridges. The OFT therefore recommended that the industry develop a standardised method for calculating price per page for ink cartridges, so that consumers could more effectively calculate and compare the full life cost of printers including spend on ink.[29]

This example raises another interesting point. Requiring suppliers to disclose comparable information can be useful even if consumers themselves don't directly use it, so long as there are third parties which utilise the information to provide enhanced recommendations to consumers. In the case of printers, the standardised ink cartridge costs play a key role in the recommendations made by retailers and consumer magazines and are thus likely to have improved consumer choices in this market.[30] This is true even if consumers themselves still find personalised calculation hard.

Finally, in designing disclosures that are designed to facilitate comparison across products, regulators face a difficult trade-off in terms of how *prescriptive* to be about what information is provided, and how it is provided, including how much to mandate that it be *simplified*. More precision is typically helpful for comparability across suppliers and across products, but it can potentially harm innovation if the disclosure rules do not make allowance for novel aspects of those products. Where disclosures are simplified, consumers are more likely to be able to make effective comparisons, but there is a risk that these may in fact deliver poor outcomes if the simplified information does not properly reflect what consumers most care about.

An example of the latter point is the legal requirement, under the EU Consumer Credit Directive, that suppliers of consumer credit include within their promotional material a representative annual percentage rate of charge ('APR'). This is a single figure which

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

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

represents the total cost of the credit per year and which is calculated on a clearly specific set of rules, harmonised at EU level.[31] APRs are valuable for providing illustrative guidance on expected cost which is comparable across credit offerings. It could be argued that APRs would be useful, even if not strictly accurate, if they allowed for effective like-with-like comparison. In many situations, this may well be true. However, experimental evidence suggests that APRs can encourage consumers to take out longer term loans than they would choose if instead given information on total loan costs.[32] Likewise, experimental evidence produced for the FCA finds that consumers of payday loans make better choices across offerings when shown the total amount payable, than when shown APRs only.[33] This is consistent with similar findings from the US, see Bertrand and Morse (2011).[34]

ii. Disclosure requirements to facilitate the development of third-party aggregators, such as price comparison websites (PCWs).

An alternative route to enhancing consumer decision-making is to develop third-party aggregators, such as PCWs or digital advice tools, or to facilitate their development.

A first step to facilitating the development of such third-party aggregators is requiring suppliers to provide information in a comparable form, as discussed above. However, this may not be sufficient on its own. In some sectors, more may be required to ensure that such aggregators emerge.

One option could be for regulators themselves to create such comparison tools. However, they are in fact poorly placed to develop tools, which to be effective really need to be attractive, easy to use, well publicised, and to build on the latest technological developments. It is simply not what regulators are good at, nor do they have access to the requisite funding.

As an alternative, regulators can mandate that industry develop such solutions. For example, following its investigation into private healthcare, the CMA required the industry to set up an independent, but industry-funded, information collator which would make the

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

[32] Pete Lunn, Marek Bohacek and Alicia Rybicki (2016) “An experimental investigation of personal loan choices”. See: https://www.esri.ie/pubs/BKMNEXT314.pdf.

[33] Financial Conduct Authority (2015) “High-Cost Short-Term Credit Price Comparison Websites: A behavioural study for the Financial Conduct Authority”. Research by London Economics and YouGov. See: http://www.fca.org.uk/static/fca/documents/consultation-papers/cp-15-33-behavioural-study.pdf.

[34] Marianne Bertrand and Adair Morse (2011). “Information Disclosure, Cognitive Biases, and Payday Borrowing”, *Journal of Finance* 66(6).

information on fees and quality available via a website in a format that permits patients to search and compare results easily.[35]

Even mandating the creation of a such a tool can be difficult, however, if this goes against the incentives of industry. It can be hard to specify precisely how such a tool should be designed, and yet – absent such precise specification – industry may have poor incentives to make a tool which works well. Precise specification is also difficult in the context of the dynamic nature of digital markets, and digital comparison tools in particular. In 2006, when the CC first required the development by industry of an independent price comparison website (for the home collected credit market[36]), it was focused on developing this tool for use within browsers on desktops, and perhaps laptops. The authority had no idea that consumers might one day spend substantially more time browsing the internet on smart phones than on computers, let alone that they might make product comparisons through specialised apps or potentially delegate product choice to a "concierge" service or even a digital personal assistant.

A preferable option, where feasible, is for the regulator to facilitate the development of commercial comparison tools by requiring suppliers to disclose to such aggregators accurate and up-to-date information about their products, in a format which is machine-readable and stable over time, to enable the aggregators to design algorithms to collect and present the relevant information.

For example, in the payday loan market, the CMA was concerned that it was difficult to search online across suppliers. It therefore required suppliers to provide their data to at least one PCW which is both independent and FCA-regulated.[37] A quick review of the current online situation shows this intervention to have been effective in facilitating the commercial development of PCW functionality covering payday loans.

In some markets, individual consumers effectively require bespoke personal comparisons, based on their usage data. In such circumstances, disclosure requirements may need to go even further, and require incumbent suppliers to make such data available, ideally in a systematic and computer-readable form.

[35] Competition and Markets Authority (2014) "Private Healthcare Market Investigation: Final Report". See: https://assets.publishing.service.gov.uk/media/533af065e5274a5660000023/Private_healthcare_main_report.pdf. The resulting website is PHIN (Private Healthcare Information Network), https://www.phin.org.uk.
[36] Competition Commission (2006) "Home Credit Market Investigation", Final Report and associated 2007 Order, at: https://www.gov.uk/cma-cases/home-credit-market-investigation-cc
[37] Competition and Markets Authority, "Payday lending market investigation order 2015", at: https://assets.digital.cabinet-office.gov.uk/media/55cc691e40f0b6137400001f/Payday_Lending_Market_Investigation_Order_2015.pdf.

As an example, the UK Open Banking initiative requires banks to make personal transaction data available to authorised parties, with consumer consent. These data must be provided through standardised and open Application Programming Interfaces (APIs) in order to facilitate the development of more personalised price comparison services, and also new account information aggregation services.[38] These latter have a variety of potential advantages for competition, including that they should reduce the benefits for consumers of taking different banking services from the same supplier, which should in turn facilitate greater search and switching across suppliers for individual banking services.

iii. Interventions to ensure that third-party information collators are themselves effective in enhancing consumer decision-making

Whilst third-party aggregators have the potential to play a valuable role in enhancing consumer decision-making, it is important to recognise that they may not always carry out this function as well as they might.

This could be inadvertent. For example, a price comparison website might not be aware that the effect of enhancing the salience of prices may be that competition on quality is reduced. Moreover, even if it wanted to make quality more salient, it might struggle to source comparable information on quality. In this situation, a regulatory requirement on suppliers to disclose underlying quality information on a systematic and standardised basis may be a useful intervention.

The FCA is currently piloting such a disclosure requirement with the insurance industry, which requires suppliers to publish a series of comparable value measures. The data are not provided in an especially consumer-friendly format, but they can be utilised by third-party aggregators to provide consumers with enhanced easy-to-use indicators of product quality. The FCA has found that this pilot disclosure has already incentivised some suppliers to enhance the quality and value for money of their products.[39]

However, constraining the effectiveness of consumer decision-making could potentially also be a deliberate strategy for third-party aggregators. They may have a commercial incentive to do so where comparison tools are funded through commissions from suppliers, rather than directly by consumers. For example, the CMA has recently launched enforcement action against a number of hotel booking websites for (amongst other concerns) the fact

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

[39] Financial Conduct Authority press release 1 March 2018, "FCA value measures pilot having a positive impact", https://www.fca.org.uk/news/press-releases/fca-value-measures-pilot-having-positive-impact.

that the default rankings presented to consumers are heavily influenced by commission charges and that this is far from clear to consumers.[40] If a comparison tool is able to limit its effectiveness in driving effective competition between suppliers, while remaining sufficiently good to attract consumers, then this may be a profitable strategy, so long as it is able to extract some of the additional rents that arise from the reduced competition between suppliers, for example through commissions.

While it may seem superficially attractive to require aggregators to change their funding model to avoid any risk of conflicts of interest with consumers, it can often be hard to identify a funding model which does this while enabling the aggregator to remain viable. As such, an alternative regulatory approach may be to place restrictions around how third-party aggregators themselves disclose information to consumers.

For example, in the payday lending sector, the FCA has imposed rules on PCWs which require that users should be able to search by amount and duration of loan, that search results must be displayed in ascending order of total amount payable, and that the ranking must not be influenced by any commercial relationship.[41] These rules were informed by consumer testing in the form of behavioural laboratory experiments.[42]

In terms of commercial relationships, a less interventionist option would simply be to require PCWs to disclose their links and commissions, and to set out clearly how their rankings are computed. However, some commentators are sceptical about the efficacy of this approach, given the responsibility it places on consumers to utilise this complex information effectively, and to avoid being misled by the consequently biased rankings. This scepticism is partly based on evidence from the US Federal Trade Commission which found, in an experimental setting relating to mortgage brokering, that consumers were confused by additional information on commissions, and typically made worse choices as a result of receiving it. Specifically, they seemed to infer (wrongly) that an apparently high commission to a broker must signal a poor value product.[43]

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[40] Competition and Markets Authority press release 28 June 2018, "CMA Launches enforcement action against hotel booking sites" https://www.gov.uk/government/news/cma-launches-enforcement-action-against-hotel-booking-sites.

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

[42] Financial Conduct Authority (2015) "High-Cost Short-Term Credit Price Comparison Websites: A behavioural study for the Financial Conduct Authority". Research by London Economics and YouGov. See: http://www.fca.org.uk/static/fca/documents/consultation-papers/cp-15-33-behavioural-study.pdf.

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

As with many other issues discussed in this paper, finding ways to ensure that third-party aggregators act broadly in consumers' best interests while remaining commercial viable remains an important and complex area of policy, and indeed legal, debate.

c) Switching interventions to enhance consumer engagement

As discussed above, competition may also be weakened if consumers are disinclined to switch supplier. Consumers will be less likely to bother engaging in searching the market if they don't expect to switch, even if they find a better supplier. And suppliers' incentives to offer good value for money will be reduced if they expect to keep their existing customers anyway, and don't expect to win new ones. A third category of engagement intervention thus seeks to address such switching barriers.

Consumers may be deterred from switching on the basis of 'real' switching costs, that is switching costs which do not reflect behavioural factors. However, the latter can also play an important role, and this has clear implications for optimal intervention design.

i. Interventions to address real switching costs

Real switching costs may be *pecuniary*, such as fees incurred for exiting a contract, the need to pay duplicate fees from both suppliers during a transition period, or a loss of warranty cover. Consumers can also face real but *non-pecuniary* switching costs. These could potentially relate to the time and effort associated with switching, for example having to phone up and spend time on 'hold' in order to switch supplier. They could also relate to consequential actions, for example, if switching phone provider, the time spent contacting friends to give them a new phone number.

If there are real switching costs of this sort, an obvious regulatory intervention is to reduce them. The evidence suggests that reducing or eliminating such cost barriers can indeed be very effective in enhancing consumer switching.

Where such costs arise from contractual restrictions, simply requiring the removal of the restriction can be a powerful remedy. For example, in 2004 the OFT required car manufacturers to remove restrictions that existed within new car warranties which stated that use of an independent servicing provider would invalidate the warranty.[44] This provided a clear disincentive to consumers switching away for their servicing. An *ex post* evaluation of

[44] Office of Fair Trading (2004) "Servicing ties removed from new car warranties", Press Release 14 May 2004. See: http://webarchive.nationalarchives.gov.uk/20140525130048/http://www.oft.gov.uk/news-and-updates/press/2004/85-04.

this intervention found that freeing up consumers to use independent servicing providers saved consumers around £66-81m per year.[45]

Notably, the evaluation also found that consumer awareness of the change was limited, and that the overall benefit of the intervention would have been significantly greater with enhanced consumer promotion. This finding is arguably relevant to many demand-side interventions; that is they only work (or work best) if consumers are made aware of them.

In other situations, the intervention may need to go further than simply removing a contractual restriction. An example is the introduction of mobile (cell phone) number portability in the EU, which reduced the hassle cost of switching mobile operator by mandating that users can retain their number.[46] Cho, Ferreira and Telang (2014) analyse the impact of this intervention and find that it decreased mobile prices by 7.9 per cent on average.[47]

ii. Interventions to address behavioural factors limiting switching

Even where the costs of switching are real, consumers may potentially over-estimate them, and especially the downside risk of switching. For example, in response to a lack of competition in the UK retail banking market, which partly reflected limited switching, the major banks agreed to develop a reliable 7-day Current Account Switching Service (CASS). Despite this providing a good service, a 2016 CMA review of the market found poor consumer awareness of CASS, and also low levels of confidence in the service, with consumers continuing to fear that switching bank would be time-consuming, burdensome and unreliable.[48] As well requiring some small changes to the CASS scheme, the CMA required the banks to carry out a long-term promotional campaign to improve consumer awareness and understanding of it.

Behavioural factors can also create additional switching barriers of their own. For example, in 2011, the UK telecoms regulator Ofcom banned auto-renewing fixed term contracts in telecoms.[49] The primary problem with such contracts was not the automatic renewal itself, but the high termination fees which were then imposed within the new contract. In

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[45] Office of Fair Trading (2006) "Evaluating the impact of the car warranties market study", OFT852. Evaluation by Europe Economics. See: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oft/about_oft/oft852.pdf.
[46] Article 30 of Directive 2002/22/EC and amended by Directive 2009/136/EC.
[47] Daegon Cho, Pedro Ferreira and Rahul Telang (2013) "The Impact of Mobile Number Portability on Price, Competition and Consumer Welfare". See: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2265104.
[47] Minjung Park (2011) "The Economic Impact of Wireless Number Portability", *Journal of Industrial Economics.*
[48] See footnote 38.
[49] Ofcom (2011), "Automatically Renewable Contracts Decision on a General Condition to prohibit ARCs", at http://stakeholders.ofcom.org.uk/binaries/consultations/arcs/statement/ARCs_statement.pdf.

principle, there is no reason why consumers who wished to switch could not simply cancel during the window prior to auto-renewal. However, the empirical evidence developed for Ofcom by Greg Crawford, found that customers on these contracts are far less likely to switch than other customers. This suggests that behavioural factors play a role, with the structure of the contract perhaps exploiting the difficulty consumers have in remembering to cancel within a particular time window (or their failure to understand the consequences of not doing so).

Also in telecoms, Ofcom has been concerned that consumers are deterred from switching mobile phone provider because, to do so, they have to contact their existing provider to terminate their agreement, and to receive a 'PAC code' if they wish to retain their existing number. In the past, this has required a phone call. There is clearly a real cost of time associated with such calls, but Ofgem found that behavioural factors were if anything more relevant. Consumers dislike making such calls, not least because they don't like to face unwanted sales attempts from an apparently disappointed sales persons, who are incentivised to try and retain customers. To ameliorate such concerns, Ofcom has now mandated that providers introduce a system by which customers can cancel their agreement (and receive their PAC code) via text and Internet-based options. This will enable easy switching within one working day, without the need for any difficult conversations.[50]

d) Pure attention tools

Facilitating better consumer decision-making, through interventions of the sort described above, may well be enough to trigger engagement amongst many consumers. Other customers, though, may need a further prod. This is particularly likely if they are not in fact making any sort of conscious decision not to engage, but rather their lack of engagement is unconscious.

Encouraging engagement amongst such consumers can be difficult. However, a number of interventions have been tried, with some success.

i. Disclosures which are designed to trigger consumer attention.

If consumers are provided with specific relevant information in a prominent, reader-friendly and timely way, then this can improve consumer attention. A recent example is the FCA's requirement on providers of general insurance to include last year's premium when sending

[50] Ofcom (2017) "Statement: Decision on reforming the switching of mobile communication services", at https://www.ofcom.org.uk/consultations-and-statements/category-2/consumer-switching-proposals-to-reform-switching-of-mobile-communications-services.

out renewal letters (or an annualised version of the existing premium, if there have been any mid-term adjustments).[51]

This intervention was based on empirical evidence from randomised controlled trials which demonstrated that the inclusion of last year's premium led to increased switching, at least for those customers facing the largest price hikes.[52] Of course, consumers would already have had information about the previous year's premiums in their files somewhere. However, reminding them of this information in the renewal letter, right next to the new premium, had a significant impact in gaining their attention.

ii. Disclosure requirements which are intended to aid decision-making when consumers are already using a product or service.

Disclosure requirements are not always targeted at consumers' initial purchasing decisions but can also be directed at improving their decision-making once they are using a product or service, without involving any change in supplier. This sort of disclosure requirement need not necessarily affect the intensity of competition in the market but can nevertheless be important in ensuring that competition occurs on dimensions that deliver real benefits to consumers, rather than firms competing for customers in order to later extract as much out of them as possible.

As an example, following pressure from both the OFT and UK Government, the major UK banks agreed to offer consumers the option of sending text alerts if they were about to go into unarranged overdraft (which can in turn incur substantial fees) and allowing them a 'grace period' in which to sort out the situation.[53] Taking advantage of a staggered roll-out, the FCA was able to carry out an empirical *ex post* evaluation of this intervention. The text alerts were found to be powerful in reducing unarranged overdraft charges, with the impact found to be especially strong for consumers who also had mobile (cell phone) banking apps, for whom charges fell by 24 per cent.[54]

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

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

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

[54] Text alerts and mobile banking also decreased average current account balances by 17 per cent to 24 per cent, as consumers (presumably) sought to reduce the opportunity cost of holding balances in accounts with

However, while clearly beneficial, only around 3-8% of bank customers in fact signed up for such text alerts. On the basis of this, the CMA has now required the banks to automatically enrol consumers into receiving text alerts by default.[55] Recent evidence developed by FCA shows that the alerts have retained their positive impact across this wider customer base (albeit the alerts are found to be more effective for 'rare' overdraft users than for 'heavy' users).[56]

iii. Changing the choice architecture facing consumers

A lack of consumer attention or engagement can cause, or exacerbate, default bias. Where this is exploited by suppliers to increase sales, consumer decision-making can be enhanced by interventions which change the choice architecture facing consumers, either by forcing a choice or by altering the default options.

Two recent examples from the EU are worth noting.

- *Microsoft Internet Explorer competition remedy.* This intervention was a rare example of a remedy recognising behavioural biases under core EU antitrust law. The concern was that consumers automatically adopted Microsoft Internet Explorer, which came free with Microsoft Windows, even though there were alternative free browsers available. This default bias allowed Microsoft to essentially leverage its dominant position in operating systems into the browser market. The remedy required consumers to make an active choice of browser.[57] It seems to have been fairly effective, with Internet Explorer's market share dropping off far faster in the EU, where Microsoft was subject to the Commission's remedy, than in the US, over the period March 2010 (when the remedy was implemented) to November 2014 (when the ballot box was dropped).[58]

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no (or low) credit interest. Financial Conduct Authority (2015), "Message received? The impact of annual summaries, text alerts and mobile apps on consumer banking behaviour", Occasional Paper 10. See: https://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-10.pdf.

[55] See footnote 38.

[56] Financial Conduct Authority (2018) "Sending out an SMS: The impact of automatically enrolling consumers into overdraft alerts", Occasional Paper No. 36. See: https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-36-sending-out-sms-impact-automatically-enrolling-consumers-overdraft-alerts.

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

[58] According to GlobalStats StatCounter (http://gs.statcounter.com/), Internet Explorer lost market share in both US and EU over this period. However, in the US its share fell from 53.6 per cent to 35.5 per cent, a fall of 18.1 percentage points. By contrast, in the EU it fell from 45.3 per cent to 17.5 per cent, a fall of 27.8 percentage points.

- *Ban on 'opt-out' selling online*. If a box involving an add-on sale is pre-ticked, consumers may be disinclined to untick it ('opt out') due to default bias, even if this means then not shopping around for the said add-on or even buying entirely unwanted products. This led the EU to instigate a ban on online sellers engaging in such opt-out selling for additional products or product attributes. The intention is that consumers should be required to make an active choice in respect of these, rather than falling into buying them from the supplier by default.[59] This intervention has the potential to enhance competition for these additional products, as well as generally improving consumer decision-making.

Another potential response to a lack of consumer engagement is to carry out some elements of the consumer decision-making process on their behalf, in order to make the final choice easier. An example is collective switching, whereby a third party chooses a supplier on behalf of a set of otherwise unengaged customers. Collective switches can be carried out on an opt-in basis, whereby customers do have to make the decision to sign up to the collective switch, or an opt-out basis, whereby customers are automatically switched unless they specifically opt out. Both can be powerful tools, albeit the latter are typically more effective, as discussed in Deller, Bernal, Hviid and Waddams Price (2017).[60] Opt-out collective switches are sometimes termed 'municipal aggregation' in the US and have been utilised in a number of local US energy markets, albeit on the basis of a clear democratic mandate such as following a local referendum. In the context of the UK energy market, Ofgem is currently testing opt-in collective switching for the long-term disengaged, and the first test has yielded strongly positive results.[61]

iv. Delaying the consumer decision to overcome point-of-sale effects

Finally, an important bias that is observed in real-life sales situations is that consumers are often reluctant to say no when dealing with sales people face-to-face. This may be because they trust the advice of the sales person, or it may be that they don't want to upset them or deal with a difficult interpersonal situation, but the overall effect is that suppliers can sometimes face an important point-of-sale advantage when selling follow-on products, such as warranties or insurances relating to a primary product which a consumer has purchased.

[59] 2014 EU *Consumer Rights Directive.*
60 Deller, D., P. Bernal, M. Hviid and C. Waddams Price (2017) "Collective Switching and Possible Uses of a Disengaged Consumer Database', see: http://competitionpolicy.ac.uk/documents/8158338/19064125/Collective+Switching+Report+-+August+2017.pdf.
[61] Ofgem press release 20 August 2018, ""Eight times as many people get a better deal in Ofgem's collective switch trial", https://www.ofgem.gov.uk/publications-and-updates/eight-times-many-people-get-better-deal-ofgem-s-collective-switch-trial.

This can in turn lead to consumers purchasing additional products they don't want or need, or alternatively not shopping around for the best deal on such products.

In such situations, intervention can potentially be used to separate the two purchasing decisions. A recent example is the FCA's intervention in relation to *Guaranteed Asset Protection (GAP) insurance.* This is typically sold alongside a car and covers the difference between the sale price of the car and its replacement value at the time of any insurance claim. When the FCA studied this market, it found that the gross profit margin on this form of insurance was around 4.5 times higher than for standard car insurance, and that stand-alone GAP insurance could be purchased for around half the price of its price when sold instore as an add-on. Nevertheless, more than half of the purchasers of this product had not considered buying it prior to purchase, and less than a fifth had shopped around.

The FCA did not consider that instore warnings would be sufficient to overcome its concerns in this case. Instead, the FCA imposed a four-day deferral period before any add-on purchase could occur. The intention is that this should reduce the point of sale advantage, encourage consumers to make a more positive choice about the purchase, and give them a chance to shop around before doing so.[62] The FCA has now evaluated the impact of this intervention and found a 16-23% reduction in GAP sales, reflecting the fact that a significant proportion of consumers decide not to make the purchase, when they have time to reflect on the offer.[63]

3. Some lessons for policy-makers

As should be clear from the above discussion, regulators and competition authorities are increasingly turning to demand-side interventions of various sorts to improve consumer engagement and decision-making and thus enhance competition. In designing and implementing these interventions, many of which involve disclosure of one sort or another, a number of specific lessons can be drawn from the regulatory experience to date. Many of these have been discussed above. It is, however, worth highlighting a number of more generic lessons.

First, in designing interventions of this sort, it is important to analyse carefully the barriers to decision-making which real consumers face, so as to target these effectively. Where possible, *consumer testing* of interventions can also be hugely valuable. Effective

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[62] Financial Conduct Authority (2015), "Guaranteed Asset Protection insurance: competition remedy Including feedback on CP14/29 and final rules", PS15/13, at http://www.fca.org.uk/static/documents/policy-statements/ps15-13.pdf.

[63] Financial Conduct Authority (2018), "Evaluation Paper 18/1: An evaluation of our guaranteed asset protection insurance intervention", at https://www.fca.org.uk/publications/corporate-documents/evaluation-guaranteed-asset-protection-insurance-intervention.

interventions are not easy to design, as is demonstrated by experimental results showing that perfectly sensible-seeming interventions often have only limited impact. It can be hard to assess how consumers will react, even directionally. As a simple example, when the FCA carried out a randomised controlled trial ('RCT') to assess how best to design a letter to consumers offering redress, it found that women (but not men) were on average less likely to respond if the letter was signed by the CEO than if it was simply signed by the more generic 'Customer Services Team'.[64] This finding was entirely unexpected and remains difficult to explain.

In carrying out such consumer testing, RCTs (also known as field experiments) are the gold standard, because real interventions can be tested on real consumers in real situations, without those consumers even being aware that they are part of an experiment. These typically require, however, the close involvement of the firms which hold the customer relationships. These firms may be uncomfortable about experimenting on their own customer base and also unenthusiastic about testing interventions which are designed to facilitate their consumers switching away from them. As such, firms may need to be mandated to engage with such processes if they are to yield valuable results.

Second, whether or not such *ex ante* consumer testing is done, it is important that regulators revisit markets to carry out *ex post evaluation* of the effectiveness of interventions. This is valuable because it can be so difficult to design interventions that enhance engagement in the face of consumer behavioural biases, even with upfront consumer testing. This is partly because it is hard to assess likely supplier reactions through consumer testing. As such, it is useful to examine the impact of such interventions in practice, with a view to either enhancing them going forward, if they have not worked as well as expected, or dropping them if they are ineffective and cannot be improved.

In addition, it is sometimes possible to draw wider lessons from such *ex post* evaluation that can help inform intervention design in other markets. Moreover, the promise of future *ex post* evaluation can provide useful incentives for suppliers. Suppliers may be more likely to act in a way that is supportive of the desired outcomes if they are aware that there will be future evaluation, and an associated risk of further intervention if there has been insufficient improvement in market outcomes.

Third, the *tone of voice* used by regulators in this area is important. They can easily slip into a tone that suggests demand-side problems in markets are somehow consumers' 'fault' or that consumers are being stupid or irrational when they fail to spend their spare time seeking out the best deal in a particular market. It is of course entirely reasonable for

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

consumers to be picky about how they use their precious and limited time and effort. Moreover, to the extent that there are behavioural factors at play in weakening consumer decision-making, these are often the types of behavioural bias and psychological traits that we all exhibit as human beings. Just because someone doesn't choose to spend their evening online seeking the optimal energy tariff does not mean they are behaving stupidly.

This matters because if regulators appear to 'blame' consumers for their poor decision-making, then this could in fact have the negative consequence of alienating consumers and further discouraging market engagement. This could in turn further weaken or distort competition. It is better to describe the sorts of interventions discussed here as tools to enhance consumer engagement and decision-making, essentially by making it quicker and easier.

Fourth, engagement interventions are unlikely to be a panacea in all markets. They can typically help to improve consumer engagement and decision-making, and in doing so enhance competition. However, there are genuine costs and difficulties involved, both for consumers in engaging and for businesses in implementing interventions, which may make the either ineffective or not cost-efficient. Intervention design also needs to take account of issues related to relative salience or relative consumer engagement, which can add further complexity.

Overall, interventions are unlikely to fully engage all consumers or generate perfect decision-making. Indeed, it can sometimes be easier to enhance engagement – and thus competition - for the already more engaged customers, but rather more difficult and costly to raise engagement levels amongst the unengaged. As discussed above, this is of particular relevance within markets where suppliers can vary their product offerings on the basis of the level of consumer engagement. In such circumstances, increased engagement by the already engaged may have no beneficial impact on the less engaged and may even result in their facing higher prices once supplier reactions are taken into account.

In assessing the overall impact of any demand-side intervention, it is therefore important to think about both the overall costs and benefits associated with the intervention and also the distributional consequences across consumers. Considerations of fairness and equality may play a particular role when the less engaged consumers are also, on average, more vulnerable.

Fifth, in markets where consumers are particularly disengaged, there seems to be a consensus developing across UK regulators that interventions which change the choice architecture facing consumers can be more powerful in improving market outcomes than interventions involving disclosure, even where this disclosure is well designed. Engaging consumers can be extremely hard, and in such circumstances the best intervention may well be either to force a choice, by removing any default option, or effectively to change the default choice, albeit on an opt-out basis, on behalf of the consumer.

Finally, where interventions are imperfect, and especially where this has significant distributional consequences, regulators face a difficult choice. Do they rely on such measures and accept the imperfect market outcomes, or do they reach for '*outcome control*' measures, such as price regulation, which are more interventionist?

In recent years, UK regulators (and UK Government) have shown an increasing willingness to consider such a policy response, with price regulation recently being introduced into: the payday lending market[65]; that part of the telephony market where customers take a landline only (that is, with no broadband)[66]; that part of the energy market where customers pay by pre-payment meters[67]; and with Government currently developing legislation to reintroduce a price cap across the energy market[68].

Such price regulation has a very different basis to the price regulation that was prevalent in many countries following the privatisation of public utilities. The latter reflected concerns about market power due to supply-side concentration. Here the concerns are about market power due to demand-side issues, which in turn reflect behavioural factors. In each of the recent UK instances of price regulation cited above, the driver of the market problem is either weak engagement by consumers – typically a subset of more vulnerable customers – or (in the case of payday lending) poor consumer decision-making in the presence of significant behavioural biases. There is an intention, across these cases, to relax or remove the price regulation at a later stage once a way has been found to increase consumer engagement. Extensive testing of possible engagement interventions is currently underway.

Price regulation can clearly be beneficial in terms of reducing the highest prices paid by consumers, in a situation where competition for the less engaged customers is ineffective. However, as with any price regulation, there are potential downsides. In particular, there is a risk that price caps weaken competition for engaged customers. The more that regulation

[65] Financial Conduct Authority (2014), "Detailed rules for the price cap on high-cost short-term credit Including feedback on CP14/10 and final rules", PS14/16, at https://www.fca.org.uk/static/documents/policy-statements/ps14-16.pdf.
[66] Ofcom (2017) "Review of the market for standalone landline telephone services: Statement", at: https://www.ofcom.org.uk/__data/assets/pdf_file/0015/107322/standalone-landline-statement.pdf.
[67] Competition and Markets Authority (2016) "Energy market investigation: Final report", Para 20.24. See: https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf.
[68] UK Department for Business, Energy and Industrial Strategy (2017) "Draft Domestic Gas and Electricity (Tariff Cap) Bill", Cm 9516, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/651268/CCS207_CCS1017179938-1_Draft_Domestic_Gas_and_Electricity.pdf.

ensures that consumers get a good deal, irrespective of their engagement efforts, the lower will be the incentives of consumers to engage, and this will in turn tend to reduce competition. This effect could potentially even be sufficient to mean, perhaps counter-intuitively, that industry profits rise and total consumer outlay increases when price regulation is introduced.

As such, there is an ongoing debate within the UK about how to deal with markets characterised by price discrimination which reflects differences in relative customer engagement. This debate has been precipitated by concerns the existence of a so-called 'loyalty premium' being paid by inactive customers across a variety of UK markets. The consumer body Citizens Advice recently issued a super-complaint to the CMA relating to this issue in respect of the cash savings, home insurance, mobile phone, broadband and mortgage markets.[69] A likely focus of the CMA's assessment will be whether there are smarter customer engagement interventions available to tackle the problems in these markets, or indeed whether there are smarter forms of outcome control regulation which are less susceptible to the downsides associated with simple price caps.

Conclusion

In brief conclusion, consumer-facing interventions which are designed to enhance consumer engagement are becoming increasingly prevalent and topical.[70] This paper discusses some key categories of such interventions, some important policy issues, and some key lessons for policy-makers, drawing on recent experience from the UK. In particular, it emphasises the importance of consumer testing in ensuring that such interventions are effective.

The paper also highlights, however, that while existing consumer engagement interventions can be valuable in enhancing competition, they may not be a panacea. This is especially a problem in markets characterised by substantial differences in relative customer engagement combined with price discrimination. Much progress has already been made towards designing more effective customer engagement interventions, but more work is needed both in this area and in developing better approaches to outcome regulation in markets where it is unrealistic to raise engagement levels further.

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[69] Citizens Advice (2018) "Excessive prices for disengaged consumers: A super-complaint to the Competition and Markets Authority". See: https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/excessive-prices-for-disengaged-consumers-a-super-complaint-to-the-competition-and-markets-authority/.

[70] It is noteworthy that the Competition Committee of the OECD recently held a roundtable policy discussion on such interventions. See: http://www.oecd.org/daf/competition/consumer-facing-remedies.htm. The CMA and FCA, on behalf of the UK Competition Network, have also recently published a joint 'lessons learned' report in this area. Financial Conduct Authority and Competition and Markets Authority (2018) "Helping people get a better deal: Learning lessons about consumer facing remedies". See: https://www.gov.uk/government/publications/ukcn-consumer-remedies-project-lessons-learned-report.