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Designing and Testing Effective Consumer-facing Remedies - Background Note

5 June 2018

This document was prepared by the UK Competition and Markets Authority to serve as background for Item 4 at the 127th Meeting of the Working Party No 3 on Co-operation and Enforcement on 5 June 2018.

The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

More documentation related to this discussion can be found at
www.oecd.org/daf/competition/consumer-facing-remedies.htm

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Designing and Testing Effective Consumer-facing Remedies

1. Introduction

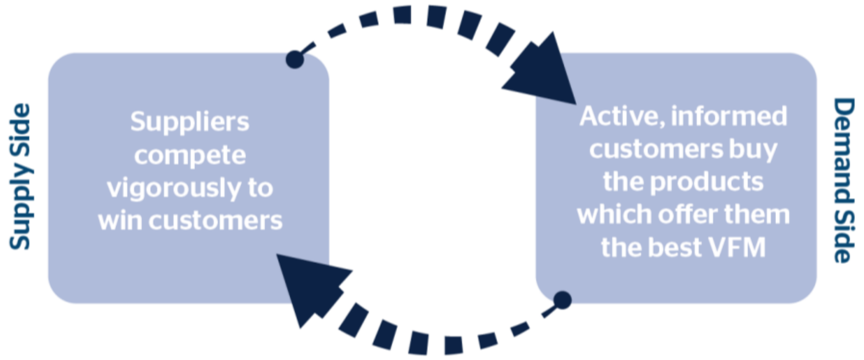
1. The focus of the roundtable on effective consumer facing remedies is on how competition authorities and regulators can intervene in markets to make the demand-side work well, delivering benefits for consumers. It builds on work carried out by Competition and Markets Authority and UK regulators over the last year[1] as well as reflecting submissions from OECD delegates.

1.1. The importance of the demand side

2. Market outcomes are determined by the interaction of demand and supply conditions. Both the demand- and supply-sides of any market need to work effectively for its customers to benefit from low prices, good quality, high levels of innovation and responsive customer service.

3. Where the supply side of a market is characterised by numerous suppliers and low barriers to entry, market power is typically expected to be limited and suppliers will be incentivised to offer a competitive price.

4. However, good outcomes also depend on a functioning demand side. Where customers face challenges such as barriers to accessing relevant information on price or quality, barriers to switching, barriers to searching or comparing between suppliers, or where they face barriers to understanding the choices on offer, suppliers may be able to exercise greater market power than they otherwise would.



[1] The UK Competition Network Consumer Remedies Project, which was co-led by the CMA and Financial Conduct Authority, has examined a number of aspects of the design, testing, monitoring and implementing of demand-side remedies. For further information, see UKCN homepage, which includes an archive of relevant academic and policy documents.

5. Much work of competition authorities focuses on supply-side interventions. For example, merger control seeks to ensure that business combinations do not give rise to increases in the concentration of suppliers that would result in worsened competitive outcomes, while anti-cartel enforcement seeks to ensure that suppliers do not eliminate competition between them by agreement.

6. However, competition and consumer authorities may also intervene on the demand side across a wide range of tools, such as market studies, antitrust enforcement, consumer protection cases,[2] mergers or, more generally, in their role as advocates for competition in policy formation or as promoters of awareness of competition issues. Market studies, in particular, represent a flexible tool for Competition Authorities to seek to improve outcomes for consumers, enabling intervention on both the supply and demand-side of markets. Similarly, regulators often look to combine both demand and supply-side interventions to facilitate competition in their sectors.

7. For these reasons, understanding how to design, test, implement, monitor and evaluate demand-side remedies to maximise their effectiveness is of broad relevance to both competition authorities and regulators.

1.2. Structure of this paper

8. This paper provides an overview of the ways in which demand-side problems can lead to poor consumer outcomes in markets, before discussing the types of remedies that have been put in place to address these issues and some preliminary views on their effectiveness. It highlights that the careful design of remedies is integral to their effectiveness and that consumer-focussed testing offers a valuable means of learning which remedy is likely to work. Finally, it sets out some of the on-going debates in this area as a basis for further discussion.

9. The paper is structured as follows.

- Section 2 considers the various sources of demand-side problems in markets.
- Section 3 provides an overview of the main categories of remedy used to address those problems and some preliminary conclusions on the effectiveness of such interventions.
- Section 4 considers practical aspects of getting those remedies right, especially relating to testing, evaluating and refining remedies.
- Section 5 sets out some of the main issues and topics for discussion in the area of demand-side remedies.

[2] While the aims of consumer protection cases are different from those of traditional competition cases, the demand-side interventions that may be put in place will often have similar effects in terms of ensuring that competition between firms works in the best interests of consumers.

2. Sources of demand-side problems in markets

10. As set out above, a poorly-functioning demand-side of a market can increase the market power of suppliers and/or lead to competition occurring along dimensions that are more visible but less important to consumers. Both of these effects result in worse outcomes for consumers. This section outlines some of the key reasons why demand-side problems might arise in practice.

11. One approach to analysing demand-side behaviour which has been used by UK Competition Authorities is to describe the steps that consumers would need to go through to exercise effective choice, and then identify the barriers that prevent this from happening. A well-functioning market typically relies on consumers being able to:

- **Access** information – for example, on the prices and quality of alternative products;
- **Assess** this information – for example by comparing rival offers and making an informed choice between them;
- **Act** on the information – for example by being able to switch provider easily.

12. This framework seeks to capture insights both from traditional industrial organisation theory and behaviour economics. Industrial organisation theory highlights how information asymmetries, barriers to searching, barriers to switching and other obstacles can limit customers' ability to choose the best product for them, and how this can result in a reduced incentive for suppliers to maintain or improve the quality of their offering to win customers from their rivals. Behavioural economics explains how consumers make decisions in practice and how suppliers may be able to capitalise on certain behavioural biases, making it more likely for consumers to choose a product or service that is not the best for them and thereby increasing suppliers' profits by reducing competitive pressure in the market.

13. Based on this combination of industrial and behavioural theory, barriers to consumers' ability to access, assess and act on information can arise from a combination of market characteristics, behavioural biases and actions taken by firms. In particular, demand-side problems can occur as a result of:

- costs, either real or perceived, to exercising choice such as search and transaction costs;
- limitations in consumer decision-making resulting from behavioural biases or contextual factors; and
- suppliers exacerbating the impact of both these costs and biases in a way that worsens outcomes for consumers.

14. The following section discusses each of these points in turn.

2.1. Costs to exercising choice

15. A first set of demand-side problems can arise from costs and barriers to accessing, assessing or acting on information, or the perception of such costs. Consumers may face barriers to assessing the offerings of firms and finding the

supplier with the best price, quality and/or other characteristics that determines which products they would prefer. Important examples of these costs include search costs and switching costs.

2.1.1. Search costs

16. Where customers expect to spend time, effort or money in order to assess which product best satisfies their needs and preferences, they may choose not to search the market and instead choose a firm at random. This is especially true where such search costs are expected to be large relative to the value of the product being purchased. In such circumstances, suppliers' incentives to maintain or improve their competitive offering may be reduced. Box 1 sets out two different markets in which the CMA found that a lack of information increased search costs for consumers.

Box 1. Lack of information on price / quality

Legal Services

The CMA looked at the legal services market for individuals and small businesses in England and Wales. The infrequency and the circumstances of the purchase of legal services by individual consumers and small businesses combined with a lack of upfront information from lawyers led to a finding that consumers were not able to drive competition. The most common services used by consumers relate to significant and stressful life events such as death, breakdown of families and the sale and purchase of residential property. Even in conveyancing, where around 80% of transactions are conducted for a fixed fee, fewer than one in five lawyers' websites included any form of price information.

Private Healthcare

The CMA investigated the market for acute secondary and tertiary private healthcare in the UK. It found that both patients and their agents (General Practitioners) lacked information regarding the quality of healthcare provided by private hospitals and by medical consultants, for example in terms of mortality rates, surgical infection rates, patient satisfaction and measures of improvement in health following treatment. This lack of information meant that patients were not able to make informed decisions regarding which hospital and/or consultant to choose for their treatment.

In addition, private hospitals' incentives were to compete primarily on the measures of quality that were visible to patients, including the hospitality services provided (food, rooms, toiletries, car parking), but which were less important to the overall quality of the service provided.

2.1.2. Switching costs

17. Switching costs are the real or perceived costs of time, effort and money that a customer incurs when changing supplier, as compared to remaining with the current supplier. Switching costs increase the likelihood that customers will continue to buy from the same supplier and, therefore, become 'locked-in'.

18. The existence of actual or perceived switching costs both creates a group of "captive" customers and gives suppliers an incentive to discount heavily to new customers (since they need to overcome the costs of switching). Where suppliers can price discriminate, this may lead to higher prices for captive customers, especially if customers do not anticipate this type of price discrimination when choosing their supplier in the first place. In the absence of price discrimination, suppliers must balance their incentive to charge lower prices to attract new customers and to charge higher prices to capitalise on the old customers with a lesser tendency to switch.

19. High switching costs in a market do not necessarily lead to weaker competition overall, since they can create incentives for suppliers to compete strongly to attract new customers. However, in some circumstances switching costs can lead to a softening of competition, particularly where suppliers have significant market power. In general, switching costs are likely to be more problematic in mature markets, where the proportion of customers that are locked-in rises and opportunities to earn discount "new customer" prices dry up. When analysing switching costs, it is important to consider what factors may result in a lack of discounting (meaning higher prices for captive customers are not offset, and switching costs are driving up profitability).[3]

Box 2. Switching costs in supply of Liquefied Petroleum Gas

During its investigation into the market for the supply of liquefied petroleum gas ('LPG') to domestic customers, the CMA identified a number of barriers which resulted in low rates of switching between suppliers, even among customers who could obtain significant net savings by switching.

In particular, the CMA observed that suppliers normally retained ownership of the LPG storage tanks on domestic customer premises and required customers who switched providers to have their existing tank removed and replaced by a similar tank from the incoming supplier. In addition to the effort/inconvenience of switching tanks, customers faced charges from both the incoming and outgoing supplier, to cover or contribute to the suppliers' switching costs. The level of these charges was unclear as they were not always set out in contracts and depended on the discretion of suppliers.

In addition, suppliers included requirements for three-month notice periods in order to switch and put in place lengthy minimum-term contracts, increasing customers' perceived costs of switching.

2.2. Behavioural biases and contextual factors

20. A second set of demand-side problems can arise from characteristics of consumer behaviour. We distinguish here between underlying behavioural biases

[3] For more analysis of switching costs, see OFT (2003).

(for example, cognitive limitations), and contextual factors in particular markets which might affect consumer behaviour (for example, distress purchases).

2.2.1. Behavioural biases

21. A body of evidence shows that consumer decision-making often departs from the rational behaviour described in standard microeconomic models of consumer choice. Consumers have busy lives and finite time, energy and resources to devote to searching for, learning about and choosing between the competitive offerings of different suppliers. In that context, customers can frequently use heuristics or 'rules of thumb' to make decisions: for example, only buying products when they are on special offer.

22. While these rules of thumb can often work well for consumers, they can in certain circumstances bias consumers to making decisions that lead to poor outcomes, for example by reducing the incentive for suppliers to improve their competitive offering or aggressively enter a new market because they do not expect consumers to reward that competitive behaviour. This is especially the case where suppliers are able to learn about consumers' biases and exploit them to make choices that are more profitable for the supplier but further away from the best outcome for the consumer.

23. Consumers exhibit a range of behavioural biases, which differ in terms of their potential for resulting in poor outcomes. Behavioural biases include:

1. present bias – a strong tendency to favour options with payoffs occurring in the present than in the future;
2. reference dependence and loss aversion – a preference not to assess outcomes in their own right but rather as gains and losses relative to a reference point, often underweighting gains and overweighting losses;
3. anchoring effects – the disproportionate influence on consumers of reference prices or quantities, for example a minimum monthly repayment for a credit card influences a consumer's decision as to how much to repay, with many repaying smaller amounts than they otherwise would have done.
4. framing effects – the impact on choice of presenting competitive offerings in different formats, or referring to different contextual information; and
5. overconfidence bias – the tendency to overestimate their own abilities and knowledge, and therefore taking riskier decisions than they otherwise would.

24. These behavioural biases differ in terms of their potential for resulting in poor outcomes. Two of the most important outcomes resulting from behavioural biases are the status quo effect and choice overload.

- The status quo effect refers to consumers' preference to maintain the current circumstances or stay with a previous decision or, effectively, not act. It can occur as a result of present bias or reference dependence and loss aversion.
- Choice overload refers to the empirical observation that increasing the number of options available to consumers results in a greater tendency for them to delay making a decision as well as an increase in the likelihood that the default option will be chosen. To the extent that consumers fail to make

a choice, or make a poor choice, this can result in worse outcomes. Choice overload is exacerbated by time constraints, complexity of alternatives and lack of expertise in evaluating the options. Suppliers may exploit choice overload by increasing the range and complexity of options.

Box 3. Behavioural biases in Payday lending

The CMA found that users of payday loans demonstrated a number of behavioural biases:

- **Present bias** – Consumers were focused on the immediate need for consumption rather than whether they can repay in the longer term.
- **Overconfidence** – Borrowers were over-confident in their ability to repay a loan which led to borrowers incurring significant interest and late payment fees. Borrowers repeatedly 'rolled-over' loans – paying-off a loan by taking a new loan with the same lender.
- **Framing, Salience and limited attention** – Consumers were often influenced by how information on payday loans was presented, focusing on headline repayments without considering all potential costs such as additional fees and charges.
- **Persuasion and social influence** – Lead generating intermediaries advertised extensively emphasising the likelihood of being accepted for credit rather than finding the most suitable loan. Borrowers were matched with lenders based on commission receivable. Uncertainty of loan acceptance meant that once borrowers identified a lender who would lend money, borrowers would return to that lender regardless of cost.

2.2.2. Contextual factors affecting how customers make decisions

25. As described above, behavioural economics has identified a range of biases or tendencies among consumers that give rise to departures from choices or outcomes that would be predicted by traditional economic models where consumers behave rationally and maximise their utility.

26. Consumer behaviour can also be affected by particular contextual factors and costs that affect decision-making. These include:

- cognitive and emotional costs – for example where a purchasing decision must be made very quickly or unexpectedly, or under conditions of emotional distress (such as in the example of care homes in Box 4);
- uncertainty about the benefits and costs of any particular course of action and risk preferences.

27. Contextual factors may affect decision-making even under ‘traditional’ economic assumptions about consumer behaviour. In these situations, consumers may well be acting rationally and optimising their decisions, however subject to the very real and binding constraints imposed by contextual factors they face in real life.

28. Moreover, interventions that account for these contextual factors and costs – and reduce their size or impact – may be effective in helping consumers to achieve the (better) outcomes predicted by traditional models.

Box 4. Care homes

The CMA market study into care homes found that there were many barriers to people making well-informed choices, including the context in which decisions were made.

Consumer research showed that there was often very little prior consideration of care needs and options by prospective residents, their representatives and their families. Frequently, decisions on care are faced for the first time following a sudden illness, injury or loss of a carer, meaning they are often made with urgency under extremely distressing circumstances. Furthermore, it is very difficult for residents to correct a poor choice, as once settled in a care home they find moving to a different home extremely stressful.

The care system is highly complex with residents and/or their representatives needing to assess their eligibility for funding, and to try to find suitable, affordable care homes that have vacancies. The CMA found that the information and guidance available to residents could be confusing and providers often did not clearly provide all the important information people need to make an informed choice, including information on pricing.

2.3. Suppliers' actions to exacerbate demand-side problems

29. A final source of market problems can arise as a result of the interaction between the demand-side factors discussed above and the response of firms. In many cases suppliers may have the ability and incentive to exacerbate search and switching costs and take advantage of behavioural biases.

2.3.1. Raising search and switching costs

30. In some markets search costs may be exacerbated by suppliers. For example:

- suppliers may introduce 'noise' or complexity in the market by complicating their pricing structure or bundling simple products with more complex ones to increase the overall level of complexity and make comparison more difficult;
- they may charge different prices at different locations, for different brands, or at different times, making it difficult to find the low-priced offer;
- suppliers may fail to make available all the product information needed by customers to make an informed choice, in particular of one-off purchases.

31. Where suppliers are not proactive in making relevant information readily accessible to consumers, those consumers may not be willing to expend the time, effort or financial cost of finding that information and, therefore, their ability to identify the best offering for them may be less effective. To the extent a lack of

information results in consumers becoming less responsive to differences in the price or quality of different suppliers' offerings, those suppliers may be incentivised to offer worse terms than they would otherwise offer.

32. For example, in the recent legal services market study (see Box 1), the CMA found that very few providers published transparent prices or information on service quality. This led to an increase in search costs, and meant that many consumers simply chose their closest or most convenient provider, or used 'word of mouth' recommendations. The market appeared to be locked in a 'low transparency' equilibrium, in which individual providers did not have an incentive to deviate by increasing their level of transparency.

33. Similarly, suppliers can sometimes act to create or exacerbate switching costs. Contractual terms (such as limited rebates for cancellation) or marketing devices (such as loyalty cards) can have the effect of increasing switching costs or influencing switching decisions.

34. For example, in its Payment Protection Insurance market investigation, the Competition Commission identified the rebate policy on single-premium policies (where the entire premium is paid upfront) as a barrier to switching. Where consumers cancelled before the end of a contract, the CC found that rebates on the upfront spend were not given on a pro-rata basis. If a consumer cancelled a PPI policy, the rebate given was typically not enough to take out an identical policy with another provider.

35. In Canada and Japan, the competition authorities have identified particular types of conduct by mobile phone providers that lead to higher switching costs (see Box 12). Both authorities have advocated for action to limit the length of contract terms, and to reduce cancellation fees imposed by providers.

2.3.2. Exploiting behavioural biases and contextual factors

36. Firms may also be able to exploit behavioural biases. For example, consumers may use heuristics or rules of thumb to decide which products to buy, and suppliers may be able to identify these heuristics and exploit them in a way that makes consumer choice less effective. Box 5 describes the example of gym contracts, where providers have an incentive to lock consumers into long contracts with limited cancellation rights.

Box 5. Gym contracts

Consumers' decisions to enter into gym contracts may be affected by behavioural biases. Evidence suggests that consumers typically over-estimate the frequency with which they are likely to visit a gym in future. This creates an incentive for gym operators to exploit the behavioural biases by locking consumers into long-term contracts which are hard for consumers to cancel if they find that they use the gym less than they initially anticipated.

Between 2011 and 2013 the OFT took consumer enforcement action against a number of gym operators. The OFT found that some operators:

- imposed a minimum membership period of a year or more without giving consumers the right to terminate the agreement in certain circumstances (for example, illness, injury, loss of livelihood, change of principal place of work); and
- imposed long minimum term contracts (12 months or more) with long notice periods and high fees for exiting the contract.

An ex-post evaluation conducted by the CMA estimated that the action to address unfair terms had saved gym users around GBP 37 million.*

* https://www.gov.uk/government/news/gym-users-saved-37-million-by-crackdown-on-unfair-contracts

3. Overview of demand-side remedies

37. There are several types of demand-side remedies which can be used to achieve varying objectives, be it improving the information available to consumers, aiding their decision making, reducing search costs or making switching easier. This section provides an overview of the different types of demand-side remedies, giving examples of their use across a number of OECD countries, before drawing some lessons on their effectiveness and how they might best be applied in future. The overview and lessons learnt are heavily drawn from Amelia Fletcher's review of demand side remedies.[4]

38. There are four main categories of demand-side remedy explored in this section:

- Disclosure remedies;
- Shopping around remedies;
- Switching remedies; and

[4] *"The Role of Demand-Side Remedies in Driving Effective Competition: A Review for Which?",* Amelia Fletcher, Centre for Competition Policy, University of East Anglia, 7th November 2016.

- Outcome control remedies.

39. In this section, we provide an overview of various remedies that fit into each of these categories. However, we note that there is some crossover between these categories and a remedy may have multiple aims. For example, an intervention requiring the disclosure of greater/standardised information on the price of products, will make it easier for customers to shop around and to switch to a better value supplier.

3.1. Disclosure remedies

40. Disclosure remedies play a key role in supporting effective competition by ensuring consumers have access to information and can use it to compare products and services and make informed decisions. This might include putting information in the public domain which is not currently available, requiring it is presented in a clear and comprehensible way and ensuring that it is not misleading.

41. There are a variety of sub-categories of disclosure remedies, including those designed to:

- **Address information asymmetries**, by putting information into the public domain that was not previously available to customers. The information made available could be regarding the quality of the good or service or some other element such as the price or the terms of sale;
- **Improve consumer awareness and understanding** of the range of products available and their relevant characteristics. This type of disclosure remedy goes beyond simply putting information in the public domain, for example ensuring that the information should be provided in a clear and comprehensible way or should be displayed prominently; and
- **Facilitate the process of comparing products** to aid shopping around and switching. This type of disclosure remedy focuses on ensuring information is made available to consumers in a standardised way to aid comparison or that the information disclosed is sufficiently complete and accurate to avoid misleading customers. It can also involve creating new forms of information to aid comparability.

42. All of these types of disclosure remedy may be used to help either new or existing customers make better purchasing decisions. The following boxes provide examples of disclosure remedies that have been applied in OECD countries that fall into each of the categories above. Remedies in the third category, in particular, tend to overlap with shopping around and switching remedies and so may be combined with other approaches to form a complimentary remedies package.

Box 6. Disclosure to address information asymmetries

Japanese childcare services

Japan's Fair Trade Commission (FTC) has advocated for better information disclosure in relation to Japan's childcare services. It can be difficult for parents to judge the quality of a daycare centre, since many daycare centres operate behind closed doors and young children cannot express their own opinions. Japan's FTC has advocated that more information would better assist consumers when choosing a daycare centre and that municipalities should identify the specific type of information that would be particularly useful to guardians when making decisions. Such disclosure should promote competition amongst childcare service providers, enabling them to compare themselves to their competitors and giving them incentives to improve the quality of their services.

Private healthcare in the UK

To address the lack of quality information in the UK private healthcare sector (see Box 1), the CMA required private hospitals to collect a range of performance measures relating to both hospitals and consultants and to submit these for publication on the website of an independent Information Organisation. The aim is for patients and GPs to be able to compare performance across hospitals' and consultants' when choosing where to seek treatment.

Box 7. Disclosure to improve consumer awareness and understanding

Credit cards in Hungary

Following an investigation into interest-free reimbursement related to the use of credit cards, the Hungarian Competition Authority, Gazdasági Versenyhivatal (GVH), accepted undertakings from OTP Bank Nyrt. OTP Bank Nyrt committed to launch an educational campaign to improve consumer awareness and responsible decision-making with respect to the main information regarding credit cards (for example grace periods, repayment opportunities). They also committed to promote an educational website on credit card use, enabling consumers to access bank neutral information.

Banking in Brazil

In order to address concerns around increased concentration in the Sao Paulo region following the acquisition of Banco Nossa Caixa by Banca do Brasil, the Brazilian Administrative Council or Economic Defense (CADE) adopted behavioural remedies. These required that Banco do Brasil should contract a third party to inform the customers of Banco Nossa directly affected by the transaction about the procedures and mechanisms for moving to another bank should they wish to do so.

Legal services in the UK

To address the lack of price and product information in Legal services (see Box 1), the CMA made recommendations for the eight legal services regulators to introduce consistent minimum standards of price and service transparency. As a result, consumers will be able to access information on price, service and redress in a comparable and consistent format for the most commonly purchased services. Regulators are also developing and promoting an information hub setting out which types of lawyers can help with different legal matters.

Box 8. Disclosure to facilitate comparison across products

The Danish mortgage market

In a recent market study into the mortgage market, the Danish Competition and Consumer Authority recommended implementing a simple standardised cover to mortgage credit agreements in order to increase intelligibility and comparability for consumers. The Authority conducted a lab-based experiment based on behavioural insights and found that adding the cover significantly increased consumers' ability to identify the monthly costs of the loan.

Airlines in New Zealand

Following a consumer protection investigation, New Zealand's Commerce Commission secured undertakings from a number of airlines to end their practice of pre-selection of 'opt out' services when selling airline tickets to New Zealand customers online. Items that airlines had pre-selected during the online booking process, at an added cost to the flight, included baggage, seat selection and travel insurance. This practice was found to be misleading customers as to the price of the flight and the services they were actually buying, often leading them to purchase something they did not intend to.

3.1.1. Disclosure remedies: lessons learned

43. The evidence on the effectiveness of demand side remedies generally is mixed, with some improving customer engagement while others have been ineffective or, in some cases, harmful. For example, disclosure remedies implemented in the UK banking market have had varying degrees of success:[5]

- The introduction of text alerts for UK banking customers who are about to go into unarranged overdraft was found, in an ex-post evaluation, to be very effective in reducing both unarranged overdraft charges and current account balances, especially when consumers also have mobile banking. Signing up to text alerts or mobile banking was found to reduce unarranged overdraft charges by 5-8%, while signing up to both services led to a reduction of 24%.
- In contrast, putting information on unarranged overdraft charges onto monthly bank statements was found to have no discernible impact on customer awareness of these charges or on the level of charges incurred.

44. Having reviewed a range of available evidence, Amelia Fletcher draws some helpful conclusions around the use of disclosure remedies:

- ***It is important to ensure compliance with disclosure remedies*** – Limited compliance by firms will likely reduce the impact of a remedy. Monitoring and reporting can be used to supervise compliance and are discussed further in section 4.

[5] *"Message received? The impact of annual summaries, text alerts and mobile apps on consumer banking behaviour"*, FCA Occasional Paper 10, March 2015.

- ***Rules may need to be prescriptive to ensure disclosures are clear*** – Interventions may need to go beyond simply stating that information should be clear and comprehensible to consumers and dictate precisely how information should be provided – for example by specifying a set format.
- ***Well-designed disclosures can be effective in triggering shopping around*** – Testing is crucial to getting the design right.
- ***Testing can be valuable in understanding how consumers make decisions*** – The information an authority expects will be helpful to and understood by a consumer may not always be correct. Testing can be used to ensure disclosures really do enhance consumer decision making. This is discussed further in section 4.
- ***Consumer awareness and attention to disclosure is important*** – To ensure consumers are aware of the disclosure, additional measures may be needed to ensure the prominence and timeliness of the disclosure. In addition, consumer awareness and attention can be affected by who does the disclosure and where the disclosure appears.

3.2. Shopping around remedies

45. These remedies aim to make shopping around easier or less costly. They support effective competition by making it easier for consumers to compare products and services and make informed decisions. Shopping around remedies can facilitate the development of search and comparison tools, ensure better information is available to consumers to aid comparison or simply encourage or prompt shopping around. It can often be difficult to distinguish between different demand side remedies. Here we list those remedies whose primary aim is to facilitate shopping around. This may include remedies which involve disclosure requirements but also those which go beyond this, for example by enabling better third-party comparison and decision-making tools.

46. Shopping around remedies can also be grouped into three broad sub-categories, including those designed to:

- **Enhance the collation of information to facilitate search and comparison.** This may take the form of simply collating the relevant information in one place or it may either support or directly require the provision of additional functionality, for example the ability to compare products and services on price or some other factor – commonly referred to as 'digital comparison tools.'
- **Provide access to personal information to facilitate comparison –** This type of remedy focuses on ensuring access to consumers' personal information to aid more effective comparison of products. Such information, for example regarding a consumers' usage patterns, can help consumers identify the product or service which best suits their needs. Consumers often do not hold this information themselves, rather it is held by their existing product or service provider. These remedies might require incumbent suppliers to provide this information directly to consumers, to digital comparison tools or other third parties to help consumers better compare the different offers available to them.

- **Trigger or require shopping around** – This type of remedy seeks to overcome consumer inattention or inertia and may include consumer awareness campaigns which highlight the gains to be made from shopping around as well as how to do it, as well as introducing alerts to consumers which can be targeted to have maximum impact. They may also involve changing the choice architecture where consumers face circumstances which may push them from shopping around.

47. The following boxes provide examples of shopping around remedies that have been applied in OECD countries that fall into each of the categories above.

Box 9. Remedies to support the development of comparison tools

Telecommunications in Mexico

The regulator and competition authority for telecommunications in Mexico, the Instituto Federal de Telecomunicaciones, has implemented a tool to help consumers compare mobile phone plans as well as fixed telephony, pay TV and broadband services. This consumer-friendly information tool enables consumers to compare their plan with other options offered across providers and check whether they are being offered a competitive price.

Retail banking in Iceland

In settling a case based on a finding of collective dominance in the market for retail banking services in Iceland, the Icelandic Competition Authority agreed commitments with the three big banks. In particular, each bank is required to ensure information on general fees, rates and terms is accessible on its website through an open API (Application Programming Interface) that third parties can download and use to set up comparison websites. Comparison websites should reinforce consumer awareness of price and trigger more effective competition

Box 10. Remedies to provide customers with access to personal data

Personal current accounts in the UK

Following a market investigation into the effectiveness of competition in the UK retail banking market, the UK Competition and Markets Authority (CMA) implemented a remedy requiring banks to implement ‘Open Banking.’ Open Banking requires banks, providing they have a consumer’s permission, to share that consumer’s current account data securely and in a standardised form with third parties, such as ‘apps’ selected by the consumer. Doing so enables consumers to take advantage of new and innovative products. These could include ‘apps’ which help consumers better manage their accounts, ensuring they don’t go overdrawn or which help consumers compare different bank accounts on the basis of their own requirements.

Box 11. Remedies to trigger shopping around

Health insurance in the Netherlands

The Netherlands Authority for Consumers and Markets and the Netherlands Healthcare Authority are currently jointly testing disclosures designed to reduce consumer inertia and prompt greater shopping around and switching in the Dutch health insurance market. The interventions being tested are based on behavioural insights about consumer inertia and include:

- Offering respondents information about the ease of switching relevant to their demographic group, combined with a matching illustration.
- Asking respondents about their current insurance plan and showing them in a simple matrix how their plan compares to two highly comparable (and often cheaper) plans in terms of coverage and monthly premium.
- Offering respondents the option to sign-up to reminders to compare insurance offers.

Internet browsers in the EU

In January 2009, the European Commission announced an investigation into the bundling of Internet Explorer with Windows operating systems from Microsoft due to concerns that the tying of Internet Explorer to the Windows operating system might harm competition between web browsers, undermine product innovation and reduce consumer choice.

In December 2009, the EC accepted a remedy in which Microsoft agreed to install a pop-up box function which prompted Windows customers to make an active selection from a list of twelve popular browsers, including Internet Explorer.

Professional social networks in the EU

In October 2016, the European Commission was notified that Microsoft was proposing to acquire LinkedIn. Following an investigation, the EC found that the proposed merger raised competition concerns in the professional social network services market.

In December 2016, the EC accepted commitments from Microsoft that included (amongst other things) ensuring that PC manufacturers and distributors would be free not to install LinkedIn on Windows and allowing users to remove LinkedIn from Windows should PC manufacturers and distributors decide to preinstall it, for a period of five years.

3.2.1. Shopping around remedies: lessons learned

48. As set out earlier in the paper, there is mixed evidence on the effectiveness of demand side remedies, with some having their intended effect whilst others are less effective or even harmful. For example, shopping around remedies targeted at the extended warranties market in the UK have had varying degrees of success:

- A requirement on those selling extended warranties to tell consumers that they are free to shop around was found to be successful in raising consumer awareness that they can do this. The evaluation found that 74% of consumers realised that they did not have to make an immediate decision on extended warranties. Shopping around, while still low, increased significantly from 4% to 15%.

- However, a price comparison website developed for comparing extended warranties has been found to be of limited use, with very few providers listed, including only one selling stand-alone extended warranty cover.

49. Having reviewed a range of available evidence, Amelia Fletcher draws some helpful conclusions around the use of shopping around remedies:

- ***Encourage the development of commercial digital comparison tools*** – This is often better than competition authorities creating such tools themselves as commercial tools have strong incentives to market their sites effectively and to make them as user-friendly as possible.
- ***Governance of digital comparison tools is key*** – Good governance can ensure comparison tools operate effectively, for example that their rankings are not distorted by supplier commissions and that they keep their information on products and services updated. Regulation or accreditation of comparison websites can be used to address such issues.
- ***Bear in mind that digital comparison tools will not be used by all consumers*** – Most digital comparison tools are available online and therefore consumers who do not use the internet will unlikely be able to search out the best online deals. This is of particular concern if online prices are significantly lower than those available offline.
- ***Provide consumers' personal information directly to digital comparison tools*** – with consumers' permission, remedies which facilitate this are likely to be more effective than relying on consumers to pass the information from supplier to comparison tool themselves.

3.3. Switching remedies

50. Switching remedies enhance competition by making switching easier or less costly, by reducing consumer inertia, or by increasing the likelihood that consumers will switch providers. Consumers do not actually need to switch providers to drive effective competition. It is enough that providers face a real risk of losing customers and alternative providers a real opportunity to win them.

51. Switching remedies can be separated into two sub-categories:

- **Remedies that involve changing contractual restrictions.** This type of remedy prohibits the use of contract terms that serve to disincentivise consumers from switching their provider, for example by imposing cancellation fees, having short windows for giving notice to terminate or which automatically renew; and
- **Remedies that make switching quicker, easier, more reliable or more attractive.** These remedies seek to encourage switching by addressing consumer concerns about the time switching provider may take as well as the ease and reliability with which it can be done. Such remedies may

include introducing switching services, setting minimum quality guarantees for the switching process (for example time limits) and requiring portability.

52. The following boxes provide examples of switching remedies that have been applied in OECD countries that fall into each of the categories above.

Box 12. Remedies to reduce contractual constraints on switching

Enabling mobile phone switching in Canada and Japan

Both Canada's Competition Bureau and Japan's Fair Trade Commission have advocated for a series of remedies enable greater switching in their telecommunications markets.

Both authorities have advocated limiting the length of service contracts to ensure consumers can move from one service provider to another. In Japan service contracts are currently two years as standard whereas in Canada a large proportion were three years in duration. In addition, both authorities advocated minimising fees to cancel a contract with Canada's Competition Bureau suggesting these fees should be limited to any outstanding balance owed by the customer in relation to the device only. In Japan, where contracts automatically renew if not cancelled after two years, the FTC has also proposed simpler procedures for cancelling contracts.

Both authorities have also advocated for prohibiting handset locking – whereby a service provider locks a device so it can't be used on another service provider's network. Locked handsets are a powerful block to consumers who want to switch service provider and Canada's Competition Bureau proposed locking should be prohibited and service providers be required to unlock any previously locked devices free of charge.

Lastly Canada's Competition Bureau has proposed prohibiting the tying of service contracts with device contracts. This would enable a device repayment relationship to continue after a consumer has switched to a rival service provider. The Bureau has also proposed greater flexibility in how and when devices can be repaid, for example by allowing for advance repayments.

Liquefied Petroleum Gas in the UK

In order to facilitate switching in the LPG market (see Box 2), the CMA required suppliers to change their contract terms to:

- give customers the right to request the transfer of their tank to an incoming supplier and to cap the price that the incoming supplier would have to pay in such circumstances;
- standardize and improve the information available on both suppliers and their offers, and on the switching process; and
- change customer contracts, including restricting notice periods to no more than 42 days and exclusivity periods to no more than two years.

Box 13. Remedies that make switching quicker, easier or more reliable

Number portability in New Zealand & Peru

As is the case in many countries, in New Zealand customers can retain their telephone number when they change service providers – known as number portability. This reduces the costs of switching provider, taking away the need for consumers to inform friends of their new number or risk missing communications.

OSIPTEL, the Regulatory and Competition Agency for the Peruvian telecom market, first required number portability in 2010. Initially, this intervention had a relatively modest effect, with fewer than 0.5% of numbers being switched each year. In a second intervention in 2014, however, OSIPTEL shortened the time period within which numbers had to be transferred – from 7 days to 24 hours. This resulted in a significant increase in switching rates, which was also supported by the prohibition of selling locked handsets.

3.3.1. Switching remedies: lessons learned

53. As with other types of demand-side remedies, there is good evidence that some interventions designed to facilitate switching can be highly effective. For example, academic studies have found strong empirical evidence that number portability is effective in driving competition. For the EU, Cho, Ferreira and Telang (2014) find that the introduction of number portability decreased mobile prices by 7.9% on average.

54. In contrast, other switching remedies have been relatively ineffective. For example, an evaluation of a bank account switching service in the UK found that consumer awareness and confidence in the service was lower than had been expected and its introduction had only led to a small increase in switching volumes, with other aspects of the switching process still deterring consumers resulting in continued high levels of inertia.

55. Having reviewed a range of available evidence, Amelia Fletcher draws some helpful conclusions around the use of switching remedies:

- ***Measures designed to overcome financial barriers to switching can be very effective, as can remedies which reduce the 'hassle factor'*** – For example remedies which remove cancellation fees and therefore directly reduce the cost of switching, or remedies such as those enabling portability.
- ***Interventions can prevent providers from practices which exploit behavioural biases and limit switching*** – For example complex termination procedures and auto-renewal practices can all make switching unduly difficult and can be altered through remedies.
- ***Consumer awareness of the switching process is key*** – Consumers may have misconceptions about the difficulty of switching provider. Where this is the case remedies may need to focus on addressing these misconceptions as well as actions to reduce switching costs. This can be done through promotional or marketing activity.

3.4. Outcome control remedies

56. In certain cases, the demand-side remedies described above may be ineffective in driving effective competition or may create costs for some groups of consumers. For example, where there is price discrimination in a market, enhancing competition for engaged customers may result in disengaged customers paying a higher price. In these cases, outcome control remedies may be preferred.[6]

57. Outcome control remedies specify what suppliers are and aren't allowed to do. They can take a number of different forms including:

- **Rules around how a product is sold, or who it may be sold or marketed to.** For example, consumers wishing to purchase a specific product may be required to take professional advice first, or supplies may only be permitted to sell certain products to suitably-qualified consumers who are able to understand the risks. In the most extreme cases, this can take the form of an outright ban of particular products.
- **Restrictions on product characteristics/variety, or on price discrimination.** This type of remedy may take the form of requiring minimum quality standards, limiting the number of different products a supplier may offer customers in order to reduce complexity, or requiring that certain groups of consumers are offered the same or similar prices.
- **Price regulation.** Even in markets where there are plenty of suppliers, if the demand-side response of consumers is weak, suppliers may have a degree of market power which they can exploit by charging high prices. Price regulation can limit the extent to which suppliers are able to do this.

58. The following boxes provide examples of outcome control remedies that have been applied in OECD countries that fall into each of the categories above.

[6] These may be seen as supply-side rather than demand-side remedies, although in many cases they may aim to resolve problems which have arisen on the demand-side of a market.

Box 14. Remedies setting rules around how a product is sold

Payment protection insurance in the UK*

The Competition Commission's review of the PPI market found that customers' perceptions that taking PPI would increase their chances of being given credit, together with the bundling of PPI with credit and the limited scale of stand-alone provision of PPI acted as barriers to customers searching for the most suitable PPI product.

As a result, the Competition Commission imposed a remedy prohibiting the sale of PPI at the point of sale of the underlying credit until after seven days after the credit sale. The aim of this remedy was to address consumer misperceptions about PPI and to encourage search/shopping around by consumers who wished to purchase PPI.

* Payment protection insurance (PPI) is an insurance product that enables consumers to ensure repayment of credit if the borrower dies, becomes ill or disabled, loses a job, or faces other circumstances that may prevent them from earning income to service the debt.

Box 15. Restrictions on product characteristics or price discrimination

Retail energy in the UK

As part of its 2013 Retail Market Review, Ofgem (the energy regulator for Great Britain) introduced a number of restrictions on the number and type of tariffs that energy suppliers could offer domestic customers. These included:

- Limiting the number of tariff choices a consumer would face to four;
- Standardising tariff structures;
- Creating rules designed to simplify bundles, discounts and reward points; and
- Proposals to facilitate collective switching.

These interventions were designed to make it easier for domestic consumers to understand and compare energy tariffs across suppliers, addressing concerns that the proliferation of energy tariffs was confusing to customers and creating barriers to search and switching.

Box 16. Price regulation

Payday lending in the UK

In response to concerns about the Payday lending market (see Box 3), the UK Government introduced legislation requiring a cap on the cost of short-term credit. This cap was put in place by the Financial Conduct Authority (FCA) in January 2015 and structured in a way to try and account for the existence of behaviour biases. It took the following form*:

- For all high-cost short-term credit loans, interest and fees must not exceed 0.8% per day of the amount borrowed.
- If borrowers do not repay their loans on time, default charges must not exceed £15. Interest on unpaid balances and default charges must not exceed the initial rate.
- Borrowers must never have to pay back more in fees and interest than the amount borrowed, i.e. a total cost cap of 100%.

In addition, the FCA introduced limits on the number of times that payday loans could be rolled over before being repaid.

*"Detailed rules for the price cap on high-cost short-term credit Including feedback on CP14/10 and final rules", FCA, November 2014.

3.4.1. Outcome control remedies: lessons learned

59. As for other types of demand-side remedies, the effectiveness of outcome control interventions depends on their design and the context in which they are put in place. For example, a recent review of the payday lending price cap (see Box 16) finds that the cap has been successfully set at a level which has allowed the market to continue to exist, whilst also reducing the number of borrowers getting into either extreme difficulty and/or repeated lending cycles than previously. Therefore, although some consumers have been denied access to this product, there has been a net benefit.

60. In contrast, the CMA found that the 'Simpler tariffs' rules introduced in the energy market failed to reduce complexity to a level that overcame the need for price comparison websites (PCWs) to help make choices, but at the same time limited useful tariff innovation. As a result, the CMA recommended that Ofgem remove these requirements.

3.5. Conclusions on the effectiveness of demand-side remedies

61. In addition to the specific lessons set out above, there are a few more general points to bear in mind when designing demand-side remedies:

- Working with the incentives of the right commercial parties, such as PCWs, can be powerful as they are often better than regulators at developing attractive solutions and they can continue to drive change as the market develops in ways that may not have been predicted when the intervention was introduced;

- When designing a demand-side intervention to promote a particular behaviour, the UK Behavioural Insights Team recommends that the intervention should make such change Easy, Attractive, Social and Timely (EAST).[7] This is likely to be particularly relevant when behavioural biases are an important factor;
- Demand-side interventions can have distributional effects and agencies may wish to give special consideration to the problems faced by particular groups of consumers, such as those who are vulnerable;
- Outcome control remedies can directly override market signals, so their design needs to be carefully considered to avoid being harmful or even anticompetitive (for example, by limiting innovation);
- It is important to consider the supply-side reactions to demand-side remedies, since these can reduce the effectiveness of the latter, or even make them harmful;
- Agencies should remain humble about their ability to predict either the future or the effectiveness of demand-side interventions; and
- Where possible, testing interventions with real consumers and refining the remedy design can boost effectiveness.

4. Road-testing consumer facing remedies

4.1. Why is road-testing necessary?

62. As described earlier in this paper, many consumer-facing remedies aim to try and change consumer behaviour in some way, for example to get consumers to shop around more, help them make more informed choices and switch to an alternative product or supplier which better suits their needs. However, designing a remedy which is successful in changing consumer behaviour in the way intended is often not straightforward and takes much refinement and development.

63. As described in section 2, consumers often behave in ways which traditional neo-classical models of consumer behaviour might find unexpected, for example they may not always act in their own self-interest. In order to design effective consumer facing remedies we need a proper understanding of how consumers behave, derived from evidence rather than our own assumptions which are often inaccurate. It requires a process of designing remedies where ideas about consumers' behaviour are first tested and then reassessed before deciding whether the remedy can be implemented and, if so, in what form.

64. Testing can be used to compare how different remedies perform in relation to their objectives. For example, it can be used to screen a number of different remedies to come up with a smaller set of most likely options which can then be

[7] See Behavioural Insights Team - EAST.

tested further. Once a desirable remedy has been identified, testing can be used to consider the detailed design and implementation features and how these impact upon the performance of the remedy. This fine tuning of remedy design can help maximise the effectiveness of interventions.

65. Testing can also play a useful role when completing cost benefit analysis or impact assessment for consumer facing remedies. This is where the effects of an intended policy are estimated, ideally by quantifying the expected impact. Testing may not always provide a precise calculation of an intervention's impact but can help establish the direction of the impact and help estimate its overall magnitude.

4.2. Before road-testing – things to consider

66. Before testing consumer remedies there are a number of important factors to consider[8]:

- ***At what stage to test?*** – testing can be useful at many different stages of remedy development. This can include remedy design, implementation or to help with monitoring or evaluation. The earlier testing is incorporated the more scope there is for it to contribute to ensuring the remedy is effective.
- ***What are the remedy aims and objectives?*** The objectives of the remedy should be defined in as much detail as possible. This is key in designing the testing of a remedy in order to be able to identify what outcome the researcher is seeking to observe and measure.
- ***What do you know already?*** A good understanding of consumers' attitudes and behaviours can help when designing a remedy and coming up with possible options for testing. This can be gained from a review of existing literature including results from previous testing exercises and engaging with stakeholders, for example via customer surveys.
- ***How much time do you have?*** Testing takes time to be conducted properly. The simplest testing exercise is likely to take at least six months with other types of testing lasting a year or more. So undertaking testing must be considered early if it is to be a realistic option.

4.3. What type of testing to use?

67. There is a range of testing options which can be used to road-test consumer-facing remedies. The main methods discussed here are:

- Qualitative research
- Surveys
- Experiments including laboratory testing
- Field trials

[8] See European Commission Applying Behavioural Sciences to EU policy-making for more information.

68. The most appropriate choice will depend on the research question and the time available. Often several different testing methods may be used to see if they arrive at similar findings. This is particularly important when developing an understanding of the consumer decision-making process, and investigating the possible existence and effect of behavioural biases.

69. The main advantages and disadvantages of these testing methods are summarised in the table below. Each testing method is then discussed in more detail.

Testing type	Pros	Cons
Qualitative research	• Provides rich nuanced information on beliefs and attitudes. • Consumers can express themselves freely as not constrained by pre-established questions (as in a survey) or observed in an artificial setting (as in a lab experiment), and allows for follow-up questions and discussions.	• Information generally not representative of the larger population due to small sample sizes. • Relies on consumers answering honestly and understanding their own motivations and preferences (often not the case). • Actual consumer behaviour may differ from reported behaviour.
Surveys	• Large representative sample means results generally applicable to population.	• Responses often limited by question and answer options. • Relies on consumers answering honestly and understanding their own motivations and preferences (often not the case). • Actual consumer behaviour may differ from reported behaviour.
Experiments	• Reliable in establishing causal effects. • Can be used to establish general principles which can be applied to other markets.	• Artificial environment means results may not hold true in the real world.
Field trials	• Reliable in establishing causal effects. • Take place in natural setting so results extrapolate well to the real world.	• Can take a long time to undertake.

4.4. Qualitative research

70. Qualitative research methods focus on understanding consumers' knowledge, attitudes, beliefs and fears. They can tell researchers about how consumers think they will behave in different circumstances and provide insights as to the drivers behind this. Common types of qualitative research include consumer focus groups, semi-structured interviews and participant observation.

71. Qualitative research methods can provide valuable insight into consumers' decision-making process which may be missed by other testing methods. They can be useful in understanding *why* consumers do something, rather than simply recording *what* they do or *how* they do it. In addition, qualitative research does not require a large sample size and allows a significant amount of information to be collected in a relatively fast and cost-effective way.

72. However qualitative research can lack external validity: the nature, limited sample and reliance on self-reporting means the results may not hold true in other contexts. Qualitative research methods are therefore good complements to other methods of consumer remedy testing.

4.4.1. Surveys

73. Surveys use structured questionnaires to elicit information on consumers' attitudes, beliefs and expectations. They can also be used to elicit information about how consumers might behave in the future following an intervention.

74. Surveys can be carried out relatively quickly and cost-effectively and, provided samples are sufficiently large and representative, they allow robust inferences to be drawn about the population of consumers as a whole.

75. However, the design of the survey questionnaire can limit the richness of the information collected. In addition, it can be difficult for consumers to predict how they might behave and hypothetical situations may be difficult to convey.

4.4.2. Experiments

76. Experiments are a way of systematically studying how people's behaviour varies across different conditions. In essence, this methodology involves assigning participants to various different circumstances and observing how the choices they make change. The controlled nature of this process allows the researchers or policymakers to identify causal links between the circumstances and their associated differences in behaviour with far greater confidence than can normally be achieved by simply observing consumers' choices in real life.

77. Some experimental methodologies −field trials− involve testing changes in real-life situations (for example, varying the disclosure forms given to clients by a financial adviser) and observing the consequences without consumers being aware that they are taking part in research. More detail on these is set out later in this paper. This section deals with experiments which involve at least partly artificial, controlled settings, including for example laboratory testing.

78. Conventional laboratory experiments have the highest level of control and, because of this, are often used to test specific design features of a policy. The experiments are used to prove that the fundamental incentives upon which an intervention is built hold in practice in a simple and highly controlled setting.

79. In a laboratory experiment, the researcher will manipulate one element – the policy element – whilst keeping all other relevant elements stable. The aim is to draw conclusions about the effect of the policy element on participants' actual behaviour, without any uncontrollable factors or noise.

80. This means that laboratory experiments are reliable in establishing causal effects – they have high internal validity. Identifying causal links is very important, both in helping to diagnose the root causes of consumer behaviour but also in predicting the effects of consumer facing remedies. In addition to this they can also help uncover the mechanism by which consumer behaviour changes, rather than just observing the outcome.

81. Because laboratory experiments are used to test the fundamental incentives that influence consumer behaviour and therefore on which an intervention is built, their results can often establish general principles which can apply across a range of real-life markets.

82. Laboratory experiments are generally quick and easy to carry out and can often be done with small sample sizes, saving time and money.

83. However, as with qualitative research, laboratory experiments are often challenged for a lack of external validity due to their artificial nature, with the results not being replicated in the real world. Although external validity can be improved through experimental design, laboratory experiments are often followed by other, more real world, types of testing. An example of a laboratory experiment is set out in Box 17.

Box 17. Using a laboratory experiment to test the impact of price framing on consumer decision making

The UK Office of Fair Trading (the predecessor to the CMA), conducted a lab-based experiment to consider whether or not the way prices are presented or 'framed' to consumers has effects on consumer decision making and consumer welfare.

The laboratory environment simulated real consumer choice with goods on offer from multiple stores and with consumers able to buy multiple units. A baseline price frame where consumers see simple 'per unit' prices was tested as well as several other price frames including:

- Drip-pricing where the consumers see only part of the full price up front and price increments are dripped through the buying process.
- Complex pricing where the unit price requires some computations, for example '3 for the price of 2'.
- Time limited offers where the special price is only available for a pre-defined short period of time.

The experiment involved 166 participants each of whom participated in the unit-pricing baseline and two price frames. Each participant completed 30 rounds of the experiment to determine whether any effects of the price frames could be overcome through experience.

The results showed that participants made more mistakes and achieved lower consumer welfare under the price frames tested compared to straight unit pricing (the baseline). In particular, drip pricing and time-limited offers generated the biggest welfare losses and were the price frames where participant made the most errors. With these price frames participants were more likely to buy at the first shop rather than continuing to shop around.

The results of this experiment informed the OFT's work on principles for fair advertising of discounts with supermarkets.

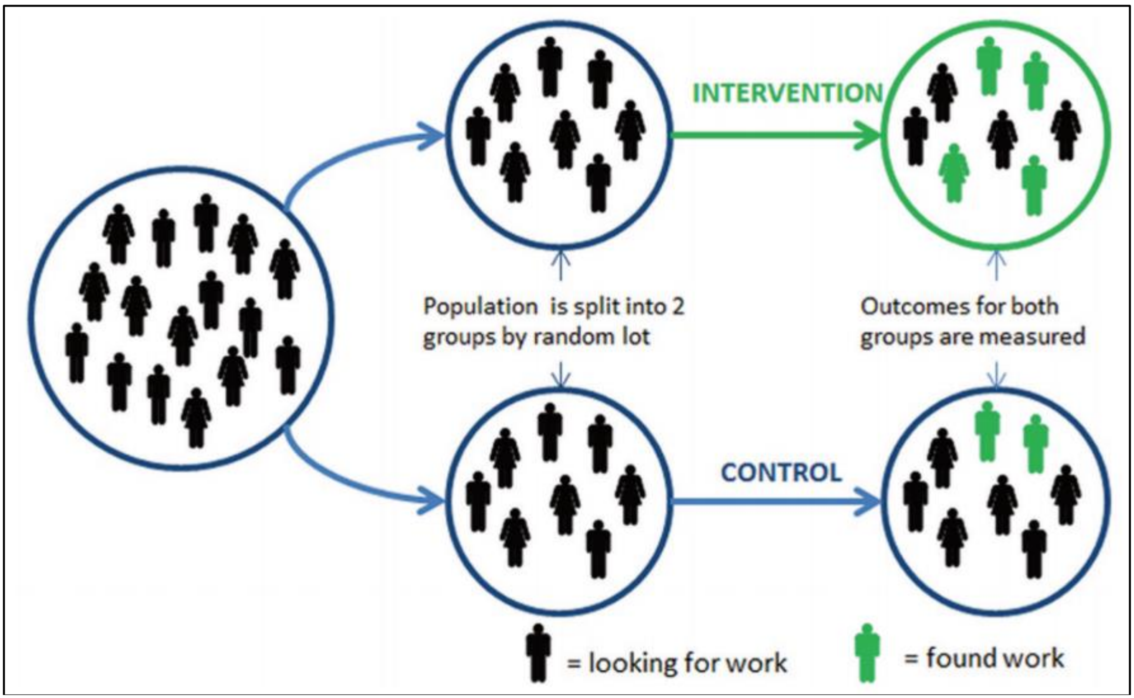
4.4.3. Field trials

84. Ideally, people's behaviour should be observed in their natural environment without any interference from observers. This is the purest and most accurate observation of behaviour and is the principle underpinning field trials.

85. Field trials are increasingly used to test public policy interventions. In its simplest form, a field trial or Randomised Control Trial ('RCT') divides a target population randomly across two groups: the control group and the treatment group.

For the control group nothing is changed, while the treatment group faces the policy intervention being tested. Any differences between the two groups can then be attributed to the impact of the policy intervention rather than being due to other external factors. Field trials are therefore very reliable in determining causal effects.

Figure 1. The process of conducting an RCT



Note: See Test Learn Adapt from the Behavioural Insights Team.

86. Field trials conducted in this way have a number of benefits over other research designs.

87. RCTs use real consumers who experience the intervention in a natural setting. For example, in a laboratory or focus group consumers may focus far too much on a remedy than they would in real life where they may only give it cursory attention. This means the results of field trials are likely to extrapolate well to the real world.

88. The main disadvantage of RCTs is that they can be time-consuming and expensive to run. A researcher must allow sufficient time to design and test different treatments as well as for data collection and analysis of the results. To obtain results which are statistically significant the sample size needs to be sufficiently large and should be representative of the consumers to which the remedy will be applied.

89. However, once completed, RCTs build causal evidence that can be used to rule out conventional wisdom and establish hard evidence in favour of remedy options which may have been considered unlikely to be successful. In addition,

they provide precise quantitative information that allows researchers to determine the magnitude of the effect.

90. An example of a field trial is set out in Box 18.[9]

Box 18. Using field trials to test the impact of improved renewal notices in UK home and motor insurance

The UK Financial Conduct Authority (FCA) used field trials to test whether improving the renewal notices consumers receive when their home or motor insurance is due to automatically renew could encourage consumers to switch or negotiate their policies. This followed concerns that the majority of UK home and motor insurance policies automatically renew and at an increased price, leaving consumers paying high prices.

The FCA conducted field trials with 300,000 customers across one home insurer and two motor insurers. In particular, they tested four types of disclosures:

1. Including last year's premium next to this year's premium in renewal notices
2. Sending a leaflet with renewal notices e.g. a guide to shopping around
3. Simplifying renewal notices by using bullet points and simpler language
4. Sending reminders two weeks after renewal notices

The FCA found that putting last year's premium on renewal notices caused between 11% and 18% more consumers to switch or negotiate their home insurance policy. The effect was larger for consumers offered higher price increases at renewal. Other changes to renewal notices, including simplifying renewal notices, sending information leaflets, and sending reminders had little or no impact on consumer behaviour. This shows the importance of testing disclosures, where possible, before rolling them out across the market.

4.5. The importance of evaluation

91. After implementing a consumer facing remedy it is important to evaluate its effectiveness. Evaluation is a comprehensive assessment of whether a policy is delivering its expected benefits, including measuring outcomes and impact.

92. Evaluations can generate valuable information and contribute to a wide range of initiatives and objectives. Key reasons to undertake evaluation include:

- ***To ensure remedies remain fit for purpose*** – Markets change over time, in some cases very quickly, for example due to changes in consumer

[9] See FCA Research for further details.

behaviour, technology or new entrants. A remedy which was effective at a particular point in time may need to be amended or removed completely further down the line. Evaluation is key to ensure remedies continue to deliver their intended objectives.

- ***To provide evidence to inform future decision making*** – Evaluations can provide sound evidence of which interventions work and are effective. This information can be used to inform the development of new policies, and to improve the effectiveness of existing ones.
- ***To provide accountability*** – Evaluations can demonstrate how funding has been spent, what benefits were achieved and assess the return on resources. This can help satisfy external scrutiny requirements.

4.6. Overview of how to conduct an evaluation[10]

Steps for conducting an evaluation	
1	Identify evaluation framework
2	Identify evaluation questions
3	Select evaluation approach to be used
4	Identify evidence requirements and how to be collected
5	Consider practical arrangements
6	Conduct the evaluation
7	Use and disseminate the findings

93. The evaluation of a remedy requires a framework within which the evaluation can be designed, data analysed and results interpreted. To build this framework, the assumptions, processes, impacts and outcomes (both intended and unintended) of the intervention should be identified and articulated. These then form the basis of the framework within which the impacts of the intervention can be evaluated.

94. Evaluation can consider many questions but most will relate to three broad areas. These then drive the evaluation approach employed:

- Questions around how the remedy was delivered should be considered using process evaluation;
- Questions around what difference the remedy had are best evaluated using impact evaluation; and
- Questions around whether the benefits of the policy justified the costs should be considered using economic evaluation.

95. The evidence requirements for each of these different types of evaluation will vary. The research methods discussed earlier in this section can be used to help gather this evidence as set out in the table below.

[10] This is informed by guidance set out in The Magenta Book.

Evaluation type	Overview	Method
Process evaluation	Process evaluation is concerned with the processes associated with the remedy, the activities involved in its implementation and the pathways by which the remedy was delivered.	Process evaluations can employ a wide range of data collection and analysis techniques. They will often include the collection of qualitative and quantitative data from different stakeholders, using, for example, group interview, one to one interviews and surveys.
Impact evaluation*	Impact evaluation involves a focus on the outcomes of the remedy. It may consider what the outcomes were, any observed changes and how big they were, how changes varied across consumers and any unintended outcomes.	Impact evaluation relies on being able to isolate the effect of the policy from all other potential influences. To test this, it is necessary to estimate – usually on the basis of (often quite technical) statistical analysis of quantitative data – what would have happened in the absence of the policy – known as the counterfactual. Field trials and experiments like those set out earlier can be effective ways of evaluating impact.
Economic evaluation	Economic evaluation considers whether the outcomes of the policy were justified, including whether the costs have been outweighed by the benefits. A key type of economic evaluation is Cost Benefit Analysis (CBA).	CBA aims to quantify as many of the costs and benefits of a policy as possible, including wider social and environmental impacts. This means that CBA can examine the overall justification for a policy as well as compare different policies.

Note: * For more information see the FCA's Ex post impact evaluation framework.

96. Planning an evaluation involves considering a range of practical matters including the governance structure, the resources required, budget and timing. Developing an evaluation plan at an early stage will help to ensure that all the important steps have been considered. Key considerations are set out as follows:

- ***Governance*** – It is important for an objective evaluation that the team responsible for conducting an evaluation are independent of the team who were responsible for the implementation and delivery of the remedy. This could mean the evaluation is undertaken by external contractors or the team is kept at arm's length.
- ***Resources*** – Any evaluation will require significant input from a range of people with different skillsets, including policy makers and analysts. It is important to think about the resource required early.
- ***Budget*** – The cost of doing an evaluation may be queried and it is therefore important that evaluation is proportionate to the risks, scale and profile of the remedy. There should be sufficient budget to conduct a robust evaluation rather than risk an inconclusive or weak result. This may include considering trade-offs such as undertaking the evaluation in-house rather than relying on external contractors.
- ***Timing*** **–** The choice of when to conduct an evaluation will, in part, depend on the evaluation questions. A process evaluation may be useful to iron out any problems early on, whereas with an impact evaluation, time will need to be allowed for the impact of the remedy to appear which may lead to a longer evaluation period.

97. Evaluation can be built into the design and implementation plans for a remedy. One way authorities can build evaluation into the policy implementation is through the use of pilot schemes or phased implementation where a remedy can be tried out on a smaller scale and evaluated before being implemented more widely.

98. Another way of building evaluation into the policy design itself is to consider whether to specify a finite duration, for example by means of a long-stop date in a 'sunset clause.' A 'sunset clause' will generally specify when a remedy will cease to have effect, by reference to a specific date or clearly defined future event. Remedies can then be evaluated before further action is taken.

99. Even where evaluation is not built into the design and implementation plans for a remedy it is still good practice to ensure the remedy is properly evaluated within an appropriate timescale to ensure it remains fit for purpose.

Box 19. The UK CMA's commitment to remedy evaluation

The CMA has developed guidance to commit more clearly to considering the use of sunset clauses and to reviewing the ongoing need for remedies, with a view to ensuring that remedies do not remain in force where they are no longer necessary to achieve the purposes for which they were imposed.

When introducing a remedy without a sunset clause (or if the sunset clause substantially exceeds ten years), the CMA would normally expect to initiate an assessment of whether the remedy remains appropriate within ten years of the remedy coming into force.

In some cases, the CMA may recommend a review within shorter timescale either on its own initiative or following a request by those on whom the remedy is imposed. This could for example be triggered by a change in circumstances, such as new entry to the market.

100. Once an evaluation is completed it is important to draw together all strands of the research to provide a full answer to the original research question. It is important to consider whether the results present a consistent picture. Evaluation results should be set in the context of other knowledge about the intervention and the context in which it was delivered.

101. Given the time and resources entailed in conducting an evaluation, the results should be well disseminated to ensure maximum value is gained from it, for example by making sure the results can inform other policy work.

5. Topics for discussion

102. The purpose of this paper has been to provide an overview of some of the sources of demand-side problems in markets, how various competition authorities and regulators have sought to address them, and the lessons that have been learned in terms of both the type of interventions that can be effective and how rigorous design and testing processes can be used to ensure the effectiveness of future demand-side remedies.

103. This section summarises the main conclusions that the CMA and UK regulators have drawn to date, before highlighting several areas of on-going debate and discussion with respect to designing effective consumer-facing remedies.

5.1. Lessons learned

1. Competition authorities and regulators need to understand both the demand- and supply-side of the markets we oversee. Significant problems can arise on both sides of the market and interventions to improve competition will only be effective where they are correctly targeted.
2. While it is essential to identify and diagnose competition problems accurately, it is equally important for the long-term development of competition that agencies select, design and implement effective remedies. As much effort should go into the latter as the former.
3. Remedies that are targeted at tackling demand-side problems, for example by promoting customer engagement, can make a positive difference to consumer outcomes but only where the “right” remedy is put in place. Poorly designed remedies may be ineffective or even detrimental to consumers.
4. The process of identifying and designing effective remedies benefits significantly from testing and refining options with ‘real’ consumers, where such testing is practicable. Agencies’ assumptions about what is likely to work can not only be incorrect but can, in certain circumstances, lead to the implementation of remedies that have unintended, detrimental consequences for markets and consumers. The level and type of evidence required to support the design of a remedy differs on a case-by-cases basis, and requires the exercise of judgement from the relevant authority or Government.
5. Where ex ante testing of remedies has not been carried out or is not possible, ex post evaluations of effectiveness can provide important insights / lessons for both existing and future interventions.

5.2. Areas of on-going debate

5.2.1. What are the limits of 'nudging'?

104. Many demand-side remedies can be characterised as “nudges” that help consumers overcome certain of their behavioural biases and make decisions that are better aligned with their own interests and/or preferences. This approach is now a well-established part of the toolkit of both competition and regulatory agencies, as well as other policy-makers.[11]

105. However, in certain cases, agencies and Governments have found it necessary to intervene directly in order to control market outcomes, for example to protect the most vulnerable customers. More information on outcome control remedies is set out in section 3. In these cases, “nudging” customers was judged to

[11] For example, to enhance private pension saving rates in the UK, employees are now automatically enrolled in private pensions with contributions deducted from their salaries and topped-up with contributions from their employers. Employees may opt-out of this scheme but they will be re-enrolled every three years unless they make a new, active choice to opt-out.

be insufficient to address the problem identified. In several such cases, there were concerns that while nudges may have helped some customers to engage and to benefit from competition, those benefits would not extend to customers who remained disengaged.

106. This issue arises most frequently in markets with continuity of supply, i.e. where a customer's existing supplier will continue to provide a service unless the customer makes an active choice to switch. In these markets, firms may be able to price discriminate between engaged and disengaged customers. Such price discrimination tends to raise particular concerns where the product being supplied is a necessity and where the disengaged customers are disproportionately drawn from vulnerable groups, e.g. those over 65, with lower levels of education and/or income.

107. For example, in 2017 Ofcom announced that BT had agreed to reduce prices by 37% and limit subsequent increases to the rate of inflation for those customers who only purchased a landline service and did not buy other products, such as broadband. These customers were disproportionately older and less likely to engage in the market in terms of shopping around and switching.[12]

108. Similarly, the UK Parliament is currently considering legislation to reintroduce (temporary) price controls for domestic retail energy customers, limiting the amount that energy suppliers can charge customers who are on default tariffs, i.e. those customers who have not made an active choice of tariffs.

109. Another alternative approach to relying on "nudges", without seeking to control outcomes directly, is to introduce new market mechanisms, such as automatic (collective) switching processes which can overcome or circumvent the particular demand-side issues observed. For example, in a market where customer inertia is observed to be a problem, suppliers can be invited to bid to serve groups of customers, with the customers automatically switched to the best deal.

5.2.2. Will putting customers in charge of their own data and encouraging the role of intermediaries be effective in engaging consumers?

110. The approach taken to the disclosure of information to customers to help them make better choices has evolved over time as agencies have learned from both the insights of behavioural economics and from their practical experience of implementing and reviewing the effectiveness of remedies. As Amelia Fletcher highlights in her review, prior to 2010 the focus was on disclosing additional information to customers, on the assumption that such disclosure (alongside removing barriers to switching) would be sufficient to make the demand-side of the market work well.

111. From around 2010 onwards, the CMA and UK regulators, drawing on the insights of behavioural economics, focussed to a greater extent on making engagement in markets easier for customers by reducing the associated search and

[12] Ofcom found that two-thirds of landline-only purchasers were over 65, and three-quarters had never switched provider. See Ofcom press release for further details.

cognitive costs. Initially, these agencies sought to design and implement remedies that directly reduced such costs for customers.[13]

112. However, in recent years, the CMA and UK regulators have adapted their approach in two key respects. First, they have sought to leverage the expertise and incentives of firms in the industry to deliver more effective interventions. For example, in the recent digital comparison tools market study, the CMA's recommendations were focussed on facilitating the role of private-sector PCWs across a number of sectors. This recognised that such firms were likely to be more effective at engaging customers and facilitating search and switching than a similar service that was operated by a regulator.

113. Second, the CMA and UK regulators have shifted focus in terms of the type of information that firms are required to disclose and the format in which such information should be provided. In the recent banking inquiry, the CMA required that retail banks made customers' own information (relating to their usage of banking services) available to the customers themselves (and not just information on the banks' services and pricing) and, also, that banks should make such information directly available to regulated third parties, including PCWs (via APIs) where customers had provided permission.

114. At each stage, the CMA and UK regulators have become more focussed on designing remedies that work with both the incentives of private firms and with the actual decision-making processes of customers. Enhanced ex ante testing of such remedies provides reasons to believe that these interventions will be more effective than previous ones. However, it will be important to monitor how markets develop in the longer term with these interventions in place.

5.3. Trust in markets and the use of customer data

115. The control and use of customers' data by firms with the aim of maximising profits has been highly controversial in recent years, creating widespread concern and mistrust. Governments have responded to such concerns with new regulations to control the collection and use of individuals' data, e.g. the General Data Protection Regulations which came into force in the EU this year. However, as set out above, competition authorities and regulators have also been considering the opportunities that big data offers in terms of making markets work well for consumers. By making it as straight forward as possible for customers to engage in markets, the hope is that interventions can overcome a number of the behavioural biases discussed previously.

116. When designing demand-side interventions, therefore, there is a challenge in terms of ensuring that customers have both access to and control over their own data and sufficient trust in market rules and regulations and in market participants

[13] For example, following its review of the home credit market, the Competition Commission required that all suppliers should provide specified information on the prices and characteristics of their products to a CC-appointed, independent 'website operator' (PCW). The remedy specified that the website should be set up for the purpose of price comparisons and not as a mechanism for purchasing. See https://www.lenderscompared.org.uk/

to encourage them to share their data with third parties where doing so will bring them benefits in terms of lower prices and/or better quality or more innovative products and services. Where consumers do not have that trust, demand-side remedies that seek to exploit the benefits of new data technologies are likely to be significantly less effective than they otherwise would be. Therefore, authorities should consider the degree of protection available when designing and implementing these remedies.

117. For example, the open banking remedies recently put in place by the CMA rely on the willingness of customers to provide third party intermediaries with access to detailed information on their current accounts. For this remedy to be effective, customers need to be reassured as to the security of their data and their ability to control how it will be used by those third parties, and so this has been a priority in the CMA's ongoing work to implement these remedies