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CEER Report on commercial barriers to supplier switching in EU retail energy markets

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INFORMATION PAGE

Abstract

This document (C15-CEM-80-04) presents a report on commercial barriers to supplier switching in EU retail energy markets.

This document seeks to identify commercial barriers to switching, identified as obstacles found from the customer side which stop or keep a customer from switching. This is achieved with relevant research which identifies the reasons behind customers' choices. Barriers to switching are rooted in practices by suppliers and customer perception of the energy market. This document should help stakeholders focus their efforts to encourage switching and provide a basis for future work on good practices for removing barriers to switching.

Target Audience

European Commission, energy suppliers, traders, gas/electricity customers, gas/electricity industry, consumer representative groups, network operators, Member States, academics and other interested parties.

Keywords

Consumer rights; customer protection and empowerment; supplier switching; prices, contracts, tariffs and 3rd Package.

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Related Documents

CEER/ACER documents

- CEER Position Paper on early termination fees, May 2016, Ref: C16-CEM-90-06
- CEER Benchmarking report on removing barriers to entry for energy suppliers in EU retail energy markets, April 2016, Ref: C15-RMF-70-03
- ACER /CEER Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2014, November 2015
- CEER Position Paper on well-functioning retail energy markets, October 2015, Ref: C15-SC-36-03
- ACER /CEER Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2013, November 2014
- CEER Guidelines of Good Practice on Price Comparison Tools, July 2012, Ref: C12-CEM-54-03
- Electricity and gas retail market design, with a focus on supplier switching and billing. Guidelines of good Practice, January 2012, Ref: C11RMF-39-03

External documents

- CEDEC position Collective Energy Supplier Switching Campaigns, European Federation of Local Energy Companies, October 2014
- 10^{th} Consumer Market Scoreboard, European Commission, June 2014
- Harmonised Model for Supplier switch, NordREG, 2013
- Consumer engagement with the energy market: tracking survey 2014, Ipsos MORI, June 2014
- Energy Market Investigation: A report for the Competition and Markets Authority, GfK NOP, 2015

Country reports

- The Netherlands
  Trend Report on Competition and Consumer Confidence in the Energy Market First half of 2014
- UK
  Customer Engagement with the Energy Market - Tracking Survey 2013
- Ireland
  CER Consumer Survey Report 2015: Findings from 2015 research on attitudes and experiences in the domestic and SME electricity and gas markets in Ireland

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EXECUTIVE SUMMARY

Based on consumer surveys, case studies and previous work, this report aims to identify the main commercial barriers to switching. Switching offers customers the most direct way to benefit from the market, but in practice energy customers are confronted with barriers when they want to switch or compare alternative suppliers and contracts, therefore not allowing for real competition between energy suppliers. When we talk about switching we mean the complete process from the deliberation phase till the moment the customer is supplied under the new contract. We want to examine the evidence of these de facto barriers to switching and evaluate their impact on customer perception and market dynamics.

This paper aims to address the question of "what keeps customers from switching". Based on relevant research, CEER aims to identify how the customer looks at the energy market and interacts with suppliers. In this paper, commercial barriers are defined as obstacles at the customer end which stop or keep the customer from switching and create a lack of trust in new entrants or the energy market in general. They are rooted in suppliers' practices and/or customer perception about switching or the liberalised energy market in general. NRAs should ensure that companies give complete, clear and comparable information when they interact with customers and work to improve tools that are already in place to remove existing barriers to switching.

Apart from commercial barriers, barriers to supplier switching may also result from regulatory or systemic issues such as small monetary gain due to price regulation, the time it takes to switch due to the legislated process, or weak customer awareness of their rights in the energy markets. CEER has analysed these systemic and regulatory barriers extensively[1] and therefore these are beyond the scope of this report. In this paper, CEER has focused on commercial barriers to supplier switching; i.e. barriers that materialise when customers engage in the market and interact with suppliers.

When analysing barriers to switching it is important to distinguish between customer perception and reality. Consumer perception about insufficient gain from switching could be caused by the lack of complete, understandable and comparable information on offers that make it difficult to assess the real monetary gain. Furthermore, this lack of information can prevent customers comparing their offer, contract and bill to analyse if the expected gain was actually achieved. This may deter the customer from switching again.

Across Europe, there is broad customer distrust of the electricity and gas retail markets. To build this trust, providing complete, understandable and clear information is essential. When lack of trust keeps customers from switching this is an important competition issue, which might hinder the development of a well-functioning retail market. Meanwhile, surveys show that customers do not trust new entrants, which is to the benefit of incumbent suppliers who already have a substantial customer base.

Furthermore, consumer surveys demonstrate that a gap between perception and reality exists also regarding the complexity of the switching process. Consumers that have not switched perceive the process of switching as complex and time-consuming. Commercial practices that emphasise this perception or the lack of information about (the ease) of the switching process enhance this barrier to switching. The surveys also show that customers who have switched did not regard the process of switching complex at all. This underlines the importance of clear and objective information about the switching process.

[1] CEER Benchmarking report on removing barriers to entry for energy suppliers in EU retail energy markets; and CEER Electricity and gas retail market design with a focus on supplier switching and billing: Guidelines of good Practice

Consumer satisfaction is a double edged sword. It is not a problem if a customer is satisfied with the service of its current supplier and makes an informed decision to stay. However, if satisfaction comes from inertia this could be a barrier that keeps customers from switching. In such cases the satisfaction could result from the lack of interaction between the supplier and its customers. This could take the form of not communicating price changes actively and discretely renewing contracts at the end of their term. These practices can be seen as commercial barriers to switching since the suppliers engage in deliberate activities to mesmerise the customers and do not actively provide them the obliged information.

Early termination fees pose a commercial barrier to switching for energy contracts with variable pricing, where the customer carries the risk of the price variation. Early termination fees charged in case of contracts that result from automatic renewal of fixed term energy contracts might lead to customer lock in and therefore act as a barrier to switching. From the customer's perspective, clarity is the most important consideration to ensure that justified termination fees do not create a barrier to switching.

Value added services can be seen as a form of product innovation and therefore beneficial to the well-functioning of the retail market. They provide a way for suppliers to differentiate on components other than the price. Nevertheless, these services can be seen as commercial barriers to switching when the contract conditions make it impossible or costly to switch energy supplier.

In this report CEER identified two groups of commercial barriers to switching:

- Barriers that influence customer perception about the energy markets. CEER observed that most of these barriers are caused by incomplete, complex and non-comparable information on prices, contract conditions and market processes; and
- Barriers resulting from commercial contract conditions that lead to customer lock-in.

Type of barrier	Description
Consumer perception	Insufficient monetary gain
	Lack of trust
	Complex switching process
	Satisfaction/loyalty
Commercial contract conditions	Unjustified termination fees
	Value added services

As a next step, NRAs should identify the barriers in their relevant markets and choose the right tools to remove them. CEER is developing a Roadmap to well-functioning retail markets, which could provide additional information for removing the identified barriers to switching. Furthermore, it is important that NRAs make an effort to improve the transparency and comparability of offers. Price comparison tools can play a role here as well. CEER is working on an update of its Guidelines of Good Practice on Price Comparison Tools to clarify what a good price comparison tool should look like. When suppliers provide customers, through all sales channels, with complete understandable and comparable information on price and conditions this might encourage customers to be more active in the electricity and gas market. Due to the focus on providing complete, understandable and comparable information to customers, cooperation with national consumer protection agencies and consumer organisations may also be an effective way to remove some of the barriers discussed in this document.

1 Introduction

1.1 Context and previous work

One of CEER priorities is to improve market functioning from customers' perspective in order to allow customers to take full advantage of the opportunities of liberalised retail energy markets. CEER recognises that the removal of remaining barriers including barriers to supplier switching will support the implementation of this priority. The 3rd Package[2] states that customers should be able to switch suppliers free of charge. Charging a customer for switching is an obvious barrier to the process. This report aims to identify other existing barriers to switching.

This paper is in line with and seeks to complement the high-level principles of CEER 'Position Paper on well-functioning retail energy markets'. The document further develops some of the indicators at a more detailed level. The document is also in line with CEER 'Benchmarking report on removing barriers to entry for energy suppliers in EU retail energy markets'. Both documents aim to reveal the missing aspects of retail energy markets that would deliver benefits for customers.

CEER recognises that suppliers' practices may differ across Member States, so this document benefits from the experience of the various NRAs. Meanwhile the report tries to identify and summarise commercial switching barriers that can be found across Europe. This has been done by gathering and combining relevant research on how customers see the liberalised energy markets, how they make choices and how they interact with suppliers. This means that this report is not only about switching per se, but also considers perceptions that influence customer choices.

1.2 Objective and scope

Switching offers customers the most direct way to benefit from the market, but in practice energy customers are confronted with barriers when they want to switch or shop around for new suppliers or contracts, therefore not allowing for real competition between energy suppliers. When we talk about switching we mean the complete process from the deliberation phase till the moment the customer is supplied under the new contract. We want to examine the evidence of these de facto barriers to switching, evaluate their impact on customer perception and on market dynamics.

This report aims to address the question, "What keeps customers from switching?" Based on relevant research CEER aims to identify how the customer looks at the energy market and interacts with the suppliers. In this paper, commercial barriers are defined as obstacles found from the customer side which stop or keep a customer from switching, and cause a lack of trust in new entrants or even the energy market in general. They are rooted in practices by suppliers or customer perception about switching or the liberalised energy market in general. NRAs should work to make sure companies give complete, clear and comparable information when they interact with customers and work to improve tools that are already in place to remove existing barriers switching.

[2] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

Apart from commercial barriers, supplier switching barriers may also result from regulatory or systemic issues such as small monetary gain due to price regulation, the time it takes to perform a switch due to the legislated process or low customer awareness of their rights on the energy markets. CEER have previously analysed these systemic and regulatory barriers extensively[3] and therefore these are beyond the scope of this report. In this paper, CEER has focused solely on commercial barriers to supplier switching; i.e. barriers that materialise when customers engage in the market and interact with suppliers.

The focus of this report is the identification of commercial barriers, although some of the case studies included in the report provide examples or good practices of removing them.

The commercial barriers identified in this paper provide guidance for NRAs to ensure that suppliers work according to consumer protection law and encourage customers to be more interactive by giving complete, transparent and comparable information about the price, contract terms and conditions, as well as ensuring an easy switching process. Ultimately this report provides NRAs with a collection of work on consumer behaviour related to customer switching in the retail energy markets. This information will help NRAs and CEER to determine the aspects on which to focus their future work on consumer behaviour with the aim of removing these commercial barriers to switching. The impact of the identified commercial barriers might be enhanced by energy suppliers' unfair commercial practices. These unfair commercial practices are, however, not in the realm of most energy NRAs. Therefore these practices are not within the scope of the report but they should be considered when targeting the identified barriers to switching.

1.3 Methodology

In adopting the customer centric approach we aim to identify the different commercial barriers that keep customers from switching using a true customer perspective. The customer perspective recognises that some practices or contractual terms might not seem a barrier at first glance, but act as an obstacle to customer switching when they are not sufficiently clear. In those cases transparency is key and the lack thereof might be one of the more important barriers to switching from a customer perspective.

CEER has collected customer opinions and experiences about the switching process in gas and electricity, as reflected in enquiries and surveys at EU level (like the Consumer Market Scoreboard) or at National level (examples: The Netherlands, UK). In addition CEER has received the answers to ACER questionnaire among BEUC members about retail energy markets. Finally CEER has collected case studies on identification and possibly successful removal of commercial barriers to switching in different member states.

[3] CEER Benchmarking report on removing barriers to entry for energy suppliers in EU retail energy markets (April 2016) and Electricity and gas retail market design, with a focus on supplier switching and billing. Guidelines of good Practice (January 2012)

2 Identifying the barriers

Switching rates have been increasing over the years. In 2014 the average switching rates for electricity and gas were 6.3% and 5.5% respectively. Figure 1 below shows that there is a large spread in switching rates between Member States. Member States are in different stages of market liberalisation and at different levels of competitiveness. However, commercial barriers to switching might be present irrespective of the level of competition or the phase of market liberalisation.

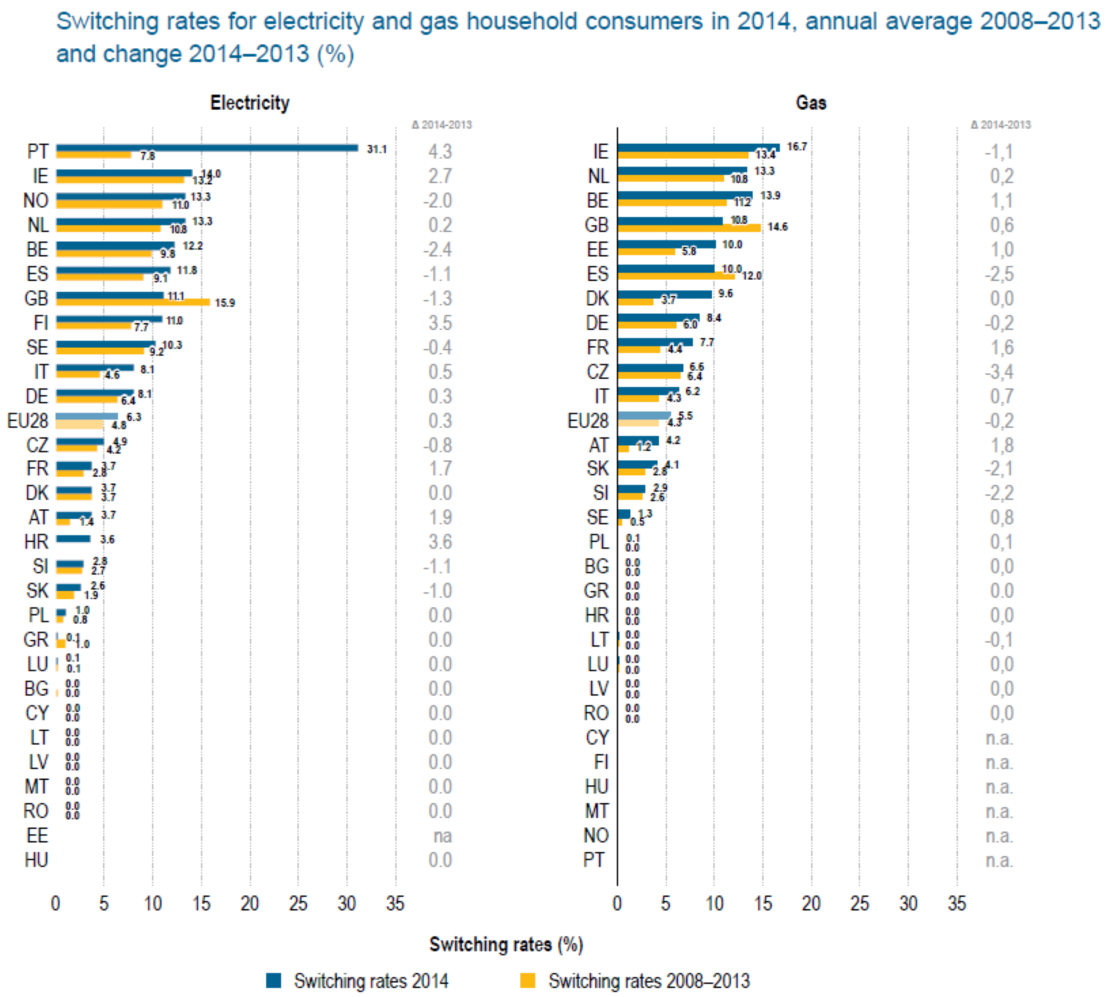


Figure 1: Average switching rate (Source: ACER/CEER Market Monitoring Report 2015)

Before going deeper into the reasons why customers do not switch, it is interesting to see how many customers have not switched at all. Figure 2 below shows the percentage of customers with a different supplier than their incumbent supplier. Vice versa the figure shows the percentage of customers that have never switched supplier[4].

[4] It might be the case that these customers have switched contract of price within the incumbent supplier.

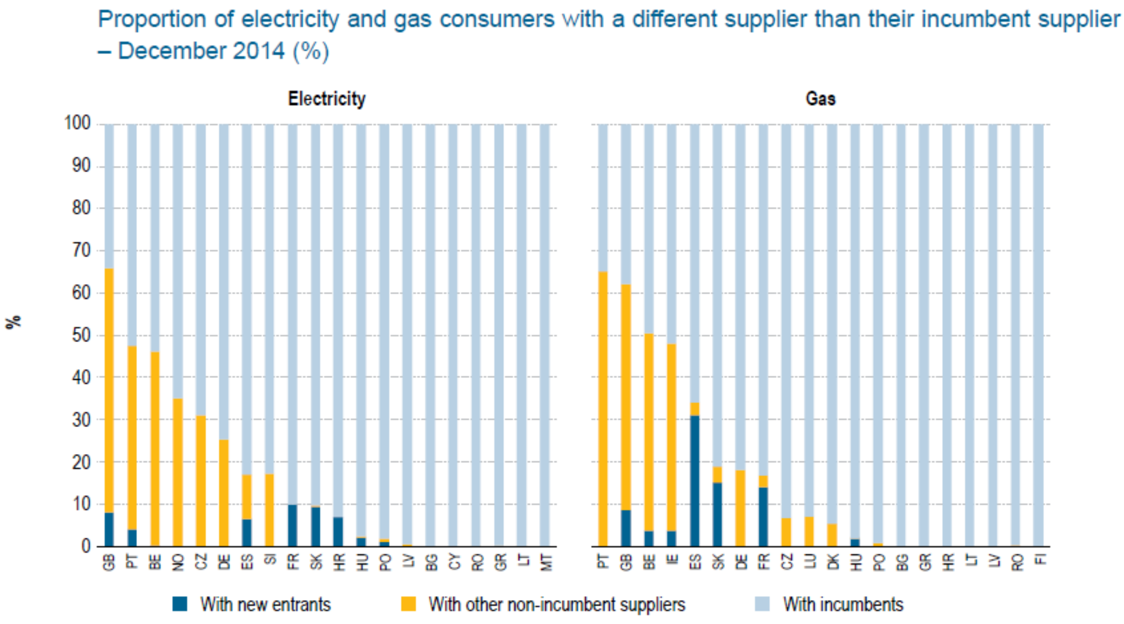


Figure 2: Consumers with a different supplier then the incumbent supplier (Source: ACER/CEER Market Monitoring Report 2015)

Based on the results of the ACER questionnaire[5] the main reasons for customers not to switch, and therefore the main high level barriers to switching, are:

1. Insufficient monetary gain
2. Lack of trust
3. Switching is perceived complex/hassle
4. Satisfaction/loyalty

The reasons above were graded with 6 or higher on a 0 to 10 point scale by consumer organisations of 15 different member states. These findings are supported by other studies done in different member states.

In a consumer survey in the Netherlands, consumers who had never switched were asked what their reasons were for not switching. Figure 3 shows the results of that question.

[5] ACER/CEER MMR 2015, p. 97

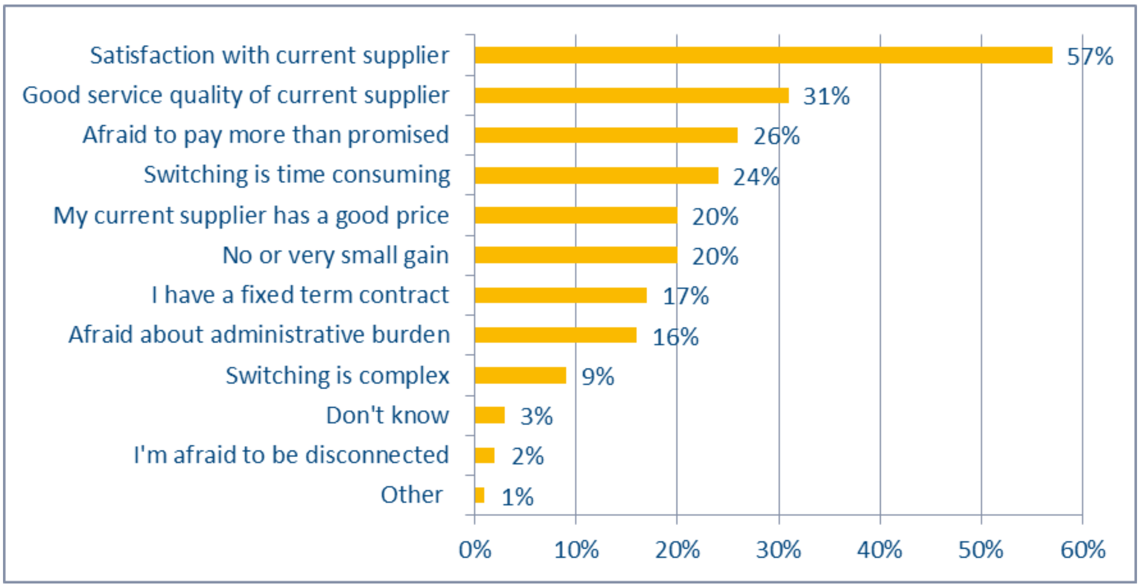


Figure 3: Reasons not to switch (Source: Consumer survey in the Netherlands, ACM, 2016)

The Irish NRA asked a similar question to domestic electricity customers. The main reasons why they would not switch are presented in Figure 4.

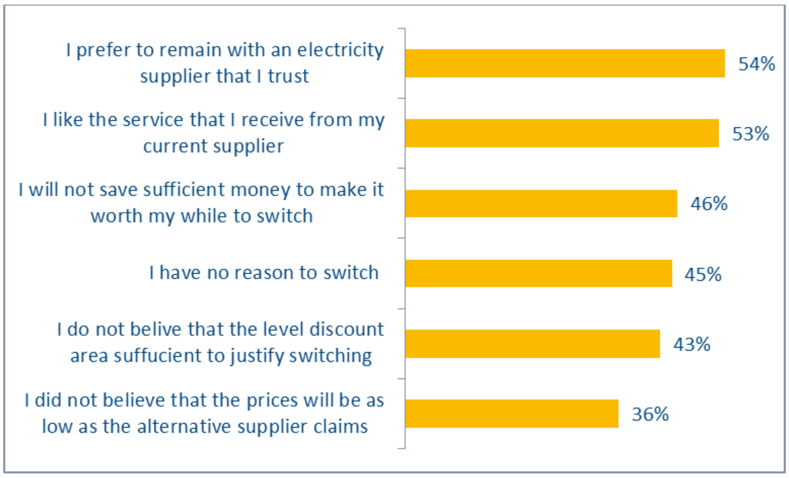


Figure 4: Reasons not to switch (Source: Consumers survey Ireland, CER, 2015)

While the ranking of the specific reasons differs slightly in different studies, the main areas - lack of monetary gain, lack of trust, switching is complex and satisfaction with the current supplier - are consistently brought up by customers when they are asked why they did not switch. These findings are based on what customers think, i.e. customer perception.

Xiaoping He and David Reiner performed a study on why British customers do not switch energy suppliers. They focus their research on the role of individual attitudes. As the consumer surveys above show, consumers perceive that the potential savings from switching are too small and therefore do not outweigh the perceived effort it takes to compare offers and switch. He and Reiner (2015) conclude that non-price factors prevent customers from switching, even if switching appears rational. The lack of attention to the issue of energy prices and the complexity of household energy tariffs deter them from being active in the market. The perceived costs and benefits of switching are associated with three key variables: (i) whether customers believe they are currently on the cheapest tariff; (ii) whether they have difficulty in understanding their energy bill; and (iii) the perceived difficulty of switching. Perceived complexity of energy tariffs could prevent customers from realising the potential gains of switching, while the cost of the switching process itself will also act as a deterrent. Improving the convenience of switching and making it easier to understand both the costs and benefits of switching is essential for removing some of the obstacles to switching (He and Reiner, 2015).

These conclusions underline the importance the perceived costs and benefits play the customers decision whether to switch or not. It becomes clear that it might be beneficial for companies that have an advantage of deterring customers or certain groups of customers from switching to increase uncertainty and minimize triggers that stimulate customer engagement. These activities are what we call here commercial barriers to switching.

The next sections will discuss the main reasons why customers do not switch in an attempt to identify the commercial barriers to switching.

2.1 Insufficient gain

Monetary gain is still the main reason for switching in Europe. This means that for this group of customers the actual gain is sufficient to offset the costs of switching. The total cost of switching includes both actual and perceived costs of deliberation and time spent on executing the switch. For customers who have not switched the lack of monetary gain is one of the main deterrents to switching. Data on energy offers collected in the ACER/CEER MMR suggests that the perception that customers have about potential savings often does not correspond with reality. This discrepancy is a key commercial barrier to switching.

Customers might have an idea of the minimum gain that would offset the (perceived) switching costs. The reasoning behind this barrier is that what customers think they are able to gain by switching is substantially lower than what they can actually gain. Nevertheless, in some countries, customers’ perception about low savings in switching matches with the real fact of low savings, as it is shown in Figure 5 below.

However, 14 European Member States still have regulated prices and price spreads are therefore determined by the price regulator. Customers might feel that the regulated tariff offers maximum cost-benefit. Also initial offers might be different from the actual price paid. It does not take into account any additional requirements or perceived disadvantages contained in the contractual terms and conditions which might influence customer decisions.

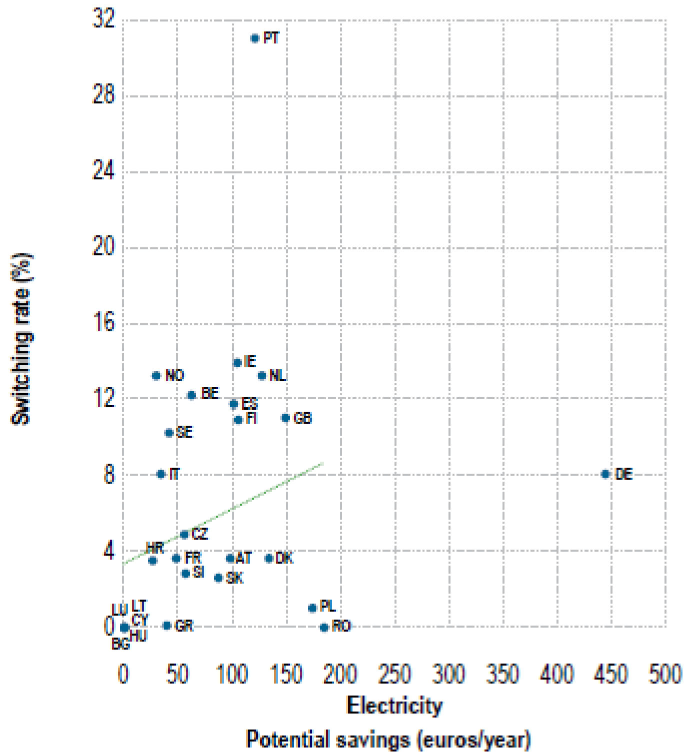


Figure 5: Relation between switching and potential savings. (Source: ACER/CEER Market Monitoring Report 2015)

A Spanish case study presented by the NRA (CNMC) for benchmarking showed that customers perceive that switching brings little monetary gain. The perception, in this case, matches reality since new entrants do not have the capability to offer significantly lower prices. Instead, they can only offer value added products which have not been attractive enough to persuade the customer of the proposed advantage of switching.

This lack of potential savings is due to the biggest costs (see Figure 6) of the bill being fixed prices (network access fees) and other charges that cannot be assumed internally by suppliers. These charges, which include a deficit in the sector that has to be paid by all customers, an electricity tax and premium costs for renewable generation, are fixed by government and comprise 40% of a domestic bill. Meanwhile the use of Standard Load Profiles to determine domestic customer bills mitigates the ability of suppliers to offer time of use tariffs which reflect fluctuating wholesale prices.

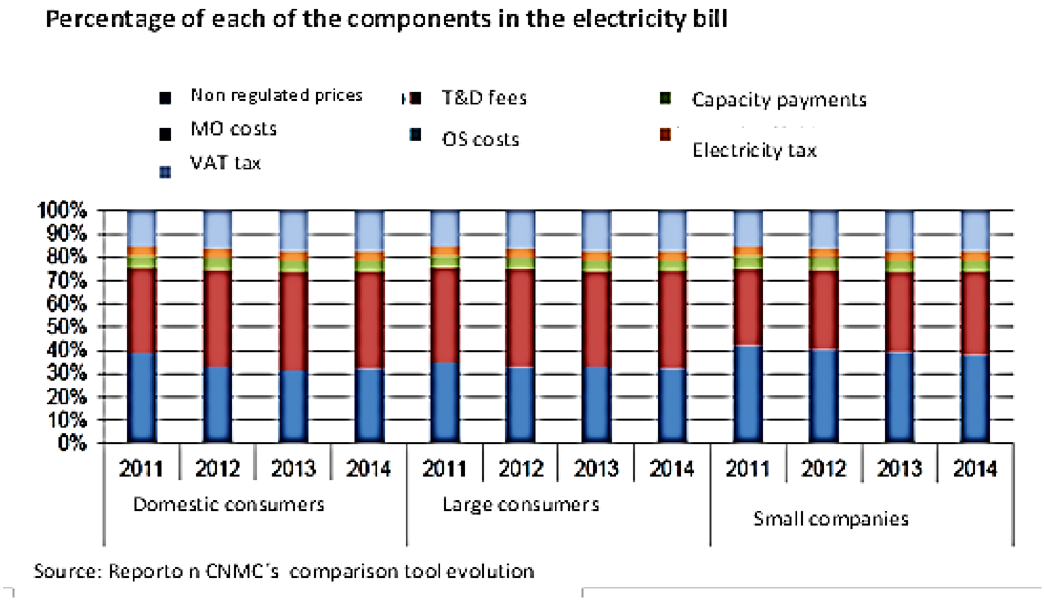


Figure 6: Percentage of each of the components in the electricity bill. (Source: CNMC's report on their comparison tool evolution, YEAR)

The case of the Netherlands: Gap between perceived and actual savings

The consumer survey in the Netherlands asked consumers some detailed questions on the monetary gains from switching. The results show that consumers that have never switched think they are able to save 85 euros annually. Consumers that actually have switched at least once in the last three years, report a significantly higher expected gain from switching, 147 euros annually.

More important than the difference between switchers and non-switchers, is the difference between perceive and actual savings to be made. Based on price analysis the Dutch Authority for Consumers and Markets (ACM) concluded that for a one year fixed price contract, the average price difference between the average and the cheapest offer was 222 euro annually. The actual difference between the most expensive and the cheapest contract was 423 euro annually[6].

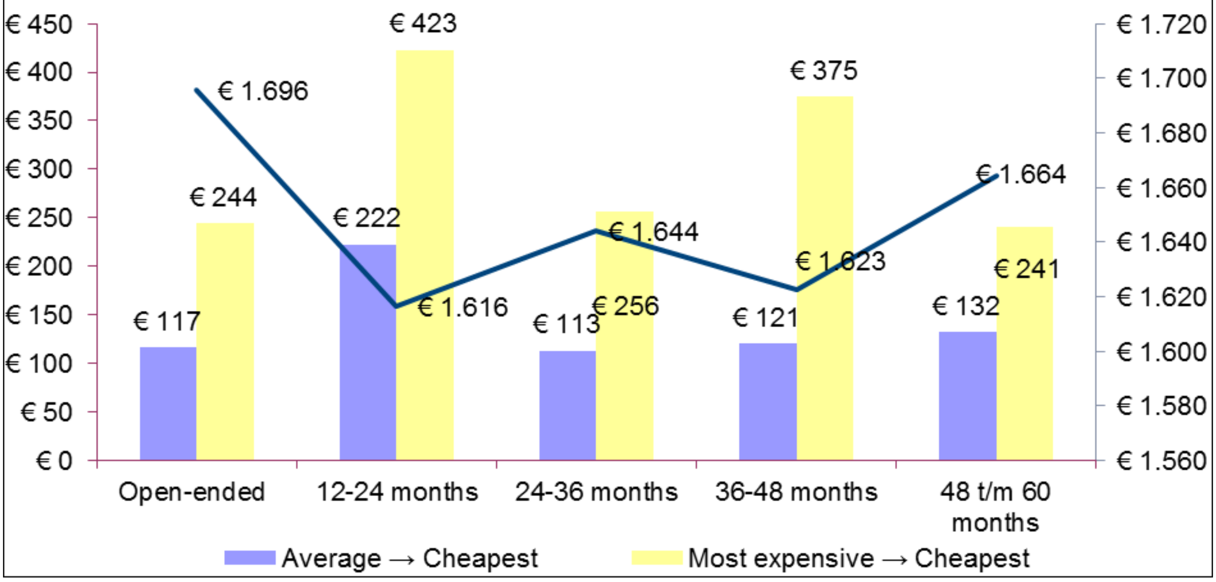


Figure 7: Price differences on two price comparison tools on 17 September 2015 (Source: ACM)

This shows that there is a large gap between what consumers think they can save and what they are actually able to achieve if they switch to the cheapest contract. In the deliberation phase the reasons for the discrepancy between perception and actual experience might have more to do with cognitive biases than with rational choice.

When consumers feel insecure about what they can achieve, about what choices are available, they will rely on heuristics, or simple shortcuts, which enable them to deal with complex issues, or things that they perceive as complex, such as the energy market. This can lead to cognitive biases.

It is not easy to detect cognitive biases and measure their influence on consumers' inertia. Based on previous studies and scientific literature, ACM identified three cognitive biases: social proof, the status quo bias and the loss-aversion bias.

[6] Data for dual fuel 1 year fixed price offers in September 2015 on price comparison tools.

Social proof

Social proof is one important bias. One could argue that, while most consumers do not switch, the social standard is not to switch. Indeed, when asked, only 10% of consumers say that they would probably switch supplier within the next two years. However, when switching is recommended by family members or friends, 31% of all consumers say that they would probably switch.

Status quo and loss-aversion bias

Another bias that causes inertia is the status quo bias. Consumers tend to stick with what they know and are less likely to trust new energy suppliers. Only 21% of all consumers trust new and unknown energy suppliers. The status-quo bias is probably also the most important reason for consumers to renegotiate their contract with their own supplier.

Closely related to the status quo bias is the loss-aversion bias. Consumers are, on average, risk-averse and try to minimise losses. Figure 3 shows that 21% of Dutch consumers do not switch because they are afraid they will ultimately pay more than the alternative price being offered.

Following the same reasoning as in the case study above, in the UK, when consumers were asked about the minimum annual saving that would encourage them to switch supplier, the median amount stated was £240 per year in the context of an average dual fuel bill of £1300. It may be that 'worthwhile' savings are higher than they would otherwise be, because of the perceived hassle factor associated with switching (see below). Since many consumers believe that supplier prices will remain roughly unchanged and that switching will be time-consuming, many consider the benefits of switching to be too low to justify the costs[7].

One main problem in telling the difference between perception of savings and real savings obtained is the fact that customers were not always able to tell whether they had been successful in their attempts to save money after switching. Ipsos MORI (2014)[8] found that a fifth of those who had switched did not feel that they were paying less than they would have if they had not switched. TNS (2014) found that almost a fifth of those who sought to save money by changing tariff or supplier could not be sure whether they had actually achieved a short or long term saving. Moreover, 16% of these customers believed they did not make the saving they expected, of which 22% saved money (but not the amount they expected): 49% said it made no difference, 20% felt they ended up paying more money[9]. This issue is also shown in Figure 8, where results from the Irish Consumer survey present the proportion of customers whose bill had reduced by the expected amount following switching.

[7] http://www.ukrn.org.uk/wp-content/uploads/2014/12/Statement-Consumer-engagement-and-switching.pdf

[8] Consumer engagement with the energy market: tracking survey 2014, Ipsos MORI, June 2014

[9] Energy Market Investigation: A report for the Competition and Markets Authority, GfK NOP, 2015

Rating the overall experience of switching supplier
(Base: All who switched last 12 months – 118)

Factor	Trend - % agree with statement					
	2015	Trend 2011	2012	2013	2014	2015
Bill reduced by expected amount	69%	72%	70%	62%	74%	69%
New supplier service satisfactory	85%	92%	85%	78%	86%	85%
Understood the terms	85%	91%	86%	84%	89%	85%

Rating the overall experience of the actual switching package with current supplier
(Base: All who switched package - 84)

Factor	Trend - % agree with statement			
	2012	2013	2014	2015
Bill reduced by expected amount	66%	67%	61%	62%
Understood the terms	83%	88%	75%	81%
Complied with the terms	79%	86%	72%	72%

Figure 8: Experience of switching (Source: Consumers Survey Ireland, CER, 2015)

The above illustrates the importance of clear and easily accessible information about the offer, the price and the contract conditions. More importantly the information flow should be seamless throughout the customer journey, to make sure the customers can compare the offer with the contract and check if promises are delivered when the bill arrives.

It is important to realise that, especially regarding the attitude towards switching perception, biases and issues of trust are essential determinants in the decision making process. The goal in the deliberation phase should be that the monetary gains from switching can be easily and objectively established. A first important step is, like it is with all purchase decisions, that customers have easy access to transparent and comparable information about what the product is going to cost them. Making it difficult for customers to determine what a specific offer is going to cost them creates a barrier to switching. Suppliers who benefit from low switching have therefore an incentive to provide in-transparent information to create a barrier to switching.

Electricity and gas can be seen as complex products for which it is more challenging to provide transparency about the total costs before the contract is signed. This is because of the nature of the product and more specifically because of the fact that the total costs are only established afterwards, when the total consumption is measured.

Some commercial practices such as or door to door sales or phone contact from the seller, are more prone to in-transparent, incomplete or misleading information about the service and price offered. Not only a barrier to switching, these commercial practices could also result in switching to a contract that in hindsight was not the preferred contract of the customer.

These facts bring a responsibility to the suppliers to make sure that all offers to customers are easy-to-understand, and to make sure that customers are able to compare these offers with other offers. Only then will they be able to choose the offer that best meets their needs and feel comfortable to switch.

Data from the 10th Consumer market scoreboard shows that there is still a long way to go with respect to better comparability of offers. Figure 9 below shows that energy and gas services score amongst the lowest service providers with an average of 6.4 and 6.6 respectively.

Figure 9: Comparability of offers among sectors (Source: 10th Consumer market scoreboard)

Good price comparisons tools are a way to lower barriers to switching by providing an easy and trustworthy way to compare offers[10]. Energy contracts, however, are sold through various channels and in order to remove this barrier to switching information on the price should be up to standard in all circumstances. For example in over-the-phone sales or doorstep selling, the customer might be more susceptible for commercial pressure, and therefore it is key that information about the price is presented in a clear, transparent and understandable way.

[10] See CEER Guidelines of Good Practice (GGPs) for Price Comparison Tools

Rules and regulations of information requirements during the pre-contractual phase may differ by member state. The basic requirements are defined in horizontal consumer protection legislation. In some member states energy specific regulation might apply to the information requirements. The two case studies below provide examples of the approaches taken by two different NRAs with respect to information requirements on the price of energy contracts in order to empower and engage customers.

The case of The Netherlands

According to the Authority for Consumers and Markets (ACM) all offers to consumers for switching energy companies must be easy to understand, and consumers must be able to compare offers. Only then will they be able to choose the offer that best meets their needs. If consumers are able to make well-informed decisions, it generates competitive pressure on all market participants. Providers will then have to do their best in order to attract new customers, but also have to keep doing their best for their existing customers. This should lead to competitive prices, better service, and more innovation.

Towards the end of 2014 ACM published the document 'Provision of information in the consumer energy market', stipulating what information must be given to energy customers. ACM has consulted extensively with the energy industry about this document. It is now completely clear to providers in the energy industry what information requirements they must comply with. Enforcement of the compliance therewith will be performed by ACM based on horizontal consumer protection legislation as well as energy specific legislation.

<u>Individual offers</u>

ACM has agreed with the energy providers that offers must be tailored to the individual consumer's needs, based on that customer's actual usage, for example as found on his annual energy bill. This has been implemented because estimates based on average usage, household size or on property type often differ considerably from consumers' actual usage. Therefore individual offers prevent actual costs which completely different from what one would expect based on one's initial offer due to the discrepancy in actual and estimated usage.

The following requirements have also been agreed upon:

• ACM and the energy providers agreed to adopt clear terminology, meaning all providers must use the same terms.

• Consumers must be informed in advance about all costs and they need to be included in the offer. This generates a total price with which all offers can be easily compared.

• Providers must state the correct costs for network management, as these vary per network operator.

• When stating the total price, the **total annual costs** must, in any case, be displayed. As these can also be found on the final bill of one's current provider, it will make comparing the different offers easier.

• Consumers must be clearly informed about how much of their power is renewable**.**

The case of Sweden

In the Swedish market, all electricity retailers that market an electricity contract to the customer must present the **price of a unit**, the so-called price comparison. The unit price of electricity, includes all the price components for electricity and the price must be stated in öre per kWh. The price must be set for three different consumption loads.

It is the Consumer Authority which is responsible for supervising the electricity suppliers' provision of accurate price information to consumers. In 2015 the Consumer Authority implemented controls on Swedish supplier's websites to ensure that prices are presented correctly.

There are several different price comparison tools (PCTs), both commercial and the regulated, available for customers who want to compare prices, contracts and suppliers. The regulated PCT (elpriskollen.se) is run by the regulator Ei.

All suppliers are required to report specific prices and contracts, which means that they must change prices on the PCT when they change the price to the customer. Ei supervises the suppliers' reporting of the correct prices on the PCT. If the prices are incorrect, Ei has the option to remove the incorrect information and mandate, through an injunction, the supplier to present correct information.

Through findings from market surveys, Ei appreciates that many customers want information from independent experts. Therefore Ei will continue to market the regulated PCT (elpriskollen.se), especially towards vulnerable customer groups.

When talking about the monetary gain of switching, price of energy is an important aspect. However, suppliers must provide a complete and transparent offer with all the characteristics of the product in order to allow customers to assess the gain of switching and make an informed decision. For example, in assessing an offered fixed price contract with duration of 3 years, it is important to know what the conditions are in case of early termination. These conditions can be as important as the price of the energy itself.

Other essential information relates to price changes. While primarily relevant to customers on variable price contracts, there are some cases where certain conditions may change prices on fixed contracts, allowing customers the right to end the contract. These conditions should be clear for the customer when signing the contract. This information is necessary for the customer to make an informed decision over which contract is right for them.

Information about price changes should also be provided in a timely manner, allowing the customer to take timely action (compare/switch supplier or contract), before the new price is in effect. It is not always in the supplier's interest to actively communicate price changes to their customers, especially when price increases are concerned. Meanwhile, from the customer perspective these price changes are essential to make informed choices in the liberalised energy market. This split incentive makes clear that transparent and timely communication about price changes might not be something all suppliers would do without prompt.

The above is also supported by the fact that a Court of Justice in a German case[11] has ruled that in the case of one-side price changes the supplier has some obligations to meet with respect to the protection of the customer:

1. The contract must set out in transparent fashion the reason for and method of the variation of the charges, so that the customer can foresee, on the basis of clear, intelligible criteria, the alterations that may be made to them.

2. The right of termination conferred on the customer must actually be capable of being exercised in the specific circumstances. That would not be the case if, for reasons connected with the details of the termination procedure or the conditions of the market concerned, the customer has no real possibility of changing supplier, or if he has not been informed suitably and in good time of the change.

In practice there is a large difference in actual implementation of these criteria. Figure 10 below provides an overview of the different way 'timely' is defined in different member states.

Time point of information about energy price changes – 2014

Legal requirement to inform final household customers about energy price changes	Fixed price		Variable price	
	Legal	In practice	Legal	In practice
10 working days in advance	BG**^	AT		AT, NO*††
15 working days in advance	HR*, RO*		RO*	
22 working days in advance	LT	LT	LT	LT
30 working days in advance	CZ, EE**, GR**, ES^^, FI†, FR, HR**, IE†, LU*†, LV, SI*, SK†	CZ, EE**, ES*, FR, IE, LV, SK†	CZ, EE**, GR**, ES^^, FI†, FR, GB†, IE†, LU*†, SI*	CZ, EE**, FR, GB†, IE
60 working days in advance	DK, IT^^^	BE, DK	IT^^^, SE**	BE
Legal requirement to inform final household customers about energy price changes does not extend to a specific number of days	AT, BE, BG*, PL, PT, RO**, SI**	BG*, PT, RO**	AT, BE, DE, DK, LU**, NL, PL*, PT, RO**, SI**	DE, DK, NL*, PT, RO**
There is no legal requirement to inform final household customers about changes in the energy price component	HU, MT*	MT*	EE*, GR*, HU, MT*, NO*, SE*	EE*, MT*, SE*††
The supplier is not allowed to change the price during the fixed period of the contract	DE, EE*, GB, NL, NO*, SE	DE, EE*, GB, NL, NO*, SE		

Source: CEER Database, National Indicators (2014-2015).

*Note: * electricity, ** gas, † calendar days, †† the contract between the supplier and the customer specifies how and when information about price changes are provided, ^ 7 working days, ^^ 30 days for electricity (fixed price), 44 days for gas, ^^^ 90 calendar days.*

Figure 10: Information about price changes (Source: ACER/CEER Market Monitoring Report 2015)[12]

In the case that a fixed price contract ends and the customer receives an offer for a new fixed price contract for a fixed period, it is essential that he receives the information in such a way that he will be able to compare this with other offers available to him. The supplier has an incentive to present this retention offer in such a way that it seems superior to all other offers.

As stated before, this information should include the total costs concerned with the new contract, as well as all the essential conditions necessary to make a good comparison with other offers in market. Especially in this phase, where the supplier is incentivised to encourage retention, objective and complete information is crucial to ensure a minimal barrier to switching.

[11] C-92/11 (March 21st 2013)

[12] In Cyprus, the legal requirement to inform final household customers about energy price changes also does not extend to a specific number of days.

Additionally it should also be clear what happens when the customer decides to do nothing. With nothing in this case is meant that the customer chooses not to act on the retention offer and not switch to another supplier. In this case the customer will be automatically renewed into a certain contract with his/her current supplier. Of course with a product like energy automatic renewal is necessary to prevent unwanted disconnections. However it puts the customer in a potentially vulnerable position if the information on price and conditions is not adequate to make an informed choice based on the monetary impact the renewal might have.

The extent of vulnerability and therefore the potential of commercial practices aimed at creating a barrier to switching depend on the specific legal regime with respect to automatic renewal of energy contracts. CEER's Position Paper on early termination fees explores this subject.[13] It makes a big difference whether suppliers are allowed to automatically renew a contract with a fixed period or if a customer is always allowed to switch with a short notice and free of charge after automatic renewal. The legislation therefore can enhance or attenuate the negative effects of this barrier to switching. This is also shown in the French case below, which demonstrates how legislation can attenuate these negative effects. The French situation also applies to some other Member States, such as the Netherlands, where automatic renewal is regulated by general consumer legislation.

The case of France: *Loi Hamon*

In many countries, if a customer enters into a fixed term contract which he/she does not actively end at the end of the contract term, the contract will be automatically renewed for the same period. This can lead to 'customer lock-in', especially if the procedure for contract termination is complex or the window available to the customer to do so is short.
In France, this situation led to the 'Loi Hamon' (Law Hamon), which prohibits for automotive and insurance contracts a termination fee once a fixed term contract has been automatically renewed at the end of the first term. Other countries apply the same rule whereby automatically renewed contracts can be ended free of charge with a month's notice. This practice incentivises the supplier to give the customer a competitive contract.

[13] CEER Position Paper on early termination fees

2.2 Lack of trust

Following from the above, trust is an important factor. It influences the attitude and deliberation customer has towards the market, the incumbents and the new entrants. Figure 11 below shows that trust in general is relatively low for electricity and gas retail markets compared with other service. They score a 6.2 and a 6.5 on a 10 point scale respectively. Consumers were asked to answer the question "on a scale from 0 to 10, to what extent do you trust retailers/providers to respect the rules and regulations protecting consumers?"

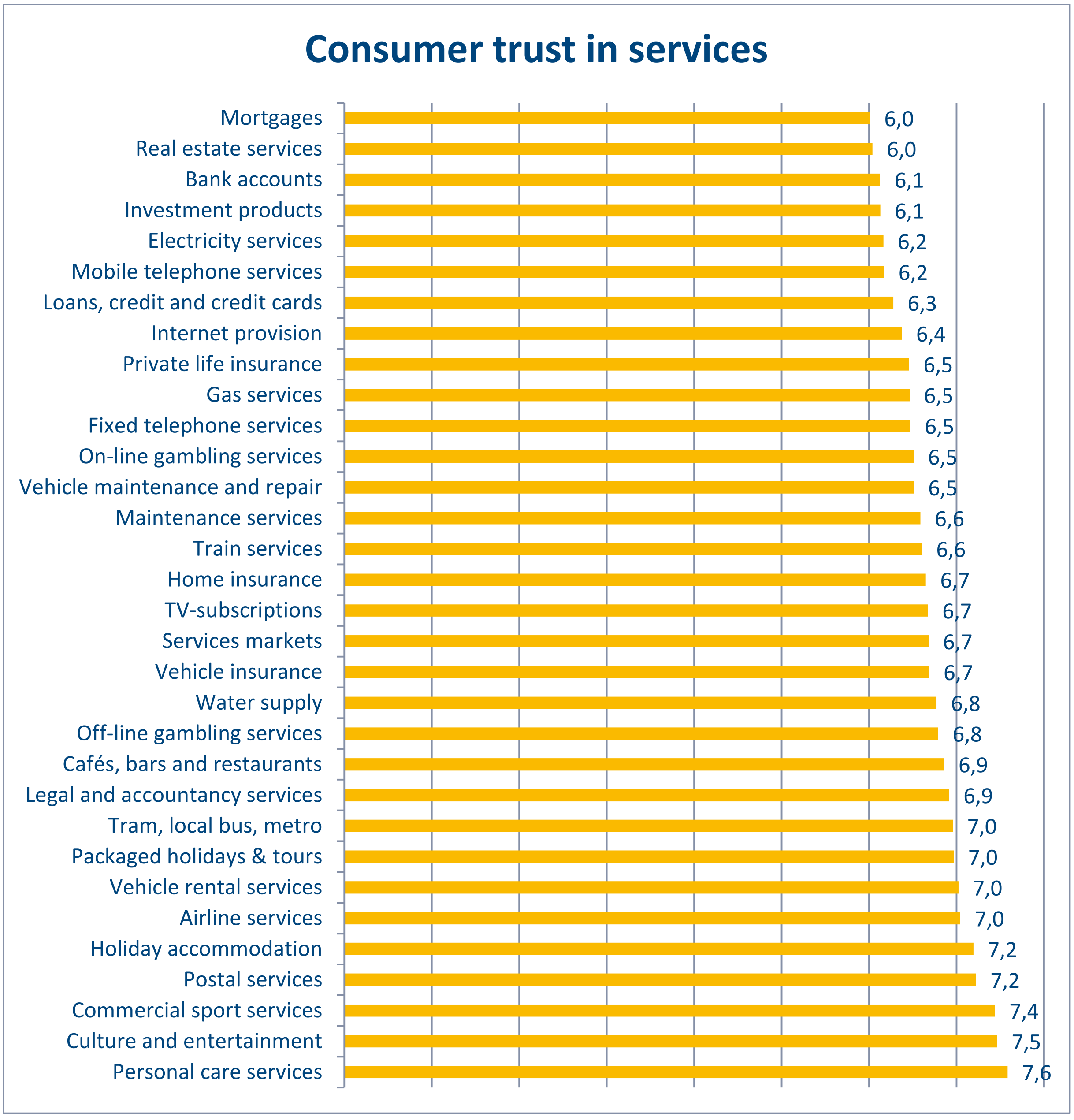


Figure 11: Consumer trust in services (Source: 10th Consumer market scoreboard)

The same barriers regarding perception and trust as identified in the beginning of this report are also identified in the *Centreforum Think Tank's* '*Reforming retail markets*' report[14] which shows that some customers deliberately avoid the switching process due to bad experiences of switching in the past: 26% of customers claim they would not switch again having done so previously. Similarly, in the UK, a further barrier to access – or rather, even to attempting to engage with the switching process – results from low customer trust in energy providers. Energy is ranked among the UK's least trusted sectors.

The figure below shows customers' trust in providers in different sectors, based on their experiences with switching.

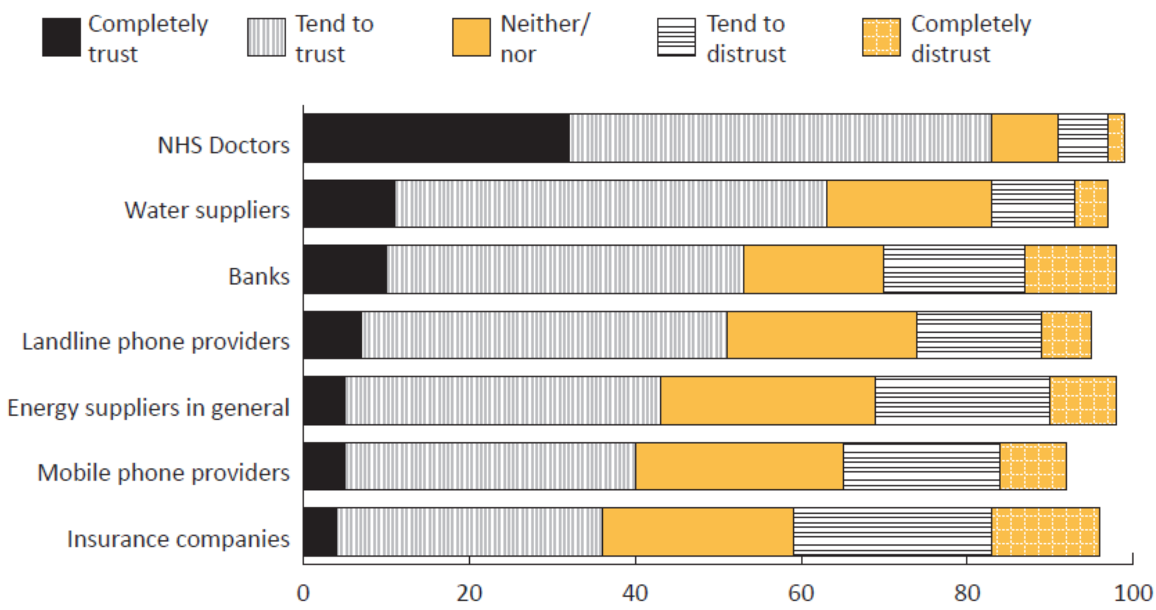


Figure 12: Consumers´ trust in providers in different sectors (Source: Reforming retail energy markets, Papworth, Day and Thomas, April 2015)

Trust however, is a difficult and very wide concept to grasp, and again has a lot to do with perception. What customers exactly mean when they talk about trust greatly depends on the context. In considering whether to switch at all, trust is mostly relevant on a high level and related to the image of the sector in general. The question asked in the consumer scoreboard reflects this high level trust.

On a more detailed level, notions about offers being 'too good to be true' are important drivers behind the trust in the market and the customer's confidence about switching. As previously mentioned, misunderstanding of offers, and, sometimes, unfair commercial practices, without allowing customers to request more information, makes distrust grow among customers.

Furthermore, the thinking that all power companies are the same,, and appearance of new entrants with perceived little knowledge about the sector or not financially stable, can lead into lack of trust and retract customers from the initiative of switching.

[14] Reforming retail energy markets, Papworth, Day and Thomas, April 2015

Finally energy companies have historically been seen as a monopoly that work with the sole purpose of making money, while raising the price significantly, without considering the customer; this fact makes customers suspicious about the advantages of the offers and prefer to stay with a contract, where the price might be high, but it is, at least, known.

Customers do not always trust that they will receive what is promised to them in the pre-contractual phase. This is not only due to general mistrust of the industry, but also enhanced by the lack of comparability between the offer and the contract that is drawn up and signed. Additional conditions or costs that were not (clearly) presented in the offer damage trust and could result in termination of the contract with the use of the cooling-off period (if applicable). The discrepancy between what was (perceived to be) offered and the final contract creates barriers to future switching.

Therefore complete information on price and conditions is also key in establishing trust. Suppliers that try to hide disadvantageous conditions or additional costs when offering contracts to customers create a barrier to switching because the information flow between offer and contract is not seamless and the customer is unpleasantly surprised.

The Centreforum's '*Reforming retail markets'* report[15] notes that misconduct and scandals may have fed this lack of trust. Energy providers have been accused of widespread mis-selling, contributing to supernormal profits despite warmer weather and lower wholesale prices. In recent years, examples of malpractice include tariffs being switched without permission, sales representatives underestimating the price of a new tariff, customers being sold a tariff that was not fully explained, and the lowering of direct debit prices to make a switch seem cheaper.

Barriers to assessment of energy market information include the complexity of bills and difficulties obtaining clear like for like price comparisons. The complexity of tariffs confuses some customers and makes like for like comparison a daunting prospect for others. The terms and conditions contained within tariffs, including unclear cancellation procedures, serve as a mental block to switching[16].

Some surveys from consumer organisations have found that the information provided on new offers, from new or current suppliers (mostly via door to door or phone sales), has made the comparison of the product more confusing. Meanwhile sellers' aggressive attitudes have been reported.

A survey by CEACCU (a Spanish consumer organisation) demonstrated the lack of trust from customers to new supply companies. A shown in Figure 13, most of those who had experience with door-to-door or telephone salespeople were not positive about the experience.

[15] Reforming retail energy markets, Papworth, Day and Thomas, April 2015, http://centreforum.org/assets/pubs/reforming-retail-energy-markets.pdf

[16] Reforming retail energy markets, Papworth, Day and Thomas, April 2015, http://centreforum.org/assets/pubs/reforming-retail-energy-markets.pdf

Percentage of consumers with door to door or phone sales experience

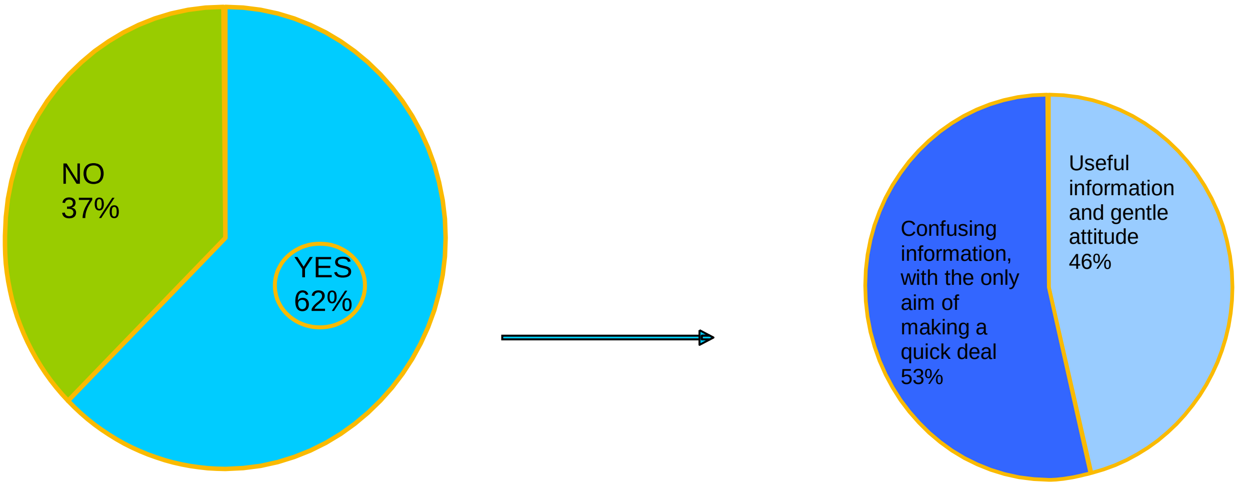


Figure 13: Information door to door or telesales (Source: CEACCU, Spanish Consumer Organisation)

14.5% of customers switched their supplier following a door-to-door sales experience. Of those who switched, 29% were not happy with the change and felt that they had been misled; when asked why, 82% answered that conditions were different from what they had been informed about.

Billing information is another interaction between the supplier and the customer. The energy bill provides the customer with the essential information to check if what was offered and what was in the contract is actually delivered. The bill completes the chain of information. If the bill is unclear, incomplete or incorrect this directly influences the trust the customer has in the market. It might confirm the idea that the offer was in the end ‘too good to be true’.

The conclusions of the 8th Citizens Energy Forum underline the importance of clear billing information in relation to customer engagement. The Forum calls for improved and comparable pre-contractual information, including green offers, contract and billing information to increase customer engagement and for more clarity on the costs of the components of energy bills to remove barriers to effective competition and allow customers to choose from more diverse offers.

The information provided about the end-date of the contract should be accurate and transparent. When there is uncertainty about the end-date of the contract the customer cannot make an informed choice on when it is time to re-evaluate the contract. This relates directly to the issue of trust, the customer should not be surprised by the actual end-date of its contract. This information should be seamless throughout the customer journey. Especially in the case of fixed contracts the end-date is an important characteristic to help the customer make a choice about switching.

2.3 Complex process

The customer switching process refers to a wide range of activities that result in a customer having a different supplier of energy. But the process itself can also be a barrier to switching if it does not take into account the principles of consumer protection, among which is the right to a quick process and with all the guarantees that the service will not be interrupted at any time.

Consumers who have never switched can perceive the process of switching as a hassle and complicated. This perception can be caused by lack of information about how the process is carried out. These aspects can lead to an inactive attitude from customers.

Transparent and clear information about the switching process given by independent bodies is critical for customer decision making. Independent bodies should not only establish guarantees, but also supervise advertisements and offers included in the price comparison tool, and allow a simple way for customers to complain if the process infringes guarantees

Since 2008, DG SANCO have published the Consumer Markets Scoreboards on a regular basis, which monitor how the single market is performing for EU consumers and warn of potential problems of specific consumer markets. The Consumer Scoreboard data provide important insights into how the markets are functioning from the consumers' perspective.

The figure below shows the answers to the question "On a scale from 0 to 10, how difficult or easy do you think it was to switch?" The ease of the switching process was assessed differently by consumers who had actually switched suppliers and consumers who switched within the same supplier or did not switch at all. The group who had switched suppliers rated the ease of switching at 7.7 while those who had not provided a score of 6.3. Moreover the group who had not switched suppliers was more than twice as likely as those who had, to rate the process as difficult, represented by a score between 0 and 5. This indicates that consumers who have not switched before perceive the process of switching more complex than that it actually is.

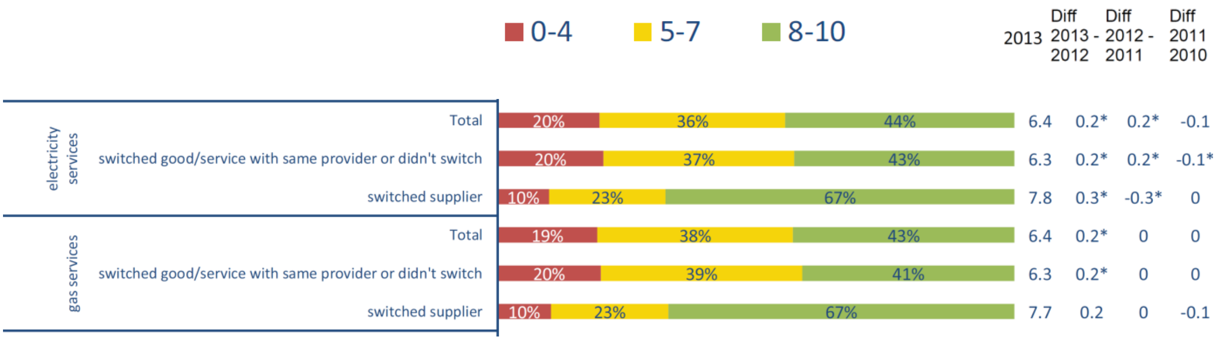


Figure 14: How difficult do you think it was to switch (Source: 10th Consumer market scoreboard)

The findings above regarding the actual ease of switching are supported by the consumer survey performed by CER in Ireland. Among switchers the satisfaction about the switching process is high. 91% of the switchers rated the experience as easy or very easy.

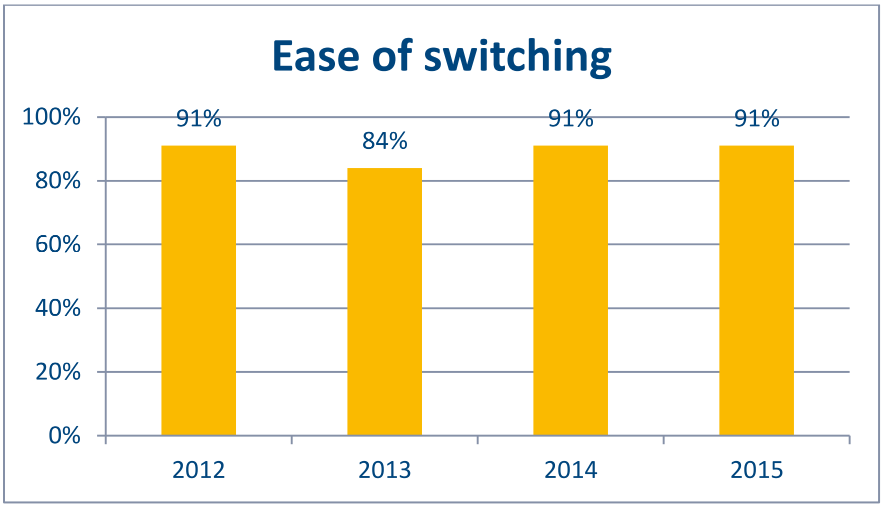


Figure 15: Rating of the switching process among switchers of domestic electricity supplier (percentage rating the experience as easy or very easy) (Source: CER Ireland)

The switching process follows a few steps, depending on the specific market design. The lack of clarity for the customer over what steps need to be taken can form a barrier to switching. Providing clear information about the process can help to counteract the perception customers have about switching being complex and a hassle. There might also be other market processes which create a barrier to switching. The case of Sweden below shows that a process designed to make moving easier and ensuring customers have electricity when they enter a new home produces a barrier to switching by minimising the customer's involvement in the choice of an energy supplier for their new address.

In the Swedish electricity market, it is easy to switch supplier. The customer contacts the electricity supplier, for example by phone or online. The change is always free of charge.

Though when a customer moves from one house or apartment to another, it is still the case that many customers do not actively choose a supplier and an electricity contract. To ensure the customer's electricity supply in these cases the network operator in the area where the customer moves in is obliged to direct the customer to a supplier. The customer will then receive a so-called designated contract with that supplier. The designated contract is often much more expensive than other types of contracts on the market.

The fact that the customer can start using electricity in the new home without contact, contract or agreement with a supplier may be a barrier to switching as engagement is reduced.

In 2013 Ei proposed to the government a new relocation process for the Swedish electricity market. This process assumes a supplier centric model, whereby it would be mandatory for the customer to contact a supplier to register the relocation and to sign an electricity contract. The proportion of customers with so-called designated contracts would drastically drop and more customers would switch supplier.

The processes around renewal and automatic renewal of contracts can create a serious commercial barrier to switching.

Most importantly a (very) short time frame in which a customer should cancel the contract before it is automatically renewed can deter switching substantially. This is exacerbated with uncertainty about the contract end-date. Next, a complex cancelation procedure can be used as a commercial barrier to switching. If a contract that was concluded online can only be terminated by writing a letter one could argue that this would pose a barrier to switching since the preferred channel for this customer is probably the internet.

2.4 Satisfaction/loyalty

At first glance satisfaction with their current supplier as a reason not to switch can be seen as a positive thing. The question is whether this apparent satisfaction is, in fact, contentment with the current supplier, or whether customers are content with the situation as it is now. One could argue that a large part of the customers do not have much to do with their current supplier. When they are for example on a flexible contract and payments are automatic there is not much interaction between the customer and the supplier. If this lack of interaction creates a sense of satisfaction that acts as a deterrent for switching suppliers have an incentive to minimise interaction and change that might influence the perceived satisfaction and trigger the customer to start looking around.

As described above, satisfaction can also be seen as reluctance to change things or as familiarity with something customers have known for a long time. This is an essentially different way of looking at satisfaction with the current supplier. When taking this perspective, cognitive biases may play a role in causing inertia. As explained above, the status quo bias makes customers stick to what they already know. This is exacerbated by the lack of trust in new and unknown suppliers. The consumer survey for the Netherlands showed that only 22% of consumers trust new and unknown suppliers.

The main objective of the supplier is to create loyalty and keep the customer satisfied, which should be the way a liberalised energy market works. However, this is only in the advantage of the customer if the loyalty and satisfaction results from added value and superior quality of service as compared to alternative suppliers.

2.5 Conclusions on the main reasons not to switch

When analysing the described barriers to switching it is important to distinguish between customer perception and reality. Consumer perception about insufficient gain from switching could be caused of the lack of complete, understandable and comparable information on offers that make it difficult to assess the real monetary gain. Furthermore, because of the same reason, customers think it is not always possible to compare their offer, contract and bill to analyse if the expected gain was actually achieved. This may deter the customer from switching again.

To address this barrier it is important, that NRAs make an effort to improve the transparency and comparability of offers. Price comparison tools can play a role here as well. CEER is working on an update of its GGPs on price comparison tools to clarify what a good price comparison tool should look like. When suppliers provide customers, through all sales channels, with complete understandable and comparable information on price and conditions this might encourage customers to be more active in the electricity and gas market.

On the other hand, in some Member States insufficient gain from switching is a reality. There can be numerous reasons why the price differences are small. One could argue that one of those reasons is that the market is functioning very well, because competitions should drive down the price differences over time in a well-functioning retail market. The assumption is that this stage of competition is not yet reached when looking at the European retail energy markets.

It is more likely that small price differences and the lack of monetary gain are caused by regulated retail prices, lack of competition or a large proportion of fixed components on the total energy bill, leaving less room for price competition[17]. These are not commercial barriers by the definition of this report. Even when the lack of monetary gain can be actually observed misperception about the monetary gain might also play a role in worsening the picture.

As described, the energy sector has a trust issue. Within Europe, electricity and gas retail markets do not perform well on customer trust. Providing complete, understandable and clear information is key to build trust. Surveys show that customers do not trust new entrants. When this lack of trust keeps customers from switching this is an important issue from competition perspective and might hinder the development of a well-functioning retail market. Incumbent suppliers benefit from this lack of trust in the new entrants because they already have a substantial customer base.

Trust might be enhanced when suppliers withhold from unfair commercial practices and provide transparent information when they offer their products to customers. Furthermore, customers that decided to switch should be provided with a seamless flow of information after signing their contract. They should not be surprised by costs or conditions that are essential to the contract. These essential pieces of information should be given upfront. When this is not the case a customer who decided to switch once might never switch again.

From the consumer surveys it can be concluded that for the complexity of the switching process there is gap between perception and reality. Consumers that have not yet switched perceive the process of switching as complex and time-consuming. Commercial practices that underline this perception and the lack of information about (the ease) of the switching process enhance this barrier to switching. NRAs, suppliers and consumer organisations should provide the customer with clear information about the ease of switching. Suppliers should provide the customer with information how the switching process is going to look when they decide to switch.

On the upside, the reviewed surveys also show that customer who actually switched think the process of switching is not complex at all. This underlines the importance of clear and objective information about the switching process. Third parties like price comparison tools could play a role here as well since they are more neutral towards the switching process than the suppliers themselves, and they have an incentive to stimulate switching where this might not be the case for some (incumbent) suppliers.

However NRAs should be aware of actual difficulties in the switching process and act accordingly.

[17] in some member states mechanisms to integrate renewables may lead to low wholesale prices overall and therefore a lack of price spreads.

Consumer satisfaction is a bit of a double edged sword. When a customer is satisfied about the service of their current supplier and makes an informed decision to stay with this supplier that is not a problem. However, if satisfaction comes from inertia, it could be a problematic barrier to switching. In this case the satisfaction could result from the lack of interaction by the supplier with its customers. This could take the form of not communicating price changes actively, providing as few triggers to start thinking about switching as possible and silently renew contracts after they end. These practices can be seen as commercial barriers to switching since the suppliers engage in deliberate activities to lull customers into sleep and do not actively provide the obliged information to customers. Suppliers should provide customers with the necessary information, but other stakeholders could also try to engage customers to evaluate if they really are satisfied with their current supplier.

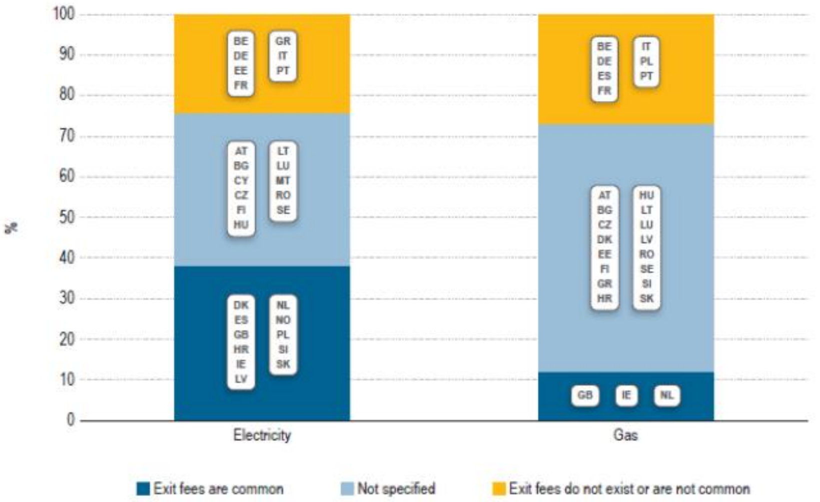
3 Main commercial contractual barriers to switching

The section above described barriers to switching based on evidence from consumer surveys and behavioural economics. These barriers focus on commercial practices by suppliers that aim to influence customer perception and mostly revolve around the provision of information to customers. There are other commercial barriers that keep customers from switching, but these might be of a more legal nature. An example would be long term contracts (e.g. more than three years) that have the effect of locking in customers. The exact effects on switching however, very much depends on the broader legal context and can differ substantially by Member State. CEER chooses therefore not to go into these commercial barriers but to focus on some contractual conditions that can be observed in energy contracts that lock-in customers and keeps them from switching.

3.1 Unjustified early termination fees

As stated by the Directives[18], switching should be completely free for the customer. Therefore, it should not be possible for energy suppliers to charge a termination fee to customers who respect the end date of their energy contract, as such termination fees are to be considered as a switching cost. However, early termination fees, which are fees charged when a customer breaks their contract before the agreed end-date, should not be considered to be a switching cost, but rather a contractual matter, although from a customer's point of view, all termination fees can in fact act as a barrier to switching.

[18] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC



Source: ACER Questionnaire (February–April 2015) and ACER Database (November–December 2014).

Notes: Based on the offer data shown or as indicated by the respondents in the Questionnaire. Although MSs are listed in the Figure, the information drawn from the offer data may refer only to the capital city.

Figure 16: Presence of exit fees (Source: ACER/CEER Market Monitoring Report 2015)

Figure16 shows that exit fees are common in almost 40% of the Member States. The next step is to analyse whether early termination fees are actually a commercial barrier to switching and in which cases an early termination fee could be acceptable.

Early termination fees are possible for fixed term, fixed price contracts, provided the customer is fully and clearly informed about the existence of the early termination fee before entering into the contract and that the rest of the contract terms are balanced and do not lock in the customer, locking the market for new suppliers. Furthermore, contracts should be balanced and provide proportionate benefits and costs for both customer and supplier. Justified early termination fees that do not reflect the period of the contract that is not respected and lock in customers against their will or interest can also be seen as a barrier to switching. An early termination fee must therefore reflect the period of the contract that is not respected.

As such, early termination fees for these types of contracts should be limited and clearly associated to certain additional cost borne by the supplier specific to the customer in question; this is typically the case when certain benefits are given to the customer in addition to energy supply, such as energy audits, energy efficiency appliances, insurance. The responsibility would be on suppliers to robustly demonstrate that these additional costs justify early termination fees.

At the same time the justification for exit fees becomes harder to make for contracts that are not fixed term and fixed price in nature. Therefore early termination fees pose a commercial barrier to switching for energy contracts with variable pricing, where the customer carries the risk of the price variation.

From the customer’s perspective, clarity is the most important consideration to make sure justified termination fees do not create a barrier to switching. Therefore, before entering in a contract with an energy supplier, it should be absolutely clear to the customer what the contractual conditions are, including whether an early termination fee will be applicable, under which conditions this could happen and how high the early termination fee will be.

A specific issue is automatic renewal of fixed term contracts. If a customer enters into a fixed term contract and does not actively end the contract at the end of the contract term, in many countries, the contract will be automatically renewed for the same term. This can lead to 'customer lock-in', especially if the procedure for contract termination is very complex or the window available to the customer to do so is very short.

CEER recommends not allowing early termination fees to be charged in case of contracts that result from automatic renewal of fixed term energy contracts. To prevent automatic renewal of contracts leading to customer lock-in, it should be prohibited to charge an early termination fee once a fixed term contract has been automatically renewed at the end of the first term.

In terms of other contractual provisions which can have similar effects as early termination fees, a lot depends on the initial market practices. In some countries, a loyalty bonus is paid out to customers who respect the full term of their contract. This bonus is paid out also if the customer decides to switch to another supplier after the contract is ended. This is the case in the Netherlands, where the bonus is not conditioned by a renewal but by the customer serving out the initial contract term (mostly 1 year). To ensure this happens in practice and no money is charged to the consumer, these bonuses are paid at the end of the contract.

There are also contracts that give the customer cashback upfront. Based on the early termination fee legislation in some countries, the supplier is allowed to ask for cash back of up to a maximum of 50 EUR per fuel (in addition to an early termination fee) if the contract is ended before the first year. This also holds for presents (such as iPads), up to 50 EUR per fuel can be charged back to compensate for breaking the contract and keeping the present.

CEER recommends ensuring that loyalty bonuses are paid out before or in connection with the end of the contract, in order to prevent them from having the effect of locking in the customer. In some markets, there are also renewal bonuses, which the customer receives only if the contract is renewed. CEER points out that renewal bonuses act as a barrier to switching and should therefore be avoided. CEER wants to remind that work is ongoing on the Benchmarking Report on commercial barriers to supplier switching, which is looking at termination fees in a broader context.

3.2 Value added goods and services causing customer lock-in

Supplier switching should be free of charge, meaning that customers should not be charged if they want to switch. Value added services are services that do not include the supply of electricity or gas, for example smart thermostats, maintenance contracts for the heating system, home security, insurance, energy efficiency advice.

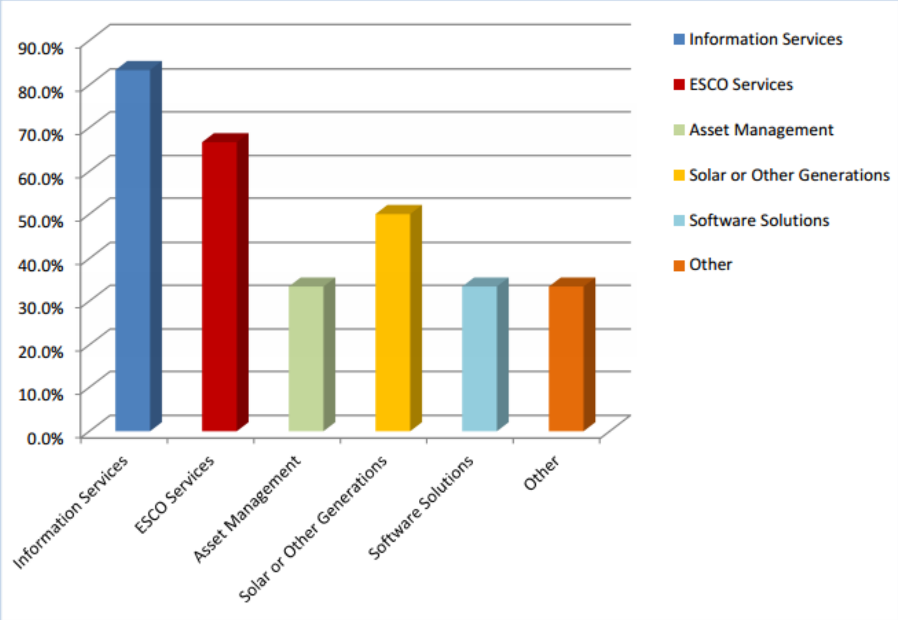


Figure 17: Value added service provided by US retailers (Source: 2012 Retail Energy Marketer Trends, National Energy Marketers Association)

The figure above depicts the range of services that are provided by US retailers that are active in non-commodity areas to household consumers.

These services can be seen as a form of product innovation and therefore beneficial to the well-functioning of the retail market. They provide a way for suppliers to differentiate, on other components than just the price. These services can, on the other hand, be seen as commercial barriers to switching in the case that they make it impossible or costly to switch energy supplier.

The main issue arises when the contract for the value added service and the energy contract are directly linked and non-dissociable from each other. In these cases the customer is no longer able to switch energy supplier free of charge, locking the customer in with the current supplier and creating a commercial barrier to switching. When the two contracts are dissociable, customer lock in does not occur. General principle is that the customer should always be able to switch supplier, no matter what other service is contracted.

As stated before, early termination fees for these types of contracts should be limited and clearly linked to additional cost borne by the supplier specific to the customer in question when certain benefits are given to the customer in addition to energy supply, such as energy audits, energy efficiency appliances, insurance. The responsibility would be on suppliers to robustly demonstrate that these additional costs justify early termination fees.

4 Conclusion

In this report CEER identified two groups of commercial barriers to switching:

- Barriers that influence customer perception about the energy markets and keep them from switching. CEER observed that most of these barriers are caused by incomplete, complex and non-comparable information on prices, contract conditions and market processes.
- Barriers that follow from commercial contract conditions that result is a form of customer lock-in.

The table below summarises the main commercial barriers discussed in this benchmark report.

Type of barrier	Description
Consumer perception	Insufficient monetary gain
	Lack of trust
	Complex switching process
	Satisfaction/loyalty
Commercial contract conditions	Unjustified termination fees
	Value added services

Suppliers might have an incentive to exacerbate the customers' perceptions towards the main barriers to switching. Where this incentive arises customers are not fully informed or are provided with incomplete and non-comparable information. Most of the barriers identified therefore point towards remediation by focussing on efforts to increase the quality of information that is provided throughout the complete customer lifecycle.

- Information on offers should be complete, understandable and comparable
- Information should comprise all the essential characteristics of the product (price, duration, start, end, contract conditions etc.)
- Information in the contract should follow seamless from the information in the offer
- Information about the switching process should be provided
- Information during the contract phase is easily accessible
- Information about price changes is complete, understandable and comparable
- Information about the end of the contract, a renewal offer and/or automatic renewal conditions is complete, understandable and comparable

Unjustified termination fees and contractual terms on value added services that cause customers to be locked into their contract so that they actually lose their right to switch supplier without additional cost can also enhance the perception barriers described above.

5 Next steps

NRAs should therefore try to identify the barriers in their relevant markets and choose the right tools to remove them. CEER is working on a Roadmap to well-functioning retail markets, which could provide additional information for removing the identified barriers to switching. Furthermore it is important, that NRAs seek to improve the transparency and comparability of offers. Price comparison tools can play a role here as well. CEER is working on an update of its GGP on Price Comparison Tools to clarify what a good price comparison tool should look like. When suppliers provide customers, through all sales channels, with complete understandable and comparable information on price and conditions this might encourage customers to be more active in the electricity and gas market. Because of this focus on providing complete, understandable and comparable information to customers cooperation with national consumer protection agency and consumer organisations might also be an efficient way to remove some of the barriers discussed in this document.

About CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national regulators of electricity and gas at EU and international level. CEER's members and observers (from 33 European countries) are the statutory bodies responsible for energy regulation at national level.

One of CEER's key objectives is to facilitate the creation of a single, competitive, efficient and sustainable EU internal energy market that works in the public interest. CEER actively promotes an investment-friendly and harmonised regulatory environment, and consistent application of existing EU legislation. Moreover, CEER champions consumer issues in our belief that a competitive and secure EU single energy market is not a goal in itself, but should deliver benefits for energy consumers.

CEER, based in Brussels, deals with a broad range of energy issues including retail markets and consumers; distribution networks; smart grids; flexibility; sustainability; and international cooperation. European energy regulators are committed to a holistic approach to energy regulation in Europe. Through CEER, NRAs cooperate and develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

The work of CEER is structured according to a number of working groups and task forces, composed of staff members of the national energy regulatory authorities, and supported by the CEER Secretariat. This report was prepared by the Customer Empowerment Task Force of CEER's Customers and Retail Markets Working Group.

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More information at www.ceer.eu.