Comparative Analysis of the Third Party Retail Markets outside Rail

Office of Rail Regulation

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Final Report

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Contents

1. INTRODUCTION

The Office of Rail Regulation (ORR) commissioned Cambridge Economic Policy Associates (CEPA) to carry out a series of case studies on the participation of third party retailers in markets. In particular, we have been asked to set out the governance and institutions in these markets, including regulatory and consumer issues arising, with the purpose of illuminating potential issues that may apply in rail retailing.

In this context, "third party retailers" means anyone other than the ultimate supplier who acts in the supply chain between the consumers and suppliers. Third party retailers vary considerably in relation to how much value they add. Third party retailers might at one extreme simply introduce a consumer to a supplier, or they may retail a supplier's product exclusively. They might provide the customer with some selection service before introducing them to a supplier. They might provide an opportunity for the customer to buy the service alongside complementary services in a single package. But third party retailers can also add much more value, and by-pass more of the supply chain. For example, if the supplier's product is wholesaled or unbundled, or if there is open access to essential facilities, a third party retailer can repackage it and add considerable value of their own. When we use the term "third party intermediary" (TPI), we will generally have in mind search services, agents, brokers, resellers and retailers, but falling short of those third party retailers who provide more than an intermediary service.

Following consultation with ORR, and some early research on a wider range of markets, it was decided to proceed with case studies in five markets:

- air travel;
- energy retail;
- retail investments;
- mobile telephony; and
- price comparison websites (PCWs).

These case studies were chosen for several reasons, including that they represent regulated sectors that retail to consumers, and therefore may be similar retailing activity taking place in rail. We present the five case studies in separate chapters which follow. In this chapter we provide a summary of the important and interesting features this research has uncovered. Table 1.1 (below) presents a summary of the market arrangements in the five case studies.

Table 1.1: Summary of findings

Feature	Air travel	Energy retail	Retail Investments	Mobile telephony	Price comparison websites
Similarities to rail	• Complex pricing • Some fares withheld from search databases • Common databases for search • Some market power: most routes 1 to 3 suppliers	• Complex pricing • Some exclusive prices/products • Some market power: 6 suppliers have >90% share	• Complex products • Some exclusive price/products • Limited retail routes	• Complex products and prices • Some exclusive price/products • Some market power in airtime: 4 suppliers have 100% share	• General case of National Rail Enquiries service • Concerns about all offers being compared • Concerns about fairness of comparison
Differences from rail	• More routing options • More retail options • Some agents resell tickets bought on wholesale terms	• Regulation to reduce tariff complexity • Unbundling of supply chain • More retail options	• Fully competitive market • Advisors have role of providing advice, not agency • Some brokers resell investments bought on wholesale terms	• Unbundling of supply chain • Consumers engaged, can cope with complexity • More retail routes	• Specific issues in specific markets • Specific regulation in specific markets • Customers more engaged
Arrangements between principal and agents	• Customer usually pays agent explicit agency fee • Supplier-agent commissions now rare • Some tickets bought wholesale and sold for profit	• Most TPIs paid fee by seller for introduction, usually from click-through • Some agents earn fees for acting as aggregators for the suppliers • Agents may join consumer groups into collective deals	• Advisors (main sales route) must charge customer for advice, no commission • Pure agents can earn commission if disclosed • Suppliers may wholesale investments to brokers who repackage to retail investors	• Retailers may earn commissions and/or introduction fees from seller • Airtime bought wholesale is repackaged by Mobile Virtual Network Operators • Numerous other bilateral arrangements	• Most PCWs paid fee by seller for introduction, usually from click-through, but sometimes other methods of identifying introduction
Costs and benefits, perceived or real, of third parties	• GDSs provide agents with easy, fast booking. • Agents a useful route to market valued by customers	• PCWs often used to compare complex offers • Brokers often used in non-domestic market to negotiate specialised tariffs	• Advisors are the main route to market • More customers now DIY • Wholesale brokers offer lower cost products but may charge for extra services	• Rich variety of competition and routes to market serving customers and sellers' needs	• PCWs Intensify existing competition by facilitating price comparison • Focus on price can be to the detriment of quality
Main regulatory and consumer concerns	• Transparency of pricing (regulated) • Bankruptcy risk – third parties can increase counter-party risk (regulated in some cases)	• Reducing tariff complexity (regulated) • Mis-selling (regulated) • Customers on tariffs no longer marketed (regulated) • PCWs giving accurate and complete comparison (optional accreditation) • Vulnerable customers	• Mis-selling due to advisors' conflict of interest (regulated) • Making the provision of information to customers more economical (free generic advice website)	• PCWs providing accurate comparison (optional accreditation)	• Restrictive practices on best price guarantees • Sector specific concerns, mainly over financial transparency, completeness and accuracy of comparison (optional accreditations)

Comparing these five markets, we find that none of the markets are as weak in competition in their retail chain as rail: the consumer in all the comparator markets has a wider range of options for basic supply than in rail as we describe below; there is a wider range of brokers and agents in all the comparator markets; and in some cases unbundling of the supply chain has allowed third parties to construct distinctive offers at distinctive prices in competition with the basic suppliers.

In some cases this has come about through restructuring of the market. In particular, originally the retail of energy was a formal monopoly, but following regulatory restructuring it has been unbundled and liberalised. Today six suppliers have over 90% market share, a degree of concentration which is of some concern, but plainly a long way from monopoly. In mobile telephony, there are only four principal suppliers of the essential mobile network service ("airtime"), but these mobile network operators (MNOs) unbundle their essential service, facilitating by-pass of their non-essential services, and many alternative suppliers in the form of mobile virtual network operators (MVNOs) are now available. This unbundling of airtime happened without explicit regulatory action in Britain, but it has required regulatory action to achieve in most other countries where it has happened. Air transport pricing has been fully deregulated on the back of considerable liberalisation of routing; there may be only one operator on some air routes, and rarely more than three, but there are typically many alternative routings suitable for the passenger giving a high level of effective competition. Thus rail is the least competitive, least unbundled, and most regulated sector we study. We include retail investments, a competitive market, as a comparator to enable a clear focus on issues outside those which might arise from any competitive shortcomings in the other markets.

All of the markets we look at have complex products with complex pricing, or, in the case of PCWs, facilitate comparison of potentially complex products and prices. PCWs help us to focus directly on the issue of comparison and complexity.

Some of the markets have common information systems. Air transport is the most similar to rail, with Global Distribution Systems (GDS) offering a similar service to the Association of Train Operating Companies database, albeit that there are three of these GDSs and they compete. A new and more comprehensive facility, the New Distribution Capability (NDC), is to be introduced by IATA. This NDC will not have a direct competitor, although the existing GDSs might improve their products to compete. The GDSs do not provide complete market coverage. Coverage by rail industry owned databases is not complete either, but it is extensive, and only some selected products are not included. Since third party rail retailers do not access products in other ways, these databases represent the market accessible to third parties. In energy markets, there is common provision of metering data, although this is not directly comparable to information on the market which the GDSs provide in air transport. We are unaware of similar market information infrastructure for use by sales agents in the other markets.

Direct purchase from the supplier is the dominant retail route in rail, although other options are available. We see that rail has a relatively narrow span of routes to market in comparison to most of the comparators. Although in many cases the customer ends up with a contract direct with a supplier, they more often use an agent, broker, or PCW to identify the chosen supplier. Traditional high street agents and newer online variants remain prominent in air tickets and mobile phones. These two markets in particular have a variety of routes to market. But there are also cases where the customer contracts with someone else. Wholesaling takes place in all the markets studied (except PCWs), enabling third parties to offer distinctive tariffs and have a direct customer relationship. “White labels” have emerged in energy and mobile phones. “White label” is where an established brand from another retail sphere puts its brand onto a supplier’s product, and may then sell it on a distinctive tariff and terms fitting to that brand, and market the product specifically to that brand’s customer group. There may also be cross-promotions and bundled offers with other services.

It is common for introducers, such as PCWs, to be paid a fixed fee for an introduction to a supplier if it leads to a sale: this applies widely except in investments. Agents charge an explicit fee for their service to the customer in air tickets and investments. In rail we note that all retailers earn a commission within the ticket price , and third party retailers also have the option of making an explicit service charge to customers. Commissions were largely competed out of the market arrangements in air tickets, and agents who advise on investment choice have been banned from accepting commission. A number of variable and non-transparent arrangements exist in other markets, including commissions and incentive payments.

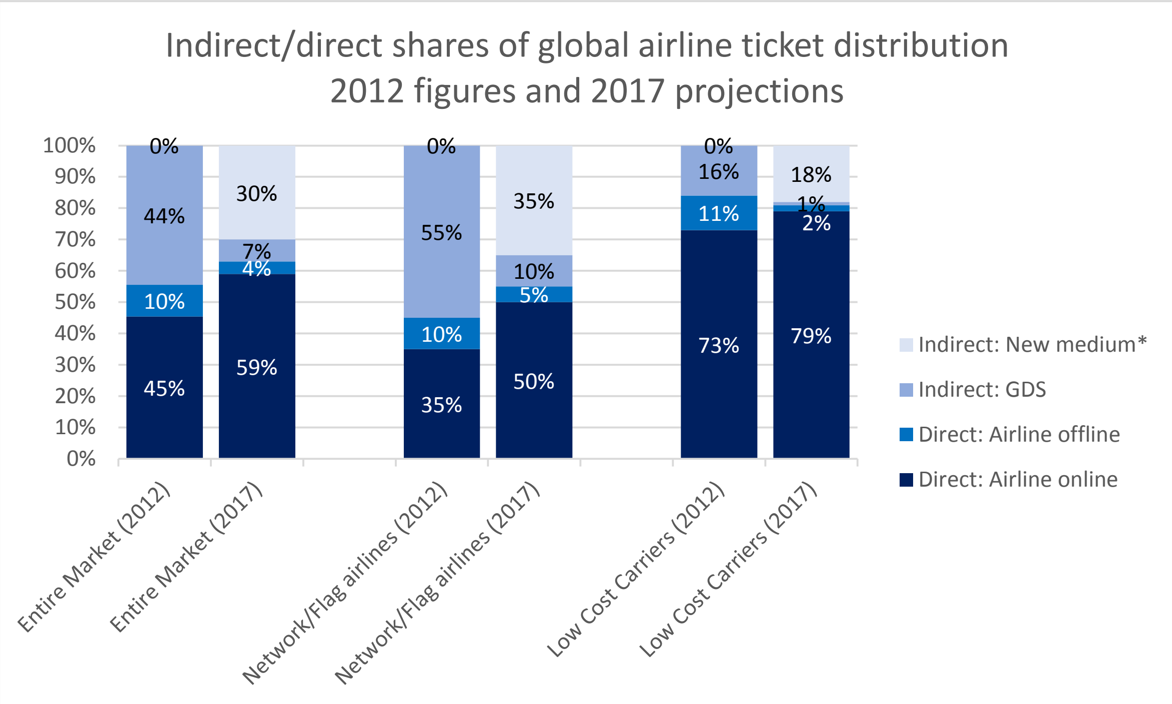
The range of regulatory interest varies. In the rail market, every route has a regulated ticket price, which may be either peak or off-peak depending upon the market. In the other markets we study, price control is limited to essential services, such as the transmission and distribution service in energy. Nevertheless, market governance has been subject to detailed regulatory attention in energy and investments, better to facilitate competition and avoid conflicts of interest. There is regulatory interest in price transparency in all of the markets, as well as general consumer concerns that might arise in any market.

2. Air Travel

Description of the market

Agents are a large feature of the world air travel market, with flights booked through the main type of agent, Global Distribution Systems (GDSs) accounting for 44 per cent of global flight ticket sales in 2012.[1] Agents receive information on flights from one of several competing GDSs, to which information is provided by all airlines who have chosen to market their tickets through the GDSs. The GDSs exist to simplify the market, collating data to save agents from having to search the market manually. In return for each booking, the GDS charges the airline and depending on the GDS-agent contract might provide a commission or bonus to the agent; the agent might also charge a booking fee to the traveller. In most of the world, there are three GDS parent companies serving flight agencies: Sabre, Amadeus, and Travelport (which owns Worldspan and Galileo).[2] These three parent GDS companies run five 'end-user reservation portals': ViewTrip, Check My Trip, Virtually There, eSKY, and FRU.PL. The latter two combine the airline sector with another (hotel and city breaks respectively). There are local differences in some markets such as China.

Figure 2.1: Indirect / direct shares of global airline ticket distribution: entire, flag, and LCC markets.



** 'indirect: New medium' refers to what the report calls 'Value Creation Hubs' which it predicts will take an approach similar to that of GDSs but more innovative. This is speculative and the opinion of those publishing the research ('Atmosphere') therefore these Value Creation Hubs are not considered in this case study. For the purpose of this comparison their market share can be considered to fall under the GDSs*

Source: Created from data in the IATA Future of Airline Distribution Report 2012 Figures 12-1, 12-2, and 12-3. Note that these may not add to 100% due to rounding.

Low Cost Carriers (LCCs) such as Ryanair or Southern Airway make much less use of GDSs,

Description of the market

and only 16 per cent of LCC flights are sold through the GDSs.[3] This is heavily impacted by the decision of many LCCs to restrict agency access to their fares: for example until recently Ryanair did not cooperate with any GDS, but it has now chosen to do so.[4] The LCCs' reliance upon direct distribution is not only due to the average $7.50-17 (per round trip) charge by the GDSs which is substantial in relation to LCC's margins,[5] but also because LCC's business model often relies on securing commissions from its customers from acting as an agent or introducer for ancillary services (hire cars, hotels, luggage, transfer services, etc.), which is easier for the airline to secure if a customer is forced to use the airline's booking system, rather than if the customer books via a travel agent who presents a competing offer.

There are also Computer Reservation Systems (CRS), which are similar in some ways to the GDSs. But the main difference is that the CRSs are operated by the airlines themselves and thus do not offer the wide-search and comparison across airlines. Therefore the CRS can be seen as a 'one-to-many' service, while the GDS is a 'many-to-many' service.

Most direct routes are operated by only one to three airlines, but with multiple routing options for most journeys, dynamic pricing, and service unbundling, the market is reasonably complex. While the traditional travel agents were initially in place as the main route to market, the fact that they still exist indicates that for some consumers travel agents also provide value-add in the form of working through the complexities. However the rise of OTAs, and flights booked directly from the airline, suggests that many consumers are willing and able to engage with and understand the products on offer, even with the increase in ancillary offerings due to unbundling by airlines keen to reach the top of the price comparison. The use of GDSs by both traditional travel agents and consumers using OTAs suggests that their value added in clarifying the complex market is, for some, quite high.

Arrangements between the parties in the market

Sales channels available

Five main sales channels exist through which a customer may book their air tickets:[6]

- *Direct - Airlines*: direct sale of the ticket by the airline to the passenger, through online, phone, and storefront channels.
- *Indirect - Traditional travel agencies*: storefront retail businesses, these sell both basic air tickets and packages comprising transport combined with other travel items such as hotels and airport transfers. Bookings can also be made over the phone or internet with some, however if more than 50 per cent of their sales are online they may be classed as an online travel agent.
- *Indirect - Online travel agencies (OTAs):* these businesses are defined as those which

Arrangements between the parties in the market

receive above 50 per cent of their sales online, and there are several hundred OTAs across Europe.

- *Indirect - Travel management companies:* these provide corporate services including traditional travel agency duties, with similar sales channels.
- *Indirect - Tour operators*: these take on duties of both the supplier (of air tickets alongside other travel products) and of the retailer. Tour operators can vary from operating all or some aspects of the tour themselves (run the airline, own the hotel) to packaging other suppliers' services into a tour. A tour operator whose package includes air travel, whether self-supplied or obtained from another supplier, is in the UK required to be licensed with Air Travel Organisers' Licensing (ATOL), and ATOL packages are required to subscribe to an insurance arrangement to return customers home if the company becomes unable to fulfil the package. These could be storefront businesses or online/phone, or both.

Within the indirect channels, agents may offer more than one or all of these kinds of services. There is clearly some blurring of the distinction between an agent selling a number of travel-related service elements, and a tour operator who packages them up into a single package which is required to be ATOL licensed.

Within the indirect channels there may be two types of agency route: indirect through an agent which uses a GDS, and indirect routes where the agent books direct into an airlines reservation system rather than through a GDS.

Commission arrangements

Twenty years ago a travel agent in Europe and the U.S. could have received up to around 10 per cent commission on the sale of airline tickets, varying by airline, but since 1995 these directly earned commissions from airlines have been declining to almost zero.[7] Travel agents now make most of their profit through charging customers a fee, which in the U.S. averages at $36/ticket, often bundled into the price of the services sold.[8]

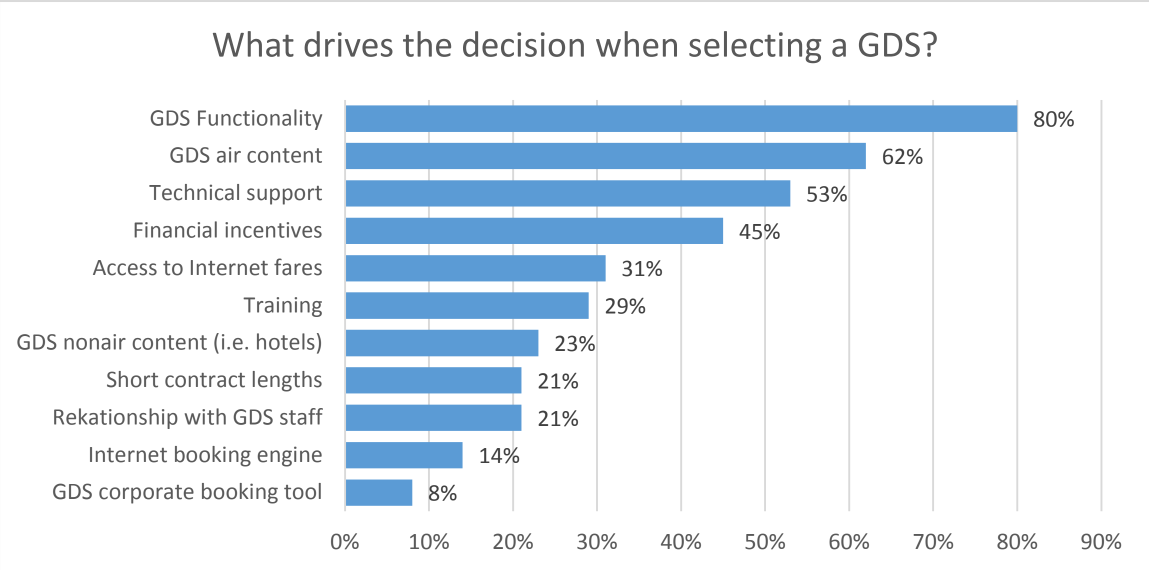
Nonetheless there are still some commission arrangements within the market, involving the 'middlemen' in the form of GDSs which were set up by the airlines and which are now used by the majority of travel agents (72 per cent in the U.S.[9]). Travel agents, including OTAs such as Expedia, use one or more GDS to obtain data from the airlines.[10] GDSs receive commission and traffic fees from the airline, and subscription fees from the travel agencies for whom they provide services. Often a GDS will pay commission or bonuses back to the agencies in return for bookings, and the agencies will often charge a booking fee to the customer. The use of consumer charges rather than airline commission reduces the risk of distorted incentives which might be present if airlines' commissions differed or are directly proportional to the cost of the flight (i.e. the agent could encourage travellers towards more expensive flights with the highest-paying airline), although it is possible that a similar effect

Arrangements between the parties in the market

might exist through the unknown bonus/reward scheme between GDSs and agents.

Some agents might use more than one GDS for a variety of reasons, as demonstrated in Figure 2.2, which shows that the main differentiation between GDSs from the agents' point of view lies in the functionality. However, it has previously been determined that 'most' travel agents use just a single GDS,[11] which could be sensible given that an agent has to pay for access to each GDS.[12]

Figure 2.2: Main differentiation between GDSs.

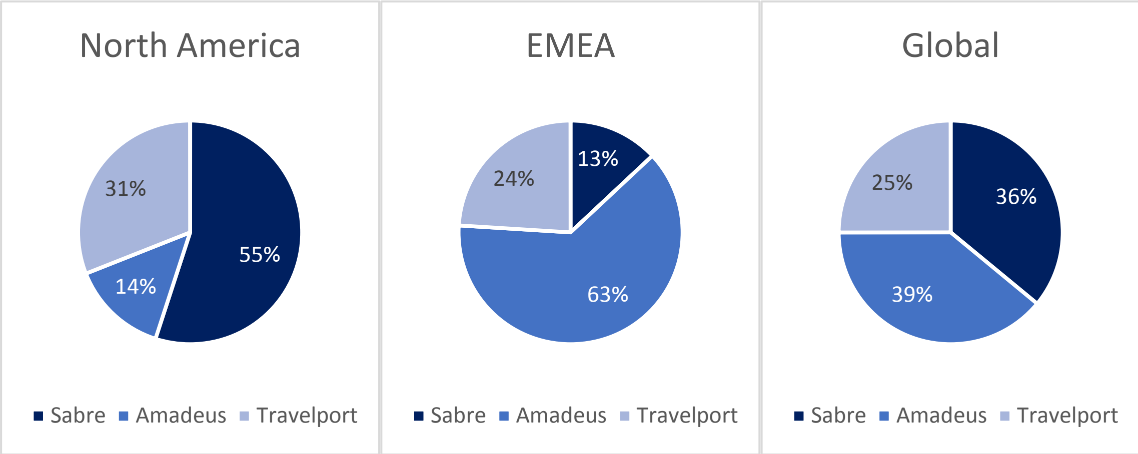


Source: Travel Weekly – GDS is still the ticket for most agencies; link.

There are three main GDS parent companies (Sabre, Amadeus, Travelport)[13] which charge airlines approximately $7.50-$17 for a round trip, [14] some of which is passed onto the agent through commission,[15] although the GDSs' payments from the airline, and to the agent, have seen a recent decline.[16] The dominance of Sabre in North America and Amadeus in Europe, the Middle East and Africa is due to legacy; Sabre was created by American Airlines in 1960 while Amadeus was created by Air France, Iberia Airlines, Lufthansa, and Scandinavian Airlines System in 1987. Travelport purchased three GDSs (Apollo created in 1971, Galileo created in 1987, and Worldspan created in 1990) which were created by a wider range of airlines.

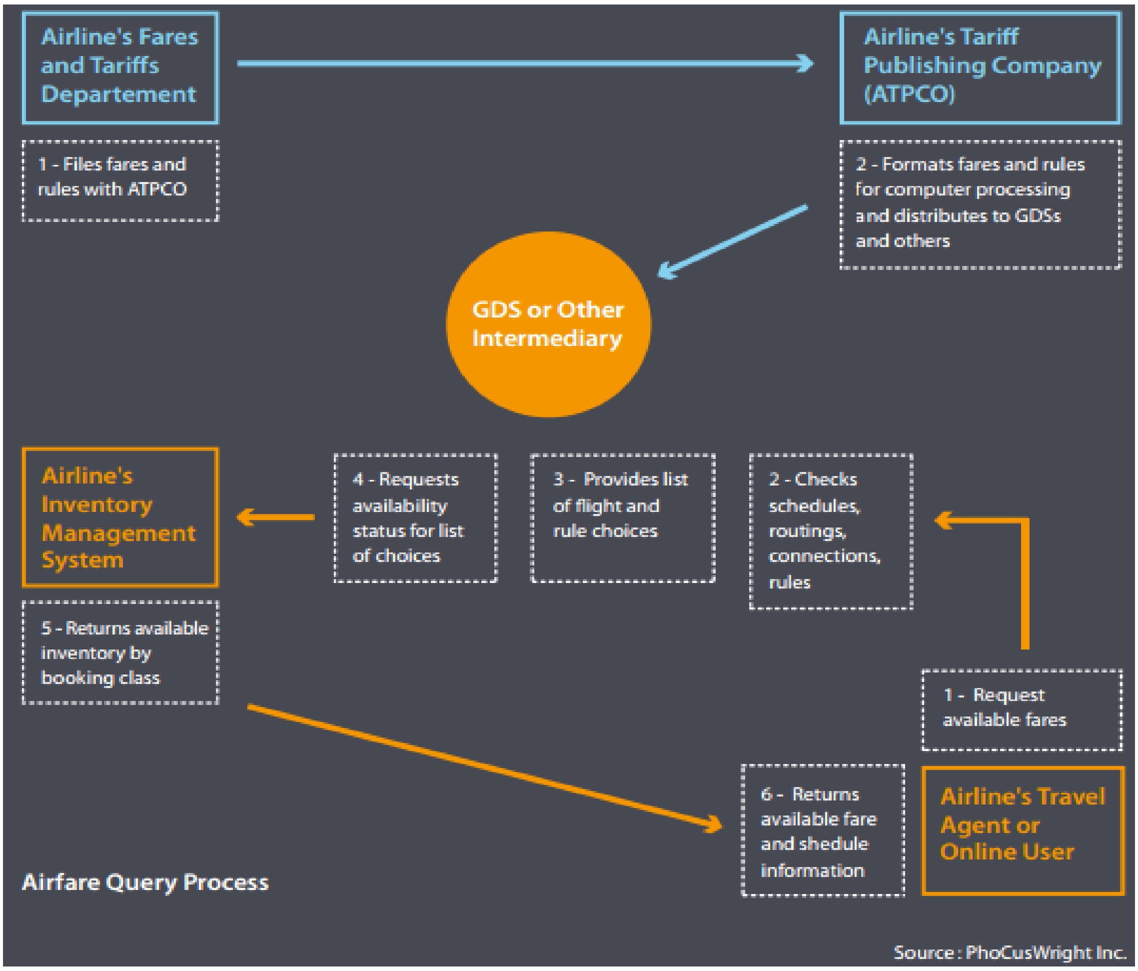
Arrangements between the parties in the market

Figure 2.3: GDS share in North America, Europe, the Middle East and Africa, and globally



Source: The Beat – Global GDS Share; link. Data as of 31st December 2013.

Figure 2.4: Airline distribution chain



Source: 'ETTSA Figure 6 – The Airfare Process'[17]

Access to product

While airlines are increasingly distributing tickets directly to the travelling customer, 44 per

Arrangements between the parties in the market

cent of air travel tickets are still bought through GDSs, and thus about the same proportion through agents.[18] More than 550 airlines are accessible through each of the GDSs,[19] and in Europe half of the air market (by value) was processed by the GDSs in 2008.[20] In the case of those airlines who do not deal with GDSs, then an agent may choose to book directly with the airline on behalf of the customer, with or without an explicit agency arrangement with the airline, and in the latter case will typically charge the customer for doing so. Airlines are also able to discriminate between GDSs, providing different ticket availability to each if they wish.[21] This then provides some differentiation between GDSs from the user's point of view, which might encourage agents to switch GDS or to use more than one.

Where there is an explicit agency relationship between airline and agent, either direct or via a GDS, airlines generally require that third parties sell a published fare for the same price that the airline charges (excluding booking fees), which dates back to the start of commercial aviation where airlines depended on travel agents. Suppliers tend to bear the distribution costs, as opposed to the standard market model whereby an agent buys the product and sells it at a marked-up price.[22]

In the past airlines would selectively sell some discounted tickets through some down-market agents, as a form of market segmentation. With the increasing direct use of yield management systems by airlines, this selective use of agents for distributing discounts has become less common, but they may still offer bulk arrangements with tour operators.

Some airlines add fees to certain fares which are booked through a GDS, or keep some or all fares from being included in the GDS database, such that those fares can only be booked through the airline directly. One common rationale for such a policy is to allow the airline to encourage the traveller to purchase the airline's ancillary products and agency offer (selected seats, baggage, insurance, car hire, etc.). This approach restricts the abilities of travel agents to provide accurate information to customers on the complete fare offer of that airline, particularly those customers who rely on OTAs, as a traditional travel agency staff member may well know to check certain airlines' direct-purchase fares. Low Cost Carriers (LCCs) such as EasyJet and Ryanair have often pursued this direct distribution strategy, to the extent that 84 per cent of the value of LCC flights in Europe in 2008 were sold on the airlines' own websites.[23] LCCs are now cooperating with the GDSs more, particularly given the aim of some to seek a greater share of the corporate travel market,[24] though reports suggest that EasyJet's attempts in this were rather unsuccessful.[25]

In some cases, there might be a direct relationship between the airline and the agent, whereby the airline benefits from an agent working with a limited number of airlines and therefore helping the airline to increase its market share. One way in which an agent can benefit in this situation is if the airline agrees to waive fees for certain items (seat/flight/name changes, priority booking, etc.) allowing the agent to still charge the customers for these items and to keep the fees.[26]

Arrangements between the parties in the market

Some airlines operate customer loyalty schemes, with fringe benefits such as customer lounge access and air miles, in some cases in cooperation with other airlines. Some highly discounted fares might not qualify for loyalty scheme benefits. This is another factor which influences customers' booking habits and the method of agency they use.

Access to data

The GDSs provide travel agencies with access to travel content and a range of technology and services, around the globe. This lowers barriers of entry into the retail travel business, allowing new travel agents access to the same level of services as established firms, in terms of: quality of content, quantity of content, and immediacy of access to content. But some airlines refuse to participate with GDSs, and some others may make a different offer directly through their website than through the GDSs. Thus agents do not have access to the entire market, which reduces transparency and makes comparisons more complex.

Air travel has seen an increase in the complexity of route options and ticket conditions, with increases in unbundling (e.g. charging for baggage or in-flight food separately; separate purchase of onward flight tickets without a formal connection)[27] making price comparison more difficult. Therefore the International Air Travel Association (IATA) has committed to a global roll-out of the New Distribution Capability (NDC) by 2016. This system will provide an improved information system from airlines to agencies, including the capability to account for ancillary options (i.e. luggage, on-board amenities, and seat maps) in flight comparisons. It will be open for all to use, therefore it is likely that it will be integrated with the current GDSs and included in the technology services which the GDSs already provide to agencies.[28] NDC may be attractive to a wider variety of airlines than the present GDS services, but the unfolding of this potentially new chapter in air ticket distribution is hard to forecast.

Arrangements necessary for entry to the market

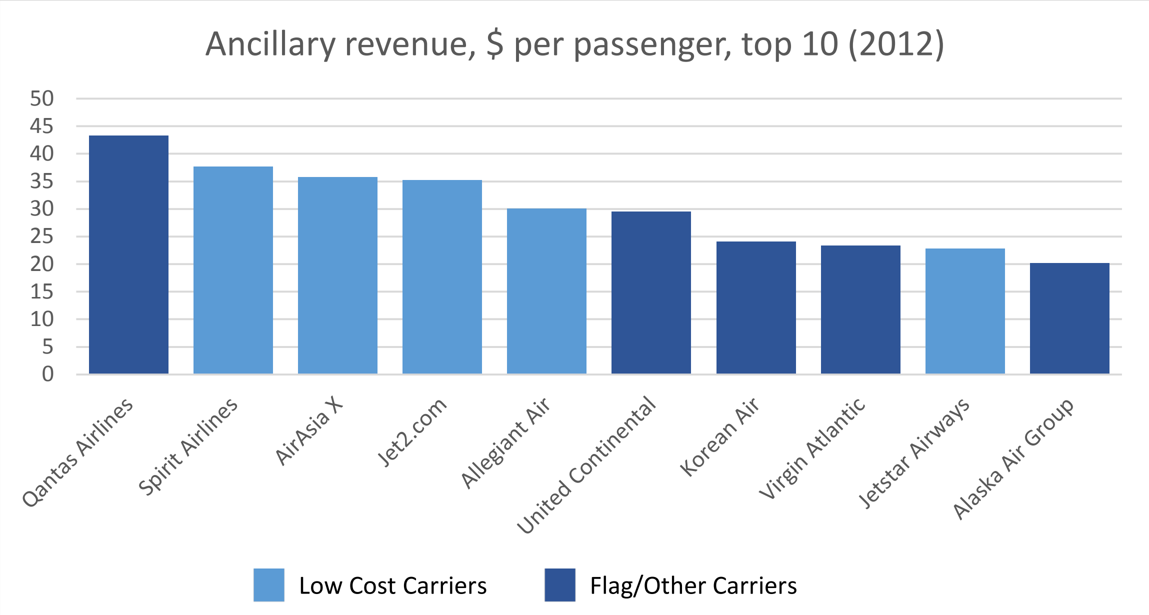
Agents intending to sell flight packages, bundling flights with car hire or accommodation, must obtain licences from Air Travel Organisers' Licensing (ATOL) to sell flights to or from the UK, with exemptions possible for certain parties, as discussed further under 'relevant external regulation' below. There are five levels of ATOL available to agents, ranging from £710 to £1,890 and with differing requirements (for example, a franchise ATOL does not need the £40,000 bond required of others).[29] ATOL are essentially insuring package holidays which are booked through its agents, for example if an airline ceases operation ATOL will ensure that a passenger is placed on a replacement flight, or that they are fully reimbursed for their holiday, etc.

Agents intending to only sell flights outside of packages will generally make an arrangement with a GDS, which will often provide technology and other facilitating services in addition to their data stream. It is of course possible for an agent to book direct from the airlines, rather than through a GDS, however it is likely that an agent will utilise the GDS when searching for flights with the airlines which deal with the GDSs as the agent will then be eligible for commission or rewards for any tickets booked with the GDS.

Unbundling

The introduction of Low Cost Carriers (LCCs), with their business model of unbundling services from the airfare, has prompted many other airlines to follow the same pricing structure; several airlines now require a different type of ticket, or an extra purchase, for passengers to place luggage into the hold of an aircraft.[30] Ryanair's ancillary revenue was on average €13.40 per passenger in 2013, which adds 28 per cent to the average €48 fare.[31] The LCCs are not alone in the 2012 'top ten' airlines measured by ancillary revenue, when measured as an absolute figure, a percentage of revenue, or as a per-passenger value.[32] The top ten for ancillary revenue per passenger is displayed in Figure 2.5 below.

Figure 2.5: 10 airlines with highest ancillary revenue per passenger as of 2012



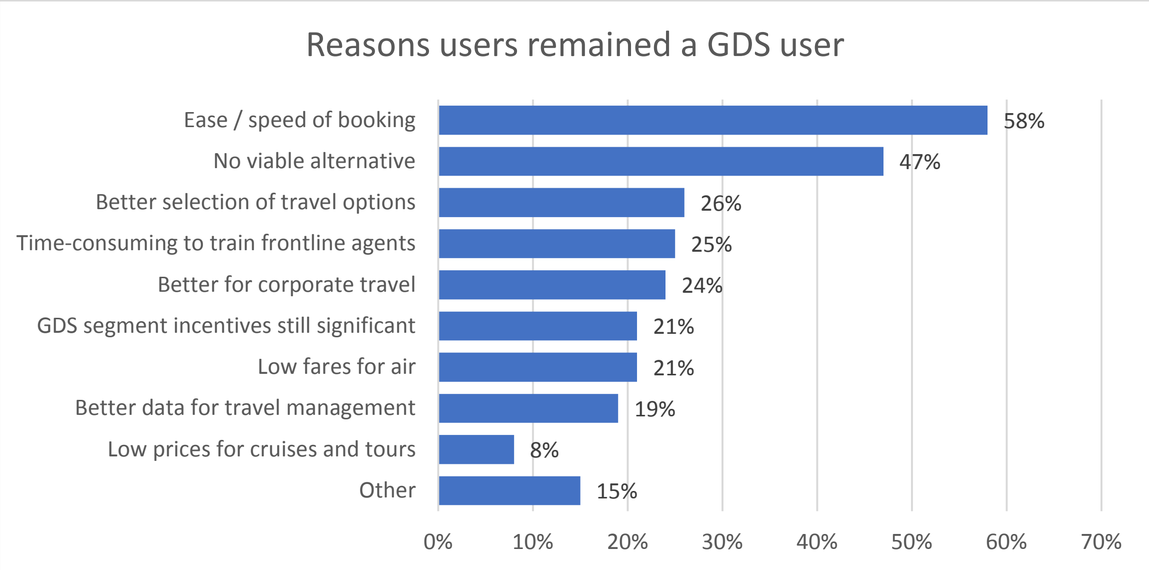
Source: Adjusted from IdeaWorksCompany and CarTrawler analysis of airline company accounts[33]

Costs and benefits associated with TPIs

One of the most common reasons provided by agents (58 per cent) for keeping their GDS subscription is that it provides easy and fast booking, while 47 per cent felt that there is no viable alternative; see Figure 2.6 for the top 9 reasons given in the U.S. survey.

Arrangements between the parties in the market

Figure 2.6: Reasons given for remaining a GDS user



Source: Travel Weekly – Reasons that persuaded you to remain a GDS user; link.

Relevant external regulation

Licensing or governance

In the UK there are specific governance arrangements for tour operators, but not for travel agencies who sell air tickets. If an agent is only selling flights outside of a package (even if they sell other products), and at the time of sale provides a specific flight (i.e. not a chartered flight), they are classed as a Travel Agent and are not required to hold an ATOL licence, and there are no further licences for UK Travel Agents selling flights only.[34,35] As with any retail sector, there can be consumer abuse and fraud, but this is seen as a general issue of consumer law, rather than an issue specific to the industry that requires specific regulation.

If an agent is selling air travel as part of a package, with accommodation or another form of travel, they are an Air Travel Organiser, and must be a member of Air Travel Organisers' Licensing (ATOL) to legally sell these packages in the UK. The agent will then be subject to inspection by the Civil Aviation Authority (CAA), under which ATOL falls. ATOL is a scheme which is designed to protect purchasers of package holidays, if there is an issue with any part of the packaged holiday sold, such as if the airline or hotel concerned cease operating. Application for membership of ATOL can cost between £710 and £1,890 depending on the agents' status and requirements,[36] and an agent will pay an extra £2.50/person per booking.[37] Exemptions from ATOL are minimal and only granted to those parties whose absence of ATOL does not place the passenger's booking at any greater risk,[38] such as Europe-Accredited Agents (EEA).[39] These arrangements are in turn governed by European

Relevant external regulation
Law under the Package Travel Directive.[40]

Action by regulatory authorities in the market

Previously air fares were regulated, a situation which reflected a restrictive route licensing regime, resulting in little competition on any specific route. The UK air market was gradually deregulated, under which route licences were made generally available to any competent airline (subject only to international arrangements) and fares were also deregulated. More recently, this situation has been reinforced by the deregulation of air transport across the EU, and reliance upon competition to control fares. Given the generally weak financial performance of the sector, and the general tendency towards the exit of state-aided airlines from the industry, there is little evidence that air transport operators benefit from conditions of weak competition.

The main regulatory interest by the authorities in the market in the UK and Europe has been in relation to:

- customers' rights in the case of delayed or cancelled flights;
- customers' rights in the case of bankrupted airlines; and
- price transparency in the booking process.

Interest has been at a European Union level, as well as national level. The European Commission currently has legislation in process to update the existing legislation on package travel.[41]

Part of an air ticket pays for airport services, and the CAA regulates the amount which the airports are allowed to charge the passenger airlines, for those airports which are considered to have a significant degree of market power. As of the 2014 determinations, this regulation applies to Gatwick and Heathrow.

Price transparency in the booking process

The CAA and the European Commission[42] have both expressed concerns with the influence that the GDSs (and other price comparison websites which 'scrape' the airlines website for information) have had on the pricing models of airlines, with a particular emphasis on the transparency of prices.

As the ease with which customers or their agents can compare flights by price increases, airlines have become focused on appearing at the top of price-ordered results. This has resulted in the unbundling of services from their 'headline price', which are then re-offered as additional chargeable services. Some of these extras are genuinely optional and therefore seen as relatively harmless (seat reservations, hold luggage, credit card payment). However other charges unbundled from the 'headline price' were sometimes unavoidable charges (booking fees and taxes), and near-unavoidable charges (i.e. levied for paying by any means

Relevant external regulation

other than a certain type of credit card, which few use).

Advertising unachievable headline prices which omit such inevitable charges is seen as unacceptable and these must be included in the 'headline' price which appears in these price comparison results. This is a UK and a European requirement,[43] and was recently reinforced through guidance issued by the CAA.[44] These rules apply wherever the price is advertised, whether on the airlines website, a price comparison website, a brochure, a standard advertisement, etc.

Although the issues of price transparency carries over to how flight tickets are presented on price comparison websites, there does not appear to be a specific requirement for regulating price comparison websites in the air travel sector. Ensuring that the airlines provide the correct and achievable headline prices is seen to be sufficient.

Concerns over oligopolistic structure of GDSs

The European Parliament has previously expressed concern around Computer Reservation Systems (CRS) which for the purposes of European Commission regulation include GDSs, though these are generally considered to be different entities; GDSs evolved from CRSs, and are thus more complex versions of a CRS. The European Parliament stated in 1998 that the previous mergers "*indicate a shift towards an oligopolistic structure for the sector worldwide, with dominant participants at a local level*".[45] A CRS is not allowed to request that an airline deal exclusively with that CRS, and the CRS is not allowed to practice discrimination through applying different rates and conditions to different airlines. The Commission released a code of conduct in 1989, and holds powers of control to take action in response to appeals against infringements to the code of conduct.

Retail price maintenance in Australia

A competition case in Australia showed a degree of concern by the authorities in the agreements by which agents and airlines sell the same ticket at the same price. The Australian authorities argued that the airline and its agent competed over the retail service, and had in effect agreed to charge the same price for that service.

Issues of noted concern

Issues raised by lobbying groups etc.

With the rise of online comparison websites, consumers often book components directly with suppliers, or book packages through companies which are not under Air Travel Organisers' Licensing (ATOL), and their travel is therefore not protected for certain issues which may arise with their holiday (such as the company being dissolved). To address this issue, European Technology and Travel Services Association (ETTSA) has proposed expanding the consumer protection under the Package Travel Directive.[46]

Evaluation / relevance to rail

The characteristics of the air travel distribution market as discussed above bear several similarities with the market for rail tickets in the UK, which provides some useful points for comparison:

- *Market intermediaries*: ATOC sits as a common feed between rail companies and those selling tickets on their behalf, which is similar to the GDS' role as they feed information between airlines and the ticket sellers, although some airlines opt out of using GDSs, or make a distinctive direct offer. But, unlike in rail, there is competition among GDSs. There is currently an initiative to introduce IATA's New Distribution Capability, which is a sole initiative of IATA. It is possible that this will become an important facility without duplication, or else other sales routes may respond and compete effectively against it.
- *Limited competition:* Although there is often only one to three airlines on a specific route, the network as a whole is less sparse than rail in terms of the number of reasonable options for passengers. Some price control is applied in rail, but has been removed from air traffic, tending to indicate a higher level of competition in air.
- *Agent vs. direct sale:* In both markets the traveller is able to choose whether to buy their ticket through an agent or directly from the airline/rail company, although in each case there can be some offers that are only directly available from the supplier. The agency route is a much larger part of the market for air travel. Some air tickets are effectively wholesaled through aggregators, so there can also be distinctive offers in the agency market. Whilst some airlines have effective retail channels of their own, others find the network of agents an important route to market, or at least some parts of the market, and are therefore happy to facilitate sales through this route. Because air tickets are seen as a discretionary purchase, and it is normal for people to pay different prices because

Evaluation / relevance to rail

of the varying details of their purchase, this is not seen as controversial in the air market.

- *Pricing policy and transparency:* Both rail companies and airlines can request that agents apply a different pricing policy to the direct ticket pricing, stopping agents from selling certain (often lower-priced) fares. Airlines can sometimes take an even stronger position, refusing to participate in the main distribution channel at all, such as Ryanair which has only changed this policy and joined a GDS in 2014.[47] There has recently been an increase in opaque distribution in air travel which does not seem to exist much in rail (i.e. packaging flights with hotels and providing an overall price, 'hiding' the price of the air travel component or extra charges which appear at check-out).[48] Whilst there is no requirement for transparency in package holidays, regulatory authorities have been concerned about transparency of airline charges where they are not packaged, and there has been detailed action and enforcement to require it.
- *Advice:* In rail there is regulatory concern about whether rail companies inform customers of all the ticket options available to them to allow them to choose the most suitable ticket for themselves. In air travel, it is rather seen as the customer's problem to find the best deal. This distinction stems from the retention of a "public service" notion in rail travel, with some regulated fares, which has largely been removed in air travel through deregulation.
- *Search:* Passengers may use agents and search engines rather than suppliers' own retail routes as a method of ensuring that they obtain unbiased information on the options. But in both industries, not all fares are accessible from agents and search engines.
- *Ancillary services:* Ancillary services related to the journey itself (class of travel, insurance, food, etc.) are a relatively small part of rail ticket selling, but more important in air. Some airlines also obtain substantial income by acting as agents for other travel services, therefore benefitting from drawing customers in with low headline rates.

One important distinction between air and rail travel is that the customer generally has a range of choices for how to make their journey in air, unlike in rail. There are typically indirect routings, and alternative airports, which increase the number of potential suppliers. Further, some airlines, though far from all, do value the route to market offered by agents and in some cases in effect wholesale their tickets for the distributors to sell on terms they find best. This tends to result in a greater level of competition and breadth of offer of terms to the customer. The main policy focus for improving the offer to the customer in air transport, driven both at a national and EU level, has been to increase the potential for

Evaluation / relevance to rail
competition between airlines, and this is generally seen to have been a successful policy. One of the main areas of concern and enforcement in air travel retailing has been price transparency, with the range of supplementary changes making it unclear what the price comparison between alternatives is until near to completion of the purchase process. To the extent that this is now regulated in detail, price comparison services inherit the level of rectitude that is imposed upon ticket suppliers, avoiding any additional requirement for regulation of the comparison services themselves. Some sales routes seek restrictive agreements to the effect that they guarantee not to sell more cheaply elsewhere. In the event that these guarantees are broadly specified, there is a possibility that competition authorities may object to them.

[1] IATA - The Future of Airline Distribution, 2012; link. Figure 12-1.
[2] ETTSA - Technology and Independent Distribution in the European Travel Industry, 2010; link. p.16, 18
[3] IATA - The Future of Airline Distribution, 2012; link. Figure 12-3.
[4] Travelport – Ryanair to participate in a GDS channel for the first time in over a decade; link.
[5] BCD travel - Global travel distribution trends; link. Page 6. 2007 data.
[6] ETTSA - Technology and Independent Distribution in the European Travel Industry, 2010; link. p.17
[7] Amadeus - Service Fees and Commission cuts, opportunities and best practices for travel agencies; link.
[8] ASTA – Frequently asked questions; link.
[9] Travel Weekly – GDS is still the ticket for most agencies; link.
[10] ETTSA - Technology and Independent Distribution in the European Travel Industry, 2010; link. p.14
[11] European Commission - merger procedure 2001; link.
[12] European Parliament - The rights of airline Passengers, working paper; link.
[13] ETTSA - Technology and Independent Distribution in the European Travel Industry, 2010; link. p.16, 18
[14] BCD travel - Global travel distribution trends; link. Page 6. 2007 data.
[15] The Economist – The ineluctable middlemen, August 25th 2012; link.
[16] ETTSA - Technology and Independent Distribution in the European Travel Industry, 2010; link. p.44
[17] ETTSA - Technology and Independent Distribution in the European Travel Industry, 2010; link.
[18] IATA - The Future of Airline Distribution, 2012; link. Figure 12-3.
[19] ETTSA - Technology and Independent Distribution in the European Travel Industry, 2010; link. p.18
[20] ETTSA - Technology and Independent Distribution in the European Travel Industry, 2010; link. p.30
[21] European Commission - Bargaining and two-sided markets, the case of GDS in Travelport's acquisition of Worldspan; link. p.46
[22] ETTSA - Technology and Independent Distribution in the European Travel Industry, 2010; link. p.22
[23] IATA - The Future of Airline Distribution, 2012; link. Figure 12-3.
[24] The Economist – Flight comparison websites, comparative advantage; link.
[25] Tnooz - No change in EasyJet business travel share after four year of GDS use; link.
[26] TravelAge West - Working with Airlines; link.
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[29] CAA – ATOL, choosing the right ATOL; link.
[30] SITA - Airline distribution, leveraging the power of smart distribution technology; link.
[31] Ryanair - final annual report 2013; link.
[32] IdeaWorksCompany – Press Release 5th June 2013, Reported Airline Ancillary Revenue; link.
[33] IdeaWorksCompany – Press Release 5th June 2013, Reported Airline Ancillary Revenue; link. Table 3
[34] CAA – ATOL, About ATOL & How to Apply; link.
[35] CAA – ATOL, Airline ticket agents; link.

[36] CAA – ATOL, choosing the right ATOL; link.
[37] CAA – ATOL, Protecting holidaymakers since 1973; link.
[38] Legislation.gov.uk – The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012; link.
[39] IATA – Europe Accredited Agent; link.
[40] European Commission - Directive on package travel, package holidays, and package tours 1990; link.
[41] European Commission - package travel and assisted travel arrangements; link.
[42] European commission - Price transparency provisions (January 2012); link.
[43] European Commission - Fitness Check, Internal Aviation Market (2013); link. Section 4.1.3.8.
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3. Energy Retail

Description of the market

Energy companies have been forcibly required to unbundle their supplies, so that energy, transmission, distribution and retail services are all separately supplied. Suppliers who deal with customers repackage these services to make an offer to customers. Retail suppliers include companies which may have varying levels of direct involvement in the provision of energy to the network or the operation of energy networks, or they may be energy traders. There is also an active market in Third Party Intermediaries (TPIs) who search or broker deals between suppliers and customers.

Before liberalisation, local electricity distribution companies had a monopoly of electricity supply in their area and British Gas, then a monopoly distributor and large gas producer, had a monopoly of gas supply. Following the reorganisation and unbundling of the electricity and gas industry, a gradual realignment took place until today where six companies with substantial energy production interests have become the major retail suppliers of electricity and gas, particularly in the domestic sector. Some of these six companies also have electricity distribution interests, but not all of the local electricity distribution companies are owned by major supply interests. Electricity transmission, and gas transmission and distribution, are not in common ownership with supply interests. There are also energy suppliers who have few or no energy production interests, but rather obtain supply in the wholesale market as traders. These energy traders are particularly significant in the non-domestic gas supply market. But energy traders have recently been gaining market share as suppliers in other markets too, starting from a very low level in the domestic sector.

UK businesses (i.e. the non-domestic market) rely heavily on services of Third Party Intermediaries (TPIs); an estimated 80 per cent of major energy users and 30 per cent of small businesses deal with TPIs.[49] The domestic market (i.e. non-businesses) is comprised of mostly energy switching services but suffers from lower rates of consumer engagement than businesses. For example, estimates show small business switching rates to be around 22 per cent/year, while domestic consumer switching rates are closer to 12 per cent/year.[50] In the non-domestic sphere, the majority of independent suppliers and new suppliers use TPIs to access new customers. Ofgem predicts that the importance of TPIs will grow in the future, particularly with the introduction of Smart Metering.[51]

Currently there are 18 domestic and 24 non-domestic electricity suppliers in the UK. There are 30 gas suppliers for domestic consumers and 16 for businesses. However, the breadth of services that fall under the umbrella of TPI means that the number of TPIs is quite large – as many as 100 switching websites,[52] while the total number of non-domestic TPIs are estimated to be over 1,000 and accrue approximately £200m in revenue per year.[53] Most domestic consumer-oriented TPIs are small in size, though may be associated with a larger parent organisation or established TPI – this is the case for so-called 'white label' TPIs, that are fronted by well-known brands, such as the Guardian newspaper's energy comparison engine, which is run by energyhelpline.com.

Arrangements between the parties in the market

Sales channels available

Broadly speaking there are two ways that consumers can procure energy: by interacting directly with energy suppliers, or by purchasing energy through a TPI. Large users have a third option, as they can also engage directly with the wholesale market. In general there are no industry wide arrangements for TPIs as they are not explicitly regulated. For context, a recent study commissioned by Consumer Futures showed that 56 per cent of respondents have used price switching websites for energy in the past two years, and around 50 per cent of those said they used the service to purchase services or switch suppliers.[54] Another study showed that 29 per cent of business respondents chose their contract through a switching website and 12 per cent went through a broker.[55]

In domestic markets, suppliers quote standard prices to consumers. They are controlled in relation to the range and complexity of tariffs they can offer, following a regulation arising from Ofgem's Retail Markets Review. That is, consumers choose a tariff from a limited and pre-populated list of available tariffs. Switching websites can then collate and present the various tariffs to consumers. There are specific protection arrangements for customers who have signed up for tariffs which the supplier no longer offers in the market.

This is an arrangement that will require review in future, because more sophisticated metering technology is being introduced ("smart meters") to the whole domestic market, that will allow new types of tariffs to be introduced, and this is an important motivation for introducing these meters. Thus the present regulation on tarrifs will require addressing in future to facilitate the effective use of this new technology.

In the non-domestic market there are generally no standard tariffs provided by suppliers, and each customer negotiates a bespoke bilateral contract with their supplier. TPIs therefore have a large role in this market and operate under a number of different business models. Also some small trader-suppliers have seen a niche opportunity here and have started offering standard tariffs to certain classes of non-domestic customer.

Ofgem identifies the following three main types of relationship used by energy TPIs:[56]

- *Sales agents*: may act independently or represent one or more suppliers. They may operate across other sectors.
- *Brokers*: present a range of offers from suppliers that the consumer can choose from (e.g. switching websites).
- *Consultants*: similar to brokers, may also offer additional advice on energy

efficiency measures.

Other services which TPIs may offer include:

- *Collective switching services*: A TPI may organise a group of customers with similar interests together and negotiate for them a collective switch to a selected supplier. This offer has been particularly focused on disadvantaged customers in the domestic sector, who gain comfort from a collective decision they may have difficulty understanding, and a possible additional discount for the collective deal.
- *Aggregator services*: The customer administration, relations, and data collection can be an administratively burdensome task, and some TPIs may relieve the burden from the supplier by acting as an aggregation point for data and customer relations.

So-called 'white labels' are yet another type of business model[57] that is gaining more attention currently. In essence, a white label is a company that is partnered with a licensed energy supplier or suppliers and offers tariffs under their own brand name, usually a well-known brand. The white label can therefore focus on activities that it is comparatively good at, for example marketing, product design, and customer service. Other activities such as wholesale energy purchasing and regulatory compliance can be left to the established licensed supplier.[58] The tariffs offered by white labels may be decided independently or jointly with the partnered supplier, and may be different from the suppliers' own tariff offer. Thus white labels are not necessarily just providing a marketing front for a given supplier, they can also act somewhat like a trader that buys wholesale, albeit exclusively from one supplier, and offers a distinctive packaging. The format of a white label supplier may be like that of a price comparison website, but some of the offers on that price comparison website might be exclusive to that TPI, branded by that TPI, and not necessarily offered elsewhere. Ofgem sees white labels may offer price competition (if prices are independently determined) as well as competition in customer service and bundling.[59] From the perspective of the suppliers behind the white labels, it also offers them a wider route to market from their broad market offer, and the possibility of focusing on particular market segments in a way their general retail offer does not permit.

Commission arrangements

Arrangements between TPIs and energy suppliers occur on a bilateral basis, and as such there is no industry standard arrangement for TPIs (e.g. energyhelpline.com has agreements with 15 gas suppliers and 18 electricity suppliers[60]). Consequently, a number of different compensation arrangements exist for TPIs depending on their clientele and business model. However, the most common type of compensation for both domestic and non-domestic TPIs is to receive a payment from the supplier as either a one-off payment or a fee based on consumption and a quoted price.

Non-domestic consumers (e.g. industrial and business consumers), have bespoke contracts and may pay fees such as a fixed fee based on the size of energy portfolio or a percentage of money savings on their previous arrangements. Domestic customers typically do not pay for the TPI's service, rather the supplier typically pays an introduction fee to the TPI (e.g. switching websites) for each customer they introduce to the supplier.[61]

Other commercial arrangements

TPIs offer consumers access to information on several suppliers, and they also offer suppliers access to several consumers. For example as noted before, some non-domestic energy suppliers rely on TPIs to establish or maintain a customer base (aggregation services). This is particularly true for smaller and new entrant suppliers in the non-domestic market.[62] TPIs in this capacity are essentially curtailing barriers to entry for suppliers while simultaneously lowering information asymmetry between consumers and suppliers.

Conditions for entering the market

There are relatively few barriers to entry for TPIs in the domestic market, and operations can range from large organisations to single person operations. On the other hand, being an Ofgem accredited TPI is potentially quite onerous in terms of set-up and training costs. This may explain why relatively few TPIs are Ofgem-accredited, and often choose instead to have arrangements with Ofgem-accredited TPIs.

Access to data

In the domestic market, which is dominated by switching/price comparison websites, the access to data by consumers is usually free. But, there is concern that the data presented to consumers is not always representative of all the options available. For example, a study commissioned by Consumer Focus found that only 20 per cent of switching websites allowed users to search for tariffs other than those that were directly available through the website.[63] Also, information on other hidden fees is not always clear or upfront; the same study found that 50 per cent of prices quoted had additional fees/conditions that were not already included in the quoted tariff such as cancellation fees and mandatory use of direct debit schemes. Customer Focus expressed their concern that in some cases, suppliers only provide certain tariffs to preferred TPIs instead of the whole market.[64] Given that suppliers are now limited in the number of tariff offers they can directly offer, to avoid complexity, we presume that tariffs which are not widely offered may be the tariffs offered through "white label" suppliers, which can be exclusive to a particular sales platform. Ofgem generally views "white labels" as having a positive influence on the market.

Ofgem has also noted that for household consumers, access to the internet is a key facilitator of switching. Consumers without access to the internet found alternative methods to be less helpful.[65]

Therefore, despite the large number of services available to household consumers, the reliability of data and ease with which it is accessed is not uniform across TPIs.

Relevant external regulation

Licensing / governance

Domestic TPIs

Ofgem has noted that some consumer protection laws such as the Consumer Protection from Unfair Trading Regulations likely apply to the activities of domestic TPIs. [66] These are largely administered by the Competition and Markets Authority (CMA) and the Local Authority Trading Standards (TS) department.

Furthermore, Ofgem licenses domestic energy suppliers and these are governed by standard licence conditions (SLCs). Ofgem has articulated clear rules under these SLCs for domestic suppliers stating that licensees are responsible for the sales and marketing actions of their 'representatives', which Ofgem interprets very broadly (though not all TPIs are necessarily representatives). Nevertheless, Ofgem has noted that the lack of explicit regulation/ enforceable code of conduct may mitigate efforts to encourage increasing integration and trust in TPIs.[67]

Ofgem also has a voluntary Confidence Code (previously administered by Consumer Focus) which sets out guidelines for fair conduct and accreditation of online price comparison websites; currently there are 11 accredited switching websites.[68] Conditions include impartiality of and consistency in the provision of data, clear identification of any association with suppliers and inclusion of all available tariffs. to name a few.[69] They are currently reviewing this code to ensure it is fit-for-purpose.

Non-domestic TPIs

In contrast, non-domestic supplier SLCs do not hold them responsible for actions of 'representatives' and until November 2013 TPIs were only governed by broader competition laws regarding business protection such as the Business Protection from Misleading Marketing Regulations (BPMMRs), enforced by the CMA and TS.

Since then Ofgem has taken over powers of the BPMMRs[70] and been consulting (in February 2014) on how best to approach the regulation of non-domestic TPIs. The four main options being considered are:[71]

- maintain status quo;
- voluntary code of practice for non-domestic TPIs;
- Code of Practice underpinned by licence condition on suppliers to work only with TPIs accredited to this Code; and
- direct licensing of TPIs.

Concurrent to the consultation mentioned above, Ofgem has been developing their preferred option, the third above, by drafting a new Code of Practice requiring non-domestic TPIs to be clear about their fees, contracts, and associations with suppliers, as well as a license condition for suppliers requiring them to only use TPIs that are signed up to the code.[72] Ofgem's preference is for this code to be governed by an independent board with Ofgem acting as an approval body,[73] though this is still a point of debate as some feel that Ofgem is better situated and has more experience in administering such regulations.[74]

There are also voluntary self-regulatory measures for TPIs in the non-domestic market that have been created by suppliers, industry bodies, and TPIs such as E.ON UK's Code of Practice.[75] However, many feel that such voluntary codes are inadequate and argue that an explicit and enforceable code of practice (such as that being pursued by Ofgem) is important to maintain the credibility of the TPI market.[76] [77] [78]

We can observe therefore that the state of regulation of TPIs is currently in flux in energy. Over the last two years powers have been increasing shifted to Ofgem, and new regulations currently in the consultation stage are aimed at being implemented by the end of 2014.[79]

Interest by regulatory authorities in the market

In their Retail Market Review, Ofgem noted significant barriers to consumer engagement such as complex tariffs, incomplete information/unclear contract information, and lack of trust in suppliers.[80] Although Ofgem's decision was to limit the number and complexity of tariffs on offer, TPIs can also help to break down these engagement barriers. The rationale for regulating energy TPIs by Ofgem stems from promoting consumer engagement, consumer protection, and encouraging competition and innovation.

In general, the view seems to be that TPIs can help promote competition and engage consumers in the energy market but end user confidence can be hampered by a few dishonest practitioners, especially when there is no formal complaint lodging process or mandatory code of practice. In particular, issues around consumer protection range from lack of transparency in fees and commissions, poor customer service, mis-selling or inaccurate information on services provided[81], and suppliers providing tariff information to preferred TPIs (i.e. not available for all TPIs).

Furthermore, Ofgem argues that existing competition law provisions aimed at consumer and business protection (enforced by Ofgem) do not cover the full range of issues in the TPI market.[82]

Issues of noted concern

Consumer concerns with TPIs

Consumer Futures outlined non-domestic consumer concerns regarding abuses by TPIs in the energy market. These included:[83]

- poor service (e.g. broker not informing energy suppliers of contract termination);
- unprofessional behaviour;
- misrepresentation by brokers;
- withholding of information (e.g. refusal of TPI to give information on consumer's energy supplier); and
- mis-selling.

A quantitative study completed by Element Energy on brokers in the non-domestic market showed that only around 20 per cent of brokers provided accurate information about the services they provide and nearly a third of non-domestic consumers had a negative view of energy brokers.[84]

In the domestic market, which is dominated by price switching websites, the concern is more focused on: the presentation of quoted tariffs, taking account of the customer's individual situation, the ordering of available tariffs, information on hidden fees, lack of complaints process,[85] information on frequency of price updates, and accessibility by vulnerable persons (for example those without access to the Internet).

Ofgem notes that consumer research has shown that many interactions with TPIs are positive, but the image of the industry may be marred by unfair or non-transparent practices of some TPIs.[86]

There has also been some concern about customers who have signed up to tariffs that the supplier no longer offers, so called "dead tariffs", which may be disadvantageous to the customer as they no longer reflect the current market situation. For example if the price of energy falls, a supplier might offer reduced prices only to newly-switching customers while not amending the tariff of existing customers. Given that suppliers are now limited in how many tariffs they can offer, tariffs no longer offered become "dead". Suppliers now have a responsibility to advise customers that they may be in such a situation, and in some clear-cut cases must migrate them automatically to more advantageous tariffs. This allows competition to benefit all customers, not just those who regularly benchmark their tariff.

Outstanding regulatory concerns

Through the recent consultation on non-domestic TPI regulation it is clear that a number of points are unclear with regards to the current draft Code of Practice. For instance: who will administer the Code (Ofgem or an independent panel);[87] the definition of TPI in regulatory context (i.e. who will the regulations cover?); [88,89] and rules governing monitoring and enforcement which are yet to be laid out[90].

Parallel concerns

There are also concerns that affect the image of TPIs but may be outside their control. For example, Consumer Futures notes that the time it takes for switching to occur and the provision of tariffs to preferred TPIs could be beyond the scope of TPIs and lie with service providers.[91] Unfortunately both these issues may have an effect on the services TPIs provide.

Evaluation / relevance to rail

- *Search:* Passengers may use TPIs and search engines rather than suppliers' own retail routes as a method of ensuring that they obtain unbiased information on the options. Comparison allows buyers easily to compare offers, and thus intensifies competition between suppliers, where this occurs. Comparison is reliable on accredited websites.
- *Exclusive offers:* In each industry, there are exclusive offers, so not all options are accessible from all agents and search engines. An important difference is that in rail these special offers generally come from an exclusive producer of a specific product. In energy, however, the basic product is available wholesale, and the exclusive offers are generally coming through niche providers, such as white labels or trader-suppliers, who may be targeting a particular market segment and do not wish to retail to the whole market. It must also be acknowledged that in a competitive market, where the underlying supply is essentially competitive, it can be hard to insist that every supplier must make its entire offer available for comparison. Ofgem insists that accredited PCWs draw customers' attention to the whole market, including offers exclusively available other than through this PCW. In energy this is practicable because there are a fairly small number of suppliers who are limited to 4 tariffs each, but it would be impracticable in most other markets. It is a controversial rule Ofgem applies because of the perceived shortcomings in that market, but one that may be hard to continue with in the longer term with growing competition and smart metering.
- *Complexity:* Energy tariffs and terms are complex, as are rules and restrictions on certain kinds of rail tickets. Thus searching for the best deal which matches the customer's situation can be complex. But whilst an energy customer might find a supplier anywhere in the market, usually a rail customer will know in advance that only one or a few rail companies could satisfy his requirements. Recognising that customers being unable to see their way through the complexities of a market is a potential market failure, Ofgem has specifically restricted the variety and

complexity of offers that a single supplier may make. But with smart metering being introduced, in part specifically because of the more sophisticated tariffs it allows, this may be difficult to continue with. This also goes against the tendency in more vibrantly competitive markets.

- *Advice:* In rail there is some concern about whether customers are sufficiently informed of all the ticket options available to them to allow them to choose the most suitable ticket for themselves. In energy, advice is understood to be likely to be important to customers, since tariffs are complex, the customer has to find the offers in the market and work out what is likely best for themselves, and the transaction is typically of large value. For this reason the provision of proper and unbiased advice is a major concern in the energy market. The suppliers themselves are not expected to advise customers about other suppliers' tariffs, but have a responsibility to advise customers in relation to their own tariff offering. There are accredited TPIs who are supervised in the way that they present information, and public information is provided on accredited TPIs. Even though there are many TPIs who are not accredited, they often have connections with accredited TPIs, so that the influence of accredited TPIs is more widespread.
- *Ancillary Services:* Ancillary services related to the main service itself, such as class of travel, insurance, food, etc., are usually a relatively small part of rail ticket selling, though can be significant in tour packages. Packaging is a larger factor in energy. It is common to package electricity and gas, and sometimes other utility services, and sometimes more general retail benefits that the particular retailer offers. These arrangements add value for customers.

Although there has been concern about concentration in the energy markets, and whether competition is sufficient to present a competitive offer to customers, competition is broadening. Production is mostly in the hands of six large energy producers, who are also the main retailers. But competition is broader, compared to rail, in at least two ways. First, there is the possibility of buying energy wholesale as a trader, and using that as a basis for supply. And second, suppliers can seek to market through white labels, which have some further, if limited, competitive influence.

The main issue in energy retail relates to information. Although domestic energy tariffs are no more complex than mobile phone tariffs, domestic customers do not engage frequently with energy supply in the way they continually engage with mobile telephony, and thus do not gain a detailed understanding of it. Although expenditure is substantial, and customers could potentially save by engaging, they are often mistrustful and worried they might be misled into making a worse choice than their present situation, precisely because it is a market they rarely engage with The government gives public advice on how to change supplier, recognise the best offer, and avoid being misled.

To reduce the complexity that can confuse domestic purchasers, regulation has been brought in to restrict the complexity and variety of tariffs one supplier can offer. This is seen by many as a tolerable restriction because of the number of suppliers competing, and the alternative routes to market through other suppliers that exist. Others such as Stephen Littlechild[92] argue that Ofgem's new simplified tariff requirements erode the positive effects of competition and innovation in tariffs, and that energy firms' response to these new restrictions will be unlikely to have a net positive effect on consumers. This argument is based around the idea of price discrimination: if a retailer is able to supply a product at different tariffs to different consumers, they will be able to charge some consumers higher tariffs and use the 'surplus' revenue to subsidise tariffs for those who would be unable to afford a uniform tariff. Regulation of "dead tariffs" helps the benefits of competition spread to all customers, rather than being restricted to those who regularly benchmark their tariffs.

Price comparison facilities exist and much use is made of them. Accreditation exists, and although there are many sources that aren't accredited, the indirect influence of accreditation is strong.

The key difference with rail is that in energy, products come from a range of suppliers, not just directly but also through various wholesalers who have the opportunity to repackage them. This gives the market a dynamic that allows customers, if only they would engage, to choose the best available deal for themselves. It took deliberate unbundling of the market to achieve this.

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[49] Ofgem - TPI factsheet; link.
[50] This may in part be due to larger companies having increased capacity to formulate energy procurement strategies and devote resources to maintaining relationships with TPIs.
[51] Ofgem - TPI exploration of market issues and options, consultation; link.
[52] Ofgem - TPI exploration of market issues and options, consultation; link.
[53] Ofgem - Consultation on proposals for regulating non-domestic TPIs; link.
[54] Consumer Futures - response to TPI market issues consultation; link.
[55] Ofgem - quantitative research into non-domestic consumer engagement in, and experience of, the energy market; link.
[56] Ofgem - TPI exploration of market issues and options, consultation; link.
[57] Ofgem considers them as slightly different than TPIs in the sense that TPIs usually engage with consumers to supply their energy needs and typically consolidate tariffs from several suppliers. White labels on the other hand only partner with one supplier and market a tariff under their own brand.
[58] Ofgem – White label providers call for evidence; link
[59] Ofgem – White label providers call for evidence; link
[60] Energyhelpline.com - how do energyhelpline.com make money; link.
[61] Ofgem - TPI exploration of market issues and options, consultation; link.
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[63] Consumer Focus - Comparing comparison sites; link.
[64] Consumer Futures - response to TPI market issues consultation; link.
[65] Ofgem - TPI exploration of market issues and options, consultation; link.
[66] Ofgem - TPI exploration of market issues and options, consultation; link.
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[68] Ofgem – The Confidence Code website; link
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[72] Ofgem - New rules for suppliers and brokers to protect businesses from mis-selling; link.
[73] Ofgem - Consultation on proposals for regulating non-domestic TPIs; link.
[74] Energy UK - response to non-domestic TPI consultation; link.
[75] TPI Code of Practice - The Code of Practice; link.
[76] Utilyx - response to non-domestic TPI consultation; link.
[77] Energy UK - response to non-domestic TPI consultation; link.
[78] Association of Convenience Stores - response to non-domestic TPI consultation; link.
[79] Ofgem - New rules for suppliers and brokers to protect businesses from mis-selling; link.
[80] Ofgem - TPI exploration of market issues and options, consultation; link.
[81] Ofgem - Consultation on proposals for regulating non-domestic TPIs; link.
[82] Ofgem - Consultation on proposals for regulating non-domestic TPIs; link.
[83] Consumer Futures - response to TPI market issues consultation; link.
[84] Ofgem - quantitative research into non-domestic consumer engagement in, and experience of, the energy market; link.
[85] Consumer Focus Study found only 50% of switching websites had a formal complaints process. Source: Consumer Focus - Comparing comparison sites; link.
[86] Ofgem - TPI exploration of market issues and options, consultation; link.
[87] Energy UK - response to non-domestic TPI consultation; link.
[88] Energy UK - response to non-domestic TPI consultation; link.
[89] Utilyx - response to non-domestic TPI consultation; link.
[90] Energy UK - response to non-domestic TPI consultation; link.
[91] Consumer Futures - response to TPI market issues consultation; link.
[92] IEA and Littlechild - Ofgem and the Philosopher's Stone; link.

4. Retail Investments

Description of the market

The investments market is notable for having most of its sales through agents in the form of financial advisers; they are not simply there to provide a comparison of price (or likely return on investment), they are responsible for ensuring that each individual investor receives clear and suitable advice. The products are too complex for there to be a major role for 'price comparison websites' as appear in other markets; there are many factors to consider when choosing an investment product and often the correct product will differ vastly depending on the investor's circumstances. Although the price, in the form of the provider's charges, is important, return and risk are more important and unverifiable in advance. This complexity, combined with a lack of consumer engagement with the product partly due to the infrequency with which these products tend to be bought, has led to most of the sales in the market being made through financial advisers, who offer to make considered personal recommendations. There are also brokers who provide pure transaction mediation and generic 'advice' without a personal recommendation, and price comparison services which compare relevant product terms, again without a personal recommendation, and direct supply from investment providers, who may or may not also provide a personal recommendation.

The former Financial Services Authority (FSA) undertook a six-year long Retail Distribution Review (RDR) which resulted in rules which came into force in 2012.[93] This review and the resulting rules now fall under the remit of the Financial Conduct Authority (FCA),[94] who is carrying out a post-implementation review, the results of which are expected in late 2014. The RDR aimed to remove some issues from the market, most notably the conflict of interest faced by an adviser who receives commission for selling an investment product.

The RDR also introduced minimum qualification and training requirements, and required financial advisers who wanted to describe themselves as independent to make any personal recommendations based on a 'fair and comprehensive' review of the market.[95] Advisers who are not willing or able to meet that standard must make it clear that they offer 'restricted' advice, and must explain what the nature of the restriction is – for instance, they may be limited in the product or provider range that they consider. The introduction of these definitions has not been popular within the market, with calls for the requirements for 'independence' status to be reduced.[96] Suppliers can also sell directly to the investors, or through 'brokers' which are not legally entitled to provide personal recommendations but provide investors with generic advice or information to make decisions ('non-advised' sales).[97]

The percentage of retail investment products sold through a financial adviser is expected to have fallen since the introduction of the RDR restrictions[98]. This is because upfront fees make the cost of advice clear to the investor, whereas before the cost of commission was

Description of the market
often 'hidden' and advice was assumed by the investor (or sometimes even described by the financial adviser) as being 'free'. This impact is likely to be greater for investors of smaller sums where the investor may interpret the proposed fees as being too high to allow a reasonable net return on their investment. Therefore, customers are increasingly turning to low-cost brokers or free online generic information for guidance. According to a 2013 survey of advisers[99] the RDR forced advisers out of the industry in several ways, with "not meeting the minimum standards" as the most-cited reason (16 per cent) which suggests that the RDR had the positive effect of removing some who were not fit to advise. However, there are claims of concern of an increasing 'advice gap' in the industry (see 'issues of noted concern' section, below), due to the greater percentage of investors which have been making decisions without the use of a financial adviser's personal recommendation. It has been suggested that this reduction is partly because of the aforementioned reluctance by the investors to pay the, now transparent, charges. It has also been suggested that investors have fewer options in financial advisers and they are either leaving the market or restricting their client base to those with a minimum amount to invest (i.e. £50,000). However figures from the FCA in 2012 indicate that 37 per cent of responding financial advisers plan to advise consumers with less than £20,000, and 62 per cent plan to serve those with under £75,000 to invest, therefore there should be sufficient advisers in the market to meet consumer demand.[100]

Arrangements between the parties in the market
Sales channels available • Indirect investment through an investment adviser, who will charge the customer a fee but will no longer receive commission on new investment recommendations (see 'commission arrangements' below). • Indirect investment through "investment platforms", which provide a transactions and holding account service to the customer. The platform makes a charge for the platform service. But typically the platforms give access to a range of investments on exclusive (cheaper) terms than those offered to individual investors, because the platform bulks up orders and purchases from providers on wholesale terms. The platform may also allow investors to add other investments of their choice on the standard terms available to individual investors. • Direct investment, directly through investment providers, who are carefully regulated in the information they may give you about the investment opportunity

they offer. They may or may not provide a personal recommendation in relation to the range of products they offer.

- Direct investment, using free, generic, guidance services such as the government-back Money Advice Service which provides clear information without making any recommendations.[101]
- Direct investment, using a broker to obtain 'information' and transactions services, but not advice.

Commission arrangements

Financial advisers traditionally received a commission as a percentage of an investment, usually 1 per cent to 8 per cent, paid by the product provider.[102] This had a significant inherent problem in that it led to the agents tending to act like salesmen rather than advisers, particularly for products which would earn the adviser higher commission for the same value of investment. In an attempt to reduce the conflict of interest of the investment adviser, any advice commenced since the start of 2013 is not permitted to incur commission from the investment provider. All charges, therefore, must be made to the customer and presented clearly to the customer upfront.[103,104]

A particular example of the distorted incentives created by commission is the situation of tracker and managed funds – a managed fund is more expensive than a tracker fund for the same investment amount, but the gross return on investment is often, on average, much the same. Thus the net return, after deduction of the higher charges, may be lower. Nevertheless, investors may be seeking specific risk profiles which may be hard to achieve with low cost investment products, but this would usually only apply to sophisticated investors with substantial funds to invest. Since the managed funds typically offered the financial advisers higher commissions, they had a conflict of interest to push investors towards the more expensive managed funds. How much in practice this had an effect is an empirical question, but the incidence of mis-selling scandals indicates that in practice mis-selling was widespread. Since the implementation of the RDR ban on commission the proportion of investment in managed funds as opposed to tracker funds has decreased.

Investments which began before 2013 are not included in this restriction and may be legally subject to commission, for example, if an investor continues to invest money under their old agreement without receiving further advice.[105] It seems that the ban on commission has led to more investors than before using 'DIY investor services' and other similar lower-cost systems, leading to lower customer revenues for the financial advisers.[106]

The ban on commission has a greater impact than might have been initially thought, as the commission was often not simply a one-off percentage on invested money but may have also include a 'trail commission' whereby an investment adviser would continue to receive, for example, 0.5 per cent of the value of an investment fund every year after having advised

Arrangements between the parties in the market

the relevant investor.[107] The FCA has issued guidance to customers focusing on the issue of trail commission.[108]

This trail commission may still be received by the advisers for all investment agreements before the RDR's implementation, however it is likely to be phased out as investors reinvest with new schemes and cause the 2012 rules to kick in. The FCA note that it is important that legacy commission is not paid indefinitely, as it would create an 'uneven playing field' in the market,[109] but due to the natural phasing out expected over time they are not taking direct action.

The ban on commission is only for advisers; commission can still be earned by those who supply information without making a personalised recommendation,[110] and therefore might still be paid through discount brokers, fund platforms, and many annuity providers who simply provide quotes without recommendations.

Access to product

In general, because an adviser takes a fee rather than commission, the adviser can be expected to make a recommendation without the bias inherent in a commission-based scheme. Advisers have to make it clear to their customers whether the advice issued is independent (considering all retail investment products) or restricted (considering a sub-set of retail investment products). In general advisers have access to the same range of investment products available to the individual investor. Where a provider does not sell products through brokers, an adviser can advise investors on how to access those products. Some investment products are exclusive to some routes to market, such as the investment platforms, who obtain special terms by buying the products wholesale.

Access to data

Generally speaking, data is not provided directly from investment providers to advisers and brokers, rather it is the responsibility of the latter to be aware of the market, through listings in the trade press, materials collected, etc. In principle an adviser can be aware of anything that a customer can buy, and advise on it. There are no common data platforms such as the ones that exist in air transport, for example. Restricted advisers, and investment platforms offering access to a limited menu of products, have specifically chosen to restrict their offer.

Arrangements necessary for entry to the market

The FCA recognises the importance of investors being able to trust their advisers, and has implemented guidelines and regulations accordingly.[111] In particular, advisers have to achieve a minimum level of qualification, carry out a certain number of hours of training each year, and make any restrictions in their product offering clear. The FCA is the body currently regulating the market, and they publish a 'Financial Services Register'[112] which lists

Arrangements between the parties in the market

the firms and individuals who are approved to provide financial products and services.

There are two main restrictions in this market, introduced in the 2012 RDR:

- A minimum level of qualification and a sustained quantity of training is required for all investment advisers. They should be at least Level 4 of the Qualifications and Credit Framework, and be in possession of an annual Statement of Professional Standing.[113]
- How an adviser may refer to itself depends on the range of advice it is qualified to give; it may only describe itself as an 'independent investor adviser' if it is able to advise on the entire investment product offering. Otherwise, an adviser is considered 'restricted' and must make its restrictions / practice area clear to the customer.

Relevant external regulation

Action by regulatory authorities in the market

The FCA provides authorisation for firms to promote, sell, manage, or advise on investments.[114] There have been a number of mis-selling scandals of widespread impact in relation to financial services, which has resulted in tighter regulation to reduce the risk of such widespread profiteering. In general, UK concerns about investment intermediaries have focused particularly on pensions as these are most people's largest and most important investments, which leaves many vulnerable to financial markets, and the bankruptcy risk of providers.[115] However, the FCA's predecessor in this area, the FSA, implemented the Retail Distribution Review in 2013 which brought about the following changes which apply to all investments in retail markets (different rules apply to "sophisticated" investors):[116]

- Financial advisers are legally not allowed to receive commission from the product provider; instead the customer now pays an upfront fee for the adviser's services which can be calculated flexibly at the adviser's specification. This fee may take the same structure as commission did (hourly, fixed charge, percentage of investment, etc.) and can also be facilitated through the product if desired. An investor may choose to facilitate the fee through their product, meaning they pay the fee to the product provider who then passes it back to the adviser, as this enables the investor to take advantage of any tax relief (such as in pensions) to cover their fee in addition to the investment sum.
- Advisers have to have a minimum qualification and carry out a minimum quantity of training each year. The minimum qualification is two 'levels' above the previous

Relevant external regulation

requirement.

- Advisers have to make clear whether their advice is based upon a comprehensive and unbiased analysis of the market or if they only consider a sub-set (such as only advising on a certain product). Only the former is counted as an 'independent' investment adviser, the latter is a 'restricted' investment adviser.[117]

Six months after the implementation of the RDR, the FCA discovered that while there had been some improvements, there was still a lack of complete clarity and transparency,[118] and as such issued further guidance to firms.[119] A full post-implementation review by the FCA is due in late 2014.

Quality standards

Advisers are required to have a minimum qualification, which is Level 4 of the Qualifications and Credit Framework (equivalent of a 'certificate of higher education,'[120] or first year of university), where the previous requirement was Level 2 (approximately GCSE level). They must also be in possession of an annual Statement of Professional Standing.[121] They will then be able to be authorised, registered, and approved by the FCA.[122]

Issues of noted concern

Issues raised by lobbying groups

One of the main recent concerns in the industry is regarding the 'advice gap' whereby fewer investors are obtaining adequate levels of information and advice. There is a risk that those with less than a certain amount to invest may not be able to receive appropriate advice as they are not seen as 'economically viable', and these concerns are shared by the regulator, the FCA.[123] The factors often cited as exacerbating the advice gap include: financial advisers leaving the market (including banks' advisers); financial advisers reluctant to take on investors with lower sums;[124] increased access to free online information or cheap brokering services; and investors' reluctance to use a financial adviser now that the cost is more transparent.

However these concerns are not necessarily well-placed. In particular, investors with lower sums could be making a rational choice to seek cheaper advice if they consider that there would be a low return as a result of the extra cost of using a financial adviser. In this case the greater transparency, rather than leading to poor investment decisions, could simply be driving more efficient decision-making. Research by the FCA in 2012 showed that 37 per cent of responding financial advisers planned to advise consumers with less than £20,000, and 62 per cent planned to serve those with under £75,000 to invest, therefore it appears

Issues of noted concern

there should be sufficient advisers in the market to meet consumer demand.[125]

Some regulators' concerns which are not addressed through regulation

The payment of trail commission is something which the FSA/FCA has highlighted and banned for new investments from 2013, however trail commission still exists on investment deals agreed prior to this date, and on products sold through channels other than 'financial advisers'.[126] The FCA has encouraged consumers to take steps to avoid paying trail commission on historic deals with financial advisers, to speed up the anticipated phasing out of trail commission which would naturally occur as investors switch in time to newer products which fall under the new rules.[127]

There is also some degree of concern about the relatively new investment platforms. Platforms can give access to lower cost investments not directly available to individual investors. But the platforms charge a premium for their service, and can therefore be used inappropriately by investors who are simply buying a consumer investment available to the market, and who don't need the platform's holding service.

Major issues arising from notable investigations, enforcement actions

There have been a number of mis-selling scandals in the financial services industry that resulted in enforcement action, with large compensation schemes being set up. Both personal pensions and endowment mortgages are products that have an investment angle, where mis-selling has been a major issue, and there has been concern that the bad advice arose from the larger commissions to be earned from selling the inappropriate product.

Evaluation / relevance to rail

Investment products are complex and therefore financial advice is an important element of the investment industry. Recent actions by the FCA (and FSA) in investment retail have been implemented to ensure that customers are best able to select the investments most appropriate to their situation, rather than the investments that their agents and suppliers are most motivated to sell. Transparency of the cost of customised financial advice makes the customer more able to decide whether they wish to purchase it.

The fact that fewer customers are now paying for advice, which is a matter of concern to some (especially those who sell advice) may in fact be an efficient outcome. The increased unwillingness to pay for customised financial advice in relation to smaller investments may be because customers perceive it is not worth paying so much for customised financial advice in relation to investments of that size, now that the costs of that customised advice are transparent. Previously the cost was opaque and it is possible that customers routinely overpaid for a service which is not value for money in context. The efficient outcome for

Evaluation / relevance to rail
smaller investors may indeed be reliance upon more generic forms of information. A similar issue exists in rail, where there has been concern about customers being properly advised about which rail tickets are available to them, and which is the 'best' for their needs. In the absence of regulation, rail retailers have a conflict of interest when selling tickets: first, in selling a specific route over competing routes, and second in selling more expensive tickets when a less expensive ticket would have been suitable. This issue is enabled by the national system of ticketing, which customer-facing railway providers are required to offer to all customers (any UK rail company which issues tickets can also issue any other UK rail company's tickets through this system) as an informational service (as with financial advisers). This potential conflict of interest is removed by industry arrangements which require impartial retailing between rail companies. In investment, the conflict of interest is through the more direct route of bilateral commission arrangements, where highlighting the commission in the market to raise awareness among consumers would not have been sufficient to solve the issues. Rather than solving the conflict of interest through informational means, therefore, the financial regulator has removed the source of the conflict by banning commissions. Investment platforms are a relatively new development which demonstrates some potential advantages from wholesaled capacity being retailed to customers by a route different from the traditional methods. Brokers bulk up investment requirements under wholesaling agreements, and offer them at lower cost to customers through a distinctive, lower cost, retail route. They earn a premium for the use of the platform, which also provides the added value of a holding and account service, although traditional brokers may also offer such a service. Rail does not present this wholesaling offer at present, and therefore there is the potential for further innovation in tariffs, retailing and ticket media which is being lost by disallowing wholesalers from packaging and returning that capacity to market in innovative ways.

[93] FSA – Retail Distribution Review, information for firms; link.
[94] FCA – Retail Distribution Review, information for sole advisers; link.
[95] FCA – Financial advice, independent and restricted advisers; link.
[96] FT Adviser – FCA admits independent, restricted definitions 'not working'; link.
[97] Money Advice Service (MAS) – Do you need a financial adviser; link.
[98] FT Adviser - RDR to blame for loss of market share; link.
[99] Cass Business School - The impact of the RDR on the UK's market for financial advice; link. Figure 1.4
[100] FCA - RDR adviser population and professionalism research, 2012 survey; link. Table 5.13
[101] Money Advice Service (MAS) – About us; link.
[102] FCA – Investments, Changes to financial advice; link.
[103] FCA – Retail Distribution Review, information for sole advisers; link.
[104] FCA – Investments, paying for advice; link.

[105] Investors Chronicle – The IFAs that are still allowed to take commission; link.
[106] Mindful Money – One year on from the commission ban costs of advice have fallen; link.
[107] The Guardian – FSA ban on commission-based selling sparks 'death of salesman' fears; link.
[108] FCA – Investments, trail commission; link.
[109] FCA – Policy Statement, Payments to platform service providers and cash rebates from providers to customers; link.
[110] FCA – Investments, changes to financial advice FAQs; link.
[111] FCA – Retail Distribution Review, information for sole advisers; link.
[112] FCA – Financial Services Register; link.
[113] FCA – Investments, what to ask an adviser; link.
[114] FCA – Financial products, investments; link.
[115] Law Commission – Fiduciary duties consultation summary Oct 2013; link section S.30.
[116] FCA – Retail Distribution Review, information for sole advisers; link.
[117] FCA – Financial advice, independent and restricted advisers; link.
[118] FCA - Retail Distribution Review, 6 months in; link.
[119] FCA - Factsheet, Disclosing your firm's charges and services; link.
[120] Ofqual - Qualification levels comparison; link.
[121] FCA – Investments, what to ask an adviser; link.
[122] FCA – Financial Services Register; link.
[123] CityWire - FCA chief Wheatley admits concerns over price gap; link.
[124] FT Adviser – FCA struggle to quantify advice gap continues; link.
[125] FCA - RDR adviser population and professionalism research, 2012 survey; link. Table 5.13
[126] FCA – Investments, paying for advice; link.
[127] FCA – Investments, trail commission; link.

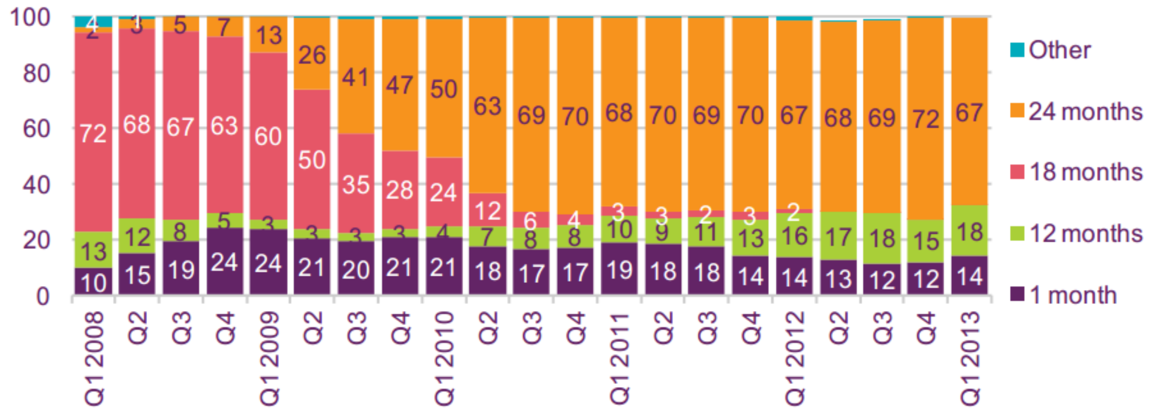
5. MOBILE TELEPHONY

Description of the market

From the customer's perspective, there are two parts to a mobile phone service: the connection, and the handset. There are two main types of financial arrangement for paying for a connection: contract or Pay As You Go (PAYG), with contract taking the largest section of the market by a small margin in 2013 (53 per cent of subscribers).[128] With a contract, the consumer is typically liable in arrears for metered usage and periodic fixed charges, but commonly these are set off against fixed price packages for quantitative bundles of usage, which may be paid in advance, subject to further charges for use in excess.

Contract periods can vary from a month to several years, though contracts of one or two years are most commonly sold today (See Figure 5.1). Contracts are only available to people with adequate credit status. PAYG phones require users to add 'credit' to their account before being able to use the phone (various methods of mediating this transaction are available), which they can then use at the stated tariffs. PAYG users can also often purchase quantitative 'bundles' using their 'credit'. Handsets can be leased, sometimes as part of a bundled tariff, or purchased separately. Originally handsets were offputtingly expensive and thus their costs was often concealed in a bundled tariff. Recently low-end handset prices have reduced and unbundled tariffs are more common, while high-end handset prices have increased and therefore longer contract lengths are popular (Figure 5.1).

Figure 5.1: Contract lengths for new post-pay mobile connections, as a percentage of sales

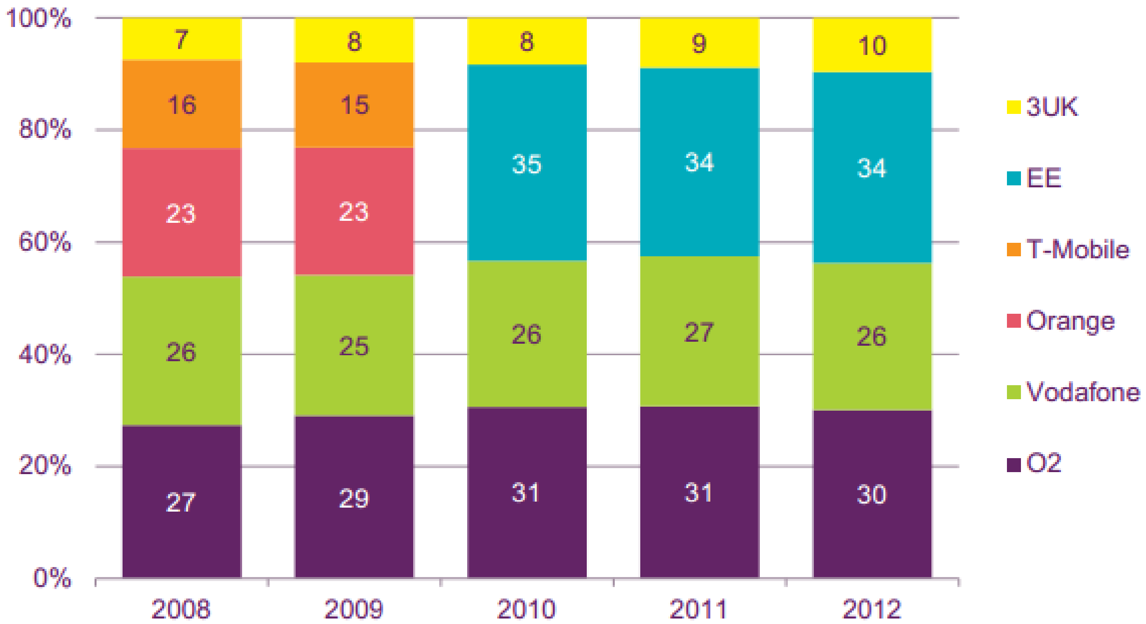


Source: Ofcom - the communications market 2013, telecoms and networks; link.

There are four main Mobile Network Operators (MNOs) directly providing connection service in the UK: EE, o2, Three and Vodafone. The market share of these networks is shown in Figure 5.2. These MNOs sell their services directly to the customer, and also via agency arrangements in two distinct ways: through retail agents and through the approximately 80[129] wholesale agents known as Mobile Virtual Network Operators (MVNOs), such as Virgin Mobile and Tesco Mobile. These MVNOs had 13 per cent market share in the UK in 2009, and in most data such as Figure 5.1 the MVNOs' market shares are allocated to the relevant

MNO rather than being represented separately.[130]

Figure 5.2: Mobile phone UK market share (percentage) comparison 2008 to 2012



Source: http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/cost_value_final.pdf Figure 21

There are many more manufacturers of handsets than connection suppliers, which can often also be procured directly from the supplier but are normally sold through a reseller regardless of the type of connection attached to the handset: contract/post-pay, pay as you go, or neither ('SIM free').

There are two main reselling agents in the mobile phone industry in the UK, who sell mobile phone connections on behalf of the four MNOs (and occasionally MVNOs): Carphone Warehouse and Phones4u, who make up 43 per cent of the mobile phone distribution market.[131] These two companies have a combined total of 1,456 UK stores, compared to the approximately 1,784 of the 'big 4' combined (EE 576;[132] o2: 466; Three: 342[133]; Vodafone: 400). These essentially sell the MNOs' (and MVNOs') services to customers, which may be packaged with a deal including equipment and other communications services. Once the customer has obtained a package from a reseller, the customer then enters a relationship with the relevant MNO/MVNO.

Alongside these obvious agents are 'MVNOs. These organisations bulk-buy access to MNOs network services at wholesale rates, and repackage it to provide connection services to their customers. The MVNO provides the sales, customer care, and billing functions: only the mobile voice and data service received by the customer is mediated by the MNO. The regulatory obligations of an MVNO are unclear. [134]

There is a large number of MVNOs, which vary considerably in the extent of the services they secure from the MNOs, and the services they self-provide. Some are essentially "white label" operations, adding little value and simply rebadging an MNO's service to market it to a specific market, while others may make considerable investment in their own fixed communication network infrastructure by-passing as much as possible of the MNO's services (and many intermediate levels exist). Although originally MVNOs contracted directly with MNOs, now there are also MVNO service wholesale distributors used by some MNOs wishing to avoid the administrative burden of having to deal with numerous MVNOs.

MVNOs arose naturally from competition in the UK market. In most other countries, MVNOs did not arise naturally and have only occurred where regulatory unbundling has been enforced to facilitate their emergence.

Arrangements between the parties in the market

Sales channels available

There are several sales channels for purchasing a mobile phone connection, whether on 'contract' (normally 12 or 24 months) or 'Pay As You Go' (PAYG):

- Direct from the MNO, the four UK MNOs are: EE, o2, Three, Vodafone.
- Direct from a MVNO, which receives wholesale access to an MNO's infrastructure and is able to create unique product offerings, such as Lyca mobile or Tesco Mobile.
- Through a reseller/broker, which retails the MNOs' and MVNOs' products, without creating its own mobile product offering. They commonly also offer unique deals, and bundle mobiles with other goods. The two large UK resellers are Carphone Warehouse and Phones4u.
- Through a dealer or franchise associated with the broker or network.
- Through an affiliation programme, either with a network or with a broker – these do not tend to count as intermediaries, as they simply refer the potential customer to the supplier.

Mobile phones can also be 'bundled' with other services, such as 'data only' contracts (which use the MNOs' data infrastructure), broadband, television, and fixed line services.

Price comparison websites also exist in the market, and typically earn their commission through the affiliation route.

Commission arrangements

Affiliate programmes, whereby a website is encouraged to generate 'leads' through placing a link on their own website, exist for most UK mobile phone networks and resellers. There is a high level of transparency, with commission rates published for three of the UK's four most popular networks and the two most well-known agents/resellers (Carphone Warehouse and Phones4u[135]) ranging from £5 (for a PAYG handset) to £70 (for a business contract).[136] Some only offer commission on leads for connection plus handset contracts (as opposed to connection-only or handset-only), with set fees dependent on which 'tier' the generated sale falls into. Carphone Warehouse offer 35 per cent of their margin for affiliates.[137]

An MVNO does not have a commission arrangement with its MNO, instead the access to the network is sold at a bulk price and the MVNO then applies its own tariffs to customers, aiming to manage their usage within the MVNO's purchased allocation of network services. The arrangements with the MNO are commercial and depend upon many factors, as the level of service purchased can vary considerably.

Access to product

The MVNOs arrange bilateral agreements with their respective MNOs in which bulk discounts are applied to the MVNO's access to the MNO's network. Carphone Warehouse and phones4u act as agents for the respective MNOs, directly linking customers to the MNOs and then taking a fee from the MNO.

Access to data

The MVNOs act as airtime resellers, while Carphone Warehouse and phones4u act more as airtime agents, although may act as a reseller when putting together a package of handset and airtime contract. Resellers will typically buy their stock, both the handsets and the access to the connections, in advance of selling them. Thus there is not the same requirement for a constant feed of data as is present when an agent is selling on behalf of a supplier and thus needs to be aware of changing stock availability and pricing.

Carphone Warehouse and phones4u will make the connection request to the MNO on a real-time basis, and the contract for both phone and handset will be with the MNO not the reseller; the handset may also be provided by the MNO, or it might be in a package put together by the retailer. There may be other conditions with the agent, such as the 'cashback' schemes explained in 'Issues of noted concern' section.

Relevant external regulation

Action by regulatory authorities in the market

Ofcom has an accreditation scheme for PCWs (which act as an agent or affiliation partner) for telephones, broadband, and television, whether sold individually or as a bundle. Billmonitor.com is currently the only mobile-only website approved.[138]

In the UK, there are no specific MVNO-related regulatory requirements.[139] In 1999, Oftel ran a consultation investigating the case for regulatory intervention in the provision of access to MVNOs. Oftel found that the case for intervention was not clear enough given the existent level of competition in the mobile market and the prospect of increased competition resulting from auctions for 3G spectrum. Oftel also concluded that issues related to capacity and network planning arising from MVNOs entering the market were best dealt with through commercial agreements.[140] Therefore, while other countries have struggled to achieve an MVNO market penetration of a few per cent (the global market share is 1.9 per cent), and in many cases have enforced unbundling to get any at all, in the UK this extensive activity arose entirely naturally and has become very active.[141]

Issues of noted concern

There does not seem to be a great deal of regulatory concern in the UK mobile phone industry, which extends to the third party intermediaries. The level of competition appears to be adequate, markets are reasonably transparent, and despite some complexity of financial arrangements, intervention does not appear to be required to assist customers to navigate the market. Despite the relatively small number of MNOs, unpackaged MVNO arrangements have arisen apparently voluntarily, whereas they have had to be mandated in most other countries where they have emerged. One of the main regulatory concerns has been with aspects of MNOs' tariffs for relatively infrequently used services such as 'roaming' charges. As of late 2015, UK mobile network operators will not be allowed to charge customers a higher fee for using their mobile phone in other European countries than they would be charged for usage within the UK. There are already limits on the tariffs charged for 'roaming' mobile users across Europe,[142] with a compulsory safety cap for data usage (per month) while roaming world-wide.[143] This has been implemented by the European Parliament. In the meantime, the fees which 'contract' customers can currently accrue whilst abroad are subject to an upper limit imposed by most MNOs and MVNOs.

Agents' clauses

An issue experienced in the UK a few years ago involved the agent selling a contract involving, for example, a£30/month commitment for two years, but promised the customer £20/month cashback for the duration. If the agent ceased trading (or reneged on their agreement in any other fashion through terms and conditions loopholes), the consumer has expected to pay only £10/month after cashback but would be tied into the full amount of the contract with the MNO without any means of holding the agent accountable.

Mid-contract price rises

There have been issues in the UK with consumers believing they have signed up to a fixed-price contract for the duration (often 24 months) to later find the operator increasing their monthly payments. This was usually stipulated in their terms and conditions but very rarely explained to the consumer. There are now rules against these mid-contract price rises, stating that consumers must be given 30-days' notice and the opportunity to terminate the contract in response to the price rises.[144]

Evaluation / relevance to rail

The main distinction between mobile telephony and rail is that there is more competition in telephony, despite the apparently rather unpromising situation of just four MNOs offering basic service. The four MNOs all offer roughly equivalent service, although some have weaker coverage in some geographic areas. This low level of basic competition does not seem to have a negative impact on innovation in the market, particularly as its status as an evolving market means that the competition is sometimes based on innovation and progress such as the recent race for 4G. The MNOs have been willing to unbundle their offer in detail and sell it in a rich array of forms through MVNOs. Although this occurred naturally in the UK, it has not often happened elsewhere, and in other countries compulsory unbundling has been required to achieve it. This unbundling, allowing multiple other parties to increase the competitive dynamic, has not occurred in rail.

In the mobile telephony market there is a wide array of choices available to the consumer, as the MNOs' offers can be broken up and repackaged by MVNOs, creating even more offers for the customer. It is possible that in Britain the market dynamic meant that the smaller MNOs saw MVNOs as a route to greater market share overall, better to compete with the market leaders, rather than a competitive threat to be avoided; whereas in many other countries, where MVNO arrangements did not arise naturally and were mandated, the market dynamic did not create that situation. MVNOs could be seen as beneficial since they address a market need (i.e. cheap overseas calls in the case of Lyca Mobile) which might not have otherwise been met.

We can speculate that in the UK the MNOs find MVNOs a useful route to extend their scope of competition against the other MNOs, which might have in part arisen from the lack of balance between them, and thus the weaker ones looking for a way to improve their network utilisation. Given the commercial strength of some of the parties seeking to enter the MVNO market, it is possible that the MNOs were aware that if they failed to make a deal with these interested parties, one of their competitors would take the opportunity. In many other countries' markets, the MNOs have apparently been sufficiently secure in their routes to market that they did not naturally see the benefit of MVNOs.

There is also considerable scope for packaging with equipment and other services, such as offering mobile and landline together and/or even including television and broadband subscriptions, allowing straight resellers to offer a service distinct from what can be obtained directly from MNOs and MVNOs.

The tariff offers are complex, but unlike in energy there has been less regulatory concern about assisting customers to select appropriate suppliers. We can speculate that because people engage regularly with their mobile phones, are aware of the mobile phone deals of friends and family, and are interested in the particular features and costs of operating them, that information on how to obtain the appropriate and desired service tends to travel deeply into the population. This is in contrast with energy, insurance, and long distance rail tickets, which people engage with much less frequently.

Despite being based upon a market with a limited level of competition in the basic supply item, airtime, the competition engendered by unbundling has resulted in a competitive market such that the authorities have remarkably few concerns.

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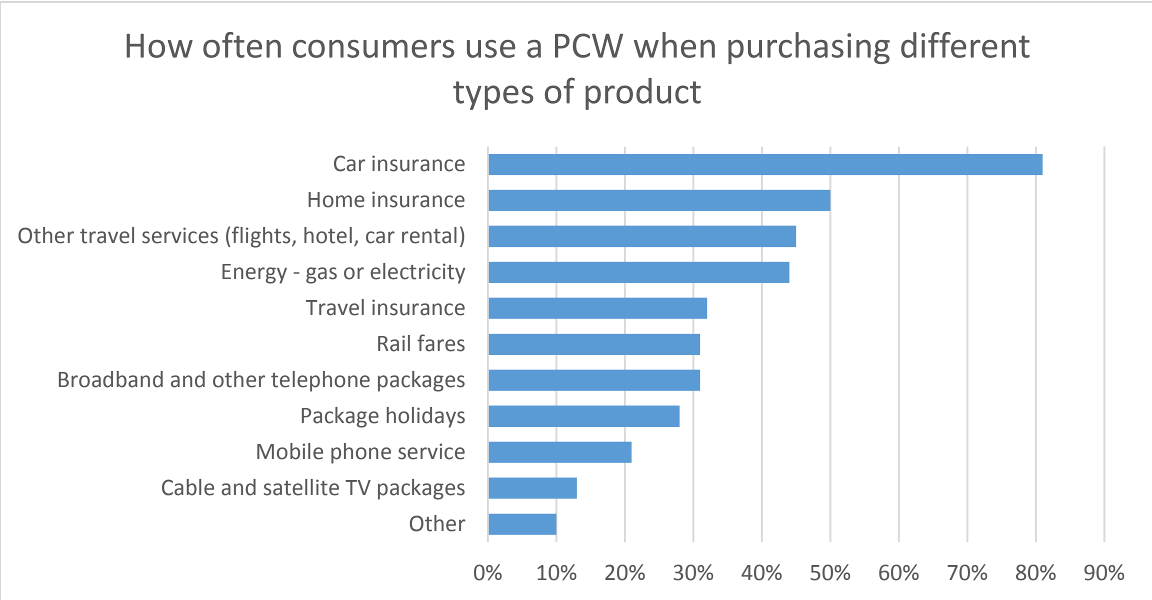
[128] Ofcom - the communications market 2013, telecoms and networks; link.
[129] GSMA - Mobile Economy Europe 2013; link.
[130] Ofcom – MVNO market share; link.
[131] These together have 43 per cent of the UK mobile phone distribution. Source: The FT – Three severs ties with Carphone Warehouse; link.
[132] Mobile news - EE to open 50 new stores and grow franchise base to 100; link.
[133] The FT – Three severs ties with Carphone Warehouse; link.
[134] Ofcom - Setting up an MVNO; link.
[135] Click for: Carphone Warehouse, Phones4u
[136] Click for: o2, EE, Vodafone. 3 mobile has an affiliate programme without published rates
[137] Carphone Warehouse – Affiliate programme; link.
[138] Ofcom - guidelines on how to apply (PCW accreditation); link.
[139] Ofcom - Setting up an MVNO; link.
[140] Oftel - Statement on MVNOs, 1999; link.
[141] Informa - the multifaceted world of MVNOs; link.
[142] European Commission - Roaming Tariffs; link.
[143] Ofcom - charges for international data roaming; link.
[144] http://stakeholders.ofcom.org.uk/consultations/price-rises-fixed-contracts/statement
http://consumers.ofcom.org.uk/2013/10/protection-for-consumers-against-mid-contract-price-rises/

6. PRICE COMPARISON WEBSITES

Description of the market

Price comparison websites (PCWs) allow consumers to quickly obtain a list of suppliers of a certain product (good or service) and their respective prices or other relevant terms. They can then choose an offer from the list, and are connected directly to the supplier, at which point the PCW's service is complete. PCWs mostly earn money from the supplier for the "click-through", though this may be restricted only to situations where a sale is eventually made. Figure 6.1 shows the results of a survey of customers that had used a price comparison website in the previous two years. Evidently, the most commonly compared product (within its market) is car insurance, followed by home insurance, travel, and energy.

Figure 6.1: Products / services that price comparison websites are used for



Source: Consumer Futures report on consumers of PCWs[145]

Figure 6.1 suggests that price comparisons are most active in services, in particular the kind of services where web-mediated sales form a relatively large market share. However, PCWs are also available for physical goods (one such site is Kelkoo), but PCWs tend to form a smaller proportion of the overall market in those sectors, not least because the web presence is smaller in those sectors.

Arrangements between the parties in the market

Commission arrangements

The PCWs have three main revenue streams:

Arrangements between the parties in the market

- commission from suppliers for “click-through” sales;
- fees paid by suppliers requesting a more prominent position on the PCW (very few PCWs automatically order results by price, some do not always achieve the correct price order, and some lack the functionality to order by price altogether[146]); and
- advertising, through traditional sidebars/popups and positioning advertising above search results which sometimes misleads consumers into believing that they are the top result from their search.

Commissions are paid to the PCW if the supplier can directly trace the sale back to them. When a consumer uses a PCW to identify a preferred supplier but then books directly through the supplier it is more difficult for the PCW to link this sale to their website, however it is still possible. Of those surveyed by the OFT in 2010, 81 per cent of consumers had used a PCW but only 19 per cent of those consumers subsequently purchased through the PCW.[147] One energy PCW published a list of its suppliers, outlining that 21 of the 29 suppliers which they list on their website do pay them commission[148] (See case study on energy retail - there are specific arrangements for energy PCWs–).

Access to product

Suppliers are under no obligation to deal with PCWs, and some refuse to assist them or pay them. This is one reason (alongside lack of trust) for consumers’ habit of using more than one price comparison website for each purchase.

Access to data

While some PCWs have arranged to receive data directly from the suppliers, others will instead obtain their data from searching the relevant suppliers’ websites.[149] Some PCWs have negotiated specific deals with suppliers to obtain exclusive prices for deals they mediate.

One concern with price comparison websites is that if, instead of having a clear arrangement with the supplier to obtain data from them and earn an introduction fee, the PCW ‘scrapes’ the product results from the suppliers’ websites and proceeds to take the customer’s money in the mode of a retailer, without the consumer obtaining a direct relationship with supplier, the consumer may become exposed to some counterparty risk that they had not understood. For example, when a ‘scraping’ PCW is used to book an airline ticket the consumer may not have a direct relationship with the airline and thus might not be updated on changes such as to flight times or baggage/security requirements. This might seem similar to a normal agency relationship, where there is some counterparty risk, but in this case, because the supplier refuses to accept any kind of introduction from the agent, the customer does not obtain the normal relationship with the ultimate supplier they expect. But this is more of an issue elsewhere in Europe than the UK, where PCWs have

Arrangements between the parties in the market

been adopted quite quickly and UK companies seem to be relatively compliant with regulations and laws.

Arrangements necessary for entry to the market

There is no formal licensing of PCWs in general, but there are sector-specific arrangements in relation to some sectors. Many web-based suppliers offer commission to any website registered with them that provides an introduction to that supplier's service, and this can become the basis of offering a general search service to customers. As PCWs become established, they obtain the market strength to negotiate terms with suppliers they introduce.

Sales channels available

PCWs in general supply only a search service, allowing customers a convenient aggregation of information on sources of supply and prices for a certain product. Customers therefore generally have the option of dealing directly with suppliers, or through any other specific supply arrangements that exist in that sector of the market.

Some other innovations have also been observed. For example some PCWs offer the possibility of an aggregation service whereby a group of customers make an aggregate deal with the supplier mediated by the PCW. In the energy sector websites known as 'collective switching websites' exist, where the website requests a quote from the supplier on behalf of a group of households who are prepared to switch, expecting a better deal than might be offered to an individual switching.[150] There are of course downsides to collective switching, particularly the inflexibility which it introduces, limiting the number of consumers for whom this scheme is appropriate.

Relevant external regulation

Action by regulatory authorities in the market

The OFT has considered the issue of PCWs in general, and those individual sector regulators where there are specific issues in relation to retail have often also considered them. In general the authorities consider PCWs a positive force for transparency and market efficiency, if headline prices advertised are 'achievable'. But consumer distrust, not always justified, of such websites has resulted in them being underused in comparison to their potential for improving customers' awareness and engagement, and for increasing price competition. Consumers do not necessarily need to trust a single comparison website for the market to be useful. If a consumer chooses to use two similar comparison websites and trusts their collective conclusion then the overall effect for consumers is reasonably

Relevant external regulation

positive, but it remains that conducting multiple searches is suboptimal.

Ofgem and Ofcom both introduced a voluntary accreditation scheme for their respective markets (see 'Quality standards', below), however there has been no regulation imposed generally on the markets, because of resistance from leading websites. Similarly, in relation to financial services, the Government set up the independent Money Advice Service (MAS) (which provides independent and commission-free advice and comparison tables on saving, borrowing, and investing).[151] OFT has not sought to impose any general regulation, but has published advice to customers on the use of PCWs to assist them to make the best use of them.

Quality standards

There are schemes which have been introduced in various markets to address the lack of consumer trust in the PCWs, with interest by regulators and other organisations. While these schemes are not compulsory and therefore PCWs may operate in the market without meeting the accreditation standards, the schemes should assist consumers in identifying trustworthy PCWs. However, the effectiveness of these voluntary accreditation schemes at protecting consumers is questionable since there is very low awareness of them among PCW users (just 16 per cent).[152] Under these accreditation schemes PCWs disclosure their practices, and the accreditation is intended to make those disclosures credible.

Accreditation by market regulator

- *Energy*: Ofgem has approved several online PCWs, alongside publishing a guide[153] to assist customers in using PCWs for switching gas and electricity suppliers. Their 11 approved websites have been identified as those which present fair and unbiased options and prices.[154]
- *Telephone, television, broadband*: Ofcom has an accreditation scheme for these services, whether sold individually or as a bundle, with five websites approved. [155]

Accreditation by other organisations (possibly of limited relevance)

- *Air travel:* The International Association of Travel Agents (IATA) provides accreditation for travel agents to become authorised to sell tickets on behalf of their 243[156] IATA member airlines.[157] The Air Travel Organisers' Licensing (ATOL) must approve any agent which is selling UK air travel as part of a package (i.e. with car hire or accommodation). [158]
- *British Insurance Brokers Association (BIBA):* BIBA, merged with the Institute of Insurance Brokers, has almost 2000 members.[159]
- *Multi*-sector: There are three main UK-based accreditation schemes which compare online shops across multiple sectors: Safebuy UK,[160] Shopsafe UK (which also runs

Relevant external regulation

schemes in some other countries),[161] and the Europe-wide Trusted Shops.[162] All of these provide online shops with a star-rating (out of 5) and a logo to place on their website.

Issues of noted concern

Some concerns of regulators and lobbying groups, which are not addressed through regulation

The main regulatory concerns have been:

- mechanisms to raise trust in PCWs; and
- incorporating them into the specific retail environment of those markets with specific retail regulation.

The concern about trust in PCWs arises not because PCWs have shown themselves to be particularly untrustworthy, or are having disadvantageous effects on markets. Rather the concern arises because PCWs have been assessed as having a beneficial effect through introducing increasing transparency and competition to markets, but tend to be underused as consumers are suspicious of them, often more so than is justified. Given the limited role of the PCWs in a sale, and their action as searching tools in a market crowded with well-known searching tools their ability to cause detriment to the market (short of outright fraud), e.g. by confounding customers with misinformation, is limited and in practice rarely occurs. Nevertheless, consumers are worried about their rights when buying "through" a PCW instead of directly from a supplier,[163] although in practice customers usually do deal directly with a supplier after being directed from the PCW. Customers perceive PCWs to be unclear regarding whether the suppliers can pay to influence their ranking, and 31 per cent of users place importance on the impartiality of PCWs.[164] Indeed customers typically search several PCWs (83 per cent of customers[165]) to confirm the results. Customers also sometimes liaise directly with current or potential suppliers while using the PCW results as a bargaining tool. Nevertheless, an attempt to introduce an industry-wide code of conduct to raise trust failed when the most popular PCWs refused to join.[166]

In response to consumers' worries and reluctance to use PCWs for financial services, where trust is particularly weak and the need for advice strong, the UK Government has set up the independent Money Advice Service (MAS). MAS provides independent advice and comparison tables on saving, borrowing, and investing, and does not receive commission.[167] The Government launched a large advertising campaign to increase awareness of this service.[168] MAS has not been without its own criticism, particularly that it has not integrated with the existing organisations and instead duplicates information available elsewhere.[169]

Issues of noted concern

However dependent on the success of the aforementioned advertising campaign, it could be helpful by providing consumers with all of the information collected in one place.

Consumer trust in PCWs has improved in the last few years, assisted by OFT-issued guidelines which were released in 2012 and set out in a letter to the top 100 PCWs.[170] A 2010 survey found that consumers worried that the PCWs sell personal data on, thereby creating unwanted sales communication, or that the data was not presented in a transparent way.[171] A 2013 study, 94 per cent of consumers felt that PCWs were 'very' or 'fairly' reliable.[172] There is a wide array of PCWs available, vary in the market segment which they cover and the business arrangements (i.e. fees and commission from suppliers) – but such arrangements are not often made clear to consumers.[173]

Major issues arising from notable investigations, enforcement actions

The CMA, or its predecessor the OFT, investigated PCWs in particular market environments, mainly hotel reservations and car insurance.

In hotel reservations, PCWs have attempted to impose clauses on suppliers which insist that they do not sell the product cheaper through other PCWs (some are stricter and might insist it is not cheaper anywhere else, similar to the conditions which Amazon have tried to impose on its book suppliers). This is known as a "most favoured nation" clause, and in the case of hotels the authorities found this might be an undue restraint on trade. Commitments were made by some major websites that the latter, stronger type of "most favoured nation" clause would not be used.[174]

In car insurance, the legal case is still on-going,[175] and many of the issues in the investigation are unrelated to this case study. But "most favoured nation" clauses have been raised as an issue in the preliminary remedies document. More broadly we can observe that the CMA finds that PCWs appeared to increase competition, with customers using PCWs appearing to be much more price sensitive than customers who addressed the market in other ways. Since customers using PCWs focus heavily on price, this may have had perverse effects on product quality, i.e. the level of cover being offered and other details of terms. Some insurers design a "stripped down" product that would compare well on PCWs. The quality of insurance products is complex and may be difficult for customers to understand.

We have observed from the other case studies that there can be specific issues in specific sectors of the market. In air tickets, there has been concern about the transparency of the price and availability of the price being offered. This has been addressed directly through regulation of the suppliers in terms of what they can advertise, and PCWs inherit this responsibility. In some sectors, e.g. energy and telecoms, there is accreditation of PCWs. Relatively few PCWs are accredited, but the accredited websites can have a broader influence on the market by providing services to other PCWs that inherit the correctness.

Evaluation / relevance to rail

The UK railway retail market potentially requires the purchaser to engage in searching among numerous alternatives, a functionality which the PCWs were set up to facilitate in various markets (including rail, with National Rail Enquiries, for example, which acts as a PCW rather than an agent for rail tickets). The commission received by the railway ticket agents and the PCWs is in return for their value-added in enabling the products to reach the customers with a greater amount of transparency, and each provides little value-added to the end service itself.

Consumers perceive that they benefit a reasonable amount from PCWs, once they have found a trustworthy method of using them, describing that using PCWs' in particular: ensures the customer receives a better deal, offers a more convenient alternative to individual searches, and is easier than individual searches.[176] This convenience is reduced by the perception that the PCWs do not always provide a complete or transparent and unbiased comparison, leading the consumer to use more than one PCW in their search process.

PCWs with a substantial market presence have sought to impose terms on the suppliers whose products they advertise, requesting that the suppliers do not advertise the same product more cheaply elsewhere. The competition authorities have concern that such clauses can be an undue restraint on trade, particularly if their scope is broad, e.g. if it applies to prices applying in other routes to market beyond the PCWs.

Transparency of the prices being compared can be an issue when the details of what is being compared are unclear, such as airlines unbundling goods and insurance companies offering different terms. In airline tickets this was addressed by regulation of suppliers, not of PCWs, with the expectation that PCWs would then advertise the correct information as supplied by the airlines.

In some sectors PCWs have been regulated to make the nature of the comparison more transparent. Mostly this has been done through standards and regulation in individual sectors. These have not been made compulsory, but the fact that some websites have voluntarily adhered to the standards has had broader effects for the level of standard in the market.

[145] Consumer Futures – Price comparison websites, consumer perceptions and experiences; link. p.22 Figure 4.10
[146] Consumer Focus – comparing comparison sites; link. p6-8, p.24, Table 7A
[147] http://www.oft.gov.uk/shared_oft/market-studies/AoP/OFT1291.pdf 9.11: 81% used a PCW, 15% bought through the PCW they used: 15/81=18.5%

[148] Uswitch – help; link.
[149] Consumer Futures – Price comparison websites, consumer perceptions and experiences; link. p3
[150] Consumer Futures – Price comparison websites, consumer perceptions and experiences; link. p.63-66
[151] MAS - comparison tables; link.
[152] Consumer Futures – Price comparison websites, consumer perceptions and experiences; link. p.58
[153] GoEnergyShopping – Homepage; link.
[154] Ofgem - The confidence code; link.
[155] Ofcom - guidelines on how to apply (accreditation); link. and Ofcom - price comparison; link.
[156] IATA - Current Airline Members; link. Accessed 29/05/2014
[157] IATA - Accreditation Travel; link.
[158] ATOL - protecting holidaymakers since 1973; link.
[159] BIBA - about BIBA; link.
[160] Safebuy – homepage; link.
[161] ShopSafe - shop online in safety; link.
[162] Trusted Shops - The leading seal of approval for online shops in Europe; link.
[163] Consumer Futures – Price comparison websites, consumer perceptions and experiences; link. p.41
[164] Consumer Futures – Price comparison websites, consumer perceptions and experiences; link. Figure 5.4 p.38, 54-57
[165] Consumer Futures – Price comparison websites, consumer perceptions and experiences; link. p.32
[166] This is Money - comparison websites ditch watchdog plan; link.
[167] MAS - comparison tables; link.
[168] Money Marketing – Watch the new Money Advice Service's new £1.43m TV ads; link.
[169] The Telegraph - Money Advice Service 'not fit for purpose', say MPs; link.
[170] Press release: OFT - Press release 2012 PCWs advised how to improve consumer trust; link.
[171] Price comparison websites: trust, choice and consumer empowerment in online markets; link. p12-13
[172] Consumer Futures – Price comparison websites, consumer perceptions and experiences; link. page v
[173] Consumer Focus – comparing comparison sites; link. Foreword
[174] Due to the transfer from OFT to CMA, we have been unable to find the case documents. A news report is available: Which - Travel agents can offer UK hotel price discounts after OFT ruling; link.
[175] Gov.uk - private motor insurance market investigation; link.
[176] Consumer Futures – Price comparison websites, consumer perceptions and experiences; link. pp.35-6