Digital Fairness Act
-
Input to Call for Evidence

I. General Comments

Comparison tools in the form of online platforms such as websites and apps are a valuable resource for consumers to compare electricity tariffs and offers. They support informed decision-making at the pre-contractual stage of the customer journey and enhance visibility of the retail market. Customers are relying on accurate, transparent, and trustworthy information when using these tools as these are key to help selecting a supplier and tariff that suits their needs and preferences. Hence, these tools must be properly designed in terms of fairness and transparency to ensure different types of electricity contract offers can be effectively and easily compared as well as in terms of equitable conditions across all types of comparison tools to strengthen a competitive market environment.

Eurelectric's customer survey conducted in 12 Member States showed that 31% of customers switched suppliers between June 2022 and June 2024. While most of those customers stated that they signed up to their new contract directly with the new supplier (60%), some also signed up via comparison websites (8%). In practice, this means that those customers signed up through websites that not only provide an interface to compare offers, but in addition provide a commission-based service to switch suppliers through their website.

A distinction should hence be made between platforms only providing comparison tool services and platforms which additionally provide third-party intermediary services, meaning they facilitate commission-based contract and supplier switching directly through their platform (both typically websites and/or apps). In some cases, the lines between these two business models are blurred as some operators seem to operate in a regulatory grey zone. This begs the question under which circumstances customers are led to sign up to those offers on third-party platforms offering both comparisons and integrated supplier switching services and whether consumer protection aspects are met such as transparency and clarity of information.

We have observed some general overlapping shortcomings in both business models affecting consumers:

- for consumers, it might not always be clear and evident whether they are using a comparison tool platform or a platform with third-party intermediary services.
- it might be unclear whether the comparison tool used is independent or not.
- the business model of these platforms is not always transparent, particularly in terms of financing and sponsoring.
- sponsored or advertised offers are a valid part of commercial tools, but might in some instances not be sufficiently labelled, explained, or highlighted and as such can impair unaware customers' decision-making.

II. Comparison tools

Analysis

Article 14 of the Electricity Directive sets minimum requirements that comparison tools must comply with. We have observed the following issues:

- Neither article 14 nor other articles of the Directives provide a legal definition of what a 'comparison tool' is, leading to confusion as to what types of comparison tools article 14 applies to.
- Based on paragraph 1a, the likeliest interpretation is that the article only refers to *independent* comparison tools which can be operated by NRAs, other public bodies, or private entities supervised by a public body (trust mark or accreditation option).
- Based on this interpretation*, non-independent* tools (i.e. commercial, sponsored, or funded tools) are not subject to any specific requirements.

III. Third-party intermediary platforms

Analysis

As mentioned above, intermediary platforms not only provide services that help consumers compare electricity tariffs and offers, but also offer services that facilitate switching electricity contracts and suppliers through their platform. While this is a valid business model and might simplify the switching process for consumers, it also presents particular challenges:

- The existing regulatory framework only targets *traditional* energy suppliers. This raises concerns about how to ensure that these platforms meet requirements of transparency and consumer protection.

- Given that these platforms are not energy actors, regulators might also not have any competence over the owners of these platforms.

- A particular grey zone exists when a private entity operates an independent comparison tool platform based on a trust mark awarded by a public authority and at the same time offers commission-based supplier switching services or promotes certain products in the initiation phase of the switching/sign up process.

Such platforms might favour product offers for which they receive a commission when the consumer signs up for the offer through their platform. For instance,

- by favourably displaying or promoting the product in the comparison results or in drop-down menus;
- by pre-selecting or pre-filtering such products in the section of their websites that initiates the switching/sign-up process.

Such dark patterns (or deceptive design patterns) could eventually influence customers' decision-making and product selection, hence posing questions regarding the clarity and transparency of the information provided to consumers.

IV. Recommendations

Regulatory Recommendations

Some consumer protection legislation relevant for this topic already exists in the EU. Notably, Directive (EU) 2019/2161, known as the 'Omnibus Directive' adopted in November 2019 which aims to strengthen consumer rights in the digital world. It enhances the legal framework governing unfair digital practices and improves transparency for consumers using online platforms. It places greater responsibility on operators regarding the presentation of offers, consumer reviews, discounts, and online contract terms. In addition, the Digital Services Act explicitly bans the use of dark patterns by online platforms.

Commercial comparison tools reach a large number of consumers in many Member States which independent tools might never reach and are often more innovative in their design and functionality compared to independent counterparts. Apart from that, we still consider it necessary to scrutinise some regulatory shortcomings for commercial comparison tools and third-party intermediary platforms and make necessary adjustments either to the national supervisory frameworks or to the EU legislation deemed most appropriate for this purpose.

- To ensure consistent understanding and avoid misinterpretations across Member States as well to clearly distinguish comparison tools from third-party intermediary platforms, the Commission should clarify the understanding of what constitutes a comparison tool in the Citizens' Energy Package.

- National regulators must urgently implement article 14 and provide consumers with at least one independent comparison tool.

- National regulators should subject operators of commercial comparison tools at least to the same requirements presented in article 14 (points a) to h)) – except for the obligation to be independent and to disclose their financing - to create a level playing field for supplier offers and reinforce consumer trust. Compliance with these and other requirements could be ensured through a separate accreditation scheme for commercial tools.

- All operators must prominently highlight whether they are operating an independent or non-independent/commercial comparison tool.

- Any operator offering a comparison tool service and/or supplier switching service must disclose their commercial partnerships by clearly indicating when product offers are sponsored content or paid for by suppliers. For example, by labelling such offers as ‘advertisement’, ‘promoted’, or ‘sponsored’. In addition, the operator must disclose the conditions under which these are granted, for instance in an ‘info box’. This ensures transparency for consumers and fair competition between suppliers while allowing comparison tools to maintain their business model.

- Similarly, certain product offers have important caveats and come with certain risks. For instance, an offer with variable or dynamic price elements requires the customer to adjust consumption behaviour in order to reap savings as prices are pegged to fluctuating wholesale market prices. This may not be fully understood by the customer and hence needs to be properly yet concisely explained on comparison websites and in supplier switching interfaces (for more see section transparency and accuracy below).

- In the context of supplier switching services, consumers should have the right to receive a priori clear and comprehensive information on the terms and conditions of the contract before signing it. For instance, same as suppliers, operators must provide a summary of pre-contractual information as foreseen per article 11a of the EU Electricity Directive. The customer must explicitly consent to switching and signing a specific offer.

- Overall, from a consumer protection perspective and to best ensure a level playing field for supplier offers, we recommend that national regulators or public bodies operate the independent comparison tool(s) envisaged in article 14 instead of awarding the operation to private entities based on a trust mark or accreditation scheme.

- Finally, to avoid dark patterns or deceptive design patterns on third-party intermediary platforms offering commission-based switching services, either a separate regulatory framework or changes to existing legislation might be required on EU or national level.

Design recommendations for independent and non-independent comparison tools

In the following, we refer to all comparison tools including independent and non-independent tools unless specified otherwise.

Visibility and Tool Performance

- Independent comparison tools should be actively promoted through energy bills as foreseen in Articles 14 of the Electricity Directive. Additionally, NRAs and/or the operators of these tools could advertise these tools on their websites and through public campaigns.

- The performance and usability of independent tools must be regularly monitored. This includes aspects such as the search engine functionality, the way offers are displayed, the responsiveness and speed of the tool or website.

Transparency and Accuracy

- Disclose the algorithm or logic used for price simulations.
- Clearly label all offers (e.g. as fixed, variable, dynamic). To this extent:

    - The difference between a fixed price offer and a dynamic/variable price offer must be clearly evident. For the latter, the price is usually indicated as an index price based on various possible calculation methods and will vary depending on market conditions. Hence, it should be conveyed that the price of those offers can change over time and differ from the (lower) index price initially indicated, thus cannot be taken as a basis for the final bill.

    - The information on dynamic price offers should include details regarding the calculation method or formula of the index price. For instance, the average spot price of the previous months or an estimation on an annual basis.

- Ensure offers are regularly updated, ideally with direct links to the suppliers' websites.

- In the case of sponsored or advertised content, the use of terms like 'best sellers' or 'tariff tips' can be misleading unless they are clearly explained. However, if explained in a concise, transparent, and non-misleading manner, such terms can provide orientation for consumers and support their decision making. Either way these tools should indicate when offers are sponsored content or paid for by suppliers, e.g. by labelling these as 'advertisement', 'promoted', or 'sponsored'.

Coverage and Innovation

- Comparison tools should be transparent about any limitations in their coverage, e.g. excluded providers or offers, and specify the geographical market they represent.

- Filtering options should be as complete as possible and allow comparisons based on contract type, service features (e.g. green or bundled offers), pricing details (e.g. discounts), and consumer profiles.

- Comparison tools should evolve to reflect innovation – such as dynamic pricing, bundled services, energy sharing schemes, energy efficiency solutions etc. – and not limit visibility to the cheapest offers alone. For instance, in France, the official independent comparison tool displays offers only according to price and does not promote more innovative offers such as bundled offers. Hence, comparison tools must not penalise innovation or new market models in their result rankings.

Supervisory framework

To uphold the integrity of commercial comparison tools, it is essential to ensure they operate transparently and in a competitive manner. Implementing a supervisory framework whereby the NRA or another designated body oversees the operators and their compliance with the rules mentioned above would bring significant benefits. For instance, by granting trust marks for commercial tools that meet the requirements. One such example is Ireland, where the *Commission for Regulation of Utilities* has established a Price Comparison Website Accreditation Framework.