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Dear Dan,

Statutory consultation – Removing the Ban on Acquisition Tariffs

The ban on acquisition-only tariffs (BAT) is protecting customers. It prevents suppliers restricting their best deals to small numbers of mostly affluent customers and stops a race to the bottom where loyalty is viewed as a negative trait and gets penalised. Customers are clear that they want the BAT to remain in place. In our survey, conducted by YouGov¹, 93% of customers said suppliers should not be allowed to offer their best deals to new customers only, 82% said they would trust their supplier less if they did so. Rather than consulting on removing the BAT earlier than planned, Ofgem should instead be consulting on extending the BAT until the review of future price protection is complete and implemented.

BAT protects vulnerable customers

In 2020, when switching was at its peak, just 20% of customers were benefitting from the cheapest tariffs in the market². Ofgem's own analysis shows these switchers were "*more likely to be higher income, younger, male, owner-occupiers*" and "*not a significant portion of people potentially eligible for the PSR.*"³ When the energy crisis hit, the fragile market structure caused by the unsustainably cheap tariffs being offered to switchers collapsed. Disengaged, often vulnerable customers were then penalised again by having to compensate switchers via the SoLR levy for losses they would otherwise have incurred when their suppliers went bust. With no BAT in place, the minority of customers who benefited from unsustainable competition did so at the expense of disengaged customers, often those who are vulnerable or otherwise more in need of protection.

BAT prevents price discrimination, where certain customers are excluded from certain deals based on their characteristics or behaviour. Price discrimination leads to detriment for vulnerable customers despite Ofgem's assertion that the price cap protects less engaged customers. We see differences of ₤ in costs to serve when comparing our most expensive with our cheapest customers. Removal of BAT will result in suppliers targeting the cheapest customers with acquisition tariffs, creating relative price differentials to the

¹ Nationally representative sample of 2,000 customers of various suppliers, fieldwork 17-18 May 2024

² <https://www.gov.uk/government/statistical-data-sets/quarterly-domestic-energy-switching-statistics>

³ Consultation on Removing the Ban on Acquisition Tariffs, May 2024; p50

price cap through this price discrimination. On the assumption Ofgem reflects costs accurately in the price cap, these will increase by definition to reflect the higher average cost to serve of customers who remain on the cap.

There are better ways to increase engagement

In the market today, with BAT in place, customers can make significant savings by switching. Our market intelligence from [3](#) showed customers could save [3](#) versus the price cap, Ofgem's analysis shows savings of over £400 in March 2024. This compares to a peak level of average savings of around £300 during the period 2019-2020⁴, when competition was dominated by unsustainable pricing and the six-monthly price cap generated higher savings figures from wholesale price movements. At E.ON Next, we offer a variable tariff that guarantees savings versus the cap, almost [3](#) customers have switched to this tariff since [3](#). Crucially, with BAT in place, savings today are available to all customers rather than a select few; customers can benefit from these savings without having to switch supplier. There is no evidence to suggest these savings are lower than they would be if BAT were removed.

The YouGov research we commissioned shows that just 18% of customers who haven't switched say a lack of a better price is the reason for staying with their supplier. 45% say they are happy with their current supplier. Other reasons customers give for not switching include concern about suppliers going bust, advice they've received from consumer champions and the reassurance they get from remaining on the price cap. The BAT is not the reason why engagement may not be as high as Ofgem expects, there are better ways to increase engagement than removing the BAT.

BAT provides market stability that is still necessary

Ofgem's analysis assumes that all suppliers will price sustainably if the BAT were removed. Ofgem has introduced new rules on financial resilience, the most significant of which (minimum capital requirements) takes effect from April 2025, six months after the proposed removal of BAT. These rules rely on Ofgem's discretion, they are untested. It is not clear how effective they will be in preventing unsustainable behaviour for which clear incentives remain for suppliers who may prioritise growth in customer numbers over short-term margins. Removing BAT before the effectiveness of these rules has been proven risks returning to the unsustainable market we saw pre-energy crisis.

As highlighted above, removal of the BAT leads to a higher average cost to serve for customers remaining on the price cap. We assume this will be reflected in the price cap allowance, creating the detriment described above. If this higher cost isn't reflected, suppliers would under-recover their costs for customers they supply under the price cap, leading to financial instability.

The price cap is set to encourage cost efficiency, with stringent cost benchmarks and an EBIT allowance based on an economic profit of zero. Competition beneath the cap can only occur based on movements in wholesale costs (which is happening today with BAT in

⁴ <https://www.energyscanner.com/how-much-can-i-save-by-switching-my-energy-supply/>

place), based on price discrimination (targeting cheaper customers to the detriment of other customers) or based on unsustainable pricing. With a stringent price cap in place, removing the BAT encourages price discrimination and unsustainable pricing; customers, particularly vulnerable customers, suffer from both.

A market which allows only the most engaged to access the best tariffs is not fair. It is not right that those who struggle to engage are excluded from the best deals. The BAT should remain in place whilst conversations about the future of price protection are ongoing, and until any reform is implemented. Rather than consulting on removing BAT earlier than currently planned, Ofgem should be taking action to extend BAT beyond April 2025 whilst a future model is developed.

Yours sincerely,

Steve Davies
Head of Regulation

Response to consultation questions

1) Do you agree with our minded-to position that Ofgem should modify supply standard licence condition SLC 22B to remove the BAT from 1 October 2024?

1. No, we do not agree with Ofgem's minded-to position. As we set out in response to Q3, the BAT continues to play an important role in protecting customers, particularly the most vulnerable.
2. As we set out in response to Q4, Ofgem's analysis that implies an overall consumer benefit does not account for several important impacts which are likely to lead to detriment, and does not reflect that any benefit is likely to be felt by only a small number of customers who are, in Ofgem's words "*more likely to be higher income, younger, male, owner-occupiers*".
3. Customers want the BAT to remain, in a survey by YouGov¹, 93% of customers said suppliers should not be able to offer their best deals to new customers only, in the same survey, 82% said they would trust their supplier less if they did so.
4. Rather than consulting on removing the BAT earlier than scheduled, Ofgem should instead be consulting on extending the BAT whilst the review of longer-term price protection continues.

2) If you consider that the BAT should remain in force until 31 March 2025, do you think the market wide derogation from SLC 22B for fixed retention tariffs should also continue until 31 March 2025?

5. It makes sense that the derogation from SLC 22B for fixed retention tariffs remains for as long as BAT does.

3) Do you have any comments on the analysis presented in section 2?

The loyalty penalty is relative, price cap does not stop customers missing out if they can't access the best deals

6. Ofgem views the price cap itself as protection from the loyalty penalty, we disagree for two reasons:
 - a) Removal of BAT means less engaged customers are likely to miss out on deals that take advantage of short-term wholesale price falls.
 - Price cap ensures customers get a fair price at any point in time. But prices move frequently, better tariffs become available frequently (and more frequently than the price cap updates). In the market today, customers can save up to 3% from the cap by switching, with these offers open to all customers because of the BAT. With the BAT removed, only new customers may be able to access these products.
 - The loyalty penalty customers see and feel is relative to other tariffs that are not available to them, it is not absolute. For less engaged customers who are excluded from cheaper deals, it will be no consolation that their tariff is still “fair”.
 - b) Removal of BAT brings a return to price discrimination and more active competition for customers some suppliers see as more desirable, at the expense of vulnerable customers.
 - In our portfolio we see differences of 3% in cost to serve when comparing the cheapest with the most expensive customers. Removing BAT allows suppliers to compete more aggressively for “desirable” customers.
 - With a stringent price cap in place, this competition is likely to focus on lower cost customers where savings versus the cap are more material (as was the case during the late 2010s when suppliers were able to grow through selective acquisition of particular types of customer).
 - This creates a two-tier market, where competition benefits only the most active, “desirable” customers. Customers in debt, with vulnerabilities or more complex servicing needs are likely to lose out.
 - This two-tier market creates a direct penalty for vulnerable customers as it pushes up the average cost of customers remaining on the cap. On the assumption Ofgem allows this cost to be passed through via cap allowances, costs will increase for the most vulnerable customers. If these costs are not passed through then suppliers will under-recover via the cap, leading to financial instability.
7. We disagree with Ofgem’s characterisation of the loyalty penalty and the price cap’s ability to prevent it. The price cap does not protect against the loyalty penalty that we or, more importantly, our customers see.

It is not clear that all suppliers will price sustainably if BAT is removed, it only takes one supplier to trigger aggressive and unsustainable pricing

8. Ofgem's assessment of the impact on supplier stability is predicated on an assumption that *"discounts offered to new customers are set at financially sustainable levels"*. This assumption needs to be explored further in Ofgem's analysis, in particular the assumption that financial resilience measures (some of which aren't even in operation yet) will prevent unsustainable pricing needs to be tested more thoroughly. History tells us that suppliers have different motivations and objectives in their businesses. A new entrant supplier looking to attract investment may well focus on growth in customer numbers above short term profit. Ofgem's financial resilience measures would not necessarily prevent below-cost pricing that could drag the rest of the industry back to unsustainable practices. Ofgem needs to explore more thoroughly the risk that removal of BAT leads to unsustainable discounts and the implications of that on the rest of the market.

Any benefits of removing BAT will be felt by a small subset of customers

9. Notwithstanding the points above questioning the existence of net benefits, Ofgem's assessment of the net benefits ignores the distributional impacts between customer groups. Any net benefit disproportionately benefits a small subset of customers only. As we outline below, Ofgem's analysis of distributional impacts highlights that people who previously engaged in the market (and are therefore most likely to benefit from removal of the BAT) are *"more likely to be higher income, younger, male, owner-occupiers"*.
10. Ofgem does not attempt to quantify this distributional effect of removing the BAT. Therefore, even if there are net benefits, these could well be (in fact, are likely to be) felt only by a small proportion of affluent customers. As we highlight above, if costs in the price cap are reflected properly, vulnerable customers would end up paying more. This distributional effect should not be ignored.

Savings from switching already exist, BAT is not preventing engagement

11. Our market intelligence showed, \pounds , customers could save \pounds versus the price cap by switching. Ofgem's chart 2.1 shows savings of over £400 available to customers in March 2024. These savings are significant and comparable (arguably greater) than savings available before 2021 that were restricted to new customers only.
12. That savings at these levels are already available, with BAT in place, and with the quarterly price cap reducing the opportunity to show savings from wholesale price falls, illustrates that BAT is not the reason for any perceived lack of engagement in the market. It is far from clear that removing BAT would lead to savings from switching at greater levels than we already see.

4) Do you have any comments on the draft impact assessment presented in section 3?

The benefits case ignores several important costs and overstates benefits

13. As we highlight above, the benefits case should not be based on an assumption that discounts are always set at financially sustainable levels. When accounting for the risk of unsustainable discounts and the broader impact of this on consumers, we suspect the benefits case for removal of BAT will be negative.
14. Removal of BAT is likely to lead to a rise in the use of third-party brokers and price comparison websites. These organisations have a clear incentive to promote exclusive tariffs for customers who use them. The cost of using these third parties has not been included as part of Ofgem's benefits case. In our current planning, we expect to have to pay 3% in commission for a dual fuel switch, this is 3%. These costs need to be considered in Ofgem's benefits case.
15. In paragraph 3.16 Ofgem says there has been a reduction in suppliers' costs through removal of MSC, providing a *"route for cheaper acquisition tariffs which does not involve penalising existing customers"*. MSC simply reflected the hedging costs of a customer leaving a supplier and passed those costs on to the gaining supplier. These costs still exist without the MSC in place, they are simply now be paid by the losing supplier rather than the gaining supplier. On the assumption suppliers lose customers to each other on an equal basis (a justification form removing MSC), removal of MSC does not provide a route for cheaper acquisition tariffs.

A stringent cap already sets tariffs at minimum levels; differentials can only come from price discrimination, wholesale cost movements or unsustainable pricing

16. Ofgem's impact assessment states: *"We expect any reintroduction of the BAT to increase differentials between suppliers' SVT and FTC offerings to new customers"*. (we assume this is referring to removal of the BAT rather than reintroduction). Ofgem does not provide any detail about where these differentials come from. If Ofgem's assumptions are true and suppliers only offer discounts at financially sustainable levels, with a stringent price cap in place which is based on zero economic profit, the only way differentials between SVT and FTC can occur is either through wholesale price movements or from price discrimination that differentiates customers based on cost to serve.
17. Where differentials occur through wholesale price movements, we see no justification for excluding less engaged customers who may not want to switch supplier from accessing these deals. We also note, as highlighted above, that these savings are available today for all customers with BAT in place.
18. Where differentials occur through price discrimination based on differences in customers' cost to serve, this has several costs that are not captured in the impact assessment. In particular, the effect of increasing the average cost of customers remaining on the price cap (because cheaper cost to serve customers have switched

away) results either in higher prices to less engaged customers via the cap, or risks to financial stability of suppliers supplying customers at a loss via the price cap.

19. Efficient price discrimination, by definition, results in zero net benefit to consumers. It simply removes any implicit cross subsidy that already occurs via the price cap. As we outline in our responses to operating cost, debt and levelisation consultation, it would be much fairer for customers for Ofgem to form an accurate view of the underlying costs to serve different types of customers, then make conscious decisions about cross subsidy between these groups using levelisation and reconciliation across the whole market, including those customers who switch away from the cap and would otherwise avoid paying.
20. Ofgem states *“We believe it reasonable to assume, however, that removing the BAT would generate further price competition, as well as greater incentives for suppliers to compete and for individual consumers to switch supplier (if the differential between SVTs and FTCs increases as a result).”* We do not agree that this is a reasonable assumption, to the extent that it is, it has detrimental impacts for less engaged customers that are not considered in the impact assessment.