Decision

Decision on the Future of the Ban on Acquisition-only Tariffs (BAT)

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Standard Licence Condition 22B, the Ban on Acquisition-only Tariffs ("**BAT**"), is due to expire by default on 31 March 2025 unless renewed as per our existing licence powers. From 14 May to 11 June 2024, we consulted on whether to remove the BAT from 1 October 2024, i.e. 6 months earlier than its current 12 month extension ("**May 2024 Statutory Consultation**").

We have carefully considered stakeholder feedback and ongoing energy market conditions, and this document sets out the reasons for our Decision **not to proceed** with our minded-to position and instead retain the BAT until at least 31 March 2025. Subject to further consultation, we are also exploring whether there is a more enduring role for the BAT, particularly while longer term decisions are made on the future of the retail market. We will shortly issue a Call for Input inviting stakeholder views on the merits of retaining the BAT in some form beyond 2025, including exploring possible reforms which will help it to operate more effectively in the interim.

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Executive Summary

Context

We have decided to change our minded-to position and retain the BAT until at least 31 March 2025. In so doing, we have had regard to the arguments presented during our consultation. We have weighted arguments regarding confidence in the market and consumer trust over the modelling of gains to active customers.

Furthermore, we also see merit in observing the BAT's impact on the market over a longer time period, as a standalone measure without the Market Stabilisation Charge in place, and consider that there is a case to be made to continue extending the BAT until longer term decisions are made about the future of the market. These decisions will include consideration of the future of price protection, including whether to include a permanent, enduring version of the BAT as a feature of the market.

We therefore intend to extend the BAT for a further 12 months (until the end of March 2026) and will shortly issue a Call for Input inviting stakeholder views on the merits of retaining the BAT for this period, including exploring possible reforms which will help it to operate more effectively in the interim whilst longer term decisions on future price protection are made. We intend to take this forward quickly and make a decision in order that we provide market participants with clarity on the medium term future of the BAT.

This decision means that the market wide derogation on fixed retention tariffs will also remain in place until at least 31 March 2025. We will consider its role, including whether it should be extended for a subsequent year or not, as part of the Call for Input mentioned above.

Our decision

We will retain the BAT for the entirety of its current extension period until 31 March 2025. We are therefore not taking forward the minded-to position from our original consultation of removing the BAT after 6 months of its current extension.

The current Market-wide Derogation from SLC 22B for fixed retention tariffs will remain in force alongside SLC 22B at least for that period.

Next Steps

We will issue a Call for Input shortly, inviting views on our intention to extend the BAT for a further year until 31 March 2026. We welcome any new or different responses that stakeholders have on extending the BAT for this period. Subject to these views, we intend to issue a further statement extending the BAT to 31 March 2026 in good time before hedging decisions need to be made for this time period.

We will also use this Call for Input to propose any changes to the BAT from 2025 onwards, including to the Market-wide Derogation on own fixed retention tariffs (not least whether this should remain in place alongside the BAT).

1. Introduction

Section summary

This section sets out the context of this Decision alongside the Consultation and Decision documents that have led to the introduction of the BAT. It also details the structure and overall headings for the remainder of this Decision Document.

Subject of this Decision

1.1. The Ban on Acquisition-only Tariffs ("**BAT**") is a mechanism which prevents suppliers from offering potentially unsustainable fixed deals exclusively to new customers. This ensures that any discounted deals available to new customers are also available to existing customers.

1.2. Unless it is renewed, the licence condition giving effect to the BAT will end on 31 March 2025, or the anniversary of this date for each year the policy is renewed. From 14 May to 11 June 2024 we consulted on our minded-to proposal (the "**May 2024 Statutory Consultation**") to remove the BAT from 1 October 2024 (i.e. 6 months earlier than its current expiry date).

1.3. This document sets out our decision not to proceed with our minded-to position and instead retain the BAT for the entirety of its current extension, until 31 March 2025.

1.4. Separately, it sets out our intention to issue a Call for Input in the coming months to seek views on renewing the BAT for another year from this date, which would thereby extend the BAT's role in the market until 31 March 2026. This will also consider the ongoing role of the existing Market-Wide Derogation. By extending the BAT for this period we aim to provide certainty and reduce the risk of damaging consumer trust while related, longer-term decisions on the future of the retail market (including whether to introduce a permanent, enduring version of the BAT) are being made. We would also use this time to observe the BAT's role and impact over a longer timeframe. This should enable us to make better-evidenced decisions on whether an enduring BAT should remain as part of the future market.

Structure of this Decision Document

1.5. This document is split into 3 chapters, with two additional appendices:

- Chapter 1 provides the context for this Decision;
- Chapter 2 sets out the case to retain the BAT until at least 31 March 2025;
- Chapter 3 sets out our proposals, stakeholder responses and Final Decision on retaining the BAT;
- Appendix 1 sets out the link to non-confidential consultation responses.

Context

1.6. The BAT was introduced alongside the Market Stabilisation Charge ("**MSC**"), as temporary market stabilisation measures in April 2022 during a period of significant market volatility and high prices. The MSC required any supplier who gained a customer to compensate the 'losing' supplier (from whom the customer was switching) for a proportion of their future hedging costs for that customer. Both measures were designed to encourage domestic suppliers to hedge demand in accordance with the price cap indexation by providing a degree of protection against losses if these hedges were stranded by a wholesale price fall.

1.7. Given their temporary nature, it was always intended that both the MSC and BAT would be lifted once market conditions improved. It was on this basis, alongside its evolving impact on market competition and the effect of other measures improving supplier resilience, that we allowed the MSC to expire from 31 March 2024[1]. However, we had already noted that the BAT's additional effects on competition, fair pricing and tariff offers warranted a separate view to consider whether there was any consumer benefit in retaining it. It was on this basis that we published our October 2023 Call for Input[2].

1.8. Our analysis of the BAT's wider role in the market to date has been predominantly focused on quantitative, economic impacts. Our assessment of these has indicated that retaining it would likely result in

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[1] Future of Market Stabilisation Charge after March 2024 | Ofgem
[2] Call for Input on the future of the BAT post-March 2024 | Ofgem

net consumer costs. In our Call for Input, we set out our view at the time that retaining the BAT was not likely to provide significant consumer benefits in relation to market stability or price protection. On this basis we published our Decision[3] to extend the BAT until 31 March 2024, but to consult on removing it from the licence 6 months later. Our May 2024 Statutory Consultation[4] set out this option (to remove the BAT from 1 October 2024) as our minded-to position, alongside the alternative option to retain the BAT for the entirety of its extension period until 31 March 2025.

1.9. Respondents to our consultation have made the case that the BAT should not be ended, citing reasons including risks to consumer trust and a longer timeframe to better observe its effects on the market ahead of making longer-term decisions on the future retail market and a possible enduring role for the BAT. We have responded to those arguments by changing our minded to position.

1.10. Our analysis in Chapter 2 sets out our view that on balance, retaining the BAT rather than removing it early will provide certainty for consumers and industry participants, as well as a chance to observe the BAT's impact over a longer timeframe while related, longer-term decisions on the future of the retail market (including whether to introduce a permanent, enduring version of the BAT) are being made.

1.11. Chapter 3 sets out our decision and next steps, as well as a brief summary of our view of the impact of changing our minded-to position on market participants' hedging strategies. We also set out the status of the Market-wide Derogation on fixed retention customer tariffs, as well as next steps in relation to it.

[3] Future of Ban on Acquisition-only Tariffs post-March 2024 decision | Ofgem
[4] Statutory consultation on removing the ban on acquisition-only tariffs | Ofgem

Our decision-making process

Consultation stages

December 2021 Consultation

1.12. On 17 December 2021, we consulted on a range of potential short-term interventions to address risks to consumers from market volatility, setting out three temporary measures that Ofgem could take in response, if we considered them to be warranted in the interests of consumers (December 2021 Consultation).

February 2022 Decision

1.13. Following responses to our consultation, on 16 February 2022 we published our Decision to introduce two measures to manage wholesale market volatility: a requirement for suppliers to make all tariffs available to new and existing customers (the BAT); and a requirement for suppliers to pay a Market Stabilisation Charge when acquiring new customers (the MSC). We also stated our intention for both of these measures to come into effect on 14 April 2022 (February 2022 Decision).

June 2022 Consultation

1.14. On 28 June 2022, we consulted on extending the MSC until 31 March 2023 and invited comments on extending the BAT to the same date (June 2022 Consultation).

August 2022 Decision

1.15. Following stakeholder feedback and an assessment of the state of the energy market, on 26 August 2022 we published our Decision (August 2022 Decision) to extend the MSC and the BAT until 31 March 2023. Our Decision also invited comments from stakeholders on what action, if any, Ofgem should take in relation to the period after 31 March 2023, when the current licence conditions for the MSC and the BAT end.

November 2022 Consultation

1.16. On 25 November 2022 we consulted on proposals to extend the MSC and the BAT until 31 March 2024, with the licence mechanism amended to enable both measures to be renewed on an annual basis (November

2022 Consultation). We proposed to retain the existing power for the Authority to end the MSC at an earlier date.

February 2023 Decision

1.17. Following stakeholder feedback on our November 2022 consultation and an assessment of the state of the energy market, on 3 February 2023 we published our Decision (February 2023 Decision) to extend the MSC and the BAT until 31 March 2024. New powers were granted to enable the Authority to enable both measures to be renewed on an annual basis.

October 2023 Decision

1.18. Following a review of market conditions, the MSC's evolving impact on competition in the market and the effect of other policy measures on supplier resilience, we published our intention to allow the MSC to expire at the end of its extension period in March 2024. In this Decision we noted that we would conduct further analysis on the BAT's future role before considering whether to extend its role beyond 31 March 2024.

October 2023 Call for Input

1.19. On 27 October 2023 we consulted on whether to retain the BAT as a standalone measure while the price cap remains in place (October 2023 Call for Input). Specifically, we invited views on the BAT's existing and likely future role on market stability as well as its impact on competition, fair pricing and tariff offerings.

February 2024 Decision

1.20. On 23 February 2024, we published our Decision (February 2024 Decision) to exercise our existing powers to extend the BAT until 31 March 2025. As a result of internal analysis work, we set out our view that the case for retaining the BAT as an enduring market measure was not compelling for either market stability or price protection reasons and that, on that basis, we did not intend to retain the BAT beyond 31 March 2025 (assuming the price cap remained in place). Alongside that decision we announced that we would issue a statutory consultation on whether to remove the BAT following 6 months of this extension.

May 2024 Statutory Consultation

1.21. Following our February 2024 Decision, we consulted (May 2024 Consultation) on whether to remove the BAT from 1 October 2024, with a minded-to position that we would do so instead of allowing the existing extension to continue until its expiry on 31 March 2025.

1.22. We received 26 responses from stakeholders – 10 suppliers, 4 consumer groups, 6 consumers, 5 Price Comparison Websites/Third Party Intermediaries (PCWs/TPIs) and 1 supplier trade body. 17 were marked as non-confidential and these can be found on the following page of our website:
May 2024 Statutory Consultation - Statutory consultation on removing the ban on acquisition-only tariffs | Ofgem

1.23. We have carefully reviewed these responses and used them to inform our decision. This document sets out our decision, rationale and consideration of responses.

Related publications

1.24. The main documents related to this Decision are:

May 2024 Statutory Consultation - Statutory consultation on removing the ban on acquisition-only tariffs | Ofgem

General feedback

1.25. We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this report. We'd also like to get your answers to these questions:

- Do you have any comments about the overall quality of this document?
- Do you have any comments about its tone and content?
- Was it easy to read and understand? Or could it have been better written?
- Are its conclusions balanced?
- Did it make reasoned recommendations?
- Any further comments

1.26. Please send any general feedback comments to stakeholders@ofgem.gov.uk

2. Case to retain the BAT until 31 March 2025 and consult on its further extension

Section summary

This section provides an analysis of our decision to retain the BAT for the full period of its existing extension, thereby not proceeding with our previous minded-to position to remove it in October 2024. Further, it sets out our intention to consult in coming months on extending the BAT for another year (until 31 March 2026) via our existing licence powers.

Context

2.1. In this section, we set out why on balance we now consider that the BAT should be retained for the entirety of its current extension period, thereby not proceeding with our minded to position from the May 2024 Statutory Consultation.

2.2. Furthermore, we set out our intention to consult in coming weeks on extending the BAT for a further subsequent year, which subject to consultation, would thereby keep the BAT as part of the market until 31 March 2026. Our Call for Input will also cover removal or reform of the Market-wide Derogation on fixed retention tariffs.

Our proposals

2.3. Our Statutory Consultation presented two options – either proactively removing the BAT from the licence after 6 months of its existing extension (i.e. from October 2024) or allowing it to continue until its pre-existing expiry date of 31 March 2025.

2.4. Our minded-to position was to remove the BAT at 6 months, given the perceived economic benefits from our internal analysis of driving a faster return to price and non-price competition. We considered that retaining the BAT would result in net consumer costs.

2.5. For disengaged customers, our view was that any economic disbenefit they faced was likely to be minor (possibly non-existent) and that they would ultimately be protected by the price cap as an overarching safeguard against discrimination and unfair pricing.

Stakeholder feedback

Suppliers and supplier trade body

2.6. Nine out of ten supplier respondents and the supplier trade body were in strong opposition to removing the BAT. Most considered it was unwise from a stability perspective to remove it so soon after the MSC's removal and before supplier financial resilience measures are fully implemented. Some suppliers disagreed with our view that removing the BAT would open up more competition and better overall consumer outcomes; one argued that it would foster a two-tier market where competition would likely benefit active and 'desirable' customers, with the most vulnerable having to pay for the increased average costs to serve those remaining on the cap.

2.7. The majority of suppliers considered that the BAT and price cap had different functions and therefore did not agree with our argument that price protection was largely duplicated by having both measures in place at once.

2.8. There was an overall consensus on retaining the BAT at least until a decision was made on the future of price protection. Two suppliers disagreed with our contention that the BAT negatively impacted service quality and innovation, instead arguing that the removal of the BAT created uncertainty and hampered longer term customer trust and relationships that could otherwise encourage deployment of low carbon technology.

2.9. The supplier strongly advocating for the BAT's removal (therefore supporting our minded-to position) based their arguments on the "material commercial implications" arising if Ofgem reversed its decision owing to October hedging decisions being made based on our minded-to position.

Consumer groups

2.10. All four consumer groups were opposed to our minded-to position to remove the BAT.

2.11. All respondents were in consensus that the BAT had delivered material benefits for market stability and price protection so far, arguing that there would be corresponding negative consumer outcomes if it were removed.

2.12. All respondents also agreed that the BAT should be extended at least until there was a holistic approach to future price protection, with a strong sentiment in favour of making the BAT a permanent feature of the energy market in the longer term.

2.13. Respondents felt particularly strongly about the potential negative impacts for consumers in debt and on consumer trust in the market if the BAT was removed, at least partly on the basis that a supplier's existing customers would not have access to their best deals. Respondents did not consider that these issues were adequately reflected in our Statutory Consultation.

Third Party Intermediaries, including Price Comparison Websites

2.14. All five TPIs/PCWs unanimously supported removing the BAT as early as possible.

2.15. Collectively they mostly agreed with our analysis of the BAT's impact on market stability, with one respondent going as far as considering that the BAT had worsened market stability by preventing falling wholesale prices from being passed on to consumers. There was a particularly strong emphasis in all responses on the unwelcome impacts of the BAT on market competition.

2.16. One respondent disputed that the BAT's removal could negatively impact consumer trust – they argued that the opposite was true given better availability of competitive prices and improved innovation and service levels (which, by this argument, the BAT currently prevents). They also disagreed that protected groups would suffer any greater disbenefit from the BAT's removal, given that it was never intended to provide protection to these customers (also noting that the price cap is in place and capable of providing this).

2.17. One respondent specifically highlighted the lack of transparency of fixed retention deals, with suppliers limiting PCW access to these, and urged Ofgem to enable these to be shared in order to improve transparency.

Ofgem response

2.18. We consider that the removal of the MSC has not proved particularly disruptive to the market. In our consultation we concluded that the stability risks of removing the BAT were moderate, and the responses have not provided any additional evidence that the risks are in practice higher than this. The stability risks of removing the BAT have therefore not played a strong role in our decision-making.

2.19. Our minded-to position was based on an assessment that any potential negative impact on consumer trust of removing the BAT was acceptable in the context of benefits for active consumers. We have noted the strong arguments from both suppliers and consumer groups that this would not be the case and that the impact on consumer trust would be worse than we were expecting.

2.20. Separately, we acknowledge (as we have done previously) that recent market conditions are likely to continue to have been affected by the impact of the energy crisis and that we must be cautious in drawing definitive conclusions from market participant behaviour under the existing BAT. The introduction of financial resilience measures from March 2025 will likely help mitigate overly aggressive competitive practices; however their impact, too, cannot be fully and reliably measured until after they have taken effect.

2.21. Some suppliers and consumer groups have criticised the impact that removing the BAT may have on loyal customers. Ofgem's principal objective is to protect the interests of all consumers and in doing so it has to consider the impacts on both loyal customers and those who are more active switchers.

2.22. Some pro-BAT respondents have also argued that we have underweighted scenarios where the BAT drives benefits, both through prices below the price cap for loyal customers and incentives for non-price competition. Rewards for new customers do have a role in compensating consumers for actual or perceived switching costs, which can drive increased engagement and strengthen incentives for non-price service improvements. However, given the limited timescale since the crisis we recognise it is too early to say with confidence that a market with BAT could not also deliver these benefits in a different way.

3. Final decision

Section summary

This section sets out Ofgem's final decision on the future of the BAT in the short-to-medium term, taking into consideration stakeholder responses in light of our Statutory Consultation. It also sets out the procedural next steps and explains what this means for the existing Market-wide Derogation.

Final decision

3.1. Broadly speaking we consider that the core of our quantitative analysis informing the May 2024 consultation remains unchanged. However, the dynamics of the market as we emerge from the wholesale price crisis remain inherently uncertain.

3.2. As highlighted below we are persuaded by arguments that the potential qualitative benefits of retaining the BAT, including in terms of consumer trust, should be given more weight. We are also of the view that further time observing the BAT will be helpful in any event, as we consider the future design of the market, therefore we intend to keep it in place until at least 31 March 2025.

3.3. We also recognise the arguments and evidence for keeping the BAT for longer than this. However, we have not given all stakeholders an opportunity to comment specifically on that point yet. We will therefore do so alongside any proposals for reforms to the BAT's operation (e.g. to the Market-wide Derogation) as part of our upcoming Call for Input.

Data limitations and qualitative factors

3.4. We are mindful of broader and more qualitative points raised around consumer trust, through the perception of an unfair market where only the most active switchers benefit from the best deals. There is a reasonable concern that perceptions of a market with short-lived acquisition tariffs and end-of-contract price rises could reduce trust, which in turn could have adverse effects on effective competition in the medium-term.

3.5. We are also mindful of the short timeframe that has been available to observe the BAT's impact in a non-volatile market and the potential benefits of allowing greater time to observe its operation as a standalone measure.

3.6. In our May 2024 consultation we clearly flagged the limitations of that existing data to assess the BAT's impact up to now. Until March the BAT had only existed as a complement to the Market Stabilisation Charge, which also impacted suppliers' behaviour, hedging strategies and incentives to compete.

3.7. The BAT has also only been in place during unusual market conditions. The market prior to that point was also markedly different to the one we will now see, with a higher number of aggressively competitive and poorly capitalised suppliers. Many of these have since exited the market. Moreover the impact of minimum capital requirements, set to be introduced from March 2025 as part of a broader package of financial resilience measures, cannot yet be fully considered.

3.8. We acknowledge that a longer timeframe would improve the robustness of our modelling as well as the certainty of any conclusions we could draw. We would be better able to assess the impact on vulnerable groups, including consumers in debt. Further observation of the BAT in practice under regular market conditions may also benefit Ofgem as we consider the option of an enduring BAT as part of wider changes to the retail market in coming years.

3.9. We considered these factors of consumer trust, data limitations and the potential benefits of further time analysing the BAT's role in the market as part of our original consultation. However, in light of subsequent consultation responses and given the range of stakeholder groups flagging these issues, we have placed greater weight on them than previously. **In so doing, we have decided to retain the BAT for the entirety of its current extension period, rather than take up the option of removing it after 6 months.**

3.10. We are therefore not taking forward the minded-to position set out in our May 2024 consultation. Ultimately, we have considered that the merits of assessing the BAT's impact over a longer time period, as well as of avoiding risk of eroding consumer trust though the perception of an unfair market that favours only the most active switchers, are sufficient to support retaining it in place in the short to medium term.

3.11. We appreciate that some suppliers may have made October hedging decisions based on our previous minded-to position. Market prices and switching rates that we have observed since the start of the hedging window mean that, at the moment, we expect any impacts on suppliers of re-hedging in line with this decision would be minimal. In any event, it is always the case that our minded-to positions can change in light of consultation responses and that is a fact we expect all suppliers to build into their hedging decisions.

3.12. Nonetheless, as noted previously, we are also keen to provide certainty and consistency in relation to the BAT's status in the intervening period before longer-term decisions on the future of the retail market are made. We will therefore shortly be inviting any new or different views to those already submitted to us for the BAT's extension to the 2025-26 period as well as any reforms, e.g. to the Market-wide Derogation on fixed retention tariffs, which will help it operate more effectively whilst longer term work on the future of price protection carries on. We will aim to conclude that work in order to give all stakeholders certainty for the position beyond April 2025 as soon as possible.

Next steps

3.13. To confirm, our decision is that the BAT will remain in place rather than be removed after 6 months of its existing extension period (i.e. it will not be removed in October 2024).

3.14. Furthermore, on the basis of arguments presented above, we will issue a short Call for Input in the coming weeks seeking views on our intention to retain the BAT further until 31 March 2026 whilst longer-term decisions are underway for the future of price protection.

Market wide derogation

3.15. As detailed in our February 2024 Decision, the current Market-wide Derogation from SLC 22B for fixed retention tariffs will remain in force alongside SLC 22B until at least 31 March 2025. We will consider whether the derogation should remain in place or be removed as part of the Call for Input mentioned above.

4. Appendix 1: Consultation responses

This appendix lists and provides the link to all non-confidential stakeholder responses to our May 2024 Statutory Consultation that we have published alongside this Decision. These are available on our website and can be accessed via the link below:

Non-confidential stakeholder responses to our May 2024 Statutory Consultation - Statutory consultation on removing the ban on acquisition-only tariffs | Ofgem