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Dear Daniel

**Uswitch response to Ofgem's consultation on the Future of the Ban on Acquisition-only Tariffs (BAT) beyond March 2025**

Uswitch is disappointed that Ofgem intends to extend the BAT for a further 12 months beyond March 2025 and that it could remain in place beyond this. We believe the BAT should be brought to an end as soon as possible on the basis the economic evidence suggests it leads to higher prices for consumers than would otherwise be the case, while the default tariff cap remains in place.

If the BAT is to remain in place, we welcome Ofgem considering ways it could operate that would minimise its negative impact on the market and consumers. However, in finding ways to improve the BATs operation, Ofgem should not limit its thinking to only a future enduring version of the BAT. Ofgem could and should make changes immediately where doing so would bring benefits to consumers.

We set out our key points in response to Ofgem's consultation below and respond to the specific consultation questions in Annexe 1.

**Balance of evidence still strongly favours removal of the BAT**

We do not see any strong evidence base to support the supposed qualitative benefits of retaining BAT relating to consumer trust. If Ofgem seeks to rely on these arguments, it should commission its own independent consumer research to test these arguments mindful of the quantitative trade-offs.

The assertion that removing the BAT would create an unfair market that favours only the most active switchers is flawed. Notwithstanding that the default tariff cap is the primary protection against this risk, this argument assumes that; 1) suppliers are offering good retention offers under the BAT; and 2)

that suppliers' response to the BAT not being in place would be to withdraw good deals available for existing customers. It is not the case that all suppliers offer good existing customer deals today under the BAT, meaning that some customers are blocked from good retention outcomes with their existing supplier. It should also not be assumed that under the BAT suppliers would not be incentivised to offer good deals to existing customers, in fact, an increased threat of churn due to other suppliers offering good deals is more likely to incentivise better attempts at retaining existing customers through better deals.

The BAT limits the incentives on suppliers to offer better prices to both new and existing customers and therefore risks leading to diminishing service quality and higher prices across the market.

The BAT was designed to be a short-term measure to stabilise the retail market in the face of wider volatility and regulatory interventions. The reduction in wholesale market volatility means that — even if it ever was — the BAT is no longer needed.

Ofgem is considering retaining BAT on a more enduring basis as a price protection measure; however, Ofgem's own economic analysis found it is not effective at fulfilling this role. This analysis found the BAT reduces competition in the market and is therefore likely to increase net costs to consumers. Despite Ofgem's change in position, which has led to the support for the BAT outlined in this consultation, the reality of this economic analysis remains unchanged.

BAT is not necessary to offer additional protection to consumers who are not engaged with the market. The default tariff cap already provides protection for disengaged consumers. The BAT does not change this level of protection, instead it reduces the chances of the market offering prices below this cap. While Ofgem may wish to consider the role of BAT in a regulatory framework that does not include the default tariff cap, retaining it for the purposes of observing the BAT's operation while the default tariff cap is in place will not provide any meaningful evidence base as the market dynamics in both scenarios are materially different.

**Operational improvements can be made to the BAT and these should be made immediately if it is to remain place**

We are pleased that Ofgem acknowledges current issues in how the BAT operates in practice and is open to potential changes to address this, including the inconsistent approach to how the BAT has been interpreted and enforced. However, we are concerned that Ofgem is suggesting this is a longer term review.

Many of the issues with the operation of the BAT are due to choices Ofgem has made in its approach to enforcement, rather than the underlying Supplier Licence Conditions (SLCs). As such, Ofgem could amend its approach and interpretation in a more agile manner, to better get benefits to consumers. We strongly suggest Ofgem takes this approach, rather than attempting to 'long grass' the opportunity to improve the BAT, and therefore unnecessarily perpetuating a suboptimal consumer outcome.

While the BAT remains in place, we would welcome the opportunity to work with Ofgem to find ways to minimise its negative impacts on consumers – both on an individual customer basis, allowing customers to access good deals with longer term price certainty than afforded by the price cap; and, on a wider market basis, driving consumer engagement in the market which is a vital foundation for the transition to a decarbonised power system. Permitting introductory offers would be an obvious and effective way of doing this – as it is clear for customers to understand, accesses supplier marketing budgets to provide incentives and works separately to the hedging risks behind the consumption based tariff rates.

We believe permitting this type of new customer activity is a relatively minor change that would bring competitive and consumer benefits. Therefore Ofgem should move to permit this as soon as possible, under the scope of existing licence conditions.

**Ofgem should consider the BAT in the context of objectives for the future retail market**

As highlighted in the recently published NESO report, achieving clean power by 2030 will require consumers and devices at some scale to respond to price signals through the retail market in the coming years. Implicit in this is a need in the regulatory framework to be comfortable with consumers exposed to incentives to engage and change behaviour.

Ofgem has an opportunity to support a stronger foundation of consumers engaging with the energy market, as a stepping stone to this deeper level of engagement needed in the coming years. Retail product and marketing innovation will be required to encourage consumers to move to more innovative tariffs and change consumption behaviour at scale. While this goal would be best served through removing the BAT entirely, permitting of new customer incentives may also support increased speed of take-up.

Yours sincerely

A handwritten signature in blue ink that reads 'Richard Neudegg'. The signature is written in a cursive, flowing style.

Richard Neudegg  
Director of Regulatory Affairs

## **Annexe 1 – Response to consultation questions**

### **1. Do you agree that the BAT should be extended for another 12 months post 31 March 2025, i.e. until 31 March 2026?**

No – there are several reasons why Uswitch disagrees that the BAT should be extended for another 12 months post-March 2025.

#### ***BAT no longer serves its original purpose***

The BAT was intended to be a short-term measure to force retail market stability in the face of wider market volatility and regulatory policy interventions. The reduction in relative volatility in the wholesale market means that – even if there ever was – there is no longer a need for the BAT. As a matter of good regulatory practice, it should now be removed as soon as possible.

Now that wholesale prices have stabilised, suppliers should be incentivised to compete on the quality and cost of their offer to consumers. However, the current regulatory settlement in the retail energy market limits this. The BAT softens the incentives on suppliers to offer competitive tariffs both to new and existing customers because the incentive to retain margin on existing customers is greater than the incentive to acquire new customers for the majority of suppliers in the market due to current market structure. In aggregate operating across the market, the BAT can only lead to diminished service quality and higher prices than would be the case without it in place.

#### ***BAT is not suitable as a price protection measure while the default tariff cap is in place***

Ofgem has said it is considering an enduring BAT chiefly as a price protection measure. However, it is not successful on these terms and its long-term place in the market cannot be justified on this basis.

Ofgem's own economic analysis of the BAT has found that it is not successful as a price protection measure. This analysis found the BAT reduces competition in the market and is therefore likely to increase net costs to consumers because it artificially inflates prices. Despite Ofgem's change in position, which has led to the support for BAT outlined in this consultation, the reality of this economic analysis remains unchanged. While the BAT was designed to create a more even playing field for consumers, it actually drives up prices across the market.

The BAT is not necessary to offer additional protection to inactive consumers. The default tariff cap is the primary tool in place for price protection in place at the moment. The BAT does not change this level of protection, instead it reduces the chances of the market offering prices below this cap.

While there is, rightly, a debate about the future of retail price protection more broadly, including the effectiveness of the default tariff cap, this can only meaningfully take place as part of a full, open process of policy development from both the Department for Energy Security and Net Zero and the regulator. Allowing temporary measures to become permanent by default, especially when they are no longer required, is not an appropriate way to shape this work.

**2. Do you agree with the reasons set out in this section supporting our proposal to extend the BAT until 31 March 2026?**

***Harms for indebted customers are not solved for through the BAT***

We do not agree that the BAT offers a benefit to both vulnerable and indebted consumers.

All customers, including those vulnerable and indebted could suffer from softened competitive conditions caused by the BAT. Ofgem is wrong to argue that the BAT allows vulnerable and indebted customers to access the best deals from across the market, if the best deals are not available at all

While it is in place, the default price cap is the primary price protection measure currently in place. Removing the BAT would not change vulnerable customers' circumstances or reduce the protection they currently receive. Whilst there is a wider debate on how the Government and regulator can deliver price regulation that efficiently protects inactive customers, this is distinct from whether the BAT should be retained, because it does not meaningfully protect inactive consumers from higher prices.

While we appreciate that there are some constraints on customers in debt that prevent some customers from switching suppliers, we do not consider that retention of the BAT is an appropriate way to redress the harm of this. The BAT itself does not prevent discrimination within a supplier's customer base under SLC 22B.2(d). Should Ofgem wish to address the wider issue of indebted consumers being prevented from switching, it should separately review the appropriateness of SLC 14.

***Insufficient evidence around consumer trust arguments***

We disagree that removing the BAT will decrease consumer trust. Should Ofgem rely on this as a central part of its argument, it should seek to conduct its own independent consumer research that seeks to test the question in view of the potential trade-offs. It is equally possible that by softening the market softens the take-up of fixed tariffs. This in turn would lead to more households that would otherwise be the case being exposed to frequent quarterly default tariff price changes under the price cap. High frequency and low certainty of future prices could arguably pose greater harm to consumer trust in the energy market in the coming period than the presence of the BAT itself.

***Further observation time is of limited incremental benefit***

The BAT was introduced as a temporary measure to restore stability in the market alongside the Market Stabilisation Charge (MSC). As this was always envisaged as a temporary measure, the burden of evidence should be on Ofgem to prove that there is a clear case to retain it. In our view, it is not appropriate to retain the BAT to test its benefits, particularly when Ofgem's analysis has already found it is on balance, likely to have a negative impact on consumer bills.

Ofgem's earlier analysis of the BAT found that it did not succeed on its own terms, and instead reduced competition in the market and increased costs for consumers. This indicates that Ofgem already felt that it was possible to make an assessment on how effectively — or, as the case was,

ineffectively – the BAT was functioning, and this analysis has suggested it is counterproductive as a price protection measure.

More broadly, given that Ofgem has already committed to extending the BAT beyond its previous October 2024 'minded to' position, it already has a longer window in which it can assess its effectiveness and draw any observations it wishes to relating to the BAT's potential use under a future retail regulation framework. In that sense, it is not right to think of assessing the BAT's effectiveness as a useful justification for continuing with it beyond March 31 2025.

In addition, Ofgem should ensure that, throughout the BAT's remaining period in operation, it is transparent with market participants about its impact, providing ongoing, up to date evaluation of its impact on pricing and competition. This should then transparently inform any decisions made about the future of the BAT.

### ***Consistency and clarity while long-term decisions are made on the future retail market***

Upcoming strategic decisions on the wider energy market are not a reason to retain the BAT within the current framework. Successive governments have considered reforming the retail energy market for some time, but that is not a reason for the market to remain in stasis. More substantive reforms are also a matter for the Department for Energy Security and Net Zero, not just Ofgem. As broader reforms are not entirely in Ofgem's gift, it would be inappropriate to allow the market to be artificially softened, to the detriment of innovation developments and better consumer pricing outcomes, while awaiting potential legislative developments that may or may not come to pass in the medium term.

### **3. Are there any other factors which Ofgem should consider, when determining whether or not the BAT should be extended post-March 2025?**

As the energy regulator, Ofgem has to protect the interests of existing and future customers, as well as promoting effective competition. Ofgem's own analysis found that the BAT undermines these two principles – driving up prices because it reduces competition. This also goes against the Government's wider objective to use smart and strategic regulation to protect consumers and drive down prices.

Removing the BAT would increase the number and competitiveness of fixed-term tariffs in the market, allowing consumers to get longer-term and lower-priced deals, driving down their energy costs while offering greater security. It will also increase the incentive for suppliers to compete on the quality and cost of their offering. Under these conditions, suppliers would have greater incentives to proactively support their existing customer base, to reduce the risk of churn, leading also to better outcomes for existing customers.

### **9. Are there practical and/or operational difficulties with how the BAT functions at present? Where possible, we would also welcome any perspectives on how these may be resolved in any future enduring BAT.**

### ***Opportunities to amend Ofgem's BAT enforcement approach immediately***

In the meantime, we want to work with Ofgem to address the problems with how the BAT functions to minimise the negative impact of the BAT on consumers and the market. This includes the regulator's inconsistent approach to how the BAT has been interpreted and enforced, which in our view has extended the scope of the BAT beyond the letter of the SLCs, for example, in effectively banning suppliers from offering new customer incentives even when these could be argued to be separate from the tariff itself.

Changes can and should be made as soon as possible to improve outcomes on an individual basis (i.e. to ensure customers can access good deals that enable fixing at decent rates to avoid the uncertainty of the cap change frequency) and market-wide basis (i.e. to keep driving consumer engagement in the market which is a vital foundation for the transition to a decarbonised power system).

### **Permitting new customer incentives will promote consumer engagement with limited risks**

In practice this means making clear that suppliers can offer new customer incentives (for example, cashback type incentives, as is very common and familiar to customers in other household service sectors) under the BAT. Ofgem should be comfortable with this from a market stability perspective, as funding of these sorts of incentives are often drawn from supplier general marketing budgets, not from the core hedged tariff costs. This benefits in that it puts money otherwise spent often on brand advertising, directly in the hands of consumers while also avoiding any ongoing hedging exposure or stability concerns from discounted tariffs.

From a technical point of view, we believe these changes are within the scope of existing licence conditions - in that Ofgem can interpret the definition of Tariff in the SLCs for the purposes of SLC 22B as not including cashback type incentives in the definition of Tariff in that it can be a reward for joining the supplier for a new customer rather than being related to the particular tariff. Ofgem also has the option of affording the flexibility to offer these sorts of incentives under SLC 22B.3.

On this basis we think it is unnecessary for Ofgem to limit consideration of this to a future version of the BAT. Ofgem can and should use this current consultation process and its coming statement to make an interpretation that permits new customer incentives, separate from the tariff standing charge and unit rates and therefore outside the scope of the tariff, under the current SLC framework.

### **Market-wide Derogation**

- 4. Do you believe that the existence of the Market-wide Derogation, and the ability of suppliers to offer bespoke retention-only deals, is consistent with the principle of consumer fairness within the retail market?**
- 5. Do you believe that the Market-wide Derogation has (or is likely to have) a significantly positive or negative impact on consumer interests, or on competition within the retail market? Please provide supporting evidence wherever possible.**

- 6. Are there any other factors which should be considered when looking at the impact of the Market-wide Derogation on the market?**
- 7. Do you agree with our proposal to retain the Market-wide Derogation until March 2026, and our reasons therein supporting this proposal?**
- 8. Would you recommend any changes to the operation of the Market-wide Derogation (assuming that it was being retained for the longer term)?**

*All of these questions have been answered as a single group.*

Uswitch does not have a strong view on whether Ofgem retains the Market-wide Derogation as it is not clear any changes would make significant difference to current supplier incentives and therefore to customer outcomes either way. Although in the initial period post-crisis there was evidence that some suppliers offered tariffs to existing customers only, this is less common at present. If the BAT and Derogation remains in place, Ofgem should continue to monitor any impacts or unintended consequences and act as necessary.

More broadly, we highlight that Ofgem should not assume just because the Derogation is in place that all customers have access to good fixed deal options from their existing supplier. Where suppliers do not have a strong desire to acquire new customers, and are facing limited churn of existing customers due to softened competitive conditions, they have very limited economic incentives to offer existing customer deals that would generate a smaller margin than they would achieve in the status quo.