

Addressing undue discrimination: final proposals

Response to Ofgem's consultation

George Yarrow, Chairman, Regulatory Policy Institute

There is almost a consensus among economists familiar with competition and energy market issues that, on the basis of best available knowledge, Ofgem's proposals to "address undue discrimination" can be expected to have harmful consequences for consumers and for competition. Ofgem has nevertheless tenaciously persisted in its views, for reasons that are better left to others to identify and explore, but which I suspect will cause few surprises to students of regulation and of regulatory failure and/or of organisational behaviour.

The relevant arguments have been articulated both outside and (as avid readers of Authority minutes will already know) inside Ofgem/GEMA, and there is little good to be had from repeating them again here. For the record, however, I would like to express my agreement with the succinct and lucid views on the central issues which have been expressed in writing by Professor Stephen Littlechild, by Professor Sir John Vickers and by Professor Catherine Waddams. Similar arguments have also been presented and developed in a number of other consultation responses, which have provided further warnings to Ofgem about the harmful consequences of what it is proposing to do.

I will, however, add one point. Ofgem has recently expressed a degree of satisfaction in relation to the Competition Appeal Tribunal's Judgment in a case involving anti-competitive effects of conduct in the gas metering market, including in relation to the substantial financial penalty that was imposed. It is all the more surprising therefore that, simultaneously with that case, Ofgem itself has developed a policy whose implementation can be expected to have harmful, anti-competitive effects that are significantly greater in their severity than those identified in gas metering.

This conduct points to a deep incoherence/inconsistency in policy toward competition, which appears to have developed over the past fifteen months or so. Until the position is rectified, avoidable regulatory uncertainty will persist.

13 May 2009