

Assessing undue discrimination

Response to Ofgem consultation by Professor Sir John Vickers

1 May 2009

1. I wish to make two points in response to the Ofgem proposals published on 15 April 2009 to prohibit undue discrimination in any terms and conditions offered to customers in GB energy supply markets (refs 42 and 43/09).

Inappropriate and misleading reference to a paper of mine

2. First, I object to the statement at paragraph 5.21 of the impact assessment that “Vickers outlines that in circumstances where price discrimination causes detriment to consumers' welfare, criteria such as distribution of wealth can be used to determine whether price discrimination is undue”. That is not at all the point of – or a point in – the cited paper. Indeed where I comment, in footnote 20, on distributional issues, it is to *question* whether regulatory policy is well-suited to distributional aims.
3. The point of the paper as regards markets with competition – i.e. case at hand – was to warn *against* intervention. To quote from page 185:

“First, in competitive conditions, price differentiation may well be cost-justified (and so not discrimination) but the regulator/competition authority might have limited cost information. Second, the welfare gains even from optimally targeted bans on discrimination are unlikely to be large. Third, the costs of policy discretion are likely to be considerable, not least in terms of the risks of excessively zealous intervention, and lobbying by would-be beneficiaries of intervention. In sum, price discrimination in competitive conditions (i) can happen, (ii) should not be presumed to be undue.”

4. I would be grateful if you would correct the record.

Bad policy

5. Second, and far more important, in accordance the quotation above, I believe that the proposals are likely to be detrimental to consumers and therefore bad policy. Banning price discrimination stops important kinds of price competition – for example, regional incumbents challenging one another – and so perversely can blunt competition and help firms sustain higher prices to consumers in general.
6. I urge Ofgem not to score this own goal.