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Dear Leonardo

Consultation on the process for updating the default tariff cap methodology and setting maximum charges

Thank you for the opportunity to respond to your consultation on the process for updating the default tariff cap methodology and setting maximum charges.

Ofgem is proposing to give itself the power to amend the cap outside of the routine six month cycle where exceptional circumstances occur. This power would be introduced via a licence modification and Ofgem claims it would be used only in circumstances which are rare and where high impacts would arise without urgent action. Any amendments made using this power would be prospective rather than retrospective and would apply from a specified point for the remainder of the cap period. We assume that any amendment to the cap would be limited to recalculation of the cap level rather than any more fundamental changes.

We comment on the following points in turn:

1. The case for change
2. The exceptional circumstances test
3. The practical side of the proposal

1. The case for change

Ofgem's proposal is intended to help manage the risks its price cap confers on the retail market. Under the current price cap design, efficient and well run suppliers have suffered huge losses that threaten their viability, whatever their size, and many suppliers have failed at a cost to the consumer and to confidence in the retail market.

This is one of a number of ongoing discussions and consultations aimed at addressing these circumstances, ranging from amending different elements of the current price cap

to more fundamental reform of the price cap design, including options to accommodate more complex future tariffs and time of use elements.

As might be expected for a power which is only intended to be used in truly exceptional circumstances, we struggle to see scenarios in which it might be relevant. Therefore, while we are not opposed in principle (provided the right safeguards are in place), we consider Ofgem should focus on delivering fundamental reform to the design and implementation of the price cap based on clear principles and objectives for the cap (a fair price for customers, addressing the loyalty penalty, maintaining the ability to switch, enabling supplier and customers to innovate and collaborate better to achieve net zero etc). Ofgem's priority should be amending the price cap to something that is more flexible and impacted less by circumstances.

If Ofgem were to progress with this proposal we consider that it must only be used in truly exceptional circumstances.

2. The exceptional circumstances test

The test proposed by Ofgem is "events which meet the exceptional circumstances threshold" and includes the following:

- a) The event is rare (rarity in frequency or scale are mentioned).
- b) Without urgent action there would be a high impact (materiality, irreversible effects or systemic consequences are mentioned as well as large impacts on consumers).

Notwithstanding our views above, the threshold described appears to be reasonable in only allowing changes in truly exceptional circumstances. We see the need for a balance between certainty and the ability to act in exceptional circumstances. However, it is difficult to envisage how it might work in practice without a more detailed description of how Ofgem would apply these tests. An example of how Ofgem might have used this power (had it been available) during the current wholesale price rises, would help in this regard.

3. The practical side of the proposal

We think Ofgem needs to give further consideration to the practical side of the proposal, and the timelines associated with its use of the power. For example:

- Ofgem assessment: When an exceptional event occurs, Ofgem would need time to consider the circumstances, assess the "rarity", analyse the level of impact and consult on whether the circumstances are exceptional. There would then need to be time to consult on its assessment and make a decision. We consider that at least six weeks is likely to be required from the event to decision, but would be interested to understand Ofgem's view of the timetable.
- Supplier activity: This proposal would cover circumstances of both price increase and decrease, Ofgem has not taken into account the need for suppliers to update prices and, in the case of a price increase, give customers reasonable advance notice of the amended prices by letter / email before their prices can be increased. It is very resource-intensive to do this, and we do not consider the internal process to update prices within our systems can be done in under three weeks. Where advance notice is required, dispatch of communications takes a further week at least and possibly more for customers who need a letter. All of this activity has a cost and resource

impact, most sharply felt for the wider activity required for price increases where other challenges could relate to securing print and call centre resource at relatively short notice. Our assessment is that a minimum of six to eight weeks is realistic from the date the new price cap is announced to the effective start date of the new prices.

In total, we think this is a twelve week minimum timescale to undertake all the required work to ensure any change meets the criteria Ofgem has set for a change outside of the normal six month period and ensure customers are appropriately informed of the change. It would be helpful to understand how Ofgem sees the timescales working so as to assess how practicable it would be for Ofgem to use this power.

Overall, we are not yet convinced that this proposal is realistic or likely to be effective. Given the serious harm currently being experienced by suppliers, consumers and the retail market, we would prefer Ofgem's resource to be directed at modifying the methodology of the price cap.

Yours sincerely,



Richard Sweet
Head of Regulatory Policy