

Friday 30 December 2022

## **Statutory Consultation on extending the Market Stabilisation Charge and the Ban on Acquisition Tariffs**

Retail Team, Ofgem  
retailpolicyinterventions@ofgem.gov.uk

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### **Summary**

We appreciate that the Market Stabilisation Charge ('the charge') is performing a role to mitigate the special and potentially very expensive risk that undercutting via fixed tariffs, on the back of a fall in wholesale prices, could destabilise the retail energy market again and jeopardise recovery of the exceptional costs accumulated in the crisis period.

However, there is an emerging problem - despite Ofgem's acknowledgement that "we do not consider it to be a suitable mechanism to be an enduring part of the regulatory framework" - that the direction of travel seems, by degrees, to be going down the path of embedding the charge into the market as a long-standing distortion.

The charge also suffers from a fundamental design flaw, which was tolerable when it was brought in as an emergency intervention but will have to be addressed if it is to endure for multiple years. Specifically, the charge is not targeted at the stated risk of when fixed tariffs return to the market. The charge should only apply to switches to fixed tariffs: i.e. tariffs which are taking advantage of the falling price curve.

With the charge being too generously applied, compensating for risk beyond that which it is intended to cover, it may have the effect of rewarding complacency. It softens the imperative suppliers should always have to invest in customer service performance. It literally rewards shrinking suppliers whose customers may be leaving them for reasons other than price.

Furthermore, it has been signalled within the industry that suppliers supportive of the charge in its current form are expected to lobby Ofgem to review the parameters of the charge to make it more generous still. Any such change to soften the parameters again, further in favour of losing suppliers, would only be credible if accompanied by a reasonable review and effort to reform the design.

But most concerning is the potential for the charge to become an enduring feature of the market. If Ofgem is to decide to extend the charge out to 31 March 2024, it should refrain from taking the power to extend again on an annual basis. For due process to be upheld, each extension should be taken considering the market landscape at the time, requiring an impact assessment and consultation. As proof that this will be necessary each time, the Statutory Consultation is candid about the likelihood of "further analysis we may undertake".

We wrote to Ofgem in the consultation response back in April with our concern that the charge "could accidentally end up, step by step, becoming a major market-changing intervention, akin to the price cap. Ofgem needs to be wary of finding itself trapped in a position where the charge becomes difficult to unwind." Eight months on and this outcome seems more likely not less, and emphasises how important it will be to proceed with caution.

In contrast, the Ban on Acquisition Tariffs is a much more straightforward issue, for which there is broader industry consensus. There is no net benefit to customers from the practice of price-walking, which was a feature of the unsustainable, pre-crisis retail energy market. It is an uncontentious and easily applicable addition to the regulatory framework and could be made permanent.

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## Questions from the Statutory Consultation document

<b>1</b>	<b>Do you agree that Ofgem should modify supply licence standard conditions SLC 24A and 22B so as to maintain powers to operate the MSC and the BAT until 31 March 2024, with powers given to the Authority to renew this annually?</b>
	<p>We have no issue at all with the BAT. If Ofgem is to extend the MSC ('the charge') to 31 March 2024 it should commit to simultaneously researching reform of the design of the charge, so that it can target the actual risk it is intended to mitigate: the exceptional and temporary market risk posed by the prospect of undercutting via fixed tariffs. It is remiss of Ofgem to fall into what is becoming a series of extensions without tackling reform.</p> <p>The absence of meaningful research into necessary reform of the design, for what was an emergency intervention, means it would be entirely inappropriate for Ofgem to take the power to extend the charge again annually or indeed indefinitely. That could amount, in effect, to an enduring change to the fundamental market framework, which is counter to Ofgem's stated intention and which can't be supported on the original regulatory rationale for intervention.</p>
<b>2</b>	<b>Do you agree that this should continue to include, in the case of the MSC, the existing power for the Authority to terminate it early?</b>
	Yes, and obviously so. Ofgem needs to retain the option to end what is an emergency intervention, when it can ascertain that the exceptional risk it is mitigating has receded.
<b>3</b>	<b>Do you have any comments on the proposed drafting of the changes to the supplier licence standard conditions?</b>
	Naturally, given our concern that the charge is suffering from a substantial and inappropriate degree of scope creep, we think that the proposed text of condition 24A.4 - "The power to specify a later date in paragraph 24A.3 may be exercised by the Authority on more than one occasion (up until and including on any later date specified by the Authority)" - should be removed.
<b>4</b>	<b>Do you agree that we should extend the market-wide derogation from SLC 22B for fixed retention tariffs?</b>
	No, because this licence condition addresses a separate issue: the requirement to offer all tariffs to new and existing customers. It is out of place within the scope of this Statutory Consultation and we don't see the rationale for justifying nor extending the derogation.
<b>5</b>	<b>Do you have any comments on the analysis presented in section 2?</b>
	<p>This is the one area where we are reassured that Ofgem is appropriately considering reform, by taking steps to improve its and the sector's understanding of the specific risk that has emerged from the crisis period.</p> <p>The Statutory Consultation document states that: "Although the VaR indicator is a helpful tool, over time it needs to be looked at in the round together with other developments in</p>

	<p>Government and regulatory policy and supplier resilience which may affect how risk crystallises and how it can be managed. The level of VaR that can be tolerated (ie does not risk adverse consequences for consumers) will depend on these wider considerations.”</p> <p>Ofgem’s development of the VaR measure, and other indicators, should incorporate the identification of measures which could signal in advance the level of risk that Ofgem would consider safe enough to withdraw the charge.</p>
<b>6</b>	<p><b>Do you have any comments on the draft impact assessment presented in section 3?</b></p> <p>It’s notable that the analysis is evidently more interested in hedging impacts than it is in customer impacts; with it being explained that impacts “likely to cause hardship for consumers” are essentially out of scope for now as they are covered by the Energy Price Guarantee.</p> <p>Therefore the immediate point to note is that the charge could easily outlive the Government’s support (which is again why each further extension should go through its own decision process, without Ofgem powers to extend annually).</p> <p>Furthermore, despite a depth of analysis on hedging scenarios, there is relatively little analysis on customer switching practices. The analysis provides no real insight into how much of the formidable VaR estimate could be realised, because it lacks any assessment of which cohorts of customers, and how many, are likely to leave their current supplier’s variable tariff. The analysis is also silent on customers switching (or staying loyal to their supplier) for reasons other than price. Without a measure of insight into consumer behaviour, the gross VaR figures could be presenting a high impact ‘disaster scenario’. The current view of potential VaR needs to be balanced with a corresponding distribution of switching likelihood.</p>