

To all interested stakeholders

Email: retailpolicyinterventions@ofgem.gov.uk

Date: Friday 27 October 2023

Dear all,

Future of the Ban on Acquisition-only Tariffs post-March 2024

Earlier this month we set out our position on the future of the Market Stabilisation Charge (MSC) in our October open letter¹. Both the MSC and the Ban on Acquisition-only Tariffs (BAT)² licence conditions are set to expire on 31 March 2024 following an [extension of both provisions in February 2023](#)³ ('February Decision'), and our October open letter sets out that we will allow the MSC to expire at the end of March 2024.

Within that letter we also set out our plan to conduct further analysis on the BAT's future role. The BAT was primarily introduced to complement the MSC as a market stabilisation measure. However, it has other effects on the market, the continuation of which may or may not be in consumers' interests beyond March 2024.

On that basis we are considering whether or not to retain the BAT as a standalone measure, while the price cap remains in place.

To help us make our decision on the best possible evidence, we are inviting comments and supporting evidence from interested parties as part of a non-statutory consultation to help inform our analysis. We request that stakeholders' views on the points set out below are sent to retailpolicyinterventions@ofgem.gov.uk by **Thursday 23 November 2023**.

We will set out our position in the New Year once this work is concluded, in order to make a clear decision on whether the BAT will be extended. We will communicate this in good time before the BAT's current expiry in March 2024.

Market stability

By requiring suppliers to make their tariffs available to both new and existing customers, the BAT reduces the incentive for suppliers to offer very aggressive acquisition pricing during periods of volatile wholesale prices. This has complemented the MSC's role by collectively reducing incentives to offer prices that could threaten market stability.

¹ [Future of Market Stabilisation Charge after March 2024 | Ofgem](#)

² Both SLC 22B and the Market Wide Derogation from SLC 22B for fixed retention tariffs are due to expire at 31 March 2024. [Decision - Derogations from SLC 22B – requirement to make all tariffs available to new and existing customers | Ofgem](#)

³ [Decision to extend the MSC and the BAT beyond 31 March 2023 | Ofgem](#)

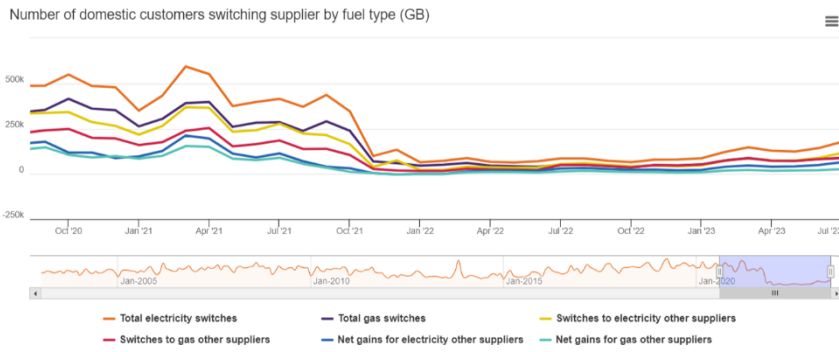


Figure 1 – Total consumer switches by fuel type, Oct 2020 - July 2023
 (Correct as of September 2023. Source: Ofgem data portal)

We believe that the combined impact of the MSC and BAT have played a significant part in reducing levels of switching during the recent energy price crisis, as illustrated in figure 1. We welcome stakeholder views (and evidence, where available) on how much this reduced switching can be attributable to the BAT, and why.

Competition

Competition is an important feature of the market as rivalry between energy firms gives a strong incentive for improvements in innovation and service as well as price. Improved competitive conditions would bring better consumer outcomes through incentivising suppliers to innovate and compete on price and non-price factors and ultimately contribute to lower bills and better outcomes for consumers. In this context, we are considering the optimal level and type of competition required for a healthy market⁴ and the BAT’s overall impact on competition for suppliers and consumers in this context.

Whilst the BAT may have had a dampening effect on competition by reducing switching to and within incumbent suppliers, it may also favour new market entrants on the basis that they are more able than existing suppliers to offer attractive deals to win customers. This is because new market entrants, unlike incumbent suppliers, do not have any (or many) existing customers to whom they would also have to offer potentially low margin acquisition type tariffs. We expect the BAT may also favour those suppliers introducing new and innovative services that consumers value by making it harder for other suppliers to offer selective discounts targeted at new customers only. Here, we consider that further analysis may assist in showing trends to determine the full impacts this dynamic has on new market entrants, as well as the consequent impacts on existing suppliers.

Whilst an increase in market competition through the removal of the BAT could lead to consumer benefits, our analysis of the disbenefits of reduced price competition owing to the BAT also suggest that where competition could occur, these benefits would be felt more by active and engaged rather than inactive consumers. At its simplest level there are two main effects – a positive benefit for non-switchers, to the extent that any discounts offered to new customers have to also be offered to existing customers (expanded on in the next section). This, however, would be accompanied by a corresponding negative effect for active switchers, who are likely to see less choice as a result of suppliers with a large existing customer base being less willing to offer cheaper tariffs.

⁴⁴See [The development of a competition framework for the domestic retail market | Ofgem](#) which sets out our proposed competition framework for the domestic retail market. We will publish an example of how we have applied this framework to the decision to let MSC expire after March 2024, in the near future.

The realities of this may be more complex – non-switchers may still not benefit, if they do not proactively sign up to any new deals on offer. Reduced dynamism overall could also result in worse deals for most consumers (expanded on in the next section). We consider that further analysis is needed to quantify the impact of BAT on switching within and between suppliers and the corresponding impact on specific groups of consumers.

We are therefore keen to receive further views and evidence on how an enduring BAT is likely to impact competition for consumers and both incumbent and new market entrants.

Impact on fair pricing

Aside from the BAT playing a market stabilisation role for which it was primarily introduced, we acknowledged in our February Decision that the BAT also limits price discrimination. We note that careful consideration needs to be given when assessing the impact of the BAT, and the associated market-wide derogation for fixed retention tariffs, on fair pricing. This is to ensure that we have fully explored any unintended consequences, both in the short term and long term, and how any enduring measure would align with wider policy changes and market conditions.

The current market-wide derogation for fixed retention tariffs, for example, was introduced following concerns raised from stakeholders that SLC 22B (which implemented the BAT) would unintentionally impact the ability of suppliers to continue the practice of offering tariffs aimed at retaining existing customers (“retention tariffs”). In our decision⁵ to introduce this derogation we stated that we did not consider that these tariffs affected the risks we were concerned about in relation to market stability and can be seen as being beneficial to customers.

We consider that these benefits have been realised by existing customers by allowing suppliers to continue offering retention tariffs. In addition, even as the gas crisis has evolved, some suppliers have said they have been cautious about offering new fixed term contracts to new customers given the hedging risk this exposes to them. The market wide derogation has consequently allowed them to manage this risk by offering new deals to existing only customers, allowing them to manage the volume risk they may otherwise be exposed to. However, if the market-wide derogation remains in place as the market opens up to competition, there is a risk of increasing price discrimination and of the market wide derogation being used in a way that dampens and distorts competition by denying new customers the best deals.

The BAT provides some price protection for existing customers by preventing suppliers from cross-subsidising deals for new customers only and ensuring existing customers have access to the same deals as new customers. We will also consider the role that the BAT may have during the existence of the price cap, which already provides a form of price protection for consumers on standard variable tariffs, to ensure that all customers are being charged fairly based on consumption levels.

We welcome any views on how effectively the BAT supports a supplier’s existing customers in a well-functioning competitive market, including through the existing market-wide derogation for fixed retention tariffs, and its role while the price cap remains in place. We will also welcome views on the existing process for securing market-wide derogations from the BAT for fixed retention tariffs.

Impact on tariff offerings

⁵ [Decision - Derogations from SLC 22B – requirement to make all tariffs available to new and existing customers | Ofgem](#)

The BAT was introduced during a period of market volatility with the specific policy intent to prevent suppliers from providing tariffs exclusively to new customers, via standard licence condition 22B. We have been clear that any attempts to subvert the letter and the spirit of the licence condition would be monitored closely with appropriate compliance action taken. As the market has evolved through the gas crisis however, we have seen instances where the BAT may be restricting tariff innovation and development, including possible low carbon technology tariffs (LCT) tariffs and business models supporting the transition to net zero. As we consider a future role of the BAT, there is therefore a case to carefully consider the desired policy intent of the measure and to ensure that the licence conditions reflect this effectively to ensure that the BAT is robust and effective in meeting its desired outcome.

Input from interested parties

We therefore seek input from interested parties on the questions below.

Questions:

For all questions please justify your responses where possible by pointing to any supporting evidence.

- 1) Do you consider there is merit in keeping the BAT in place post March 2024, after the discontinuation of the MSC?
- 2) Market Stability
 - (i) Can you provide your thoughts on/evidence of the impact of the BAT to date in terms of market stability?
 - (ii) Can you provide your thoughts on/evidence of the BAT's likely impact on market stability, if it was retained post March 2024 as a standalone measure?
- 3) Competition: impact on suppliers and consumers
 - (i) What impact would the BAT's existence post-March 2024 have on market competition for a) existing suppliers and b) new suppliers seeking to enter the market?
 - (ii) What impact do you consider the extension of the BAT would have on a) active and b) inactive consumers (i.e. less likely to switch), in terms of realising the benefits of any competition?
 - (iii) What are your thoughts on the BAT's role in making discounted deals available to a supplier's existing customers, and are you able to provide evidence to support this? Do you consider that there is benefit in having the BAT in place to provide this function while the price cap is also in place?
 - (iv) What are your thoughts on the existing policy and process for market-wide derogations for fixed retention tariffs?
- 4) Impact on tariff offerings
 - (i) Can you provide your thoughts on/evidence of the BAT's likely impact on supplier tariff offerings?
 - (ii) What are your thoughts on whether changes should be made to the BAT in order to make it a more effective policy to encourage competition (rather than as a policy to support market stability)?

Yours faithfully,

A handwritten signature in black ink that reads "Dan Norton". The signature is written in a cursive style with a clear, legible font.

Dan Norton

Deputy Director, Price Protection