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Dear Dan

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

EDF is the UK's largest producer of low carbon electricity. EDF operates low carbon nuclear power stations and is building the first of a new generation of nuclear plants. EDF also has a large and growing portfolio of renewable generation, including onshore, offshore wind and solar generation, and energy storage. We have around six million electricity and gas customer accounts, including residential and business users. EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating.

We welcome the opportunity to respond to Ofgem's call for input on the Future of the Ban on Acquisition-only Tariffs (BAT) post-March 2024. This response is not confidential.

### **Executive Summary**

Suppliers continue to operate in a financially challenging environment and face enduring risks because of continued market volatility, high prices, and operating under the Default Tariff Cap (DTC). EDF remains committed to working constructively with Ofgem to develop and introduce measures that promote a healthy, well-functioning market that allows efficient and sustainable businesses to attain a fair margin and enable continued innovation and investment to the benefit of consumers.

On this basis, we are supportive of Ofgem looking at the future of the Ban on Acquisition-only Tariffs (BAT) beyond its current expiry on 31 March 2024. We would strongly urge Ofgem to retain the BAT as a feature of the domestic retail market, until such a time more fundamental reform of the DTC can be progressed with DENSZ, to protect consumers and ensure the markets ongoing stability. This is especially true at a time when we are already seeing greater levels of customer churn return following the energy crisis, levels which we expect to see increase further in coming

months, even if the BAT is retained, as a result, for example, of measures like the removal of the Market Stabilisation Charge (MSC).

Allowing the BAT to lapse at the end of March 2024, on the other hand, runs significant risk of not learning the lessons of the past and reintroducing unsustainable and irresponsible business models and pricing practices and, ultimately, unnecessary instability into the market. As the history of this market demonstrates, this presents real risks to end consumers who will ultimately be asked to foot the costs of a destabilised market.

Furthermore, as outlined below, we note that the timing of this review is, in the short-term, incompatible with Ofgem's desire to see suppliers adopt responsible practices and is driving significant risk for suppliers. Ofgem as an initial first step should, therefore, urgently confirm as a minimum that the BAT will not be removed from April next year.

### **Consultation and decision timings**

It is vitally important that Ofgem duly considers the timing of any decision and its impact on suppliers risks and costs. Specifically, policy uncertainty over the BAT during the current DTC observation windows creates material and significant volume exposure for all suppliers, that will inevitably flow through to consumers. The ultimate impact of this uncertainty will depend on market movements over the period and individual suppliers' commercial response. However, as a responsible regulator, Ofgem should be making every effort to avoid forewarned and avoidable systematic costs such as those the current timeline for this consultation will force suppliers and customers to incur.

A decision on whether to extend beyond April 2024 by March 2024 is clearly too late to be in the interests of consumers. Ofgem must, therefore, urgently confirm that the BAT will as a minimum not be removed from April 2024.

We also note that in deciding not to extend the MSC post April 2024, Ofgem has also already taken a significant step to further promote competition. As such, in line with regulatory best practice, there is a need for Ofgem to first assess the impact of removing the MSC before allowing the BAT to lapse, especially at a time when competition in the market is already increasing (and expected to grow further as a result of the removal of the MSC). To do otherwise risks, as we explore below, encouraging a return of unfair and unsustainable behaviours, of that seen before the energy crisis.

### **Future of BAT**

As stated above, in the absence of more fundamental reform of the DTC by DENSZ, EDF strongly recommends Ofgem make the current BAT an enduring feature of the domestic retail market. We explore our rationale for this in further detail below, however, at a high level, allowing the BAT to lapse puts at risk the significant market and consumer benefits that have resulted from its introduction along with other financial resilience measures introduced by Ofgem. Without the BAT there is a real and material risk that unsustainable business models and practices that do not

create long term value for customers will return and ultimately put the future stability of the market at risk.

## **Fairness**

The events of recent years have proven that unsustainable business models and pricing practices, including below cost acquisition-only tariffs, are neither fair for existing loyal customers nor in all customers long-term interests. Ofgem's recently departed Chairman first documented<sup>1</sup> his concerns about such practices back in 2019, when he commented on many suppliers attracting new customers by offering unsustainable deeply discounted fixed term tariffs. Specifically, he commented:

*"Many suppliers attract new customers by offering deeply discounted fixed term tariffs, then roll those who don't switch at the end of their contract onto a much more expensive standard rate. This "tease and squeeze" pricing results in unacceptable price differentials of a kind now known as a loyalty penalty..."*

*"... In future, we want competition to lead to sustainable and "everyday" low prices - not rate-chasing churn where customers have to switch every year to avoid a massive hike in prices. We want to see greater competition driving up the quality of customer service - but with a reliable minimum standard. And we want all suppliers to pay their way."*

Continuing the BAT provides an essential protection for loyal customers, who make up a majority of the market, against unfair and unsustainable pricing practices which mean they are forced to switch supplier if they want to access the cheapest deals. As we explore further below, it will also ensure that suppliers are encouraged to focus on supporting all of their customers, including their existing customer base, by for example investing in high customer service levels and innovative offerings.

We note that both the Competition & Markets Authority<sup>2</sup> and Citizens Advice<sup>3</sup> have in recent years expressed serious concerns with unsustainable and unfair pricing practices across a broad range of markets within the UK. Both have called out the detrimental impact this has for consumers, specifically for the vulnerable and those who are unable to engage plus the impact on consumer trust and the belief that loyal consumers are unfairly penalised. Any return to such practices would be a substantial backward step for the retail market in GB.

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<sup>1</sup> Martin Cave speech at Ofgem Future of Energy Conference; January 2019

<sup>2</sup> Loyalty penalty update - progress two years on from the CMA's super-complaint investigation; CMA December 2020

<sup>3</sup> Excessive prices for disengaged consumers A super-complaint to the Competition and Markets Authority; Citizens Advice 2018

## **Sustainable competition**

The evidence of the last 3-4 years clearly demonstrates the impact on both competition and costs to consumers that results from unsustainable business models and business practices - such as below cost, acquisition-only tariffs. The costs to consumers of these failures have been substantial. While the continuation of BAT will not directly target supplier losses and mitigate market exit risk entirely, it would nonetheless help to ensure sustainable pricing practices by all suppliers, resulting in a more stable energy retail market to the long-term benefit of all consumers.

While Ofgem has implemented financial resilience measures designed to improve the resilience of suppliers and protect the interest of consumers, we note that these have yet to bed in and any assessment of their effectiveness has yet to be established. While we, therefore, welcome the introduction of these measures which are designed to limit the impact of suppliers who are not financially resilient, the commercial reality remains in a market without a BAT is that unsustainable competition and practices would not necessarily be prevented and could in fact be perversely encouraged.

For example, we note that some suppliers could have a view that their customer base is less likely to engage than more progressive suppliers who have previously worked hard to engage their customers. This could mean they have an incentive, in the absence of BAT, to adopt below cost acquisition-only tariffs (as they would face no risk of contagion across their existing customer portfolio) to undermine and distort the market in their interests. Such an aggressive approach to competition is not in the interest of all customers, even if some individual suppliers and customers could theoretically benefit in the short term.

## **Innovation and investment**

It is also essential that we return to a sustainable, resilient, and investable market capable of helping Britain achieve Net Zero. A resilient sector which has confidence in its ability to innovate and invest is what will bring the greatest consumer benefits for all customers.

As previously discussed with Ofgem, however, if investors are not confident in the future of the GB domestic energy retail market, further market exits are likely and new entry will be discouraged. Put simply, and as Ofgem has acknowledged through its desire to improve supplier financial resilience, unsustainable competition and pricing practices, of the sort widely seen before the energy crisis and the re-introduction of the BAT, were not an attractive proposition for investors.

Furthermore, such practices force otherwise responsible suppliers to divert what limited resources and investment may have away from those areas where it is most urgently needed, in order to engage with unsustainable competition. This is, as a matter of principle, not good for customers, the future of the market or Great Britain. Over the coming years significant investment is needed across the domestic retail market to deliver and sustain high levels of customer service to meet the evolving needs of all customers and to support the essential innovation required if suppliers are to help all their customers and Britain achieve Net Zero.

Allowing the BAT to lapse risks materially prejudicing future and diverting current investment in the GB retail market, at a time where investment is most needed. Withdrawing the BAT will only serve to further reduce, already low, investor confidence, just as the market is starting to re-emerge following the energy crisis. Put simply if Ofgem want an investable market, they cannot allow practices that undermine confidence and reduce the investability of the market.

### **Duties of the Authority**

Finally, we note that the principal objective of the Authority is to protect the interests of existing and future consumers and, wherever it is appropriate to do so, it must fulfil that principal objective by promoting effective competition. Given the significant concerns identified above both in terms of consumer impacts and broader competition concerns, any decision to remove the BAT would be inconsistent with this objective. As we started at the outset, consumer interests are best protected through a stable, healthy, and resilient competitive market. This would be at serious risk in the absence of an enduring BAT, in the absence of more fundamental reform of the DTC.

Our response to the specific consultation questions is set out in the appendix below. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Steven Eyre or myself.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Mason', with a stylized flourish at the end.

John Mason  
**Senior Manager (Price Regulation and Market Dynamics)**

## **Appendix**

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

#### **1) Do you consider there is merit in keeping the BAT in place post March 2024, after the discontinuation of the MSC?**

Yes. Please see our covering letter for further information.

At a high-level, however, until such a time as more fundamental reform of the DTC can be progressed with DENSZ, we would strongly urge Ofgem to retain the BAT as feature of the domestic retail market to protect consumers and ensure its ongoing stability. This is especially true at a time when we are already seeing greater levels of churn within the market, a trend which is expected to increase further, even if the BAT is retained, partly as a result of measures like the removal of the MSC.

Removing the BAT from March 2024, runs significant risk of not learning the lessons of the past and introducing unnecessary instability into the market. As recent history shows, this presents real risks to end consumers who ultimately foot the costs of destabilised markets and the consequences they bring.

#### **2) Market Stability**

##### **(i) Can you provide your thoughts on/evidence of the impact of the BAT to date in terms of market stability?**

The BAT was introduced at the same time as the Market Stabilisation Charge (MSC). Both measures were designed to mitigate the significant risks that suppliers faced as a result of the energy market experiencing unprecedented volatility and the uncertainty of wholesale prices for future seasons rising or falling significantly. Mitigating the costs that could fall on all consumers if suppliers exit as a result of having to manage exceptionally high levels of uncertainty in both future demand and wholesale price exposure was clearly required.

However, given both measures to date have existed together, it is difficult to evidence the impact of BAT in isolation. Yet, taken together, the market over the period has not experienced the same level of supplier failure. Although the counterfactual is difficult to estimate there is expectation that volatility risks would have been greater as prices still rose and fell. In addition, we have not witnessed to any notable degree any return to unsustainable and unfair pricing practices, such as below cost, acquisition-only tariff offerings. Consequently, overall; there is a strong belief that the BAT has had a positive impact on 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?**

Please see our covering letter. The retention of BAT beyond March 2024 will have a positive impact as it will avoid the risk of the retail market returning to practices that were witnessed prior

to its introduction and which had significant detrimental impacts for both consumers and suppliers.

If the BAT is allowed to lapse, there is a real and material risk that unsustainable business models and pricing practices witnessed prior to its introduction would return and again destabilise the market, especially at a time when competition in the market is already increasing (and expected to increase further, partly due to the removal of the MSC). Providing room for the return of both unsustainable business models and practices such as the “tease and squeeze” approach to below-cost, acquisition-only pricing would have significant detrimental effect for consumers and would damage the resilience of otherwise financially responsible suppliers who would need to react.

### **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?**

##### Existing suppliers:

The stable competitive environment experienced while both the BAT and the MSC have been in place would be expected to continue. The expectation is that with both the BAT and other financial resilience measures, would negate the ability of suppliers to unsustainably and continually price below cost to only acquire new customers, supporting a more sustainable, competitive and investable retail market in the long-term

It is also worth noting that suppliers continue to operate in a financially challenging environment and face enduring risks because of continued market volatility and high prices. In this context, mitigating against the risks of unsustainable pricing and competition distortion that can then lead to supplier failures and high costs for consumers should be a key policy driver for Ofgem. It is essential that we return to a sustainable, resilient and investable market capable of helping Britain achieve Net Zero. As set out in our covering letter, withdrawing the BAT will further reduce already weak investor confidence just as the market is starting to re-emerge following the energy crisis. If Ofgem want to create an investable market, they cannot allow practices to remerge that will undermine confidence and reduce the investability of the market.

##### New suppliers:

The existence of BAT on its own will unlikely involve a competitive constraint on their business as they enter the market or during early growth given their lack of existing customer base. In terms of the risk of unsustainable pricing behaviour by new entrants, while we do see a small risk of a new suppliers with few or no existing customers being able to compete aggressively to gain market share, any advantage or distortion created would inherently be short lived as such suppliers gain market share. Ofgem’s wider work on financial resilience has also sought to ensure that all suppliers are sufficiently capitalised and have the necessary skills to operate in this 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?**

The impact for consumers in terms of switching will be highly dependent on the volatility of the market and whether prices are rising or falling, including compared to the level of the DTC. As described above, the extension of BAT will mitigate the risk of suppliers sustaining unsustainable acquisition-only prices below costs and, therefore, will reduce the ability of active customers to gain unfair short-term benefits through unsustainable incentives.

Conversely, continuing the BAT would provide an essential protection for loyal customers, who make up a majority of the market, against unfair and unsustainable pricing practices which mean they forced to switch supplier if they want to access the cheapest deals. As we explore further in our covering letter, it will also ensure that suppliers are encouraged to focus on supporting all of their customers, including their existing customer base, by for example investing in high customer service levels and innovative offerings.

For both active and loyal customers there is also the significant benefit the continuation of BAT will help to mitigate the risk of further supplier failures and thereby avoid the high mutualised costs that consumers have and continue to face from previous supplier failures.

**(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?**

In principle we are supportive of allowing suppliers to offer exclusive deals to its existing customers. There are potentially a range of benefits associated with offering exclusive tariffs to existing customers and these should not be precluded by the BAT. Suppliers being able to reward loyalty allows them to enhance their relationship and experience with their customers - something essential if we are to play our part on helping customers and Great Britain achieve Net Zero. It also facilitates the offering of competitive rates to its customers who for some reasons are unable to engage and switch suppliers due for instance to their circumstances but stand to benefit from competitive tariffs.

Furthermore, we note that offering competitive retention tariffs to existing loyal customers is unlikely to have any detrimental impact on customers or market stability.

**(iv) What are your thoughts on the existing policy and process for market-wide derogations for fixed retention tariffs?**

Given that the current market-wide derogation rules were introduced towards the latter stages of the implementation process for the BAT, we would welcome Ofgem reviewing the drafting of the rules and considering any redrafting necessary to ensure that they meet the ongoing policy intent of the BAT.



#### **4) Impact on tariff offerings**

##### **(i) Can you provide your thoughts on/evidence of the BAT's likely impact on supplier tariff offerings?**

During the period the BAT has been in place there has not been any noticeable return to unsustainable pricing practices in the market. This was evidently not the case prior to the reintroduction of BAT.

However, ultimately tariff offerings and differentials between fixed and other tariffs will be driven by market prices and supplier costs. For instance, in a falling market you will likely see lower differentials with a BAT, than you would witness without a BAT. Such larger differential may, however, as was seen in the past be unsustainable, whilst in a rising market a BAT is also likely to mean differentials are more stable.

##### **(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)?**

The BAT was introduced at the same time as the MSC. Both measures were designed to mitigate the significant risks that suppliers faced as a result of the energy market experiencing unprecedented volatility and the uncertainty of wholesale prices for future seasons rising or falling significantly. However, given both measures to date have existed together, it is difficult to evidence the impact of BAT in isolation in terms of its impact on competition or market stability.

Ofgem in deciding not to extend the MSC has already taken steps to improve and drive greater levels of competition. Therefore, there is a need for Ofgem to assess the competition impact the MSC removal has had before taking any further steps in terms of changes to the BAT. To do otherwise could encourage unsustainable and overly aggressive competition to the detrimental of consumers and the market in general.

**EDF November 2023**