

Octopus Energy response to Call for Input on the future of the Ban on Acquisition Tariffs (BAT) post-March 2024

Dear Dan and team

Thank you for the opportunity to provide input into the consideration of whether to keep BAT as a standalone measure. Ofgem are right to consider its wider benefits and below we provide detailed thoughts, summarised as follows:

1. The timing of this review is unfortunate, Ofgem should not be adding uncertainty around the dynamics in the retail market during a live observation window.
 - a. Ofgem needs to extend the condition (now the observation window has opened) to provide stability and so that a constructive debate can occur unimpeded by commercial decisions
 - b. Ofgem should make a commitment to respect hedging windows in the timing of any further change
2. BAT should be made permanent, benefits far outweigh risks - including development of future healthy competition, improving trust in the market and enabling innovation for Net Zero.
3. The language of the licence condition does not deliver the principle of BAT and it needs to be reviewed.
4. BAT is not a replacement for the cap, instead they are complementary tools (one setting a marker that teaser tactics are not fair nor condoned and the other preventing the ability to squeeze disengaged customers).

The impact of consulting in observation windows

A majority of households are currently on SVT products and therefore Ofgem recommends that said households are hedged according to the cap (the observation window being a crucial part of this). Our concerns are:

- Although more stable than a year ago there is still significant volatility within the market, with prices to hedge an average 12m fixed tariff shifting as much as 25% or £250 week to week. Whilst suppliers can manage this risk within the construct of the market, if parameters change at the same time it becomes game theory.
- Ofgem is at risk of destabilising the market by drawing the focus back into game theory - a world that has already proven to have devastating consequences to the energy market and ultimately cost households millions of pounds (through having to emergency hedge millions of customers at the height of the energy crisis)



- Ofgem wants to consider the best outcomes for consumers but by debating significant change within an observation window they risk receiving heavily biased inputs that align to best commercial outcomes for suppliers.

It is **incumbent on Ofgem to prevent these unnecessary risks and the fairest way to do that is to extend BAT for a further 12 month window (or make BAT permanent) with immediate effect.**

Benefits of BAT

We are firmly of the view that BAT should remain an enduring feature of the market to encourage healthy competition (rather than primarily to promote market stability) for the following reasons:

1. BAT delivers certainty for customers that the energy regulator will not tolerate unfair pricing tactics - the reactive work to the 2018 [CMA super complaint](#), FCAs [General Insurance Pricing Practice](#) and the 2022 [Consumer Pricing Bill](#) all demonstrate the political and public intolerance for “loyalty” penalties and Ofgem can show it is listening to the public.
2. The price cap has successfully eradicated the extremities of “tease and squeeze” behaviours. However, competition has continued to be based on the principle that short term “deals” are healthy and the only way to get long term good value is to regularly switch. BAT can reshape this thinking - a healthy market should be one where fair pricing is a regulated certainty allowing competition to be driven by outcomes, products and services.
3. BAT will also become a complementary tool in the financial resilience work. By reducing the ability for suppliers to offer unsustainable “teaser” deals to customers, it reduces risk in the market and Ofgem will not need to focus on unsustainably priced products when assessing resilience and milestone plans.
4. Innovation is needed to reach Net Zero - BAT will provide incentives for suppliers to compete on services and tariffs, as well as price, and this will ensure retail market competition is also about smart tariffs and services which will help customers control how much energy they use and when they use it.
5. Once made permanent, BAT will enable the price cap to be simplified and able to focus on protecting disengaged customers during the energy transition - ensuring the cap is truly an upper ceiling on default prices and does not become an RRP.

Updating the licence condition

In making the BAT a permanent protection in the market, Ofgem needs to revisit the wording of SLC22B. We appreciate that Ofgem needed to implement BAT at pace and it made sense to recycle the old non-discrimination licence condition.

As an enduring regulation, the condition needs to be reworded to make it truly a ban on acquisition tariffs. It is not sustainable that suppliers need to apply for a derogation for tariffs that comply with the intention but not the regulation (this risks slowing down innovation) and redraft will remove this unintended consequence.

Continued price protection

BAT is not a replacement for the price cap and a ceiling on the price paid by permanently disengaged customers. Rather BAT and the price cap do two very different things and both have an important role. BAT incentivises suppliers to compete on service and products, by ending ‘tease’ pricing, while the cap protects disengaged households - who risk otherwise being overcharged. **Combined the BAT and the price cap define what is fair and acceptable in a complex market and send a clear message to customers that fair pricing is a regulated certainty.**

Below we provide more information on these key points and have answered your specific questions. We think BAT is an important intervention that Ofgem should keep and stand ready to support further with your decision.

Regards

Kat Renton
Head of Regulation

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

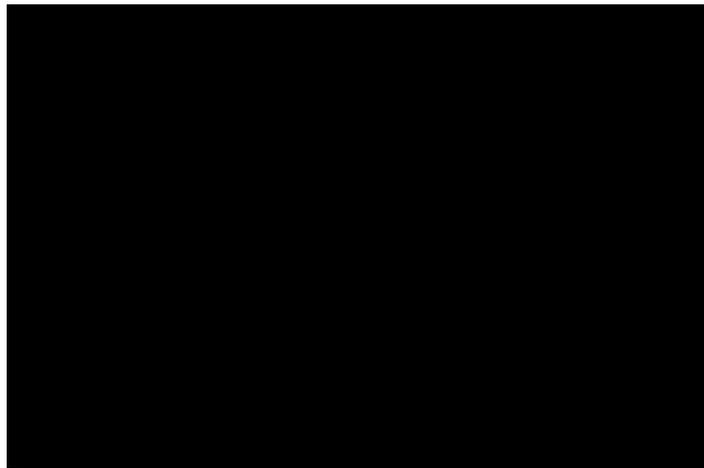
Yes. The key reasons for this are set out in the cover letter.

Prior to the Energy crisis, there was a view amongst some that a healthy and competitive retail market was considered to be one where abundant switching took place, primarily driven by “cheap” energy deals. Suppliers were encouraged, in some cases to the point of dependency, to compete using TPIs - who gained Dragons’ Den worthy revenue streams from driving down prices to sometimes unsustainable levels. This in turn led to poor outcomes as switching for deals became the primary feature of “healthy” competition, rather than service, long term good value and innovation.

Whilst the last few years have undoubtedly been tough on households (and this winter will be the toughest yet) the crisis has created a windbreak to this behaviour. BAT has played a pivotal role in this hiatus - alongside MSC; the departure of businesses dependent on this model; and generally the sustained high prices that were artificially deflated by vital government bill support.

However that is not to say now that other mechanisms are starting to fade away there is no further purpose for BAT. Ofgem has a golden opportunity right now to consider the route to Net Zero and think about what healthy competition will look like in getting us to this future world.

A stepping stone to understanding that is to consider what the drivers of switching really are. **Ofgem has the unique opportunity to assess switching in a window of little price differentiation and it is clear to us that even without large variation in base acquisition prices there are switching trends at play.** Throughout 2023 Octopus has organically grown (switching through customer action not inclusive of SoLRs, SARs or trade sales) and is doing so at large and ever increasing volumes:



We consider that this data shows that there has been competition in the market even with the BAT - it's just that this competition looks different from how competition looked pre-crisis. Ofgem needs to update its assumptions on what competition can and should look like when it is considering the future of the BAT.

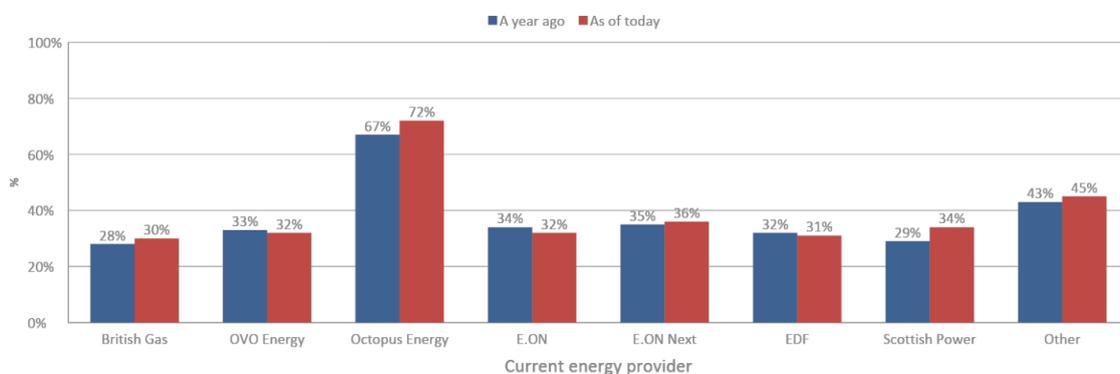
However, that is not to say that the cost of energy is not an important factor in a decision to switch suppliers. Indeed we have developed a trusted brand that looks after and enables customers to save money through innovative tools and products. For example:

- Tools such as “[Winter Workout](#)” where we encourage our customers to make savings during peak usage months (for example reducing boiler flow) and are supported by energy helper visits, thermal imaging cameras and clear and accessible communication.
- Products like [Savings Sessions](#) are designed to enable customers to engage more in their usage, creating savings by shifting usage out of peak usage windows, customers can access this whilst on a default product – under the framework of fair pricing as standard.

Indeed, in spite of BAT, a recent YouGov survey clearly demonstrates that customer trust in our prices being fair is far greater than any other supplier – and increasing.

Offers fair prices

Current energy provider



For the following question, if you have more than one home, please think about your MAIN home (i.e. the one you spend the most time at). Which ONE, if any, of the following is your current energy provider? (If you have more than one

Note: The chart excludes figures from respondents who selected: Don't know and Not applicable: I don't have an energy provider. % are of those who selected codes 4 and 5 (associate)

**survey Nov 2023 of 2000 people with full UK weighting*

Ofgem should keep BAT indefinitely (making this decisions clear immediately to prevent unnecessary costs and risks this winter) but should use the time now (until its current sunset date) to carefully consider how to simplify the licence condition such that it truly delivers on its principle of banning sharp practice and

sends a clear message to households and industry participants that the regulator will not tolerate unfair pricing tactics.

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?

Having seen the market unnaturally swing to a dominant SVT book, Ofgem implemented MSC to stabilise and reduce the risk that books hedged in line with the price cap suffer unrecoverable losses as a result of switching. BAT successfully complemented MSC, and will continue to smooth risk during volatility, however we think it has an enduring role in the market and should be considered valuable for reasons beyond market stabilisation (see questions 1 and 3).

BAT is a simple tool that ensures unsustainably aggressive pricing is not a feature of the market. This in itself provides market stability. It would be easy for industry to look back at competition pre-energy crisis and assume that a return to that market would be a sign of success. In reality the price cap was able to stop suppliers from depending on disengaged customers to fund teaser tariffs but did not completely eliminate the practice or irresponsible pricing. At the extremities of this practice were auto switching sites that alienated customers from suppliers and pushed the focus wholly on “deals” with little consideration to customer service and innovation. This has proven to be a short sighted and brittle way to compete. BAT can send a clear message to consumers, suppliers and intermediaries that fair pricing is a regulated certainty and its permanency will complement the compliance work Ofgem are doing on resilience (Ofgem will not need to focus on unsustainably priced products when assessing resilience and milestone plans).

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?

BAT as a permanent feature will help to redefine healthy market competition. It would be an error to assume that BAT has led to a lack of competition in the market over the last 12 months and that its removal is the only way to kick start switching.

Indeed for customers the energy crisis has also been hugely destabilising, many having been switched through SoLRs or SAR to suppliers they did not choose and all seeing the cost of heating their home ballooning. Their focus has been on managing affordability concerns. Nevertheless we have seen increasing numbers of customers switching to the Octopus default tariff, that is in spite of this tariff offering very little financial difference to customers and being fully compliant to the BAT licence condition.

We have 3 key features that enable customers to trust in us, in spite of the industry having a negative net promoter score¹:

1. Our prices are generally cheaper than others, we have forgone profits and focussed on cost optimisation to ensure all customers receive the best possible prices, this means customers can trust in us and know that we will always do the right thing.
2. Unlike other companies, who've traditionally used "tease and squeeze" to hide their alternative price options, customers love the fact we are so transparent about ours - even if they don't want to switch to products such

¹ [Bain 2023 UK customer trends survey](#) - industry average is -14 and it is noted that "Octopus had the highest difference (+39) versus the industry average of any of the 200 brands surveyed across all industries."

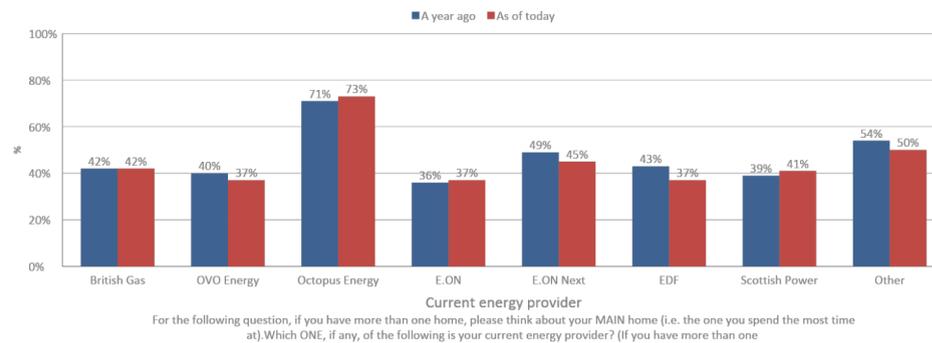
as Tracker or Agile, they know they have the option - which they rightly see as much fairer.

- Beyond the literal tariff that customers are on there are tools and products designed to support customers (see Q.1) these all increase the chance for people to save money and add to their correct view on fair pricing.

Indeed not only are we organically gaining customers at pace we also have high and improving levels of customer satisfaction and are the only supplier where trust has increased over the last 12 months. Below the results of a recent YouGov survey asking exactly those questions:

Good customer service

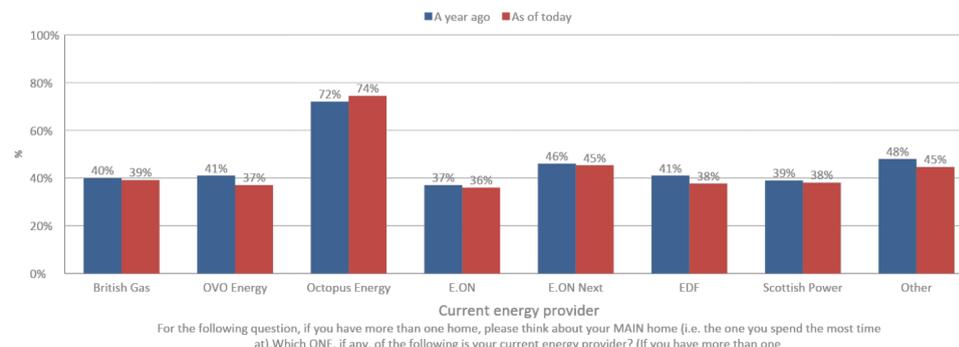
Current energy provider



Note: The chart excludes figures from respondents who selected: Don't know and Not applicable: I don't have an energy provider. % are of those who selected codes 4 and 5 (associate)

Trustworthy

Current energy provider



Note: The chart excludes figures from respondents who selected: Don't know and Not applicable: I don't have an energy provider. % are of those who selected codes 4 and 5 (associate)

*survey Nov 2023 of 2000 people with full UK weighting

BAT can challenge the market to compete on service differentiators – that will enable the market as a whole to improve and reach Net Zero. We expect that competition based on outcomes will be key to this – rebuilding trust, driving innovation and reducing costs to all households (through the development of healthy price differentiators and reducing the cost to balance the grid).

New entrants

“New entrant” suppliers who dishonourably exited the market have reputationally damaged both the industry in general and more specifically the smaller, younger independent challenger brands. Those looking to enter the market now should not be tarred with the same brush as previous new entrant failures and this licence condition will support them in achieving the trust needed to gain market share – Customers can be reassured that new entrants are pricing fairly and not a party to teaser tactics of the past.

With good trust in new entrants there is no reason why they cannot thrive in this market – there will be stability (see Q.2) and space for them to innovate. Those who do seek to enter will already be considering their USPs carefully and will surely recognise the benefits of outlawing acquisition only deals (as FCA have already demonstrated).

(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?

As set out in our response to Ofgem’s draft competition framework, we urge Ofgem to update its views of competition to move beyond using switching as the only metric of success. It would be an error to return to pre-crisis thinking around the indicators for a healthy market (defined simply as those who switch – “active” and “inactive” consumers). Ofgem should be considering a) how to protect

disengaged customers; b) how healthy competition might look for those actively engaging in the energy transition.

Loyal customers would traditionally be seen as “inactive” but in reality they could be actively participating in the market, defined by engagement in smart products and services and activating tools to decarbonise. BAT can help to focus competition on said products, which in turn will enable the following:

1. Suppliers will compete to attract customers based on good outcomes (which includes fair pricing), driving up standards across the industry
2. With trust and reputation improving active customers will start to adopt Low Carbon Technology products and tariffs which will provide them with savings and suppliers with knowledge and development opportunities
3. Disengaged customers will start to see opportunities to engage where they may have felt previously excluded or uninterested (in part at least due to the above 2 points)
4. Balancing costs will reduce as more and more households try out new products to load shift demand, this will reduce costs for everyone

BAT is an enabler to this future - redefining the markers for healthy 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?

Discounted deals

There is a cost to acquire customers and it is fair to, having recovered that cost, reduce future like for like tariff prices for those customers. However the current licence drafting does not allow for this and as such has required an industry wide derogation. The risk we think Ofgem is trying to unpack is that where there is a

mentality to compete based on pricing, suppliers could focus on making their loyal tariffs (at times where they are concerned about losses) the new teasers.

A future market should not be one where a derogation loophole is used to reinvent unsustainable pricing tactics of the past and whilst we have not seen evidence that is endemic there are plenty of regulations at Ofgem’s disposal to be able to protect against this. Further if Ofgem were to redraft the licence condition they can therefore remove the derogation and make the principle of BAT clearer.

Price Cap

BAT and the price cap do two very different things and both have an important role - defining what is fair and acceptable in a complex market and sending a clear message to customers that fair pricing is a regulated certainty.

- The principle of BAT is that using teaser price signals to lure customers is not representative of a healthy market and that suppliers must compete through other means, such as good outcomes, trust and reputation, innovative products and services.
- The price cap provides an upper cap to costs charged on default tariffs. Its principle is also very clear, retailers should drive down prices through investing in modernisation and cannot rely on inflating prices for those least active to cover inefficiencies and clawback losses on teaser tariffs, it provides pricing comfort and protection for disengaged customers.

The tools combined send a powerful message to households and each have their role in the market. The key to the price cap is to ensure it is simplified so it can be sustained through the energy transition and for BAT the licence simply needs redrafting to ensure it better represents the principle.

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

The principle of BAT and the drafting of SLC22B do not match and this has resulted in the need for derogations. We recognise Ofgem acted with agility to implement some market stabilisers and, in doing so, recycled historic licence conditions. Looking ahead, we recommend Ofgem focus on reviewing the wording of the licence conditions so an enduring condition is aligned to the intention more closely, effectively removing the need to derogate tariffs as the competitive market reopens. We would be happy to work with Ofgem in developing an enduring licence condition.

4) Impact on tariff offerings

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

We do not see a relevant connection between BAT and the development of a good range of tariff offerings. We do recognise that in its current form BAT does create some additional complexity (i.e. potential need for a derogation) but this can be easily rectified through improving the licence drafting - see response to 4(ii) below.

Ofgem should be highly sceptical of the view that BAT has quashed supplier tariff offerings and choice in the market. First, it is currently impossible to untangle the impact of BAT from MSC. Secondly, while there may be less standard fixed tariffs in the market, there is switching (as described above) and - at Octopus at least - there has been product development and growth which offers choice to consumers.

As well as provision of fixed and flexible tariffs we have developed a [range of smart import and export tariffs](#) over the past two years. Currently [over 1 million customers benefit from smart products and tariffs](#). These products include smart tariffs as well as products such as Savings Sessions, Fan Club and Power Up. [Power Up](#), for example, gives customers in certain postcodes free electricity when

there is excess power on the local grid and within 2 months over 20k customers signed up.

Whilst we are grateful that Ofgem are considering the impact of licence conditions on low carbon technology tariffs and ensuring that any licence drafting is fit for the future we do not see BAT as a detractor to innovation.

(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)?

We completely agree that BAT should remain as a policy to encourage competition and that to set this up for success Ofgem need to reconsider the licence drafting of SLC22B. This does not need to be complex, it is simply an adjustment to ensure the principle of BAT is reflected in the licence conditions. There is an opportunity to review other regulated markets to see how well their licence drafting is working and we would be happy to work with Ofgem on the development of an enduring condition.

It is also important to note that, given it is already in place, there is a huge advantage to at very least extending it for a further 12 months. When a tool that fundamentally shifts acquisition behaviour is introduced into a market it is reasonable to expect a destabilising window before a new and fairer competitive market is able to establish itself. With BAT implemented during a window of low switching, due to external events, this negative risk has not materialised.

The FCA's [General Insurance Pricing Practices \(GIPP\)](#) has demonstrated that, in spite of switching numbers dropping in the immediate aftermath of implementation, competition has changed to focus on other key differentiators (which in energy should include trust and outcomes as primary feeders into innovative new products and services) and switching has regained momentum.



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It is therefore clear to us that the impact of removing a tool that has such value (and then needing to reestablish it) is far worse than in keeping a tool that has not had time to prove its worth.