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

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Utility Warehouse was one of the first ‘challenger’ brands when it entered the retail energy market over 20 years ago, and we have a unique perspective in that we operate across numerous regulated markets: energy, telecoms and insurance. Today we serve over 900,000 households.

UW overarching view

We support the continuation of the BAT beyond March 2024

The consultation to introduce BAT was to propose an enhanced regulatory approach to ensure energy suppliers pursue sustainable business models, minimising risks to customers and the market and its objective was to create a market where suppliers are financially resilient, so that risks are not inappropriately passed on to consumers. The policy justification for the BAT remains relevant today and the intervention is successfully delivering this. We therefore support its continuation beyond March 2024.

In summary, our view is justified as follows:

- Market stability should continue to be achieved through a variety of distinct policy measures
- BAT has protected against supplier failures and continues to support market stability
- Had a BAT been established before the energy crisis, it would have prevented many of the bad practices that led to supplier failures and the associated costs of the crisis to consumers would have been far lower.
- The insurance sector - a comparable regulated utility sector - has permanently banned a similar practice ‘price walking’ and we encourage Ofgem to consider alignment in its approach
- BAT continues to promote healthy and sustainable competition

Consultation questions

Q1	Do you consider there is merit in keeping the BAT in place post March 2024, after the discontinuation of the MSC?
	<p><u>We support the continuation of the BAT beyond March 2024</u></p> <ul style="list-style-type: none"> ● The consultation to introduce BAT was to propose an enhanced regulatory approach to ensure energy suppliers pursue sustainable business models, minimising risks to customers and the market and its objective was to create a market where suppliers are financially resilient, so that risks are not inappropriately passed on to consumers. ● The policy justification for the BAT remains relevant today and the intervention is successfully delivering this. We therefore support its continuation beyond March 2024.

Market stability should continue to be achieved through a variety of distinct policy measures

- Market stability has been achieved through a variety of regulatory interventions that offer distinct solutions to a range of market challenges. We would be concerned if Ofgem were to consider removal of one intervention on the basis that another is in place.
- For example, the purpose of the price cap should not be confused with a social tariff. A price cap and a social tariff offer different protections, to different customer groups, for different reasons. They are not mutually exclusive. The introduction of a social tariff (or equivalent) for the most vulnerable does not justify the removal of market-wide price protection. One policy prevents exploitation, and one policy addresses acute affordability.
- Similarly, the BAT prevents the practice of offering cheaper tariffs exclusively to new customers, which would otherwise penalise loyal customers and distort competition. In contrast, the price cap sets a cost-reflective limit on prices, meaning that no customer can be overcharged. Again, these two interventions provide solutions to the market and are not mutually exclusive.

BAT has protected against supplier failures and continues to support market stability

- The supplier failures of 2021-22 would have been less likely had a BAT been in place. Further, the costs of supplier exits would have been lower had BAT been in place. BAT is a policy intervention that helps prevent failures, which helps reduce the fragility of the market during times of crisis. The BAT was introduced - as part of an effort to prevent more failures - after an energy crisis, but the fact that the crisis is over is not sufficient justification to remove it. Doing so would simply wind back the clock to a market exposed to the risk of customer exploitation and supplier failure.
- The BAT has contributed to improve market stability post the energy crisis and had such a measure been in place earlier the likelihood of supplier exits would have been lower and as a consequence the associated SoLR costs to consumers would have been lower.
- While the BAT and MSC were introduced as joint measures, they each served a different purpose in achieving market stability. The MSC supported suppliers by providing conditions to better manage the risks associated with purchasing energy. This assisted suppliers in being able to continue hedging in accordance with the price cap. The BAT prevented suppliers from offering potentially unsustainable fixed deals exclusively to new customers and thus reducing the risk of financial stress, supplier exits and the resulting costs and disruption for consumers.

The insurance sector - a comparable regulated utility sector - has permanently banned a similar practice 'price walking' and we encourage Ofgem to consider alignment in its approach

- We would encourage Ofgem to consider the decisions of the Financial Conduct Authority (FCA), who ruled against similar practices in the insurance sector in 2021.

	<p>The FCA introduced a permanent ban on the practice of inflating prices for loyal customers i.e. 'price walking'¹.</p> <ul style="list-style-type: none"> • The FCA found that firms were using complex and opaque pricing techniques to identify customers who are more likely to renew with them, then increasing prices for these customers each year at renewal. Customers therefore paid higher prices relative to their cost to serve. In addition, some firms engage in practices that can discourage customers from shopping around. While lower prices are available for customers if they regularly switch or negotiate with their existing provider, price walking distorts competition and leads to higher overall prices for customers. • There are many comparisons with the retail energy sector: 1) customers suffer harm if they chose not to, or are unable to switch; 2) there is a risk of overall higher prices for customers (assuming acquisition-only tariffs are subsidised by loyal customers); and 3) acquisition tariffs incentivise tease and squeeze pricing tactics that undermine the sustainability of the market. Given the FCA has concluded that these practices and the associated market and consumer harm warrant a permanent ban, we would encourage Ofgem to extend - or make permanent - the BAT. <p><u>BAT continues to promote healthy and sustainable competition</u></p> <ul style="list-style-type: none"> • The implementation of the Ban on Acquisition-only Tariffs (BAT) has not hindered market growth or competition. Over the first 6 months of FY24, despite the existence of BAT, we had over 62,500 additional households switch to us, this reflects an annualised growth rate of over 14%. Notably, BAT has not affected our growth trajectory nor had any adverse effects on our capacity to expand. • As noted in Ofgem's competition framework consultation, high switching rates is not the only measure of strong competition. We strongly believe that when Ofgem interprets its data, it must differentiate between disengaged customers at risk, and loyal engaged customers. Suppliers successfully retaining customers through effective customer service and product offerings (for example) should not be considered a measure of poor market health. • BAT does not regulate to prevent innovation or competition. Suppliers can and do innovate and distinguish themselves on price as well as other factors. At UW, we innovate by bundling together multiple utility services, thereby reducing our overheads, and our energy products are therefore priced below the price cap and are regularly the best value in the market. The BAT is part of a series of measures that facilitates healthy, sustainable competition.
<p>Q2 (i)</p>	<p>Can you provide your thoughts on/evidence of the impact of the BAT to date in terms of market stability?</p>
	<p><u>The BAT has contributed to improved market stability</u></p> <ul style="list-style-type: none"> • Between September 2021 and February 2022, the energy sector faced a critical period marked by lack of financial resilience within many energy suppliers and the rise in wholesale prices, resulting in the collapse of 28 energy suppliers. A report

¹ <https://www.fca.org.uk/publication/policy/ps21-5.pdf>

from the House of Commons Committee of Public Accounts highlighted Ofgem's challenge in striking a balance between promoting competition among energy suppliers while ensuring their financial robustness. In response Ofgem introduced short-term measures, like the BAT with the objective of creating a market where suppliers are financially resilient. As a result, we have observed a decline in supplier failures and exits from the market, indicating signs of market stability.

- The supplier failures of 2021-22 would have been less likely had a BAT been in place. Further, the costs of supplier exits would have been lower had BAT been in place. BAT is a policy intervention that helps prevent failures, which helps reduce the fragility of the market during times of crisis. The BAT was introduced - as part of an effort to prevent more failures - after an energy crisis, but the fact that the crisis is over is not sufficient justification to remove it. Doing so would simply wind back the clock to a market exposed to the risk of customer exploitation and supplier failure.

BAT has helped facilitate a new market with healthy, sustainable switching

- The BAT (among others in measures in place) has contributed to a new market where financial resilience, stability, and consumer protection are paramount. Within this new framework, switching activity (which is on the increase) is sustainable, healthy, and fit for the future.
- Like many suppliers, Utility Warehouse has been competing and winning new customers under the new regulatory framework. For example, over the first 6 months of FY24, despite the existence of BAT, Utility Warehouse had over 62,500 additional households switch to us, this reflects an annualised growth rate of over 14%. Notably, BAT has not affected our growth trajectory nor had any adverse effects on our capacity to expand.
- BAT does not regulate to prevent innovation or competition. Suppliers can and do innovate and distinguish themselves on price as well as other factors. At UW, we innovate by bundling together multiple utility services, thereby reducing our overheads, and our energy products are therefore priced below the price cap and are regularly the best value in the market. The BAT is part of a series of measures that facilitates healthy, sustainable competition.

The 2021 decline in switching was not BAT-driven

- We do not believe that the price cap, the MSC, or the BAT have had a negative impact on switching. When looking at the data provided by Ofgem - and the Government's data on domestic switching² - our interpretation is that the fall in switching correlates with the onset of high energy prices related to the gas crisis.
- The argument that switching has been negatively affected is not backed up with evidence of causation; saying that BAT has reduced switching is confusing correlation with causation; there were many extraordinary changes in the market at that time. Further, it fails to acknowledge that the switching activity pre-BAT and pre-price cap, was unsustainable. In contrast the switching activity now is healthy, sustainable and driven by innovative suppliers competing on price and non-price factors - something we believe Ofgem should be encouraging.
- Even before the energy crisis when artificial savings of £400 were on offer from unsustainable, unhedged small suppliers, annual switching rates were only 18-20%. This apathy around engagement is likely to have been exacerbated by the energy

² [Government Quarterly Domestic Energy Customer Numbers](#); see 'chart' in data table

	<p>crisis, rather than by Ofgem’s regulatory interventions aimed at protecting market stability and consumers. Even once the price cap was in place, switching rates were climbing. We would encourage Ofgem to undertake evidence on switching before changing its policy approach to market stability and putting consumers back at risk of exploitative pricing.</p> <p><u>Available research on consumer engagement does not support theory that BAT removal would increase engagement</u></p> <ul style="list-style-type: none"> • We caution Ofgem against making a decision to remove the BAT or any regulatory intervention on the basis that it will increase customer engagement. Not only are the risks high (and impact a huge proportion of the market, which includes the most vulnerable), but the available research simply does not support that theory. To deliver significant changes in engagement levels, Ofgem needs to address customer attitudes. For example: • We would encourage Ofgem to revisit the CMA’s 2016 conclusions and research on customer engagement in the retail market. They found that 34% had never considered switching, and 36% didn’t think it was possible. Of the four stages of engagement, stage 1 is the first, and most important stage of engagement. The barrier to stage 1 engagement is not price, access to information, or complexity; it is the fundamental characteristics of energy being a homogenous product that leads customers to believe there is no ability or no point in switching suppliers³. • We also refer you to our own research⁴ on switching, which draws similar conclusions in regard to the main barrier to switching - the primary barrier is that customers are not aware they can switch or believe there is no benefit because energy is a homogenous product not warranting significant price dispersion.
<p>Q2 (ii)</p>	<p>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?</p>
	<p>Our points from our response to Q1 and Q2 (i) should be considered our response here.</p>
<p>Q3 (i)</p>	<p>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?</p>
	<p>Our points from our response to Q1 and Q2 (i) should be considered our response here. These points are true for both existing and new suppliers.</p> <p>Additionally, we would suggest that BAT will not negatively affect the ability for new suppliers to enter the market as they are more able than existing suppliers to offer attractive deals to win customers. This would be because new market entrants, unlike established suppliers, do not have any (or many) existing customers to whom they would also have to offer potentially low margin acquisition type tariffs. As new suppliers become established suppliers, it is important that the regulatory framework ensures a fair and level playing field, which the BAT helps create.</p> <p>The BAT provides backstop protection for customers and market participants against tease and squeeze pricing tactics by putting healthy pressures on suppliers to compete sustainably on price and non-price factors.</p>
<p>Q3</p>	<p>What impact do you consider the extension of the BAT would have on a) active and b)</p>

³ [CMA Energy Market Investigation: Final Report](#) - Section 9, Barriers to Engagement, paragraph 9.126

⁴ [Opinium Research](#) conducted research among 3,000 UK household bill decision-makers between 22 September 2023 and 5th October 2023

(ii)	inactive consumers (i.e. less likely to switch), in terms of realising the benefits of any competition?
	<p><u>Impact of BAT on active customers</u></p> <ul style="list-style-type: none"> For active customers in the market, the BAT has meant that the tariffs available for them to switch to are responsibly hedged and are likely to be based on more than just price (which overall is better for consumers). We should note that switching is growing: according to the latest data published by ElectraLink, nearly 222,000 customers changed their energy supplier in September, marking the highest monthly total since a decline in such activity in late 2021⁵. This is evidence that the BAT is not counterproductive to active customer engagement and has allowed switching and healthy competition to continue in the market. <p><u>Impact of BAT on inactive customers</u></p> <ul style="list-style-type: none"> For inactive customers, the existence of BAT is more important as it offers protection for those who cannot/ may not want to engage in switching. The BAT also plays a key role in ensuring fair pricing and limits price discrimination. Without the BAT in place these customers would be at risk of being overcharged for their energy or used to subsidise cheaper acquisition tariffs. Ofgem should note that it is likely that disengaged, or inactive, customers are struggling not just with engagement, but the cost of energy. According to the CMA's 2016 Energy Investigation Final Report survey⁶ inactive customers (those less likely to have switched suppliers in the last three years) are those with characteristics such as living in households with incomes under £18,000 a year, aged 65+ and with a disability or registered on the PSR. These are precisely the customers that need protection, particularly in a period of prolonged high energy prices and an enduring cost of living crisis.
Q3 (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?
	<p><u>The BAT has a positive role in making fair deals available to existing customers</u></p> <ul style="list-style-type: none"> There is benefit to having the BAT in place as it allows suppliers to offer innovative, sustainable tariffs to their customers without having to compete at negative margin and enter into a doom loop. Loyal customers are therefore treated fairly and are not subsidising switchers. It should be possible for a customer to actively choose to stay with the current supplier, if they are happy with the service and offerings, without losing out financially. This also encourages suppliers to compete in areas such as excellent customer service. <p><u>Market stability should continue to be achieved through a variety of distinct policy measures</u></p> <ul style="list-style-type: none"> Market stability has been achieved through a variety of regulatory interventions that offer distinct solutions to a range of market challenges. We would be concerned if Ofgem were to consider removal of one intervention on the basis that another is in place.

⁵ <https://www.energylivenews.com/2023/10/17/energy-supplier-switching-more-than-doubles-in-a-year/>

⁶ [CMA Energy Market Investigation: Final Report](#) - Section 9, paragraph 9:10

	<ul style="list-style-type: none"> • For example, the purpose of the price cap should not be confused with a social tariff. A price cap and a social tariff offer different protections, to different customer groups, for different reasons. They are not mutually exclusive. The introduction of a social tariff (or equivalent) for the most vulnerable does not justify the removal of market-wide price protection. One policy prevents exploitation, and one policy addresses acute affordability. • Similarly, the BAT prevents the practice of offering cheaper tariffs exclusively to new customers, which would otherwise penalise loyal customers and distort competition. In contrast, the price cap sets a cost-reflective limit on prices, meaning that no customer can be overcharged. Again, these two interventions provide solutions to the market and are not mutually exclusive.
Q3 (iv)	What are your thoughts on the existing policy and process for market-wide derogations for fixed retention tariffs?
	No response
Q4 (i)	Can you provide your thoughts on/evidence of the BAT's likely impact on supplier tariff offerings?
	<p>The combination of new financial resilience measures (introduced following the gas crisis) such as the BAT and the default tariff cap, have created a new market that allows for sustainable, healthy competition and innovation. The existence of BAT will not have a negative impact on supplier offerings, it allows suppliers to offer sustainable and responsibly priced tariffs and encourages suppliers to create innovative tariffs to attract new customers.</p> <p>While supplies could offer an array of tariffs before the energy crisis, the reality remains that only a small percentage of customers are actively engaged in the energy market. The switching rates pre-crisis, ranging from 15-21%⁷ between 2018 and 2021, suggests that there is limited customer engagement, even when suppliers had no restrictions on tariff offerings. The point here is that the industry overall has low customer engagement and removing a measure such as the BAT leaves a large proportion of inactive customers at risk of missing out on the best deals in the market and removes the protections that ensure fairness to loyal customers (something that the FCA has permanently regulated against).</p>
Q4 (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)?
	No response

⁷ [Gov Quarterly Domestic Energy Switching Statistics](#)