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By email only

Dear Dan

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

Thank you for the opportunity to comment on the future of the Ban on Acquisition-only Tariffs (BAT) post-March 2024.

The recent unique market conditions and the implementation of the Market Stabilisation Charge (MSC) mean it is not possible to provide evidence on the specific impact of the BAT. However, in the absence of an alternative mechanism which ensures tariffs are fair to all consumers and sustainably cost-reflective, the BAT should remain in place.

In addition to the BAT, to dissuade suppliers from taking risks with tariffs which are not cost-reflective - risks which may result in consumers picking up the bill for supplier failure - Ofgem should make clear there will be no future bailouts for suppliers.

We explain further within our answers to your questions below.

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

Yes, there is merit in keeping the BAT in place post March 2024.

Without the BAT, competition existed in a loss-making part of the market, subsidised by the loyalty penalty. This penalised the least engaged consumers, who are also potentially the most vulnerable consumers.

With competition returning to the market, the BAT will ensure suppliers continue to price responsibly and place greater emphasis on customer service and innovation as ways to attract and retain consumers.

The BAT could also provide a way out of eventual price-capping by protecting existing customers without the market-distorting effect of a price cap. Since January 2022, the FCA has required insurers to offer existing (renewing) customers a price that is no higher than they would pay as a new customer. This was introduced to remove the loyalty penalty and make the market work better.

While we support keeping the BAT post March 2024, we have sought clarity from Ofgem on their 31 March 2023 Tariff Appropriateness letter, where Ofgem stated that, "…*rewards and promotions that are exclusively aimed at new customers are almost certainly going to be* *contrary to the BAT licence condition*." We have written to Ofgem on several occasions seeking clarity and we have yet to receive a response.

We interpret a continued reduction to unit rates, only available to new customers, as an acquisition only tariff. We do not interpret a one-off, cost-reflective, sign-up reward (e.g. a voucher) to be an acquisition only tariff.

The voucher example provides a cost-reflective marketing tool to support responsible competition. Suppliers incur running costs for all acquisition channels (e.g. marketing budgets, salary and bonus for sales staff, etc). Where a supplier can save money by using a low-cost acquisition channel (e.g. online sign-up) the supplier should be allowed to pass on a cost-reflective saving to the customer in the form of a one-off reward.

We would expect the intent of the above to be reflected in Licence to avoid further ambiguity.

2) Market Stability

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

Given the recent price volatility and the effect of the MSC, it is not possible to provide evidence on the specific impact of the BAT. We appear to be moving into a period where the requirements of the BAT will have a greater impact and prevent loss-leading and unsustainable pricing. Allowing the BAT to continue in this period will enable a greater understanding of its impact on market stability.

To increase market stability, Ofgem should ban all tariffs which do not cover a supplier's costs.

(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?

Retaining the BAT will increase market stability by reducing the incentive for suppliers to introduce high-risk or potentially loss-leading tariffs. These unsustainable tariffs were a major cause of the additional costs borne by customers following supplier failure during the energy crisis.

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?

Competition will be sustainable, based upon customer service, innovation, and cost-reflective pricing.

The BAT prevents large suppliers from abusing their position and offering loss-leading tariffs that could be cross-subsidised across other tariffs and funded by loyal customers. It also prevents the moral hazard of new suppliers' risky tease and squeeze business models which may fail and leave costs behind for customers and industry to pay.

The BAT wouldn't dissuade a genuinely well-funded and effectively managed new entrant, who sought to compete based on innovation and not merely by exploiting unsustainable pricing.

(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?

Extending the BAT means active customers will have access to sustainable, competitive prices and an increased supplier focus on using customer service and innovation as key differentiators for competition.

Inactive customers (often likely to be vulnerable) will be at less risk of funding loss-leading tariffs through the loyalty penalty and funding supplier exits due to risky business models from which they never had the opportunity to benefit, thereby a one-sided risk. They will also benefit from the improved customer service and innovation required by suppliers to compete in a stable market where loss-leading, eye-catching pricing does not play such a dominant role in 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?

The key consideration here is that all tariffs should be cost-reflective. We see no problem rewarding loyalty, but this too should be done responsibly with sustainable, cost-reflective tariffs.

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

The derogation should include all retention (loyalty) tariffs, not just fixed retention tariffs. If rewarding loyalty is to be permitted, variable retention tariffs should also be allowed.

4) Impact on tariff offerings

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

The BAT incentivises suppliers to ensure all their tariffs are sustainable because they are unable to offer loss-leading tariffs to a narrow group of consumers, with less active (or more loyal) customers subsidising them. Suppliers retain the ability to differentiate and compete based on customer service and 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)?

There should be clarifying guidance around what is and isn't considered an acquisition tariff. This should make clear that suppliers can offer a one-off, cost-reflective, sign-up reward (e.g. a voucher).

This would provide a cost-reflective marketing tool to support responsible competition and encourage customer switching (which continues to be at an all-time low). Suppliers incur running costs for all acquisition channels (e.g. marketing budgets, salary and bonus for sales staff, etc). Where a supplier can save money by using a low-cost acquisition channel (e.g. online sign-up) the supplier should be allowed to pass on a saving to the customer in the form of a one-off cost reflective reward.

We would be happy to discuss our comments in more detail should Ofgem find this useful.

Yours sincerely,

Nick Gatfield
Regulatory Manager