ofgem
Making a positive difference
for energy consumers

Consultation

Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs ("BAT")

Publication date:	14 May 2024
Response deadline:	11 June 2024
Contact:	Dan Norton, Deputy Director of Retail Pricing Strategy
Team:	Consumer Protection and Retail Markets
Email:	retailpolicyinterventions@ofgem.gov.uk

On 23 February 2024 we published our Decision (the "**February 2024 Decision**") to exercise our existing powers to extend the Ban on Acquisition-Only Tariffs ("**BAT**") until 31 March 2025. Alongside that decision we announced that we would issue a statutory consultation on whether to remove the BAT following 6 months of this extension. We are therefore consulting on proposals to remove the BAT from 1 October 2024, instead of allowing the existing extension to continue until it expires on 31 March 2025.

Our Decision made clear that we do not intend to retain the BAT beyond the current extension, assuming the price cap remains in place. Our analysis, which we summarise in this document, indicated that the case for retaining the BAT as an enduring market measure was not compelling for either market stability or price protection reasons. Our minded-to position is to remove the BAT from 1 October 2024. We expect to publish our Decision in July 2024.

We welcome views from energy consumers and others with an interest in the domestic retail energy supply market. We particularly welcome responses from energy suppliers, third party intermediaries and consumer groups.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at **Ofgem.gov.uk/consultations**. If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Contents

Executive summary

Market context: introduction of the MSC and the BAT

The BAT was introduced as a temporary measure in April 2022, to complement the Market Stabilisation Charge (MSC) in protecting consumers from stability risks during the wholesale price crisis. Following the Russian invasion of Ukraine we decided to extend these measures until 31 March 2023 ("**August 2022 Decision"**[1]). With prices still high and volatile, we announced further extensions of the MSC and the BAT until 31 March 2024 (**"February 2023 Decision"**[2]), with new powers given to the Authority to renew both on an annual basis.

Return to broader stability: expiry of MSC and consideration of the BAT's future

After a review of market conditions, we published our Decision to allow the MSC to expire at the end of March 2024[3]. As we noted then, the market has stabilised and we have introduced policies to improve supplier financial resilience and responsibility. These include a common minimum capital requirement, taking effect from April 2025, for licensees that supply domestic customers. As well as improving supplier resilience, we expect these rules will have the effect of preventing a return to unsustainable price competition and excessive risk taking.

Given these measures and the improved market circumstances, we concluded that there is no longer a case for maintaining the MSC and BAT for the purposes of stabilising the market. We acknowledged that the BAT had other potential market effects, the continuation of which may or may not be in consumers' interests beyond March 2024. After further analysis of these[4] we concluded there is a strong case to remove the BAT.

We did, however, consider there to be a residual level of risk if we removed the BAT alongside the MSC. In our decision of 23 February 2024 **("February 2024 Decision")**[5] we therefore used our powers to renew the BAT for another year and set out our intention to consult on earlier removal after 6 months. In doing so, we can set out our position ahead of relevant price cap observation windows, to allow industry the time to factor in necessary changes.

[1] Decision on extending Short-Term Interventions and adjusting MSC calculation | Ofgem
[2] Decision to extend the MSC and the BAT beyond 31 March 2023 | Ofgem
[3] Future of Market Stabilisation Charge after March 2024 | Ofgem
[4] Including the following Call for Input: Call for Input on the future of the BAT post-March 2024 | Ofgem
[5] Future of Ban on Acquisition-only Tariffs post-March 2024 decision | Ofgem

Our proposals to remove the BAT and minded-to position

Based on our analysis, our view is that retaining the BAT is no longer necessary for market stability and is likely to result in net costs to consumers through increased prices, which its purported benefits (via improved non-price competition and supplier stability) are not likely to offset. We therefore believe the interests of existing and future consumers are best served by the BAT not remaining an enduring feature of the market while the price cap is also in place.

This statutory consultation explores two avenues for removal of the BAT in the coming year. The first is removal after 6 months (i.e. from 1 October 2024). The second is removal at 12 months by default (i.e. on 31 March 2025). Simultaneously we are also consulting on removal of the Market Wide Derogation for fixed retention tariffs for the same two time periods.

Our minded-to position is to remove the BAT at 6 months; we consider that this will drive a faster return to price and non-price competition and better price savings and service levels for consumers as a result. Retaining the BAT would result in net consumer costs and we should remove it following a sufficient delay after the conclusion of the MSC. Disengaged consumers would continue to be supported by the price cap as the overarching protection against discrimination and unfair pricing. To the extent that we would expect more active competition to also result in improved quality of service over time, this should benefit all customers.

Future price protection options

We introduced the BAT as part of measures to tackle irregular and volatile market conditions, where the price cap limit increasingly determined tariff costs for much of the retail market. Market prices have stabilised, which is welcome. However the price cap remains and, as prices fall, will return to its core function to address the loyalty penalty, ensuring default customers pay no more than an efficient supplier with a small profit margin. We are consulting on removing the BAT in this context; we consider it unsuitable as a price protection measure in the short-term given the existence of a powerful tool, backed by legislation, which fulfils this role already.

Separate to this consultation we recently invited views on the price cap's medium- to long-term future, including options to reform or replace it. We recognise that a version of the BAT could be a relevant regulatory tool in the future market and will continue to develop our thinking on the role that a BAT designed specifically for price protection purposes, instead of the stability role it has provided, could play.

Licence modifications and derogations

We have published alongside this consultation a set of licence modifications to reflect our proposal to remove the BAT from 1 October 2024 – SLC 22B for both gas and electricity supplier licences - and are seeking feedback on our proposals. No change in licences is needed if the BAT continues up to 31 March 2025 (i.e. removal at 12 months) – SLC 22B would automatically expire after this date.

There would also be no separate change to the market-wide derogation to SLC 22B for fixed retention tariffs. The derogation remains in force for the duration of SLC 22B and there is no change to the original reasons for its introduction to the market. As such the market-wide derogation will remain for the duration of SLC 22B, whether for a further 6 or 12 months.

Next steps

Consultation responses are due by 11 June 2024. Following consideration of these, together with any additional stakeholder engagement, we expect to publish our Decision in July 2024 with the changes to go live from either 1 October 2024 or 31 March 2025 (depending on the outcome of this consultation). Any responses or other input, including requests for bilateral engagement, should be sent to: retailpolicyinterventions@ofgem.gov.uk.

1. Introduction

What are we consulting on?

1.1. In our February 2024 Decision we announced our intention to remove the BAT from the market in the near future. However, we also noted the residual level of risk arising if the BAT was removed at the same time as the MSC, particularly on market stability and supplier hedging.

1.2. Our existing powers within SLC 22B allow for the BAT to be extended on an annual basis without further licence modification. On the basis of the above concerns, we exercised this power from 1 April 2024, noting in our February 2024 Decision that we would follow this with a statutory consultation on whether to remove the BAT from 1 October 2024 (i.e. 6 months earlier than its current 12 month extension).

1.3. Whilst this statutory consultation refers to existing and updated analysis on the impacts of the BAT on areas previously explored including market stability, price protection, competition and tariff offerings, this analysis is only being considered on the basis that the BAT will be removed either on or before 31 March 2025.

1.4. To clarify, this consultation is focused on whether to end the BAT after 6 months as opposed to 12. It seeks to set out and consider impacts in relation to this question, with a particular focus on market stability and supplier hedging risks, when assessing the speed at which to remove the BAT from the market. The counterfactual to removing the BAT in 6 months is removing the BAT in 12 months, rather than its open-ended retention[6].

1.5. This document is split into three key sections:

- Section 2 sets out the case for both options: a) to remove the BAT in 6 months, from 1 October 2024 and b) to allow the BAT to run to its current expiry date of 31 March 2025. This includes consideration of stakeholder feedback from our Call for Input and insight from Ofgem’s analysis to date.

[6] A separate consultation on the longer-term future of price protection was recently published, which considers options beyond continuation of the price cap, including replacing it with a reinstated and enduring BAT. By contrast, this consultation is shorter-term in scope and focuses on the manner of the BAT’s exit from the market in the coming year.

- Section 3 sets out an initial draft impact assessment which includes consideration of the impacts of our proposals on competition and wider distributional factors. This is also subject to consultation.

- Section 4 sets out our minded-to proposal to remove the BAT from 1 October 2024 and includes our consultation questions.

1.6. Further information is in the appendices:

- **Appendix 1** sets out the website link to the main page on our website containing this Statutory Consultation, the licence modification notices for the BAT and the Market-wide Derogation notice for fixed retention tariffs.

- **Appendix 2** contains Ofgem's Privacy Notice on consultations.

- **Appendix 3** provides a summary of the analysis and conclusions underlying our February 2024 Decision to remove the BAT at some point before or on 31 March 2025.

Context

1.7. The MSC and the BAT were introduced as temporary market stabilisation measures in April 2022 during a period of significant market volatility and high prices. Both measures were designed to encourage domestic suppliers to hedge demand in accordance with the price cap indexation by providing a degree of protection against losses if these hedges were stranded by a wholesale price fall.

1.8. The MSC required the supplier to which a consumer was switching ("Acquiring Supplier") to pay the Losing Supplier a proportion of that potential hedging loss, calculated by reference to the price cap indexation.

1.9. The BAT complemented the MSC in protecting consumers from volatile markets by reducing the incentive for suppliers to make aggressively low-priced offerings in these circumstances (because their existing customers may take up the offer). Together, these measures have helped provide resilience for the GB domestic energy market against large wholesale price movements, whether up or down, for the benefit of consumers.

1.10. Both measures were originally due to expire from 30 September 2022 but were extended on two occasions following consultation and assessment of market conditions at the time. In October 2023, we announced that the MSC would expire from 31 March 2024 owing to an improvement in market conditions, its evolving impact on the market and the effect of other policy measures on improving supplier resilience.

1.11. Although first introduced to complement the MSC as a market stabilisation measure, it was acknowledged that the BAT has other effects on the market which needed to be explored. To this extent our Call for Input in October 2023 sought views on the existing and likely future role of the BAT on market stability, but also on competition, fair pricing and tariff offerings.

February 2024 Decision

1.12. On market stability, our findings from analysis modelling of a range of price and competition scenarios indicated that in most scenarios comparing the costs and benefits of either retaining or removing the BAT, the benefits for consumers of removing the BAT outweigh the associated supplier losses. Its impact on supplier finances is small, and close to immaterial, in most modelled scenarios. Even in the more extreme scenarios, it seems unlikely that the BAT would materially contribute to future supplier sustainability. This is true even in modelled instances of mass switching, following large wholesale price falls in the absence of both the BAT and the MSC.

1.13. On competition, there was no compelling evidence to date to suggest that the retention of the BAT would likely drive better non-price outcomes including improved overall service (through a reduction in price competition). Service quality is more likely to be a complement to price competition rather than an alternative.

1.14. On tariff offerings and fair pricing, our analysis suggested that the BAT is having a limited impact on addressing the loyalty penalty. Further, our analysis demonstrated that disengaged customers are not paying any less under the BAT, whereas retaining it as a standalone measure is more likely than not to have an adverse effect on active consumers through higher prices.

Stakeholder feedback

1.15. We consulted between 27 October to 23 November 2023 on whether to retain the BAT as a standalone measure while the price cap remains in place. Specifically, we invited views on the BAT's existing and likely future role on market stability as well as its impact on competition, fair pricing and tariff offerings. We received 14 consultation responses and we have published all non-confidential responses on our website[7]. All suppliers and one consumer group supported the extension of the BAT post 31 March 2024, whilst by contrast all PCWs and TPIs strongly opposed an extension of the BAT.

1.16. On **market stability risks**, all suppliers agreed that the BAT had contributed to market stability and considered that an extension post 31 March 2024 would help to better observe the BAT's stability impact in the absence of the MSC. They raised concern that the BAT's status had not been settled ahead of the price cap observation window for Q2 2024 and that this uncertainty had negatively impacted their hedging decisions for the period. The majority of PCW and TPI respondents acknowledged that the BAT had been a positive and necessary intervention for market stability purposes, but considered that a further extension would negatively impact consumers and the return to competition.

1.17. On **price discrimination impacts**, suppliers considered that the BAT's extension would help limit price discrimination amongst existing and new customers in the market alongside the price cap, helping to promote a level playing field. The consumer group also strongly advocated for the BAT's role in limiting price discrimination among all consumers. PCWs and TPIs were in consensus that the BAT does not play a meaningful role in limiting price discrimination for existing or new customers in the presence of the price cap.

1.18. On **competition impacts**, the majority of suppliers contended that the BAT enabled more sustainable competition that was better focused on non-price factors such as improvements in services and innovation. This point was echoed by the consumer group, who argued that extending the BAT would allow us to improve our understanding of its impact as a standalone measure on market stability. By contrast, the majority of PCW and TPI respondents shared the collective view that the BAT drives up prices for active consumers and minimises incentives to switch for disengaged customers. They considered that the BAT would have significant negative impacts on non-price factors, which would in turn affect suppliers' ability to compete to provide better overall service.

[7] Call for Input on the future of the BAT post-March 2024 | Ofgem

1.19. On the **market-wide derogation**, some suppliers considered that this should be kept for as long as the BAT is in place with some further suggesting that it should be incorporated into the existing licence conditions and/or redrafted to better suit the BAT's ongoing purpose. By contrast, the majority of PCW and TPI respondents argued that the BAT was having unintended consequences on the market and should be removed.

Consultation stages

1.20. We invite stakeholders to submit comments on any aspect of this consultation on or before 11 June 2024. This will give Ofgem the ability to publish our Decision in July 2024, and if it decides that it is in consumers' interests to remove the BAT earlier, the ability to make the required changes in order for this to come into effect from 1 October 2024.

Figure 1: Consultation Stages

Stat Con open	Stat Con closes (awaiting Decision). Deadline for responses	Responses reviewed and Decision published	SLC changes go live (if changes made)
14 May 2024	**11 June 2024**	**July 2024**	**1 October 2024**

How to respond

1.21. We want to hear from anyone interested in this consultation. Responses to this consultation and any supporting evidence can be submitted to Ofgem by emailing retailpolicyinterventions@ofgem.gov.uk.

1.22. We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

1.23. We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, data and confidentiality

1.24. You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

1.25. If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you do wish to be kept confidential and those that you do not wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

1.26. If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with

1.27. If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

1.28. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

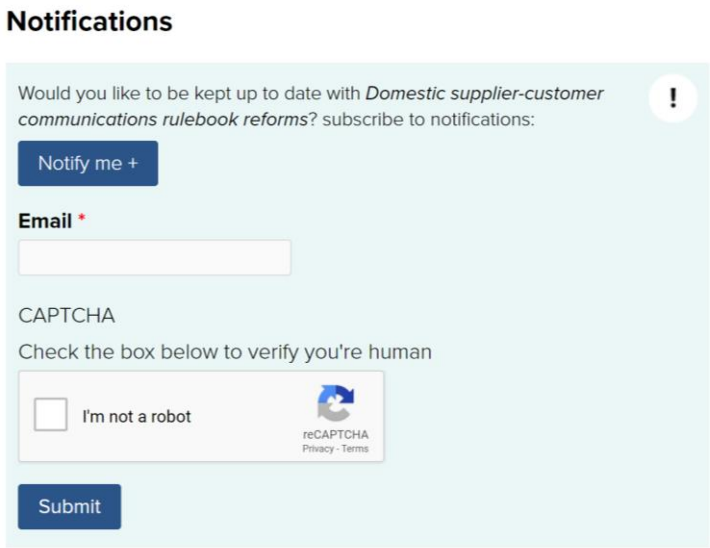
1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?

6. Do you have any further comments?

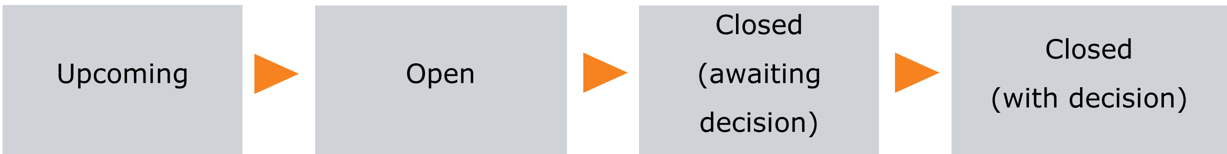
1.29. Please send any general feedback comments to [stakeholders@ofgem.gov.uk.](mailto:stakeholders@ofgem.gov.uk)

How to track the progress of the consultation

1.30. You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. [Ofgem.gov.uk/consultations.](https://www.ofgem.gov.uk/consultations)



1.31. Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:



2. The case for removing the BAT before 31 March 2025

Section summary

The BAT will expire by default on 31 March 2025 (12 months following its extension from 1 April 2024). This section sets out key issues we have been considering as we decide on whether to maintain that timeframe or remove the BAT 6 months earlier, from 1 October 2024.

Our position is that the BAT was introduced to perform a temporary market-wide stability role alongside the MSC, at a time of high and volatile prices. These extreme prices have since eased and we have removed the MSC accordingly. In the same context, our preference is to remove the BAT from the market on the basis that it has fulfilled the role it was introduced for.

It would therefore require a compelling reason for the BAT to be retained, whether for other market stability or price protection purposes. We do not consider that any such reasons are persuasive. The expected consumer benefits from removing the BAT are likely to be greater than if it were retained. We believe these benefits are likely to surpass any disbenefit arising from early removal of the BAT and can be realised more quickly if the BAT is removed earlier.

Context

2.1. We announced in our February 2024 Decision that we would remove the BAT from the market in the coming year. We decided against allowing the BAT to expire earlier, to avoid any risk of uncertainty as a result of both the MSC and the BAT being removed from the market at the same time.

2.2. The BAT was extended for 12 months using existing powers in the licence from 1 April 2024 and as such is set to expire by default on 31 March 2025. We are currently considering whether there is merit in removing the BAT earlier than this date (i.e. in 6 months, from 1 October 2024).

2.3. The existing version of the BAT was introduced as a complementary measure to the MSC. It was never intended to replace the price cap, which at present is the key measure for protecting consumers against the loyalty penalty. Ofgem recently published a separate discussion paper and call for input on longer-term options for future price protection[8], including the option of replacing the price cap with an enduring BAT. In contrast to that, this consultation is focussed on the shorter-term question of whether, whilst the price cap remains in place, there will be net benefits from retaining the BAT, including from any reduction in risk to suppliers' financial sustainability.

2.4. Unless there is a compelling and persuasive reason for the BAT to be retained, our preference would be to remove it. The BAT was introduced on a temporary basis, in tandem with the MSC which has since been withdrawn, to tackle extreme market conditions that are no longer in place. We also do not consider that it is capable of providing market-wide stability on its own. For these reasons we consider that it has fulfilled its core purpose when first introduced.

Our approach to modelling the effects of keeping or removing the BAT

2.5. We have experienced unprecedented market circumstances in recent years. The BAT was implemented as one of a range of measures that had not previously been a feature of the market. As such there is no way to directly observe the effect of the BAT as a standalone measure on competition during its existence, or its potential effect if it were to stay in place beyond October. There are various reasonable scenarios of likely consumer and supplier behaviour with and without the BAT. In support of our decision, we therefore considered a number of scenarios where suppliers would compete with more or less intensity either with or without the BAT.

2.6. To understand the difference between outcomes with and without the BAT in place, we modelled the potential levels of competition where there are falling prices. The aim of the BAT is to limit acquisition-only tariffs. When prices are falling, there will be greater opportunities for suppliers to offer acquisition tariffs below fixed term tariffs to existing customers, whilst still pricing in a financially sustainable manner. This price-based competition then increases the likelihood of suppliers incurring losses, driven by the need to unwind hedges associated with former SVT customers. Each scenario includes a set of coordinated assumptions about hedging volumes and about whether suppliers do or do not

[8] Future Price Protection Discussion Paper | Ofgem

offer FTC and acquisition tariffs to new customers. We categorised the market into three groups of suppliers based on their size. [9]

2.7. We then modelled the following:

i) Expected levels of switching between suppliers, with and without the BAT;
ii) implication for prices paid by consumers; and
iii) implication for the financial position of suppliers, where they have to unwind hedges.

2.8. Our analysis was focussed on short-term effects during a single price cap period. It is based on a range of scenarios that are derived from observing market conditions, but are necessarily based on judgement of likely competitive behaviour. We are mindful that such modelling and analysis has limitations; given the context that we have emerged from, this is inevitable. Our analysis assumes that lifting the BAT will result in suppliers making some adjustments to their commercial strategies, including both changes to hedging volumes of their SVT customer bases and changes to offers of competitive products. Both of these changes have been signalled in consultation responses.

2.9. We are also emerging from a historic price crisis – as such, market players have behaved differently to normal competitive circumstances (partly by design, given the purpose of measures like the MSC). The pre-crisis market was very different in nature: there were many more suppliers and there was aggressive, and often unsustainable, price competition. A large number of suppliers have since exited, many of which were driving unsustainable competition, and we have since introduced policies to improve supplier financial resilience and responsibility. This makes it hard to simply compare against those earlier market dynamics. In that context, we have modelled a range of scenarios when assessing the level of financial risk to suppliers in the current market in the context of the uncertainty on how the market will develop over the coming 6-12 months. It stands to reason that no set of modelled scenarios would ever be definitive or exhaustive. However, we do not believe that using more scenarios would have substantively changed our assessment.

[9] For simplification, we assumed that all suppliers within the same group will behave similarly and that suppliers will either 'gain' or 'lose' suppliers depending on pricing strategy. Given that our overall intention was to assess the relative size of different effects on prices paid and supplier finances, this is a practical simplification, and overstates the maximum adverse effect on most suppliers.

2.10. Based on these calculations, we have evaluated the direct effects on consumer outcomes and on supplier finances. As described below, our judgement based on this analysis is that removing the BAT would not threaten the financial sustainability of suppliers, and that it is more likely than not that the net impacts of competition and consumer outcomes would be positive. Our assumptions and modelling approach are described in more detail in Appendix 3.

2.11. Our analysis does not consider the dynamic benefits that may occur over time as more competition returns to the market. We have focussed on the short-term effects, during a period when market stability remains important. However, we would expect that more effective competition would also provide better incentives to improve service quality and innovation, which should benefit consumers more broadly.

The effect of removing the BAT on financial sustainability

2.12. Our assessment across the scenarios that we measured suggested that the removal or retention of the BAT was not in itself likely to be a material driver of supplier sustainability. We considered the effects of a one-off price shock of 25%, with a sensitivity of a case where prices fell by 35%. Even in the case of such a large price change, we do not expect that the effect of the BAT on supplier finances for suppliers that lose market share as a result of more intense competition would be sufficient to threaten financial sustainability. This is due to a combination of Ofgem's approach of updating the price cap quarterly, which will mitigate the period over which there might be losses from SVT customers, and also that much of the effects of price-based competition would arise with or without the BAT.

2.13. Since the BAT was introduced in 2022 we have strengthened our Financial Responsibility Principle and introduced a range of new rules designed to strengthen licensees' financial resilience and ensure they are acting in a financially responsible manner.[10] From April 2025, our common minimum capital requirement will take effect for licensees that supply domestic customers. We expect that these rules will have the effect of preventing a return to unsustainable price competition and excessive risk taking with

[10] Decision on Strengthening Financial Resilience | Ofgem, Decision on introducing a minimum capital requirement and ringfencing customer credit balances by direction | Ofgem

consumer money, and therefore we have assumed that discounts offered to new customers are set at financially sustainable levels.

The effect of removing the BAT on competition and consumer savings

2.14. One conclusion of our analysis for the February 2024 Decision was that removing the BAT is likely to result in benefits for consumers at large – most likely through lower prices, greater competition, a reasonable likelihood of improved service quality and overall net consumer benefit (including after removing the likely losses generated by unwound hedges for 'losing suppliers').

2.15. In most competition scenarios, the benefits to consumers from removing the BAT outweigh the associated supplier losses as a result of consumer switches. We also found that removing the BAT will not have a material impact on the risk of supplier failure. The net efficiency benefit of removing the BAT (i.e. the difference in net benefit between keeping and removing the BAT) was positive in most cases and will be greater in scenarios where gaining suppliers are at least in part benefitting from operational efficiencies. By shortening the BAT extension period from 12 months to 6 months and therefore removing the BAT earlier, we can realise these expected customer benefits quicker.

2.16. The scenario where the net efficiency benefit would be negative, which would suggest the strongest case to extend the BAT, would be where the existence of the BAT means that suppliers offer the same tariffs to new and existing customers, i.e. that existing customers benefit from lower prices that would otherwise only be available to new customers. In this scenario, in the absence of the BAT, we assume only new customers benefit from more attractive tariffs. Our view is that the historical evidence does not suggest that the market would plausibly behave as such. We discuss this further in the section on 'price and non-price competition' below.

2.17. The expectation is rather that, in the absence of a mechanism such as the BAT to protect suppliers under uncertain price evolutions, but with rules already in place requiring suppliers to act in a financially responsible manner and not take excessive risks with customer money, suppliers will not take extreme risks and will instead compete fairly cautiously. We have not seen evidence to signify that the removal of the MSC has resulted in disproportionately risky discounting behaviour, and we would not anticipate the removal of the BAT to do so either.

2.18. We expect any negative impacts on vulnerable and protected groups (whether through any costs of supplier failure or any increase in prices within the overarching protection of the price cap) to be relatively small – and disproportionately so when compared against the overall benefit provided for the majority of customers. As noted in our February 2024 Decision, these protected groups have a backstop level of protection via the price cap already.

2.19. Lower prices to consumers would be a persuasive argument in favour of removing the BAT at any time. If anything, it is even more so in the current context, in the wake of the wholesale crisis and following two years of historically high energy prices for consumers. We might expect consumers to exhibit a higher price sensitivity than they used to and have observed this in recent (albeit time-limited) evidence post-crisis. Therefore, we believe that giving suppliers the opportunity to offer competitive tariffs will generate positive effects for consumers that are better able to make decisions on tariffs. Whilst in theory lower prices could be below reasonably efficient levels, and come at a cost to financial stability, we have assumed that all competitive tariffs are priced at sustainable and profitable levels, and where gaining suppliers have competitive advantages, this can improve overall market efficiency.

2.20. We have openly acknowledged that some decisions during the gas crisis, not least the introduction of the MSC and the BAT, prioritised market stability over competition and limited consumer choice as a result. We judged this necessary in the wider market context, on the basis that a temporary softening of competition would retain a viable competitive market for consumers to benefit from after the wholesale crisis had abated. Now that we are largely through the crisis, we are mindful of the importance of restoring greater consumer choice and helping to reduce consumer costs, provided this does not significantly increase stability risks. On the basis of our findings that removing BAT is not expected to materially increase financial stability risks, our assessment is that that there is no longer any need for us to intervene in the market by removing the opportunity for suppliers to test new tariffs and services with new customers.

2.21. In summary, over time, we expect that a market with lower barriers to suppliers looking to develop new products and services will improve the effectiveness of competition.

We therefore expect a market without BAT to lead to consumer benefits, both in terms of prices and overall consumer outcomes.

Suitable timeframe following removal of the MSC

2.22. The BAT was introduced as a temporary market stability intervention at a time when the wholesale market was experiencing historically high and volatile prices.

2.23. Whilst market instability has not disappeared entirely since then, overall wholesale price volatility and instability have markedly reduced as have wholesale prices in general (see Table 1). We allowed the MSC to expire from 31 March 2024 in part for this reason.

Table 1: Key stages of MSC and BAT decision-making

2.24. However, we acknowledge that a residual level of uncertainty in the market remains as we emerge from the crisis. We recognise in particular that one scenario that has been suggested is that the MSC may have affected supplier behaviour to such an extent that there would be a sharp change in pricing dynamics after its removal.

2.25. On this basis we judged that our decision to extend the BAT from 1 April 2024 would provide a level of backstop protection against (and not further exacerbate) any uncertainty arising from the removal of the MSC on the same date. We must consider whether 6 months is a sufficient period between the end of the MSC and the end of the BAT, in terms of suppliers being able to manage the combined residual risk from the removal of these measures from the market.

2.26. Since the removal of the MSC in April 2024 we have not observed any notable initial stability issues to date as shown in Charts 2.1 and 2.2 below. Nevertheless, we are aware of the short time frame within which we are making these observations about the standalone impacts of the BAT. Whilst we consider the difference between a 6 and 12-month delay to be negligible in the context above, we consider that we will have been able to observe market impacts of the MSC's removal further, as well as taking into account consultation responses, by the time of the Decision of this statutory consultation.

Timing of decisions and supplier hedging

2.27. On a related point, suppliers buy much of their energy requirement over a period of time (hedging) to reduce the effect of large changes in wholesale prices. This helps suppliers to smooth costs and provides them with more certainty over future costs.

2.28. Removal of the BAT after 12 months would therefore give suppliers more time to factor its absence into their hedging and pricing strategies. This in turn could lead to a market where suppliers are better prepared and have reduced risk of losses.

2.29. On the other hand, whilst it follows that a removal of the BAT after 6 months gives suppliers less lead time to implement these hedging decisions, we consider that this timing aligns well with the upcoming hedging window for the October 2024 price cap period. Suppliers that hedge in accordance with Ofgem's published price cap methodology would be expected to hedge from mid-May 2024 (price cap observation window) for the October 2024 price cap period. On that basis we consider that our timing and minded-to position would provide enough time to allow suppliers to adjust their hedging in time for the markets to suitably reflect acquisition-only pricing from 1 October.

2.30. This is consistent with what we observed with the MSC, which had a more significant impact on suppliers' hedging decisions. Suppliers urged that we provide approximately 4-5 months notice of any decisions to extend or renew the MSC, in order that hedging decisions could be made in line with the relevant price cap observation window.

2.31. We therefore judge that a clear minded-to position on the BAT, akin to the previous publications and timelines that we have provided previously on both the BAT and MSC, will be sufficient for suppliers to make decisions for October.

2.32. We also note the potential concern of seasonal hedging risks associated with increased energy use in winter and uncertain customer behaviour. Removing the BAT in October could expose suppliers to an increase in competition, and more uncertainty in their hedging strategies, just as energy use and supplier hedging costs tend to increase. For some suppliers, the combination of both losing customers (from existing SVTs) and gaining customers (through new and cheaper acquisition tariffs) could also result in cumulative impacts. It could therefore be argued that the financial impact of the BAT's removal in 6 months might be more significant for suppliers as a result.

2.33. On balance, however, our assumption is that the associated costs for both of the issues highlighted above (i.e. of reduced time for suppliers to factor the absence of the BAT into their decision-making and any seasonal hedging risks by removing the BAT in October rather than April) would be relatively small and not great enough to counter the consumer cost benefits of removing the BAT six months earlier.

Observing the BAT as a standalone measure

2.34. As noted above, the BAT has been in effect during an atypical period. It has also operated alongside the MSC, which had a greater role impacting market dynamics. It is therefore difficult to delink the BAT's role from that of the MSC during that time, making it more difficult both to assess the BAT's individual impact on stability and competition to date and in the future.

2.35. This lack of clear information provides an argument for retaining the BAT for 12 months rather than 6 months. Removal of the BAT following the full 12 months of its current extension would arguably provide more time to assess its impact in a more typically competitive albeit recovering market, which would aid our thinking and evidence-gathering on this work[11].

[11] We are mindful that the BAT is set to be removed within the next 12 months. This may affect supplier behaviour – strategic approaches to the BAT are likely to be different in a market where it will be

2.36. However, we must balance the expected benefit that would be provided by this (of more and clearer information) against any costs that we might expect from leaving the BAT in place for those 6 months.

Price protection and non-price competition

2.37. We have considered the risk that inactive and disengaged consumers might lose out if the BAT is removed, by seeing a level of disbenefit (in the form of higher prices) when more active switchers start to benefit from cheaper acquisition-only deals (a version of the 'loyalty penalty').

2.38. Our analysis shows that 'loyalty penalty' benefits from BAT are likely to be limited. As we discuss further in our Impact Assessment section, protected groups which have a low propensity to switch could conceivably see some disbenefit as a result of early removal of the BAT. However, we do not believe it likely, certainly at any high or inordinate level of pricing. Even if this were to prove the case, disengaged customers are also already protected from unjustified tariff rises by the price cap. This is a powerful blanket protection for inactive and/or vulnerable customers.

2.39. While we are now starting to see competitive fixed tariffs re-emerge below the level of the price cap (Chart 2.1), we do not see significant differences emerging between supplier

removed soon, compared against a market where it is enduring. This would obviously affect the broader lessons we could take from observing the operation of a time-limited BAT in the current circumstances.

groups. We are not seeing any particular benefit in terms of tariff offerings for loyal customers now and during the BAT period.

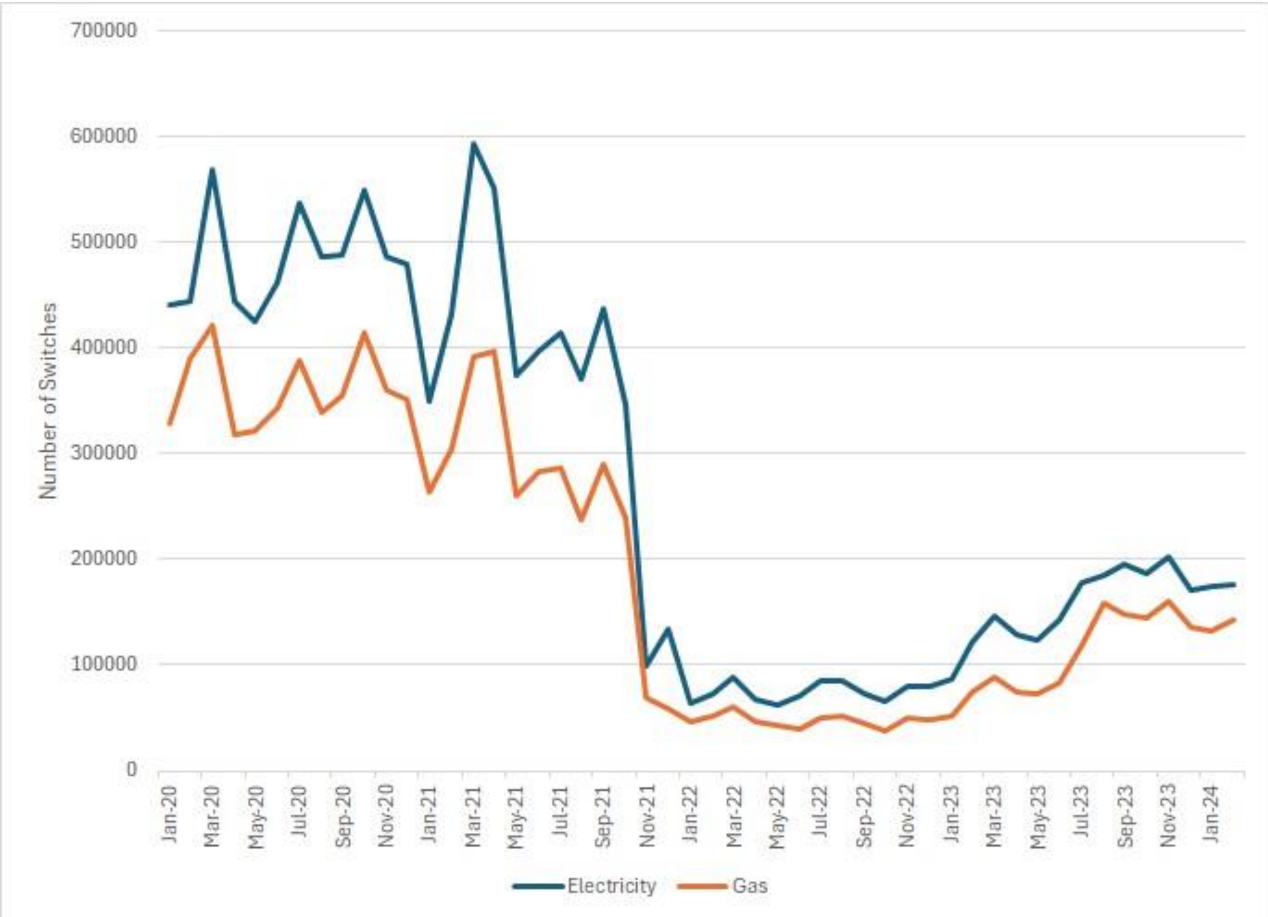
Chart 2.1: Recent trends in tariff offerings across suppliers

2.40. Further, we do not see evidence that previously disengaged customers are more likely to switch with the BAT now in place. We conducted analysis of several waves of Consumer Impacts of the Market Survey data from 2022-2024 - previously engaged customers were approximately 6-7 times more likely to switch tariff with their current supplier and approximately 2-3.5 times more likely to switch to a new supplier, compared against previously disengaged customers. Similar results are observed across multiple waves of data. This result suggests that BAT is having a limited impact on addressing the loyalty penalty in terms of consumer behaviour.

2.41. The dynamics of the wholesale market were obviously affected by the extreme volatility of recent years, as well as measures like the MSC which prioritised market stability over fully-fledged competition while the gas crisis was at its peak. These have affected both consumer and supplier behaviour – switching in general has been markedly lower since 2022 as have new tariff offerings. We appreciate that recent years are not a perfect representation of the traditional competitive market. Even so, it is notable that previous patterns of consumer switching are enduring even in a market with far less choice between competitive tariffs and where the benefits of switching are likely to be greatly reduced.

2.42. The switching rate has been increasing slowly since February 2023 but is still significantly lower than pre-crisis level, as evidenced by Chart 2.1. We do not expect these patterns of consumer switching to change appreciably, irrespective of whether the BAT was retained for a further 12 months rather than 6. We therefore judge that the impact of our decision on this issue is likely to be minimal.

Chart 2.2: Electricity and gas switching trends



2.43. Similarly, the rationale that disengaged customers would benefit from reduced prices (in the absence of cheaper deals for more engaged customers) has not appeared to bear out as yet, with the BAT in place. So far disengaged customers are not paying any less under BAT, whereas retaining it as a standalone measure is more likely than not to have an adverse effect on active consumers through higher prices. We see no compelling evidence that the situation for disengaged customers would change appreciably, irrespective of whether the BAT is retained for 6 or 12 further months.

2.44. We reach a similar conclusion when considering the argument, put forward by some respondents to our October 2023 Call for Input, that the reduction in price competition could encourage greater focus on non-price competition and better overall service. To date, this has not materialised and there is no compelling evidence that the retention of BAT would be likely to drive better non-price market outcomes. Indeed, in the pre-crisis period higher levels of customer satisfaction coincided with higher levels of switching[12], which suggests that price and non-price competition are more likely to be complementary rather than alternatives. We recognise that since the crisis there has been a positive relationship between the firms that are gaining new customers, and customer satisfaction. However, we have not seen evidence that the nature of price competition while BAT is in place has driven overall positive impacts on non-price customer outcomes, or that there have been improvements in customer satisfaction driven by weaker price competition.

2.45. We therefore judge that increased price competition is more likely than not to facilitate improved non-price competition – which would be a benefit to engaged and disengaged consumers alike - and that removing the BAT would help to achieve this. Again, however, any impact of this is likely to be small purely when comparing a 6-month extension against a 12-month extension.

Supplier financial resilience

2.46. The decision to remove the BAT in 6 months or 12 months should be considered in light of our financial resilience policies and our vision for a sustainable competitive market. Since December 2021, we have been taking steps to improve the financial resilience of the retail energy sector. We have introduced a range of new rules and enhanced market monitoring designed to ensure supply licensees act in a financially responsible manner and do not take excessive risks with consumer money. Most of our financial resilience policies have now taken effect, such as the requirement to ringfence Renewable Obligation receipts, ringfencing Customer Credit Balances when it is in the consumer interest to do so, and the

[12] One caveat to this is a noted increase in complaints, linked to small suppliers, prior to the gas crisis at a time when competition was much more aggressive (Ofgem State of the Market Report 2019, page 5). As noted before, we believe that market conditions and new financial requirements mean that a return to unsustainable price competition and excessive risk taking is unlikely. One significant change in intervening years has been the departure of a large number of aggressively competitive (and often smaller) companies from the market.

enhanced Financial Responsibility Principle. The common minimum capital requirement will take effect from 31 March 2025, however we are already monitoring licensees' plans for meeting these requirements.

2.47. The effect of these new rules should be a more resilient retail energy sector which provides a strong foundation for sustainable competition and innovation. We recognise that improving resilience does come at a cost, so we have sought to optimise the level of resilience while maintaining competition and fair prices. We are seeking to transition the market in a way that is consistent with our consumer interest framework. We envision this market being one of sustainable competition, in which all suppliers have sufficient capital to make them more resilient to severe but plausible shocks. By making the market more resilient we expect that other consumer benefits will follow.

2.48. In the medium to long term, we think these policies are more suitable than the BAT for protecting consumers from the effects of market instability, by requiring that licensees have sufficient loss-absorbing capital, act in a financially responsible manner, and do not take excessive risks with consumer money. In the short term, we have considered the extent to which providing additional time for the full suite of policies to take effect (i.e. the common minimum capital requirement taking effect in March 2025) would be a necessary risk mitigation. Based on our analysis, as we think that the impact of removing the BAT on supplier finances is unlikely to threaten supplier sustainability, even where there is a large price shock, we don't think this additional time is a significant factor.

2.49. Furthermore, retaining the BAT for 12 months would, most likely, provide stability for existing suppliers and better enable them to plan their pricing strategies with a view to meeting the common minimum capital requirement. However, we do not judge that their situation is made substantially more difficult if the BAT is removed earlier. We therefore consider that retaining the BAT for 12 months rather than 6 would be more helpful for suppliers in this context, but that the overall impact is still very small.

Overall direction and nature of the retail market

2.50. One, more strategically-minded, criticism of our decision to remove the BAT concerns the incentivisation of a 'sugar-rush' market, where removing the BAT could encourage consumers to take a shorter-term approach to their energy supply, prioritising lower costs and regular switching above factors like service quality. By the same logic, our decision could encourage suppliers to take an equivalent mercenary approach with consumers, incentivising short-term low-cost deals and a focus on acquisition, rather than service quality, retention and a lasting and more strategic relationship with their customer base.

2.51. On a related theme, we have received representations in response to our Call for Input and other engagement to the effect that removing the BAT limits suppliers' ability and incentives to offer the cheapest possible deal to loyal customers – on the basis that acquisition-only tariffs are more likely to be cheaper if they are to be competitive, and these by definition exclude and therefore penalise loyal customers who can only be offered inferior retention deals.

2.52. Where these concerns derive from the pre-crisis experience of poor-quality competitors setting unsustainable tariffs and taking excessive risk with consumer money, we expect that our financial resilience rules will mitigate those risks. Wider considerations about the balance of competition and price protection are well-suited to our ongoing consultation on the future of price protection, whose scope and scale is broader than our decision on the immediate future of the BAT.

2.53. Similarly, products and services which are designed to help consumers navigate the market are becoming more complex and innovative in line with the evolving consumer landscape. It is vital that we understand the full breadth of the consumer experience of these, including with the likely increased usage of TPIs following any removal of the BAT, so that we are prepared to mitigate any emerging harms that these may bring if the need arises. We are currently doing work to understand, more broadly, how we can best support a net zero transition, that works for all consumers and protects them from priority consumer harms, as new products and services emerge while ensuring we continue to promote innovation in the market too.

2.54. Considering these arguments in the immediate context, again these must be compared against our expectation that there would be consumer benefits in most scenarios where the BAT is not in place. The argument in favour of retaining the BAT as a harbinger of stronger relationships between suppliers and consumers would be strengthened if we had witnessed (or reasonably anticipated) the BAT resulting in reduced prices for disengaged or loyal customers. Again, while recent data and modelling must come with caveats, this has not proven to be the case with the BAT in place. In addition, as discussed above, the price cap protects consumers that remain with their new supplier from high prices. The cap on SVT prices means that a commercial strategy of 'tease and squeeze' is no longer possible, and this additional protection for loyal customers will be reflected in the tariffs offered to win new customers. While we appreciate the principle behind this argument and of supporting strong and lasting relationships between suppliers and consumers, we are also keen to ensure that consumers get access to better deals, where possible driven by supplier efficiencies, not least given the high costs faced in recent years.

2.55. Service quality has also worsened, rather than improved, during this time when the price cap has largely dictated prices for consumers, making prices unusually consistent across suppliers and leaving non-price issues like service quality as the main differentiator[13].

Conclusion

2.56. Our view is that the BAT has fulfilled its initial purpose as a temporary market stability measure. We do not believe there is a compelling reason for it to be retained, whether for market stability or price protection reasons. There are likely to be consumer benefits from removing the BAT and these can be realised more quickly if the BAT is removed earlier.

2.57. We believe that these are likely to surpass the level of disbenefit arising from early removal of the BAT – while we have cited various issues above which could be considered disbenefits, our view is that their combined impact remains less significant than the consumer cost benefits that would be realised from removing the BAT after 6 months rather than 12.

[13] We appreciate that market dynamics with a temporary BAT in place should not be treated as incontrovertible evidence of how a permanent version might affect the market. Suppliers may not have adopted long-term approaches on the basis of a measure that is temporary. We are, however, making these decisions on the best available evidence and on a short-to-medium term bases, so by similar measure these issues should not be discounted entirely.

3. Impact Assessment

Section summary

This section considers the impacts of our proposals to remove the BAT at 6 months versus 12 months on consumers and energy suppliers, as well as impacts on the broader competitive market and on certain groups of consumers.

Assessment framework and methodology

Background to our approach

3.1. The question we are considering is whether to remove the BAT after 6 months of its current extension. The counterfactual to this is for the BAT to expire after 12 months, when its extension ends. As such the impact we are considering is of 6 fewer months of the BAT in the coming year.

3.2. We are continuing to apply price cap principles – that the consumer interest is best served by energy being priced at the efficient level, which is broadly the cheapest price consistent with a notional efficient and well-managed supplier being able to finance its business. In a well-functioning market, this price will be determined by competition – where a price cap is needed, it should deliver that result.

3.3. This section also draws on our recent analysis from our recent assessment of the merits of the BAT as an enduring feature of the current market, which is summarised in Appendix 3.

The BAT and Market-wide Stability

3.4. Previous impact assessments have emphasised the risk of supplier failure during the wholesale price crisis and have made strong arguments in favour of the BAT (and MSC) being in consumers' interests by helping to ensure the viability of suppliers – and the market more broadly - at such an uncertain time. Amongst other things, the removal of the MSC demonstrates that this consideration is a lot less relevant; we consider that the supply market is viable with or without the BAT in place. Even when modelling extreme price circumstances, we judge that the BAT never has more than approximately a one percentage point effect on supplier EBIT. We see no evidence that losses in any of our modelled scenarios where the BAT has been removed in themselves present a stability risk.

3.5. This presents a strong argument for the BAT's removal, in keeping with its stated purpose as a short-term intervention to tackle extreme market volatility. The remainder of this impact assessment focuses on the BAT's impact on the market more broadly. We also consider the potential for early removal of the BAT to impact groups of protected or vulnerable consumers.

Overall impacts of BAT removal

3.6. We expect any reintroduction of the BAT to increase differentials between suppliers' SVT and FTC offerings to new customers (the removal of the BAT may also encourage suppliers to offer more FTCs in the first instance). This would increase the potential savings that engaged customers could achieve and lead to increased levels of switching between suppliers.

3.7. We may, nevertheless, also see an increase in consumers benefiting from cheaper tariffs as prices continue to fall, even where those consumers do not wish to switch supplier. Consumers would have greater visibility of deals available to them across the market and may be able to access deals with their existing supplier that are comparable to acquisition tariffs.

3.8. On a related point, one effect of the current BAT (and the associated market wide derogation) has been an increase in 'retention-only' tariffs, where suppliers offer a deal to existing customers which is not available to new customers. As these deals are not open to all, information about them is not as widely available. This presents transparency issues; it is harder for a consumer to know if their current deal is uncompetitive if there are less whole-of-market deals available to compare it to. Similarly, consumers may find it more difficult to compare a new retention-only deal against alternatives in the market (if, for example, its details are not included in price comparison websites). This creates problems for consumers both when agreeing to their deal in the first place and also when considering alternatives to it at a later stage.

3.9. By removing the BAT (and therefore also removing the market-wide derogation which allows retention-only deals) we may see an increase in supplier losses, as existing customers previously benefitting from retention-only deals move to cheaper deals with new suppliers[14]. As previously stated, however, our view is that the overall 'net efficiency benefit' of removing the BAT (ie where supplier losses are subtracted from consumer benefits) would be positive in the majority of modelled circumstances. The falling (and less volatile) pricing environment, and the removal of the MSC as an additional cost per switcher, also reduces friction and risk for suppliers in coming months.

Impact on consumer trust

3.10. Just as we have previously flagged that introducing the BAT could increase consumer trust in the market, on the basis that customers know they could access any offer from their supplier that is also available to new customers, we must also acknowledge the reverse of this may be true if the BAT is removed. On the other hand, it could be argued that the increase in less transparent, 'retention-only' deals (as highlighted above) with the BAT currently in place risks creating an opposite 'walled garden' effect, whereby existing consumers feel locked out of deals if they wish to switch supplier. This is a risk arising from the BAT market-wide derogation that we had not fully anticipated at the time of its introduction. We are mindful of the risk that this fosters a level of frustration or distrust for consumers missing out on (or feeling they are unaware of) attractive deals with other suppliers.

Impact on competition

3.11. Our experience of the BAT in practice is qualified by the wholesale price crisis. In such volatile times there have been far fewer FTCs available. We believe it reasonable to assume, however, that removing the BAT would generate further price competition, as well as greater incentives for suppliers to compete and for individual consumers to switch supplier (if the differential between SVTs and FTCs increases as a result). This is in a context where we believe there to be pent-up demand for switching and where, although data is limited and must be qualified, we have seen evidence of consumer willingness to switch for smaller gains than in the past. When comparing between a 6 month and 12 month extension any effect would, of course, be time limited. It may also be the case that price-sensitive

[14] These 'retention-only' deals may not disappear entirely after the BAT is removed; suppliers would still be capable of offering them. However, we expect their appeal for the most price-sensitive customers would be much-reduced – in the absence of the BAT, such customers would likely switch to cheaper deals available in the market unless they could negotiate an equivalent with their existing supplier. Either way we would expect retention-only deals to reduce in prevalence and impact.

customers may have already switched post-crisis (ie in the initial six month period of the BAT remaining, or even before), which would reduce any effect further.

Distributional considerations

3.12. There are distributional effects which relate to consumers' propensity to switch. Based on the CMA and Centre for Sustainable Energy reports that we have cited in previous BAT-related consultations (including our February 2023 Decision Document to extend the MSC and BAT), all of the Statutory Groups are associated with lower-than-average switching, as are those in the age and disability protected characteristics under the Equality Act.

3.13. A key question is whether these groups would suffer greater disbenefit as a result of any decision to remove the BAT earlier. This would be most likely to happen if the BAT's removal exacerbated a disbenefit already in place for these groups or if it created or resulted in a disbenefit that did not previously exist. These effects would be most likely in relation to switching and availability of deals. Removing the BAT would enable suppliers to offer attractive deals exclusively for switchers. We must consider whether non-switchers risk being unreasonably penalised as a result of this. As stated elsewhere, the existence of the price cap provides a backstop protection for all customers in this context and substantially limits the amount of potential disbenefit faced.

Modelling

3.14. We analysed relevant elements of this question as part of our February 2024 Decision (see Appendix 3 for a fuller summary). CIM data from that time suggests that disengaged customers are not particularly more or less likely to switch with the BAT in place as without it. Their behaviour has not changed markedly during the time that the BAT has been introduced and in place. This suggests that subsequent changes to the BAT are unlikely to exacerbate any existing disbenefit that disengaged customers might face – at least in terms of increasing or reducing the number of disengaged customers affected.

3.15. The scale of any disbenefit that might be faced by individual customers is a different question. With the BAT in place, we were keen to observe whether disengaged customers would pay less as a result – in other words, with suppliers unable to offer subsidised deals for incoming customers, whether that 'subsidy amount' would be returned to their existing customer base instead via cheaper prices. We have not seen that happening in practice - so far disengaged customers are not paying notably less under the BAT (whereas active customers are paying more).

3.16. Logically, this situation could reverse itself if the BAT is removed; ie disengaged consumers could pay the same, even as suppliers offer subsidised deals to incoming customers. In the short timeframe we are considering here, the removal of the MSC (whose price varied around £20-40 per switch in the weeks prior to its removal) also provides both a reduction of supplier costs for each switch and greater certainty when planning acquisition strategies for coming months (by removing the variable cost of the MSC as a factor). This could benefit engaged and disengaged customers alike – providing a route for cheaper acquisition tariffs which does not involve penalising existing customers. We therefore believe it possible for suppliers to attract new customers with cheaper deals without necessarily increasing costs for disengaged customers too.

3.17. Bearing the above in mind, it is possible that disengaged or vulnerable consumers could see some disbenefit from the BAT being removed, in the form of higher prices. However, this is not a given, nor necessarily likely. Suppliers would have to choose to subsidise incoming customers tariffs over and above both the subsidy that was already being provided to incoming customers before the BAT was put in place (and which disengaged customers have not benefited from since) and the reduction in costs realised as a result of the MSC being removed.

3.18. Therefore, our expectation is that any disbenefit would be small, if not zero, and would be outweighed by overall consumer benefits through lower prices. It is also worth highlighting that a key function of the price cap would be to curb excessive pricing and protect vulnerable customers if any price rises in support of incoming customers risked becoming excessive. We also expect that increased price competition (which we predict regardless as a result of ongoing wholesale price falls, reduction in volatility and the removal of the MSC) may result in improved service quality which would benefit engaged and disengaged customers alike.

Conclusion

3.19. Regular switchers are likely to see benefits through cheaper deals being available in the market. We do not see strong evidence that non-regular switchers are likely to see costs significantly increase alongside this. Our expectation is that non-regular switchers would pay approximately the same as they do at present.

3.20. Conceivably, protected groups which have a low propensity to switch could see some disbenefit as a result of early removal of the BAT. However, we do not believe that this is likely, certainly at any high or inordinate level of pricing.

3.21. Even if a small amount of disbenefit did materialise, vulnerable consumers would continue to be supported by the price cap as the overarching protection against discrimination and unfair pricing. We are also of the view that any disbenefit faced by disengaged customers, if realised, would be disproportionately small compared against the benefits realised by others in the market through reduced consumer costs as a result of the BAT's removal.

4. Our minded-to position and consultation questions

Section summary

This section sets out our minded-to position to remove the BAT in the next 6 months, from 1 October 2024, rather than let it run until its default expiry on 31 March 2025. This section also sets out the related impact on individually granted derogations and our MWD derogation. At the end of the section we set out the consultation questions on which we are seeking feedback.

Minded-to proposal for BAT removal

4.1. Further to the reasoning set out in section 2 and our draft impact assessment set out in section 3, our minded-to position is to remove the BAT from 1 October 2024. We consider that this will expediate the benefits of the BAT's removal by allowing consumers to ultimately benefit from cheaper deals quicker. We judge that these benefits are much greater in significance than the varied but more minor disbenefits that could arise as a result of the BAT being removed earlier. These include (but are not limited to):

- The reduced amount of time to assess the BAT's impact as a standalone measure in the market.

- The possibility that removing the BAT could result in greater resilience risks for suppliers and increased market-wide stability as a result. In line with our previous analysis, we judge it not significantly likely that the BAT would result in market-wide losses at all, let alone that these losses would represent a stability risk.

- Reduced certainty for suppliers when setting tariffs in the lead-up to minimum capital requirements formally taking effect from 31 March 2025.

Market-wide Derogation for fixed retention tariffs and other granted derogations

4.2. Alongside the introduction of the BAT from 14 April 2022, we introduced on 7 April 2022 a market-wide derogation from SLC 22B for fixed retention tariffs.[15] This was to allow domestic suppliers to continue offering – or to offer new – fixed retention tariffs to their existing customers only.

4.3. In our February 2024 Decision to extend the BAT for another 12 months we announced that we were simultaneously allowing the derogation to remain in force for the same extended time period. This was on the basis that we considered that the reasons to allow the Derogation as set out in our April 2022 Decision remained unchanged.

4.4. We remain of that view and therefore for the avoidance of doubt, our minded to position is that the derogation should remain in place for another 6 months, in line with our minded-to position on the future of the BAT. The Directions (to Gas and Electricity Licensees respectively) that provide for the market-wide derogation from SLC 22B, and that have been in force since 14 April 2022, remain unchanged. This is because they provide, at paragraph 8 of each Direction, that they remain in force for the duration of SLC 22B.

4.5. In similar terms, the limited derogations granted to suppliers of renewable tariffs that have been derogated from the default tariff cap also remain in place for the duration of SLC 22B, as provided at the respective paragraphs of each Direction.

Licence modifications

4.6. In our February 2024 Decision we noted that a removal of the BAT at 6 months would require a licence condition modification. Accordingly, we are consulting on a set of notifications to modify the existing BAT licence conditions for both electricity and gas suppliers to reflect this proposal.

4.7. To clarify, we are not proposing to issue any notices to modify the market-wide derogation, given that they already provide at paragraph 8 that they remain in force for the duration of SLC 22B.

[15] https://www.ofgem.gov.uk/publications/decision-derogations-slc-22b-requirement-make-all-tariffs-available-new-and-existing-customers

4.8. The notices to modify the existing licence conditions are published alongside this document and links to them are provided in Appendix 1.

Questions

1) Do you agree with our minded-to position that Ofgem should modify supply standard licence condition SLC 22B to remove the BAT from 1 October 2024?
2) If you consider that the BAT should remain in force until 31 March 2025, do you think the market wide derogation from SLC 22B for fixed retention tariffs should also continue until 31 March 2025?
3) Do you have any comments on the analysis presented in section 2?
4) Do you have any comments on the draft impact assessment presented in section 3?

Appendix 1 - Statutory Notices

The statutory notices provided under 23(2) of the Gas Act 1986 and/or 11A(2) of the Electricity Act 1989 of our intention to modify the standard condition of all licences, have been published alongside this document. They are available on our website and can be accessed via the link below:

https://www.ofgem.gov.uk/publications/statutory-consultation-removing-ban-acquisition-only-tariffs

Appendix 2 - Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

The details of the MSC payment mechanism will continue to be set out in the Retail Energy Code. As the changes to the licenses are linked to what will be in the Retail Energy Code, we may require to share nonconfidential responses with RECCo and the REC Code Manager to enable us to develop mechanisms further in response to consultation responses but will redact your personal data before doing so.

We will not share personal data contained in confidential consultation responses with any organisation outside of Ofgem unless legally obligated to do so. Unless you indicate otherwise, we will make your response, as provided, available online.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for as long as an audit trail on decision-making relating to the questions discussed in this document should reasonably be available.

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at https://ico.org.uk/, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system.

10. More information For more information on how Ofgem processes your data, click on the link to our "Ofgem privacy promise".

Appendix 3 - Summary of BAT Analysis, February 2024 Decision

Technical Annex

The following Annex summarises Ofgem's supporting analysis of the impact of the BAT on market stability and competition, price competition, fairness, and non-price competition. The evidence provided supports the following analytical findings:

- First, that keeping the BAT is more likely than not to have an adverse effect on customers, and these costs more than offset the benefit of avoided inefficiencies from supplier losses due to unwound hedges;
- Second, that this does not come with a significant increase in risks to the financial sustainability of suppliers;
- Third, that the 'loyalty penalty' benefits of the BAT are likely to be very limited: customers are already protected by the price cap, and previously engaged customers remain far more likely to switch;
- Fourth, that this comes in the context of emerging evidence of increased potential consumer engagement; and
- Finally, that more effective price competition is likely to also be consistent with more effective non-price competition, rather than acting against it.

Analysis of effects on market stability and consumer benefits

In order to support our decision on the future of the BAT, we have undertaken modelling of both the likely impact on consumers, and also on supplier finances and therefore stability. The aim is to understand whether consumers are likely to benefit from removing the BAT, and if so whether this comes at the cost of increased risks to supplier finances.

Overview of Modelling

To assess the direct effects of keeping the BAT in place, we produced a model that calculates the net benefit of BAT vs No BAT, on the basis of a range of scenarios for how supplier pricing strategies might be affected by removing the BAT. We measured the difference between the prices paid by consumers, and the additional costs to suppliers that lose customers from unwound hedges. The BAT is likely to have the greatest impact during periods of falling wholesale prices, and therefore to test the stability effects, we considered scenarios of a 15%, 25% and 35% fall in prices as a 'one-off shock'.

We use analysis from the post-crisis period of the number of customers that might be expected to switch for a particular level of price differential. Consistent with our previous modelling in Impact Assessments, such as the FRC Impact Assessment, we model pricing and hedging behaviour for three groups of suppliers: Large, Challenger and Small.

Where possible, assumptions are based on actual market evidence around efficiency differentials and responsiveness of customer-base across different suppliers. Consumers are assumed to benefit from lower prices through more competitive tariffs, including from more efficient suppliers, whereas suppliers face a cost where they have to unwind foregone hedges on SVT customers.

Methodology and assumptions

We modelled two direct impacts:

1. The impact on the prices paid by consumers where there is greater availability of cheaper tariffs, that, based on data around consumer response (elasticities) is expected to increase switching levels through offering higher monetary gains available to consumers from engagement.
2. The impact on suppliers resulting from customers switching away from an SVT, which is measured by hedging losses.

We do not assume any wider benefits of competition, either that there are efficiency improvements, quality improvements, or stronger incentives to innovate. In practice, for the reasons discussed in chapter 2, we expect that more effective price competition would support such wider benefits.

We calculated the savings provided to customers by the price differential between SVT and the tariffs the customers will switch to, being either an FTC tariff at average market prices, or an acquisition tariff priced below average market prices but above cost, so at a level that is still profitable and financially sustainable for the new supplier. Suppliers that lose customers will incur a loss calculated by taking the difference between the weighted average price of hedges and the average market prices for the customers they have hedged for.

We ran a number of scenarios where we used a coordinated set of assumptions to match the tariffs offered by suppliers to new and existing customers with their hedging levels. By grouping suppliers in three categories, we can make assumptions around how different suppliers would respond to the removal or extension of the BAT.

Switching elasticities are also differentiated in this methodology as we have adjusted the baseline switching elasticity into 9 elasticities based on observed historical switching patterns between the losing and gaining supplier groups.

The scenario analysis is intended to provide results that allow for a relative comparison across different scenarios, rather than focusing on the absolute numbers generated. In order to compare scenarios with each other, we set baseline assumptions about parameters such as the differential between:

1. An FTC and an acquisition tariff
2. The DTC and a competitive SVT
3. Most efficient groups of suppliers and other groups of suppliers. Most efficient suppliers are able to price under other groups of suppliers.

Other assumptions are set in order to simplify the model. We assume that all suppliers within the same size category will act in the same way. Also, we assume that consumers who can no longer switch to an acquisition tariff or FTC available to new consumers when the BAT is in place, do not then choose to switch to another supplier group offering cheaper tariffs.

Scenarios

We chose four scenarios to illustrate the balance of effects under a range of uncertainties and risks, as set out below.

- In **Scenarios 1-3**: removing the BAT results in more competitive offers to some or all customers. The greatest effect is in scenario 1.
- **Scenario 4:** The BAT leads to all suppliers offering competitive tariffs to existing and new customers, along with an overall drop of hedging positions.

Table A.1: Tariff offering across supplier groups for scenario analysis

More competitive environment	L (1)	M (1)	S (1)	L (2)	M (2)	S (2)	L (3)	M (3)	S (3)
Most competitive FTCs to existing customers only				X					
Most competitive FTCs to existing and new customers	X				X	X	X	X	X
Most competitive FTCs to all customers and also acquisition tariffs for new customers		X	X						

[(1): Removing BAT; (2): Scenario 1, with BAT; (3): Scenario 2, with BAT]

Less competitive environment	L (1)	M (1)	S (1)	L (2)	M (2)	S (2)	L (3)	M (3)	S (3)
Most competitive FTCs to existing customers only	X	X		X	X				
Most competitive FTCs to existing and new customers						X	X	X	X
Most competitive FTCs to all customers and also acquisition tariffs for new customers			X						

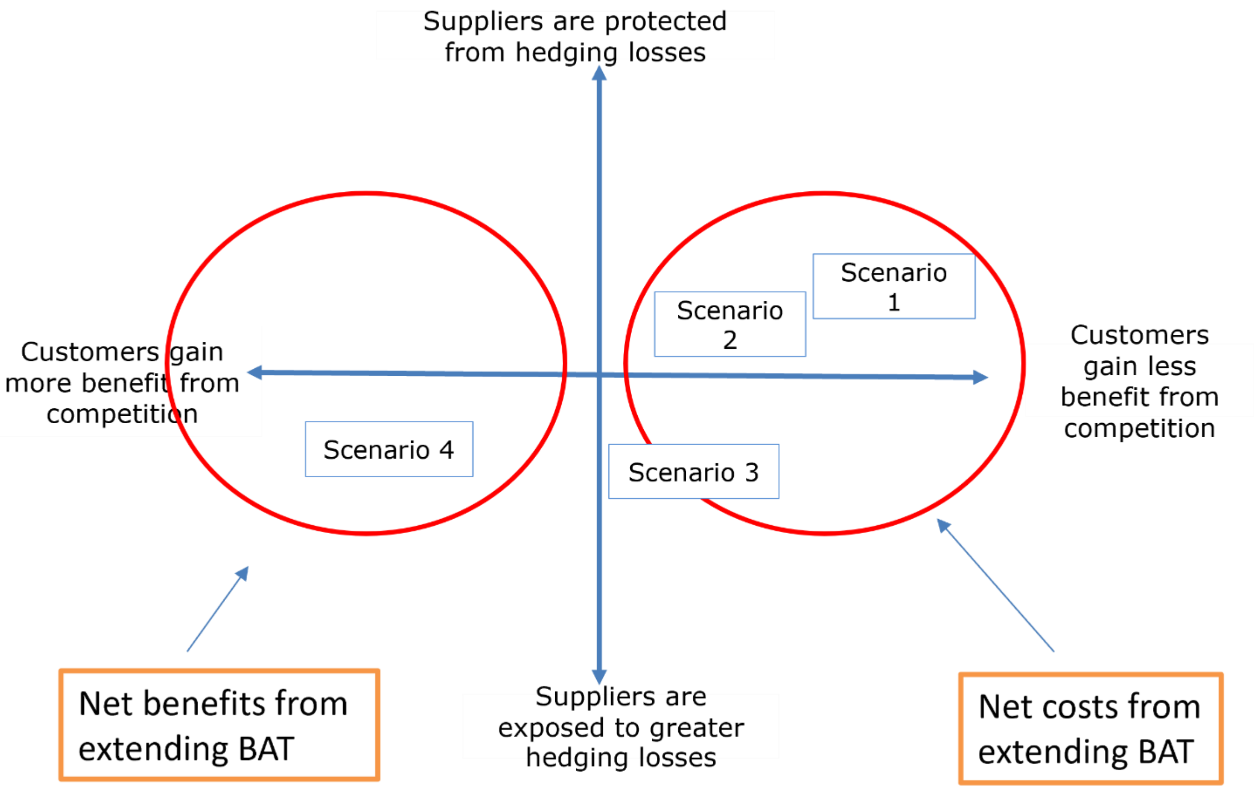
[(1): Removing BAT; (2): Scenario 3, with BAT; (3): Scenario 4, with BAT]

We do not explicitly consider whether suppliers would raise the prices on tariffs offered to existing customers to cross-subsidise any losses on newly acquired customers through acquisition tariffs. However, we believe that this effect would not impact our conclusion as while it would reduce consumer benefits, it would also proportionately reduce supplier losses. We acknowledge that there could be an unintended distributional impact, however, it is difficult to assess how this will play out given we have limited knowledge about the profile of future switchers.

Summary of Results

Chart A.1 illustrates results of our scenario modelling of the 'net efficiency benefit' for four assumptions on competitive trends in the BAT and No BAT scenarios, as the additional consumer benefit from lower prices as a result of lifting the BAT, net from the losses generated by unwound hedges for 'losing suppliers', generally where customers move from larger to smaller suppliers.

Chart A.1: Results from scenario modelling of the case to extend BAT.



Source: Based on Ofgem modelling

Our analysis suggests that Scenario 4 represents "What you would have to believe" in order for extending the BAT to have a positive effect. The BAT would be in the interest of consumers if we observe that the most competitive tariff offerings are offered to all customers with BAT, as competition to win customers brings benefits to new and existing customers. We do not see this, on average, in the market while BAT has been in place since the re-emergence of competition in summer 2023.

Scenarios 1-3 result in a positive net benefit for consumers in removing the BAT (or net cost of extending); all imply that there is a diversity in suppliers' behaviour. Therefore, we believe that if suppliers adopt different responses to the removal of the BAT, the resulting more competitive market will be expected to benefit consumers.[16] As discussed in chapter 2, this is in addition to the wider benefits that would be expected to emerge from more competition.

---

[16] The exact size of the benefits and costs depends on the input assumptions used, but generally, if the assumptions are changed in either price differential offered by suppliers or size of customer response,

Impact on stability

We have also assessed the impact of our scenarios on supplier stability (EBIT). As we categorised suppliers in three groups of size to account for diversity in responses, we also calculated the impact of EBIT margins per supplier group. We therefore rely on an average impact based on the total impact of each supplier group. We do not find evidence that the losses sustained in any of the proposed scenarios present a stability risk: Assuming that more competitive firms price differentials broadly in line with the most aggressive prices seen in the market in the last 12 months, the additional effect of the BAT is never greater than around a 1 percentage point effect on reported annualised EBIT, i.e. less than half the baseline EBIT assumed under the price cap. Overall, we think this size of effect is unlikely. However, even with the very sharp wholesale price reductions modelled, we did not identify any scenarios where the additional losses that result from BAT are large enough to result in negative EBIT for suppliers that lose customers to more competitive rivals that offer acquisition pricing.

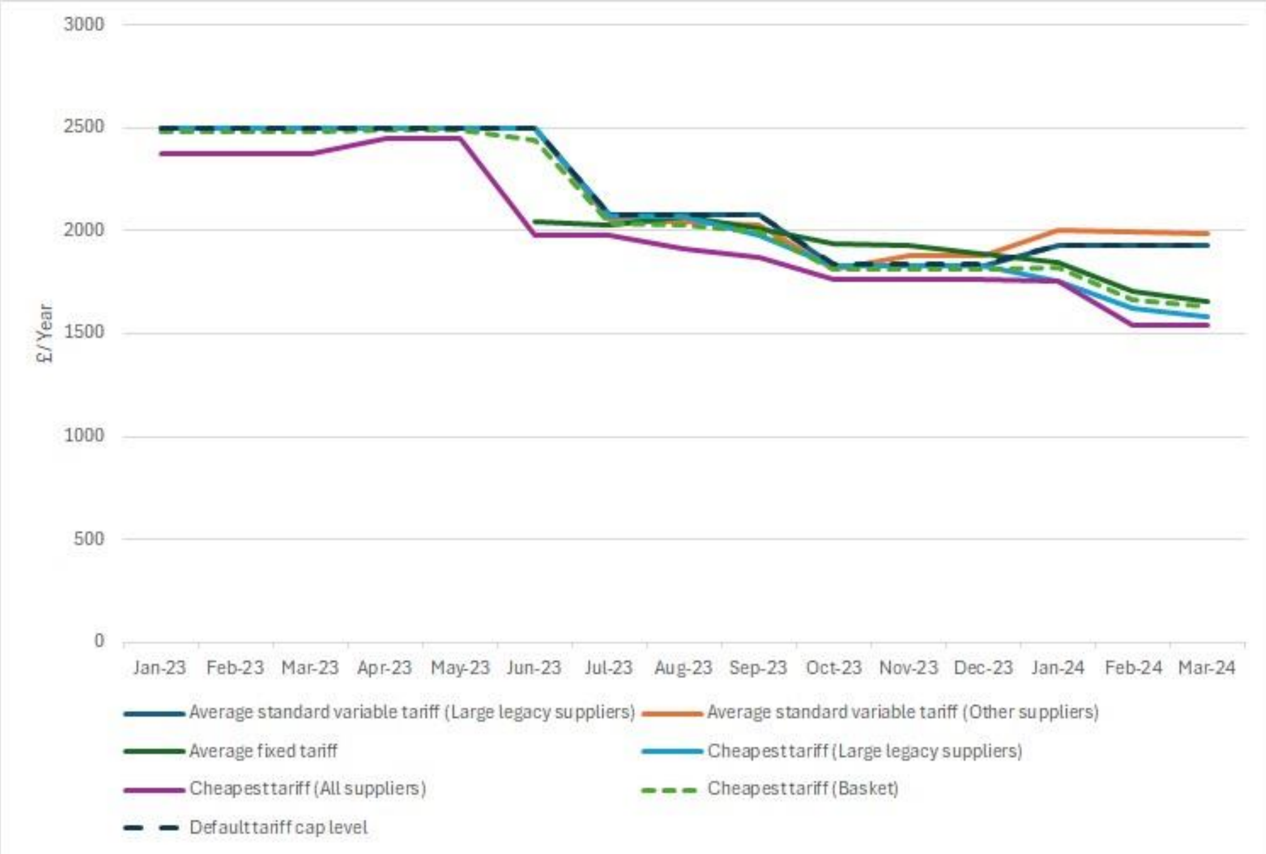
In any case, our analysis suggests that in most scenarios the greater risk to supplier finances is from the ability to offer competitive tariffs at all, i.e. the risk that was previously addressed by the MSC until it was removed from 1 April 2024, with the BAT being a smaller effect.

Analysis of case for price competition, fairness and wider market impacts.

In recent months, we are starting to see competitive FTCs re-emerge in the market, however price differentials between suppliers remain small.

Chart A.2: Trends for average FTC offered by different supplier types

then the size of the benefits and costs would both change, but the direction (beneficial or not beneficial) would not.



Source: Based on Ofgem Market Intelligence data

This is in the context of increasing price sensitivity. We have undertaken a longitudinal regression analysis at the "supplier-pair" and month level of the relationship between price differentials and switching from 2017 to 2023. Based on observed EMPRIS electricity switching data and tariff differentials for each supplier pair, we estimate a switching price-elasticity of 3-3.8%. This means that each £10 differential between the gaining and losing supplier is associated with a 3-3.8% increase in number of switches.

This relationship is broadly stable over time, until 2022 where we don't observe an effect, due to low price differentials and market activity. However, based on available data up to late 2023 there appears to be a significant uptick in consumer price-sensitivity. Even though the switching rate was lower than before, it was still higher than we would expect given the potential savings available to consumers.

This result could be caused by consumers becoming more price sensitive, or potentially due to the high proportions of consumers currently on SVTs, having deferred their switching during the crisis due to limited potential savings.

These results suggest that significant numbers of customers are looking to engage with the market and would benefit further from increased price competition which the removal of the BAT would encourage.[17]

Assessment of the potential fairness impact of the BAT

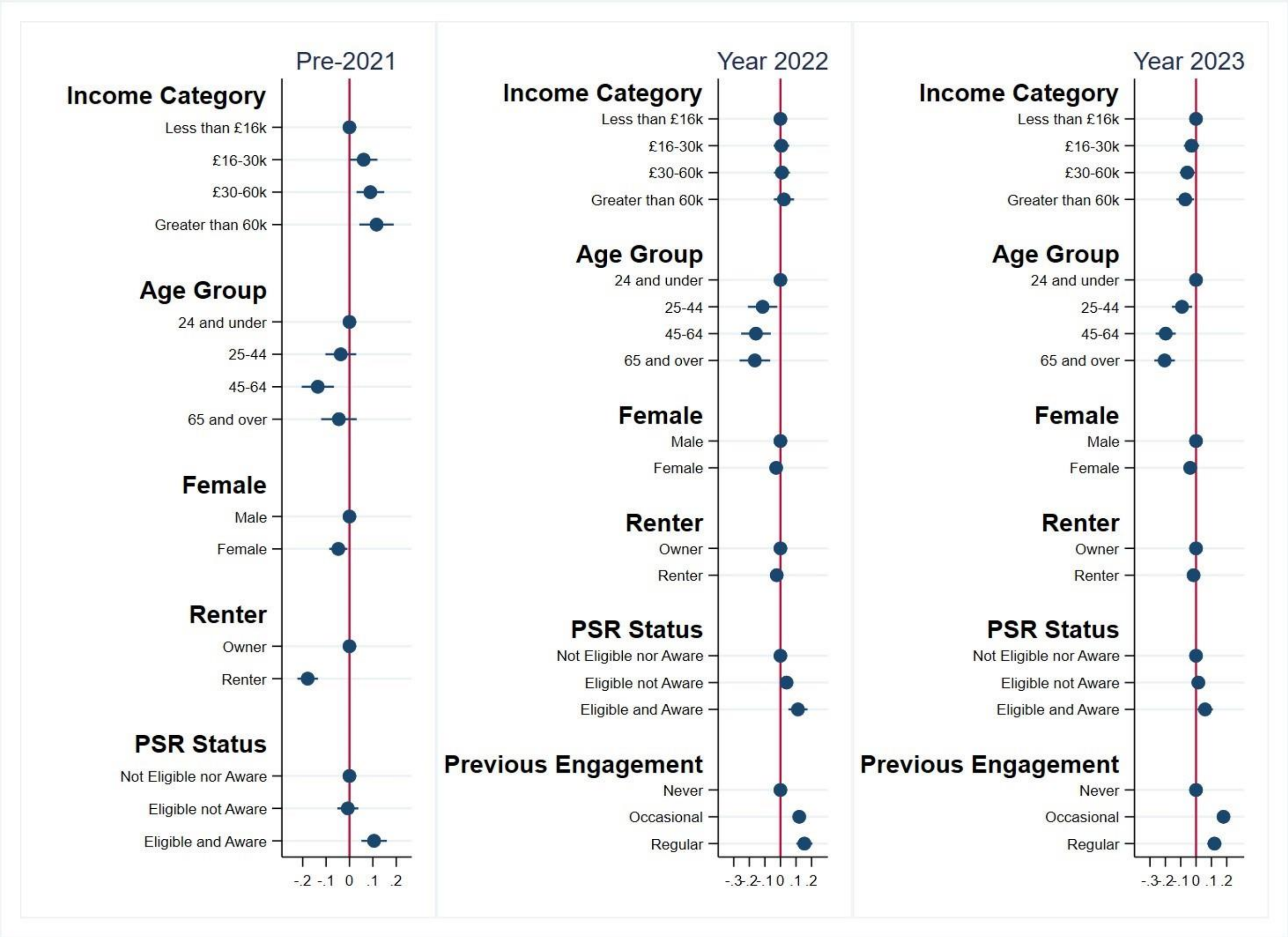
As stated in the main document, disengaged customers are already protected from tariff rises by the price cap.

To shed more light on how the profile of engaged vs disengaged customers is changing over time, we conducted analysis on the profile of switchers over time, pre-BAT and during the BAT period. People who previously engaged with the market (i.e. being a switcher pre-2021) are more likely to be higher income, younger, male, owner-occupiers and include an engaged portion on the PSR (but not a significant portion of people potentially eligible for the PSR), as evidenced by the left-hand side of Chart A.3.

We see a slight shift in profile over 2022 and 2023 (middle and right-hand charts of A.3), where the main difference is that higher income groups are now not statistically more likely to switch than lower income. However, during this period the biggest driver of switching is whether or not the person was previously engaged with the market, as measured by whether they state they were an "Occasional" or "Regular" switcher pre-2021.

Chart A.3: Profiling switchers over time

[17] Recent emerging evidence suggests that the switching rate is flattening out, despite price differentials increasing. We will be updating our analysis during the consultation period to include the most recent data.



Notes: Results from Logistic Regression Models based on Consumer Impacts of the Market Survey (CIM) data from 2022 and 2023. Results reported are probabilities and in each case should be compared to the base category, e.g. for Income, all other categories should be compared to the Less than £16k group on the red line. Groups with results to the right of the red line are more likely to switch, groups to the left are less likely. The outcome for Model 1 on LHS is people who switched pre-crisis (2021), for Model 2 the outcome is switchers during year 2022, and Model 3

We also assess the propensity of consumers to engage in different types of switching behaviour. We do this by first decomposing switching into four categories:

1. Non-switcher;
2. Someone who compares prices but doesn’t switch;
3. Someone who switches with their own supplier;
4. Someone who switches to a new supplier.

We then profile the likelihood of different types of people engaging in each of these behaviours during the period that the BAT has been in place.

During 2022 and 2023 previously engaged customers are more likely to engage in all types of switching behaviour than those who previously did not switch. Table A2 presents these results as “Relative Risk Ratios”, which compares the likelihood of pre-2021 non-switchers vs occasional or regular switchers engaging in the four types of switching behaviour mentioned above during the period that the BAT has been in place. In particular, we can see that previously engaged customers are much more likely to switch to a new deal with their existing supplier.

Results suggest that they are 6-7 times more likely to do this than historic non-switchers. We can also see that previously engaged people are more likely to compare tariffs but not switch, and to switch to a new supplier. Similar results are observed for 2022.

Table A2: Relative Risk Ratios (RRR) for different types of switching behaviour

	1 No Switch	2 Compare Tariffs	3 Switch with Same Supplier	4 Switch with New Supplier
Previous non-switcher	[base category]	[base category]	[base category]	[base category]
Previous "Occasional Switcher"	[base category]	1.91	6.65	3.21
Previous "Regular Switcher"	[base category]	3.33	6.74	2.03

Results from a Multinomial Logit Regression Model based on 2023 Consumer Impacts of the Market Survey data quantifying the probability of switching and how this varies by sociodemographic characteristics. Controlling for income, age, gender and PSR status we find that past switching behaviour is still an extremely strong predictor of switching behaviour during BAT period. E.g. An RRR of 6.65 for Category 3 "Switch with Same Supplier" suggests that the likelihood of switching with same supplier is 6-7 times higher amongst people who "Occasionally Switched" pre-2021 vs those who never switched

Taken together, these results suggest that the benefits from switching, either internal or external, seem to be accruing to the same people over time – i.e. the presence of the BAT does not significantly change the distribution of benefits from switching. But by keeping the BAT in place, potential switchers are not gaining the benefit of reduced tariffs.

Analysis of case for non-price competition benefits

By discouraging price-based competition, the BAT potentially creates an incentive for suppliers to focus more on alternative forms of competition – service quality and innovation. We have looked at trends in different measures of service quality to see if there was any observable change in these following the introduction of the BAT. In each case, we have analysed the number of suppliers showing a meaningful increase/decrease in service both in the period from the start of the energy crisis up till BAT implementation, and from then until the latest available data.

We do not find evidence that BAT results in improved non-price competition. Service quality across all metrics had worsened significantly prior to the introduction of the BAT (Table A.3). Afterwards, one measure stabilised, but the others worsened, in particular the rate of complaints. There is therefore little evidence that suppliers have altered their strategy in this respect.

Overall, we find that service quality is more likely to be a complement to price competition rather than an alternative. Service levels were significantly higher in 2019, when price competition was much more active, and the better service was associated with more sustainable suppliers.[18] This suggests that service quality is more likely to be a complement to effective price competition rather than an alternative, in which case the BAT would be unlikely to result in better service.

We recognise that it is in practice very difficult to distinguish between changes in service quality that may have resulted from the lack of competition in the market, and changes in customer perception due to the energy crisis and the cost-of-living crisis. However, as in our previous FRC analysis, we found it is still more likely that non-price competition is a benefit of more effective price competition, than an alternative to price competition.

Table A3. Service quality ratings pre and post BAT

	Overall satisfaction with supplier Pre BAT	**Overall satisfaction with supplier** BAT	**Customer service rating** Pre BAT	**Customer service rating** BAT

[18] This is explored in more detail in Section 5 of our FRC Impact Assessment. Available here: [Revised impact assessment of Strengthening Financial Resilience proposals (ofgem.gov.uk)]

Better	1	3	0	3
No Change	3	1	3	1
Worse	6	6	7	6

	Overall supplier rating Pre BAT	**Overall supplier rating** BAT	**Complaints rate** Pre BAT	**Complaints rate** BAT
Better	1	4	0	0
No Change	4	3	6	2
Worse	5	3	3	7

Notes: Customer services metrics in Pre-Bat period are compared to pre-crisis; the Post-BAT period is compared to pre-BAT. For each metric we assess whether they are Better, No Change or Worse. "Overall satisfaction", "Customer service" and "Complaints rate" were all based on a 2% or greater change (as these measures have historically moved in quite a narrow band). The 'Overall supplier rating' (the CitA measure) was based on a 5% change.