

Supporting innovation in the electricity retail market - Utilita Response

Executive Summary

It is encouraging that Ofgem recognises that reform is required to facilitate innovation within the retail sector. However, we do not believe that the proposed exemptions are an effective means of achieving this objective.

The proposal as framed would provide new entrants with a significant regulatory advantage that incumbent simply suppliers cannot replicate. This is not facilitating innovation and competition; it is presenting significantly preferable requirements to new entrants to allow them to undercut and outcompete the rest of the market. There is no element of the proposal that would encourage new entrants to offer superior products, services or provide superior operational efficiency.

Ofgem has a statutory duty to protect consumers' interests and, in doing so, consider the impact of its decisions on effective competition. We do not believe the proposal adequately considers that duty. By providing materially more favourable requirements to new entrants, Ofgem risks distorting competition rather than promoting it, enabling some suppliers to compete based on regulatory advantage rather than innovation or efficiency. Were this proposal to progress, we would challenge Ofgem to present evidence that they have properly considered their duties here and can provide adequate evidence to demonstrate this.

Exempting new suppliers from certain licence conditions is a tacit recognition that efforts to fully comply with the current licence curtails innovation. Ofgem should not seek temporary fixes or exemptions and instead tackle the more significant matter of fundamental licence reform.

There is a lack of independent evidence that the USO specifically is a barrier to entry for new entrants to the market. Calls for reform of the USO from potential new entrants must be weighed appropriately, as these parties will likely seek to achieve the optimal conditions for their own products and services without due regard to the extant market conditions.

It is correct that Ofgem wishes to encourage competition within the sector, and new entrants is a key element of this. We do not believe that the proposed exemption would drive the type of innovation that Ofgem are seeking, as there are no conditions attached to the exemption around the types of products offered – it is equally likely that conventional suppliers will emerge and use the opportunity to cherry pick low cost to serve customers and leave incumbent suppliers with those customers less desirable.

Ofgem should also consider what becomes of these suppliers after they reach the 50k threshold. Suppliers benefiting from reduced obligations while serving a limited customer base may not develop the operational capabilities or customer mix required to comply with the full USO once the 50,000-customer threshold is reached. This raises questions about whether the proposal would create sustainable competition or simply defer compliance challenges.

Our Proposal

We believe that Ofgem should consider targeted reform of the USO.

Ofgem should identify the specific circumstances in which it is prepared to permit suppliers to narrow the scope of their offerings. For example, differentiation could potentially be permitted based on payment method, targeted supplied technologies (e.g. EVs), metering arrangements,

or other clearly defined product characteristics. In contrast, Ofgem may wish to ensure that suppliers cannot exclude customers based on general cost-to-serve considerations.

Such an approach would create greater scope for innovation and product differentiation while preserving core consumer protections and ensuring that all suppliers continue to contribute fairly to serving the wider market.

We are concerned that general USO intervention would leave incumbent suppliers with legacy, high cost to serve customers.

We have provided answers to the questions posed in the consultation document below.

Q1. Do you agree with our proposal to exempt suppliers with fewer than 50,000 domestic customers from the USO?

No. While we understand the intent behind this exemption, if the USO is a blocker to innovation it is one that is felt across industry, regardless of company size. Therefore any attempt to amend the USO to improve innovation should similarly be Industry wide and regardless of size.

We would propose that a supplier be able to choose a niche to serve – Low Carbon, PrePay, etc – with the option to remain generalists, and be required to serve only those customer types, but must offer contracts to any customer of that type. This would allow specialisation across the market and encourage innovation between suppliers operating in the same niche, while also avoiding the bias towards new Suppliers that the current proposals have. This approach would also serve to improve competition via services offered – which, in a price capped environment, is a vital means of ensuring competition and freshening the UK energy market.

Q2. Do you agree with our assessment of risks, and proposed mitigations?

We agree with the identified risks, however, do not consider them fully mitigated. The risk of unfair competition particularly is one that this proposal cannot mitigate. If an influx of new suppliers enters the market and is not subject to USO and the costs associated, they may appear especially attractive to consumers in the current financial situation, leading to mass switches to these new suppliers in search of cheaper rates.

This would then leave larger suppliers who are fully subject to USO providing services to customers with a history of bad debt, payment issues, or unsupported equipment. These suppliers then assume much of the risk for the industry as a whole.

If customers do chose to migrate to these newer suppliers, it would also render the threshold irrelevant, as there is an increased risk that these suppliers exceed the 50,000 supply points of the threshold and are then expected to offer services to any customer under the USO. This also negates their opportunity to test their services and business model before scaling and introduces many scenarios where a new supplier set up for an intended niche customer base would not be sufficiently ready to serve a more general customer base.

Yours sincerely,
by email only



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