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25 June 2018

Dear Anna

Which? is concerned that the energy market is not delivering good outcomes for the majority of consumers. We agree with the Competition and Markets Authority (CMA) that weak competition and consumer engagement mean that consumers who fail to engage in the market face excessively high prices.

Which? believe it is in the long-term interests of consumers for the price cap to be a temporary measure while the market responds to the implementation of the CMA's recommended remedies. A price cap is a significant intervention in the market and it is important both for consumer and investor confidence (the latter so they remain incentivised to invest in improving the market) that Ofgem take further action alongside it.

While we welcome Ofgem's consultation on the outstanding policy issues surrounding the price cap, and the openness to explore multiple options, we remain concerned about potential unintended consequences that may result from the implementation of the price cap, which could limit its success. We are also concerned that the consultations to date have not included research on how consumers are likely to react to the cap, or consideration of how to monitor their understanding and reactions.

The energy price cap will not address the weak consumer engagement in the energy market, which contributes to excessive prices and poor customer service. The longer term objective for the cap must be a successful transition to an energy market where consumers fully benefit from the substantial technological progress in the sector.

We think there are a number of issues that the consultation does not sufficiently consider which Ofgem should focus on:

1. We are concerned that Ofgem has not established a baseline of current consumer behaviours from which changes in response to the price cap can be monitored. This is essential to **fully understand the implications of the cap and would help predict the impact the cap may have on consumer detriment.**
2. We are also concerned that **the consultation does not cover how the cap will be communicated to consumers.** Given the potential for the price cap to have an adverse effect on consumer engagement (if it is seen as a protection measure) how it is communicated - by Ofgem, suppliers and others - will be critical to how consumers respond to it and therefore its overall effect.
3. The energy market is evolving in new, exciting and (in some cases) unanticipated ways. Ofgem should retain its focus on encouraging new business models into the energy market, as these are a key driver of current and future innovation. **Regulation must not only keep pace, but also encourage new innovations and technological change.**

Ultimately, Ofgem's goal must be for a market that is more competitive and has more consumer engagement, so that the cap becomes redundant.

## **Detailed response**

### **Determining the impact of the cap on consumer detriment**

It is essential that Ofgem regularly monitor the level of consumer detriment in the energy market and how measures designed to reduce this are working (or not).

Which? is surprised that the consultation does not include a baseline of research on consumer views and understanding from which progress made under the cap can be measured. Ofgem should clearly articulate the outcomes the cap is expected to achieve, and then publish information about if/how the cap is meeting these outcomes. This should form part of the process of updating the cap over time. It is essential to know how consumers are responding to the price cap to evaluate its effectiveness.

Ofgem should publish regular monitoring reports with information on consumer understanding of the cap, relevant changes in tariff offerings, price analysis, and other relevant factors. It is also essential that Ofgem monitor the impact the price cap has on different consumer groups, particularly on vulnerable consumers, building upon the work Ofgem do through the annual State of the Market reports and consumer engagement surveys.

Regular monitoring against relevant measures relating to consumer outcomes will enable Ofgem to take quick action if the cap leads to poor outcomes; for example if previously engaged consumers misunderstand the cap and start to engage with the market less. Evaluation must be able to stand up to third party scrutiny and should include publicising the areas Ofgem will assess before commencing the evaluation, and then providing as much information as is feasible.

Ofgem have made comments that defining the conditions for removing the cap is less important at this stage, as this doesn't have to be assessed until 2020. This is a missed opportunity to determine the baseline from which progress can be measured. Not providing these criteria upfront adds to the communication challenge regarding the purpose of, and expected outcomes from, the cap. It is also likely to make it harder for suppliers to know how to optimise their responses to the cap, as they are unable to make an estimate of when it will be removed. This is likely to result in lower innovation and less investment in technological change for the foreseeable future, as suppliers are more likely to assume the cap will be in place until 2023.

### **Communication of the cap**

Industry stakeholders have indicated it is likely many consumers will feel a false sense of security around the introduction of the price cap, and therefore may further disengage from the energy market. Careful communication of the cap will be essential to prevent this.

It is encouraging that Ofgem's 2017 consumer engagement survey showed that engagement had increased; however, as the survey shows that 91% of engaged consumers did so on the basis of saving money, it is possible that with the introduction of the price cap people may feel there are less savings to be had and therefore it is less relevant to engage. It will therefore be necessary to go further to reach customers who are now even more disengaged.

Ofgem should test the impact of communications on consumer understanding of the cap and take action if it appears some consumers are inadvertently paying more because they think they are protected.

Consumers may also need to be able to understand differences in the price cap, for example between different payment methods, regional areas, and supplier size (due to different policy cost obligations). This will require consumers to be given enough information to know the cap relevant to their circumstances and how their tariff compares to it. This information will be necessary for consumers to understand if their tariff is at or below the cap level, and to help them switch. It will also be important for consumers to know where their energy costs may be cross-subsidised with bundled products and the impact this will have on their overall costs.

Which? suggest that Ofgem undertake behavioural research to determine if renaming default tariffs to better indicate that such tariffs are unlikely to offer the best value, such as 'out of contract' tariffs, would have a positive effect on consumer behaviour. If Ofgem find that more engaging terminology is successful in engaging consumers they should take action to rename these tariffs.

It is possible that some suppliers may respond to the price cap by cutting costs. While this may be appropriate in some areas, Ofgem should take action to ensure that customer service standards are not negatively impacted by the introduction of the price cap. Many customers are already dissatisfied with the customer service they receive from energy suppliers, and any decline in this associated with the price cap should be carefully monitored. Ofgem should be prepared to take immediate action if it appears customer service standards decline under the cap.

#### *Provide the right regulatory conditions*

As noted in Ofgem's initial view on the impact assessment for the price cap, it is likely that the price cap will result in suppliers increasing their focus on non-price offerings to differentiate themselves to retain and attract customers. Ofgem must therefore remain focused on the opportunities and challenges facing the energy market, in particular the digitisation of the energy system and people's homes, and continue to explore changes to modernise the regulatory system.

Digitisation will result in more opportunities for consumers to engage and encourage new business models to emerge, including both new suppliers and market disruptors - operating in ways we haven't seen in the energy sector before. It will be more important than ever that consumers can make informed decisions and understand their energy usage and data.

It is likely that digitisation and the advent of new business models will change the way consumers experience and engage with the market. This will likely be the bedrock of a better energy market and be essential to reducing consumer detriment.

Research undertaken for Which? by Cornwall Insight shows that the experience of regulation and legislative obligations currently pose a risk that new business models may be scaled back and delay the consumer benefits they are expected to bring.

Ofgem should therefore continue their work to ensure regulation is fit for purpose. This includes encouraging the widespread rollout of SMETS2 smart meters, taking enforcement action as necessary, and reviewing the supplier hub model to ensure that new business models, which may offer great benefit to consumers, are not further delayed.

Other commentary on the proposed methodology

We have not commented on all aspects of the detailed methodology, but think that it is important that Ofgem ensures the cap is designed in such a way to meet the five key tests we have previously set out:

1. The cap must not cause longer-term price increases;
2. The cap must not remove incentives for providers to improve their service;
3. The cap must not stifle innovation;
4. The cap must lead to a truly competitive energy market; and
5. There must be clear criteria for removing the cap.

Which? agree with the proposal to set the bar sufficiently high for green tariff derogations to include only those tariffs that can show they are investing in renewable energy over and above the industry standard - particularly as many green tariffs are currently priced lower than their non-green competitors. Ofgem should be publish the criteria for defining these tariffs; this could also be an opportunity to reduce consumer confusion around how 'green' particular tariffs are.

While we acknowledge different costs relate to different payment methods, providing a higher cap for those who do not pay by direct debit should be accompanied by renewed efforts to ensure consumers have the information and ability to choose the payment option best suited to their circumstances.

Informal discussions with suppliers reveal many expect their SVTs to be reset to the maximum level of the cap. Ofgem's decision on the right amount of headroom should consider this, and provide safeguards - for example, it may be appropriate to remove headroom if it appears suppliers are simply using it to increase profit margins, providing suppliers are aware of the criteria for this. Headroom should be set on a sliding scale, decreasing over time to encourage greater efficiency.

**About Which?**

Which? is the largest consumer organisation in the UK with over one million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Yours sincerely,

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