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Response to Ofgem's consultation on their discussion paper
"Developing a framework for assessing whether conditions are in
place for effective competition in domestic supply contracts"

Introduction

In responding to this consultation, I am conscious of how we got to the imposition of the Cap. The CMA assessed and the Government agreed that a significant number of consumers were harmed by energy market failures and that they needed to be protected by a price cap. The Cap should only be lifted if it is clear that these consumers would not be significantly harmed by its lifting.

Since then there has been a clear reduction in the prices that many of these consumers pay, yet there is little evidence of competition having been harmed, with record levels of switching, and large numbers of market participants.

A market that is based closer on customers paying for the cost of the energy they use, rather than having that energy subsidised by those not switching would appear to be a more viable long term market structure.

What I believe is important is that in Ofgem's assessment of the conditions for lifting the Cap, there needs to be an assessment of the extent to which those consumers who were harmed by the market before the cap will be impacted by the removal of the cap. It is this explicit assessment that is most notably absent from the current proposals, and needs to be addressed.

This needs to be an evidence based assessment, for instance, how have tariffs for these consumers changed since the imposition of the cap, what are the likely tariffs that these consumers will be on after the cap has been lifted and what are their likely actions? It is also important to assess the size of the unengaged portion of the market, and the reasons that they remain unengaged, and how has the size of this segment changed over time.

With Ofgem's role to protect consumers, that if Ofgem's belief is that a significant number of consumers will be harmed by lifting the Cap, that Ofgem makes this view very clear, so that the Government can consider if changes to legislation are required.

Question 1: Are there any features of effective competition that are not covered in our definition?

Given the nature of the issues that led to the imposition of the cap, the size of, and reasons for non engagement in the market needs to be assessed. Such assessment should then form the basis for identifying what was lacking from the previous market. It is not clear what the missing features were that led to so many people being disengaged, and therefore it is difficult to assess what are the effective

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competition features that need to be in place to ensure that there is sufficient future protection for consumers.

Question 2: What are your views on the conditions for effective competition we have proposed? Are they clear and is there anything else you think we should take into account?

In addition to Condition 3 that “competition is expected to deliver good outcomes for most consumers, including those who are less active in the market”, a further condition is required that those who are likely to have less good outcomes aren’t significantly penalised, and that this position is materially different from the situation when the cap was imposed. There is a risk that little might have changed for those who previously were exploited, and this needs to be explicitly assessed.

Question 3: What are your views on the structural changes that we propose to include in our framework? Are there any specific changes you think we should consider?

Whilst the list seems appropriate, it is important that the likely impact of these changes on the disengaged segment is quantified, as part of the overall assessment. It is unclear what methodology you will use to undertake this impact quantification.

Question 4: Are there any indicators of the competitive process not listed here that you think we should consider in our analysis?

You need to measure the size of the disengaged segment of the market and to assess how the market is seeking to maximise the revenue from this segment.

For instance, what proportion of companies are not offering standard terms below the price cap?

Question 5: What are your views on the consumer outcomes that we propose to assess in determining whether the conditions are in place for effective competition?

The question of quantifying the outcome on consumers is the crucial question in this assessment. In particular Ofgem needs to assess to what extent the outcomes for those customers who were disadvantaged under the pre-Cap market conditions will be different if the Cap is removed both from what they are now and what they were when the Cap was put in place.

This will require measures on:-

- What size the unengaged segment of the market is

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- What is the likely harm that this portion of the market would come to without the price cap.
- What proportion of this segment might engage in the market if the price cap is removed.

As the imposition of the price Cap does not appear to have reduced switching levels, what would the quantified benefit be, if any, of removing the Cap be to the engaged portion of the market?

If the assessment were to be that removing the price cap will harm consumers then Ofgem has to be clear in advising Government that the appropriate legislation should be changed

Question 6: Is there any other aspect of effective competition that the framework should consider?

No

Gavin Jones

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