



Maureen Paul
Effective.Competition@ofgem.gov.uk
Ofgem
10 South Colonnade
Canary Wharf
E14 4PU

SSE
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

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Patricia.Hall@sse.com

Dear Maureen

SSE response to Ofgem Discussion Paper on developing a framework for assessing whether conditions are in place for effective competition in domestic supply contracts

We welcome the opportunity to input to the development of this framework. Despite our continued view that the cap is not required and that competition in the sector is strong, we nonetheless are keen to engage constructively. However, we believe a full consultation is required; the current proposals do not have a level of detail or specificity to enable us to meaningfully consider your proposals or respond appropriately. Consulting further once proposals are more developed will enable Ofgem to ensure it fairly delivers on the requirements of the Act, while avoiding the risk of causing long-term damage to competition and consumer outcomes.

In preparing our response we enlisted the support of an economic consultant, Charles River Associates, whose contributions have been included.

Summary of SSE response

- SSE continues to believe that the Default Tariff Cap is not necessary. Competition was effective before the cap was introduced and remains strong. With over 60 suppliers in the market, an increasing market share held by newer entrants, high switching rates between suppliers of all sizes (in spite of the cap), and a wealth of third-party services, competition is already healthy and effective for most customers and can reasonably be expected to become healthier still as in-flight structural reforms including the smart meter roll-out take effect.
- If Ofgem disagrees with this assessment, it is vital that it is clear on the basis on which it disagrees; ie what conditions does it believe are currently lacking or what barriers remain that inhibit effective competition, as defined by Ofgem. Only then can a credible assessment be made as to whether these perceived deficiencies have been addressed or are likely to be so following removal of the cap, and the metrics that will

help inform this assessment. This will also enable Ofgem to be clear about what competition is and is not expected to deliver.

- The definition of effective competition needs to be an end-point rather than a hurdle for the removal of the price cap and it must recognise the dynamic process of competition. Ofgem's focus should centre on whether effective competition will emerge given the prevailing structures and competitive dynamics if the tariff cap is removed, rather than confirming that effective competition is already in place.
- There is no compelling logic to support Ofgem undertaking a review as to whether the existing programme of structural reforms can be expected to facilitate competition. It is reasonable for Ofgem to assume that these reforms can be expected to facilitate competition and it would be unproductive for it to revisit its earlier justification for their introduction. Given the intense competition that is already in evidence, progress of these structural reforms should therefore provide further comfort that the conditions for effective competition are being further strengthened.
- Ofgem should clearly set out what it considers to be structural changes. SSE does not accept that wider market developments (such as automatic switching) are appropriate considerations. It would be inappropriate for Ofgem to consider the success of any particular type of business model, or to put undue emphasis on any one change.
- To comment constructively on Ofgem's proposals for the conditions, the outcomes and the indicators, we first require clarity on what positive or negative outcomes Ofgem is seeking to monitor progress towards and the approach that would be taken in assessing the indicators 'in the round'.
- In respect of assessing whether market collusion exists, we believe that Ofgem should be able to rely on the conclusions of the CMA energy market investigation (2014-2016) which found no evidence of tacit coordination. Furthermore, we believe this condition is irrelevant to the analysis. This type of conduct is illegal and Ofgem and the CMA have specific powers to deal with any issues which arise from it. It should not be linked to this assessment.
- Ofgem should not include criteria which rely on speculation about future changes, the impact of which are unknown. For example, Ofgem expects to incorporate structural reforms proposed within the Future Energy Market Review by Ofgem and BEIS, which has not yet been completed. There is no insight into what such structural reforms might be, or how they might be incorporated into this framework. This seems unreasonable from a process point of view.



- Ofgem should consider what its approach would be in the scenario that it determines the cap is itself an impediment to achieving conditions for effective competition.
- Different customer segments are likely to experience different consumer outcomes. Ofgem should allow for the possibility that certain segments of the market demonstrate effective competition, while others do not. Ofgem should set out how it will analyse different consumer segments and how it would deal with a situation where conditions of effective competition are in place in certain segments, but not in others, and the role of more targeted interventions to address any specific rather than market-wide issues that are identified.

We have set out our response in Annex 1 below and would welcome the opportunity to discuss it more detail with Ofgem. Furthermore, we believe it is important for Ofgem to consult formally on the framework in autumn, having considered early industry feedback as part of this Discussion Paper process.

Yours sincerely

Patricia Hall

Annex 1: SSE response to Ofgem discussion paper on developing a framework for assessing whether conditions are in place for effective competition in domestic supply contracts

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

SSE continues to believe the Default Tariff Cap is not necessary – competition was effective before the cap, and remains strong

SSE continues to believe that the Default Tariff Cap is not necessary. Competition was effective before the cap was introduced and remains strong. With over 60 suppliers in the market, an increasing market share held by newer entrants, high switching rates between suppliers of all sizes, and a wealth of third-party services, competition is healthy and effective. Indeed, the conclusions from the CMA Energy Market Investigation (EMI) were that competition is working well for some customers and will work better for others with the introduction of remedies; these remedies have largely been implemented, or are on track for implementation.

Even if Ofgem disagrees with this, a price intervention of this scale carries risk. Following its EMI, the CMA concluded that such an intervention would run excessive risks of undermining the competitive process and was likely to result in worse outcomes for customers in the long run.¹ The European Commission has also long sought to limit regulated prices because they can limit the development of effective competition, discourage investments and the emergence of new market players.² We recommend that Ofgem’s focus should be on how best to remove the cap as quickly as possible to minimise the risk of long-term damage to competition as the wider energy market (e.g. wholesale prices) fluctuates and develops over time.

In considering a definition of effective competition, we recommend that Ofgem focuses on whether conditions can be expected to facilitate competition over time

Section 7 (1) of the 2018 Tariff Cap Act requires only that the conditions “are in place” for effective competition. As currently written, the definition states, “*Competition is effective if it involves rigorous rivalry between firms to win and to retain customers, and it results in good outcomes for most consumers in terms of what matters to them (e.g. price and quality of service).*” We would recommend adding “over time” to this sentence. This would allow

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/531204/overview-modernising-the-energy-market.pdf, paragraph 44

² Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast), COM (2016) 864 final/2 23.2.2017 (Explanatory Memorandum)

market participants to debate whether, at time of review, the conditions are in place to facilitate competition (and so the cap can be removed), or that they are not (and so the cap should be maintained), or indeed whether the cap is impeding the process of moving towards effective competition (and so the cap should be reconsidered entirely.)

Furthermore, it is not a pre-condition for removal of the cap that this definition need fully apply to current market circumstances. Indeed, Ofgem has previously noted that, “looking at market outcomes while the cap is in place is unlikely to tell us what would happen to competition when the cap is removed.”³ Ofgem should be assessing whether it thinks that effective competition will emerge given current structures and competitive dynamics if the tariff cap is removed, rather than confirming that effective competition is already in place.

Ofgem should start from the premise that their existing programme of structural changes will facilitate the competitive process over time

It is important to acknowledge that the structural reforms listed in Ofgem’s Discussion Paper were designed by Ofgem to address specific competition concerns in the market. The decisions Ofgem made to introduce these reforms were informed through a combination of consultation processes, Impact Assessments, and a CMA market investigation. Ofgem should therefore already be confident that these reforms can be expected to facilitate competition and it would be unproductive for it to revisit the earlier analyses that justified their introduction. We would agree that structural reforms are an important consideration in whether conditions exist that are expected to facilitate competition, but it must be accepted that if those reforms are implemented, or in the process of being implemented, that they will facilitate competition.

In considering its definition of effective competition, Ofgem should avoid conjecture around Future Energy Market Reforms, as that review has not been completed at this stage

We recommend Ofgem removes any criteria which relies on speculation about future changes, the impact of which is unknown. For example, the incorporation of the Future Energy Market Review by Ofgem and BEIS, which has not yet been completed, would be inappropriate from a process perspective and unlikely to guarantee a reliable or accurate outcome.

3 Default Tariff Cap: Policy Consultation Overview document, para 5.11, p. 45.

Ofgem is not required by the Act to revisit the notion of collusion in the energy market and doing so would be inappropriate and a duplication of resource

We would strongly discourage Ofgem from including the condition that “there should be no collusion between firms; abuse of market power or other practices that distort competition”. This type of conduct is illegal and Ofgem and the CMA have specific powers to deal with any issues which arise from it. This condition is irrelevant to the analysis and should not be linked to this assessment. Instead, we recommend Ofgem relies on the comprehensive CMA review into the energy market (2014-2016), which found no evidence of tacit coordination between the six larger energy firms^{4,5,6}. Even if Ofgem was minded to include these elements, we believe that repeating this scale of investigation would be a duplication of effort and disproportionate to the need given what has already been investigated and Ofgem’s current availability of market insight and trends. Ofgem should instead make reference to the findings and evidence collected via the CMA review, and its in-depth visibility of market trends and consumer behaviours gathered via their market monitoring work.

The negative trends could become more pronounced as the cap remains – Ofgem should seek to remove the cap as soon as possible

A price intervention at the scale of the Default carries risk of causing long-term damage to competition and the market. As mentioned above, both the CMA and the European Commission have actively avoided the use of such an intervention. As Ofgem is aware, the energy supply market is currently seeing unrepresented levels of supplier failure, which introduces substantial and unplanned financial pressure to existing participants. The mutualisation costs of non-payments to social and environmental programmes must be paid for by active suppliers and their customers. These costs are unplanned and are not insignificant; and combined with the increased DUoS charges that collect the revenue to fund the industry levy, these additional costs are likely to increase the financial burden on other struggling suppliers. This heightens the likelihood of more failures, which puts strain on the market.

While the cause of supplier failures is not made publicly available, Ofgem should consider whether the Default Tariff Cap – or the prospect of its introduction – was a contributing factor to these failures. Ofgem states that a degree of supplier failure is expected under the cap –

4 See section 6, 32, 33, 55 – 58 of Working Paper on ‘Co-ordination in the retail market facilitated by price announcements:

https://assets.publishing.service.gov.uk/media/54f8765de5274a1414000001/Coordination_retail_pricing.pdf

5 See 136 of Summary of Provisional Findings Report:

https://assets.publishing.service.gov.uk/media/559ad883e5274a155c00001b/EMI_PFs_Summary.pdf

6 See section 87 of Appendix 9.4 of CMA Final Report: <https://assets.publishing.service.gov.uk/media/576bcbde40f0b66bda0000b2/appendix-9-4-coordination-by-price-announcements-fr.pdf>

and within any competitive market – but SSE believes it is also important that a balance is achieved so that the stability of the market and the trust and engagement of all customers is not compromised by a continued trend of supplier failures.

The Default Tariff Cap presents a very real risk of tipping this balance, and so we recommend that Ofgem’s focus should be on how best to remove the cap as quickly as possible to minimise the risk of long-term damage to competition as the wider energy market (e.g. wholesale prices) fluctuates and develops over time.

Ofgem should consult formally and fairly on this important framework for cap removal having tabled its detailed thinking

We are primarily concerned with ensuring the best outcome for our customers, and that this framework supports the development of a healthy, well-functioning and competitive energy supply market. We have therefore sought to be constructive throughout the process in order to support Ofgem in delivering the least disruptive outcome for consumers and the market.

To comment constructively on Ofgem’s proposals for the framework (the conditions, the outcomes and the indicators), we first require clarity, and the appropriate degree of specificity, on what positive or negative outcomes Ofgem is seeking to monitor progress towards and the approach that would be taken in assessing the indicators ‘in the round’. The level of detail is insufficient to permit intelligent consideration of the proposal and an intelligent response. Thus, while we welcome the opportunity to input to the development of this framework, we are unable to comment constructively or in appropriate detail on Ofgem’s proposals for the conditions, the outcomes and the indicators.

We firmly believe that Ofgem must consult formally in the autumn prior to concluding the design of this crucial framework to ensure it achieves the stakeholder input it requires to deliver fairly a framework that aligns with the requirements of the Act while avoiding the risk of causing long-term damage to competition and consumer outcomes.

In conclusion, given these points, and as stated above, we would recommend the definition reads: “Competition is effective if it involves rigorous rivalry between firms to win and to retain customers, and it results in good outcomes for most consumers *over time* in terms of what matters to them (e.g. price and quality of service)”. This would allow market participants to debate whether, at time of review, the conditions are in place to facilitate competition.

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?

The proposals are not yet sufficiently clear in terms of what is included in the scope of each condition and how the introduction of these conditions relates to the perceived underlying issue the cap is aiming to address. In the interests of being constructive at this early stage, we have suggested areas of clarification for each condition below but would expect that Ofgem will consult fully on the framework in autumn.

2.1 Condition 1: Structural changes in the market are facilitating or can be expected to facilitate competition

We would make the following suggestion to help strengthen Ofgem's approach in considering how best to incorporate a view of structural changes in the market:

- We broadly agree that structural reforms are an important consideration in whether conditions exist that are expected to facilitate competition, but it must be accepted that if those reforms are implemented, or in the process of being implemented, that they will facilitate competition. The decisions Ofgem made to introduce these reforms were informed through a combination of consultation processes, Impact Assessments, and a CMA market investigation.
- It would be helpful for Ofgem to refer to the conclusions from the CMA Energy Market Investigation (EMI). The EMI concluded that competition was working well for some customers and will work better for others upon the introduction of a number of remedies (many of which are listed in Ofgem's Discussion Paper). The conclusions of a comprehensive CMA EMI over a two-year period should provide ample justification that these reforms can be expected to facilitate competition.
- Despite the introduction of the cap, good progress is being made on the reforms listed in Ofgem Discussion Paper, which are already working well for consumers and facilitating competition. As further progress is made, these reforms will further enhance competition - they are working well now and will only bring increased benefits to the market as they progress once the cap is removed.
- To better assist in our provision of feedback, it would be helpful if Ofgem could clearly set out what it considers to be structural changes. For example, we would argue that an automatic switching service is not an example of structural change; it is a private for-profit business model which is subject to competition in its own right. Whether any particular type of business model is successful or not should not be pre-

determining whether effective competition exists. Likewise, Ofgem should set out a full list of the CMA remedies it intends to consider as part of this condition.

- Ofgem should specify with what weight each remedy's implementation will be viewed. Do all remedies have to be implemented and what material progress would be considered sufficient? Similarly, Ofgem has not shared how it intends to measure structural reforms, how it will take known delays into account, and how the outcome of Ofgem's monitoring will be interpreted in the assessment of whether structural changes are facilitating or can be expected to facilitate competition.
- Other than progress of the smart meter rollout which is specifically contemplated in the Tariff Cap Act, it would be inappropriate to put undue emphasis on any one structural change in the market.
- It is inappropriate to include speculation about future changes, the impacts of which are unknown. For example, Ofgem expects market participants to accept paragraph 3.18 and 4.4 on the Future Energy Market Review by Ofgem and BEIS which has not yet been completed. There is no insight to what structural reforms, emerging from that review Ofgem will propose to incorporate into its framework. This seems unreasonable from a process point of view. It should also be noted that regulatory changes can also hinder competition – for example, consumers who currently benefit from Warm Home Discount from an obligated supplier are less likely to switch to a non-obligated supplier. Therefore, if any changes introduced by the Future Retail Market Review are included as part of this process the Review must ensure that any existing distortions are removed from the market (and no new distortions are introduced).
- Similarly, the Ofgem forward work plan (reference in Para 4.4) provides little more than high level detail on the objectives and areas for work in retail energy markets. We believe Ofgem ought to identify some specific structural changes and identify what it would consider sufficient progress.

2.2 Condition 2: requires that the competitive process is expected to work well in the absence of the cap

2.2.1 *It is unreasonable to hold market participants to account for regulatory barriers outside of their control*

We support the view that ease of entry and exit is only desirable when balanced with business models that are sustainable; however, Ofgem must recognise that requirements for market

entry and exit are largely set by Government and Ofgem. It would therefore be unreasonable to hold market participants to account for any regulatory barriers outside their control.

2.2.2 A further review of tacit collusion is not warranted and should not be part of this assessment

We do not support inclusion of the condition that “there should be no collusion between firms; abuse of market power or other practices that distort competition”. This condition is irrelevant to the analysis. This type of conduct is illegal and Ofgem and the CMA have specific powers to deal with any issues which arise from it. It should not be linked to this assessment.

As Ofgem is aware, the CMA conducted a comprehensive review of the energy market over a period of two years, publishing their final report in June 2016. This investigation found no evidence of tacit coordination between the six larger energy firms^{7,8,9}. Even if Ofgem was minded to include these elements, we believe that repeating this scale of investigation would be a duplication of effort and disproportionate to the need given what has already been investigated and Ofgem’s current availability of market insight and trends. Not only does Ofgem have access to the findings and evidence collected via the CMA review, but it also has in-depth visibility and data relating to market trends and consumer behaviours gathered via their market monitoring work, upon which they can draw conclusions without the need to conduct a market-wide investigation.

2.2.3 The indicators of a competitive market process should be comprehensive and Ofgem must explain how it will weigh and interpret different metrics

In paras 4.7 – 4.10, Ofgem sets out three groups of indicators: Market Structure, Consumer Behaviour, and Supplier Performance to evaluate Condition 2. The indicators of a competitive market process should be comprehensive (i.e. representative of the market as a whole) and dynamic (i.e. based on time series).

We believe that Ofgem should explain the broad principles of how it will weigh and interpret the different metrics. In particular, we believe that the following areas need to be addressed:

7 See section 6, 32, 33, 55 – 58 of Working Paper on ‘Co-ordination in the retail market facilitated by price announcements:

https://assets.publishing.service.gov.uk/media/54f8765de5274a1414000001/Coordination_retail_pricing.pdf

8 See 136 of Summary of Provisional Findings Report:

https://assets.publishing.service.gov.uk/media/559ad883e5274a155c00001b/EMI_PFs_Summary.pdf

9 See section 87 of Appendix 9.4 of CMA Final Report: <https://assets.publishing.service.gov.uk/media/576bcbde40f0b66bda0000b2/appendix-9-4-coordination-by-price-announcements-fr.pdf>

- What time period of data will be considered?
- What weight will be put on the different proposed metrics between and within the three categories/conditions?
- What will be Ofgem's proposed methodology to interpret differences across customer segments and between types of suppliers (large and small)?
- What direction or order of magnitude of change is required for a conclusion to be reached by Ofgem, including any potential interaction between the different metrics (we recognise that this is unlikely to be precise, and we do not believe that it should be, but an indication of how change may be interpreted would be indicative of Ofgem's plan to assess the competitive market process).

2.3 Condition 3: requires that competition is expected to deliver good outcomes for most consumers, including those who are less active in the market

We are concerned that Ofgem's view of good outcomes lacks specificity and it will be very difficult to justify with strong evidence whether good outcomes exist for most consumers. As Ofgem knows, consumers are not a homogenous body with the same habits, desires and expectations.

A clearer definition of 'service' will be required for this purpose and Ofgem should indicate how it will measure engagement across society. For example, some firms have made it a condition of contract that customers have a smart phone in order to sign up and there is no access to a telephony contact centre. This model clearly discriminates against some customers, but equally could be considered as an indicator of innovation. In this example, it is unclear whether Ofgem values innovation over the provision of facilities that support non-digital customers. There seems to be an inherent contradiction between the elements that Ofgem is trying to assess simultaneously in its current review framework.

Similarly, in cases when customers rely on automated switching services they are not themselves engaging with their energy supplier, rather they are removing themselves from such engagement. This is clearly an example of a customer engaged in the energy market, but the style of engagement differs greatly from how consumers traditionally – and most commonly – engage in the market. Overreliance on this model would likely be detrimental to groups of customers who are uncomfortable using this style of service. It should also be noted that these services are typically based purely on price, with no regard to customer service or smart compatibility which would lead to customers losing facilities they may value highly. Again, the balance Ofgem is seeking to strike between innovation, the provision of traditional engagement routes, and other potential items within the framework is unclear.

It is clear that various iterations of engagement and good service are possible. If Ofgem is using these metrics to define whether or not the Default Tariff Cap must be extended, it must

be clear on the outcomes it expects to see and how it is assessing the metrics in determining whether those outcomes have been achieved. Without this, it is unclear how Ofgem expects to justify any recommendations and again there is insufficient clarity upon which stakeholders can comment at this stage.

To enable stakeholder input, Ofgem should explain how it will weigh the relative importance and interpret each outcome – even if subjectively. For example:

- What is an appropriate price level?
- How much price dispersion is reasonable?
- What does quality of service mean?
- What is the right amount of tariff choice?
- What is the definition of an easy switch?

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?

Please see our comments in paragraph 2.1.

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

Ofgem has not provided clarity on what positive or negative outcomes it is seeking to monitor progress towards or how the indicators will be assessed ‘in the round’. Without sharing how the indicators are to be interpreted, or what outcome Ofgem expects these indicators to show or not show, Ofgem has made it impossible for stakeholders to effectively scrutinise the process overall. For this reason, we are unable comment on whether the list of indicators is appropriate.

While we acknowledge Ofgem’s position that it should not seek to prescribe definitive thresholds for the indicators under assessment, we believe there is still plenty of scope to refine the outcomes further. We believe that Ofgem would benefit from more robust and informed stakeholder input if it were to engage industry again once greater clarity is available. It is essential and would be in line with the framework’s guiding principle of transparency, for Ofgem to undertake a formal consultation in autumn once it has developed its proposals to a level of detail and specificity that enables intelligent consideration and response.

We also consider that Ofgem should consider the dynamic nature of competition as part of the metrics – i.e. number of new entrants, mergers, and how behaviour has changed or is changing in light of market conditions. This would require analysis of metrics related to

movement and trends rather than static observations at any point in time – e.g. looking at trends of switching rates over a period of time, rather than (for example) the latest monthly figures.

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?

5.1 More clarity is required as to how monitoring will indicate whether conditions for competition are in place

The proposals in respect of outcomes for consumers are extremely high level and do not explain the rationale for how these are used to assess effectiveness of competition. For example, para 4.15 implies that the existence of price differentials is seen as a negative outcome for consumers, but it does not explain whether (or at what level) such differentials are considered to be evidence of competition not being effective. Price discrimination can emerge even in highly competitive markets – as highlighted in Annex 2 of the Discussion Paper.

The consumer outcomes should also include softer metrics like brand loyalty and brand association; some consumers will prefer to choose their supplier for reasons other than price, such as wanting to support “green” companies, those with award winning service credentials, or those that are local to their area.

5.2 Ofgem should consider how to ensure policies for segment-specific price caps are introduced fairly to the market

We agree with views expressed in paras 4.17 and 4.18 that effective competition may not deliver outcomes that meet the needs of consumers in vulnerable situations and agree this group should be considered separately. Different customer segments are likely to experience different consumer outcomes. We recommend Ofgem undertake analysis by key customer segments and consider whether effective competition is in place for each segment.

Ofgem should allow for the possibility that certain segments of the market demonstrate effective competition, while others do not – and therefore it may be appropriate for price protection to be lifted for certain parts of the market sooner, and for others later. Such a decision would give rise to new challenges of course, such as the need to consider how best to achieve socialisation of the costs of continued price protection to certain customer groups.

As set out to Ofgem in previous consultation responses on price caps, we strongly believe the cost of safeguard protection should be fairly distributed and that Ofgem should consider a

mechanism that ensures certain suppliers are not disproportionately disadvantaged by the introduction of price caps to their customer base. As well as ensuring that all suppliers play a fair and equitable role in delivering price cap policies, this approach would avoid introducing any possible disincentive on suppliers to compete for – and innovate for the benefit of – customers whose prices are capped. Price protection policies should be fair to all market participants and ensure a level playing field, not give an undue advantage to any type of market participant or customer.

Whether the cap can end for certain customers whilst continuing for others ought to be an element of the analysis in light of Ofgem’s responsibilities (see Section 1(6) of the 2018 Tariff Cap Act). In reviewing the consumer outcomes in Para 4.15 it would be logical to evaluate them in terms of different consumer segments.

5.3 It is unclear how Ofgem will ensure sufficient data is collected and how it will baseline its assessment to ensure the analysis on customer outcomes is comprehensive

Not all of the proposed sources of data are comprehensive in their coverage of the market. It would appear, at least from what is available publicly, there is far greater information on large suppliers. Given the increasing market share of small and medium sized providers a significant portion of the market may not be covered by the data Ofgem proposes to use.

For example, to consider efficiency of suppliers, Ofgem will review data on EBIT margins and operating costs gathered from CSS. The CSSs cover only the six largest suppliers. Since the EMI, a number of companies have emerged as significant medium sized suppliers. CSS-like data is not produced for firms including Ovo, Utilita, Octopus, Shell and Bulb. A similar pattern is found for several other indicators, some examples of which are set out in Table 1 below.

Table 1: SSE commentary on Ofgem’s proposed indicators for measuring consumer outcomes

| Indicator | Comment on indicator |
|---|---|
| % of accounts by tariff type: - Large energy suppliers (> 5%); - Small and medium suppliers (< 5%); | There is no detail on small suppliers. The data provides for the number of accounts by supplier, for the 13 largest suppliers (as opposed to 14 for most metrics, due to the exclusion of Bulb which offers a single tariff). |
| Proportion of customers satisfied or very satisfied with overall customer service | This data was collected by Accent Research for Ofgem. It is a quarterly survey (Annual until 2018; 3200 domestic energy consumers surveyed in 2019Q1). The suppliers represented by the sample of customers |

| | |
|--|--|
| | <p>seem to present a comprehensive view of the market (with the Big Six, the small and medium suppliers being represented).</p> <p>While overall customer satisfaction by group of suppliers is not presented in the publicly available report, we would expect this data to be available to Ofgem (or through a request to Ofgem).</p> |
| Earnings before income & tax (EBIT) margins | This data is only available for the largest six suppliers. |
| Operating costs - per customer - relative to price cap allowance | This data is only available for the largest six suppliers. |
| Average tariff prices (SVT vs fixed tariff): - Large energy suppliers (> 5%); - Small and medium suppliers (< 5%); | This data shows trends in domestic energy bills by tariff offered by the six largest suppliers and other suppliers. It compares their average standard variable tariffs with the cheapest tariffs available in the market. Therefore, it does not provide a breakdown by company. This breakdown is available only for the six largest suppliers. |
| Satisfaction and trust (from survey data): - to charge a fair price - to provide clear and helpful information - to treat you fairly | <p>This data was collected by Accent Research for Ofgem. It is a quarterly survey (Annual until 2018; 3200 domestic energy consumers surveyed in 2019Q1). The suppliers represented by the sample of customers seem to present a comprehensive view of the market (with the Big Six, the small and medium suppliers being represented).</p> <p>While this metric is presented in the annual survey data available until 2018 (actual data tables available until 2017), the latest quarterly survey reports for 2018Q4 and 2019Q1 do not report on this metric (some detail is however available on whether customers feel they are on the cheapest tariff). We note that we would expect the data (by group of suppliers) to be available to Ofgem, or through a request to Ofgem, as it formed part of the survey questions prior to the switch to a quarterly survey.</p> |
| Number of tariffs offered in the market | An actual database is not readily available publicly. It is therefore difficult for us to assess whether this data is comprehensive. |

Switching perceptions (from survey data): - length of time to complete process - complexity of process - risks to changing supplier - lack of time to engage

This data was collected by Accent Research for Ofgem. It is a quarterly survey (Annual until 2018; 3200 domestic energy consumers surveyed in 2019Q1). The suppliers represented by the sample of customers seem to present a comprehensive view of the market (with the Big Six, the small and medium suppliers being represented).

While this metric is presented in the annual survey data available until 2018 (actual data tables available until 2017), the latest quarterly survey reports for 2018Q4 and 2019Q1 do not report on this metric. We note that we would expect the data (by group of suppliers) to be available to Ofgem, or through a request to Ofgem, as it formed part of the survey questions prior to the switch to a quarterly survey.

Proportion of customers satisfied or very satisfied with ... switching process (among those who have ever switched supplier)

This data was collected by Accent Research for Ofgem. It is a quarterly survey (Annual until 2018; 3200 domestic energy consumers surveyed in 2019Q1). The suppliers represented by the sample of customers seem to present a comprehensive view of the market (with the Big Six, the small and medium suppliers being represented).

While overall customer satisfaction with switching process by group of suppliers is not presented in the publicly available report, we would expect this data to be available to Ofgem (or through a request to Ofgem)..

Consumer survey results of trust in suppliers and the market to provide high quality services at a fair price

This data was collected by Accent Research for Ofgem. It is a quarterly survey (Annual until 2018; 3200 domestic energy consumers surveyed in 2019Q1). The suppliers represented by the sample of customers seem to present a comprehensive view of the market (with the Big Six, the small and medium suppliers being represented).

While this metric (recorded by assigning customers to segments) is presented in the annual survey data available until 2018 (actual data tables available until 2017), the latest quarterly survey reports for 2018Q4 and 2019Q1 do not report on this metric. We note

that we would expect the data (by group of suppliers) to be available to Ofgem, or through a request to Ofgem, as it formed part of the survey questions prior to the switch to a quarterly survey.

Additionally, we have concerns with the robustness of the following sources for Quality of Service:

- Which? – ratings for this survey are based on a respondent survey of service, so it requires recollection from the customer of their experience, which could have been some time ago. Sample sizes for most suppliers in the survey are very low, meaning results are not robust, and differences between suppliers' scores are not statistically significant.
- TrustPilot – this is a subscription service, and companies that subscribe to Trustpilot (for a fee) tend to receive higher ratings than those that do not.

We would suggest removing these two sources and replacing them with uSwitch insight. Although uSwitch insight is also collected via surveys, its sample sizes are larger.

Furthermore, we would have expected this Discussion Paper to explain what it is that Ofgem will do with this information to aid it in drawing conclusions about whether effective competition is in place. For example, it is not clear what Ofgem is using as a baseline for their assessment.

As mentioned in our response to Question 4, we believe that Ofgem could go further – without compromising their need to avoid over-prescription – to refine what success looks like for the outcomes listed. By not sharing such crucial information on their process, Ofgem restricts our ability to contribute to this framework and in doing so help ensure the best outcome for the market and consumers. In its current form, we are unable to effectively scrutinise the proposals and believe Ofgem would benefit from more robust and informed stakeholder input if it were to engage industry via a fair consultation in autumn when more clarity on the framework is available.

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

6.1 Ofgem must consider its approach in the scenario that it determines the cap is itself an impediment to achieving conditions for effective competition

We welcome Ofgem's planned activity to consider the impact of the Default Tariff Cap itself on competition. However, Appendix 4 does not set out what action Ofgem would take if it

were to come to the conclusion that conditions for effective competition are not in place and that the cap was the cause of this, or if the statistical analysis on the effect of the cap on its proposed metrics shows a negative impact beyond what was forecast in its impact assessment. Section 7(1) of the Act should be broad enough to ensure that Ofgem's assessment can take this into account.

It is SSE's view that Ofgem must be ready to remove the cap if it finds that the cap is an impediment to ensuring conditions for can be achieved or is harming consumer outcomes.

6.2 Effective competition does not need to be in place to remove the tariff cap

As noted previously, the Act does not require that effective competition is in place in order to remove the tariff cap. Instead, only the conditions for effective competition need to be in place. This is logical as the negative risks from retaining price control increase as competition becomes more fully effective.

Furthermore, Ofgem should consider its approach to removing the cap based on its growing confidence that structural reforms will lead to effective competition over time, and in anticipation of this being demonstrated by lagging indicators.

This is in keeping with our view, expressed in response to question 1 that Ofgem should be assessing whether it thinks that effective competition will emerge given current structure and competitive dynamics if the tariff cap is removed, rather than confirming that effective competition is already in place.

6.3 Ending the cap for certain customers segments

Different customer segments are likely to experience different consumer outcomes (given the indicators recommended in Para 4.15). Paras 3.22–3.23 considers how after the cap some categories of customers may continue to require protection. However, the need for future protection is to be handled in the Future Energy Retail Market Review and not in this review. Ofgem's assessment here is an assessment of the whole market.

We believe that whether the cap can end for certain customers whilst continuing for others ought to be an element of this analysis in light of Ofgem's responsibilities (see Section 1(6) of the 2018 Act). We believe that on reviewing the consumer outcomes in Para 4.15 it would be logical for Ofgem to evaluate them in terms of different consumer segments and that Ofgem should consider that there are possibly more options than (1) keeping the cap on (2) removing the cap altogether.



As we discuss in section 5.2, it may be that the current Default Tariff Cap could end for most customers and that an alternative solution can be put in place for customer segments where progress towards effective competition is most limited. We would welcome Ofgem sharing their views on how they would approach this scenario prior to the end of 2023, should it conclude that some customer segments no longer require protection.