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Dear Dr Paul

**uSwitch response to Ofgem's 'developing a framework for assessing whether conditions are in place for effective competition in domestic supply contracts' discussion paper**

I am writing on behalf of uSwitch in response to Ofgem's discussion paper.

uSwitch is the UK's largest energy price comparison and switching service. We engaged with the Ofgem team that designed the Default Tariff Cap including the provision of detailed data. We would welcome the opportunity to continue to constructively engage with Ofgem as it looks to drive better outcomes in the market, including as it assesses the impact of the Default Tariff Cap.

In this response we make some observations considering Ofgem's discussion paper. We are happy to discuss these further with Ofgem if it is helpful.

**Overview**

Ofgem is right to focus its analytical approach to conditions for effective competition on the likely impact should the Default Tariff Cap be lifted. Ofgem must avoid any self-fulfilling analysis that pre-determines any particular conclusion, in that it should not use metrics that may be negatively impacted specifically by the Default Tariff Cap to support a justification not to lift it.

We agree that Ofgem is right to identify several structural changes that will be relevant to monitor as part of its conditions for effective competition assessment. However, while these developments may be helpful to support a finding of conditions for effective competition, Ofgem should not consider these projects to each be necessary conditions for such a finding. We consider it likely that market conditions will support the removal of the Default Tariff Cap before the relevant reforms proposed by Ofgem and government are fully in place.

We appreciate that Ofgem cannot and should not give formal thresholds under any of its potential conditions, given that Ofgem has to consider the relationship between the status of all conditions in the round to make a judgement. However, when Ofgem carries out reviews it should be open to giving industry signals on whether progress on particular elements has been satisfactory. In giving such indications, Ofgem should be able to incentivise industry to make progress as swiftly as possible to support a finding that the Default Tariff Cap can be lifted.

We also consider it vital that the Secretary of State is presented a rounded analysis by Ofgem as part of the annual Default Tariff Cap reviews. Ofgem should fully assesses the counterfactual scenario of removal regardless of whether it is Ofgem's recommendation at that time. Ofgem should for example have a fully formed potential remedy setting out the additional vulnerability price protection that it would put in place should the Secretary of State opt to lift the Default Tariff Cap. Ofgem's analysis at each annual review for the likely economic impact of cap removal should assume that enduring price protection for vulnerable customers continues. This is the only way that the Secretary of State make a balanced decision about whether the time is right to lift the Default Tariff Cap.

Finally, we consider it important that Ofgem takes a consultative approach to these assessments ahead of publication of a final report for the Secretary of State.

In the remainder of our response we offer some more specific comments on the discussion paper. We would welcome the opportunity to engage further with Ofgem as it develops its thinking on this.

### **Inclusion of price differential as a metric**

We are concerned that price differential is placed alongside price in Ofgem’s discussion paper as a good outcome indicator. We appreciate that some stakeholders have sought to highlight any price differential present in the market by presenting a differential as something that is inherently problematic. In our view this can create an undue focus on price differentials that risks poor regulatory decisions and worse outcomes as a result.

Prices that consumers achieve can be significantly dispersed in a market when even the highest price is lower than market scenarios where all prices are consistent. In its assessments Ofgem should consider likely default energy prices without a price cap in absolute terms, for example comparing against total costs and using relevant international comparisons.

We consider this particularly important when considering the innovation and product complexity that is possible in the time period where Ofgem will need to review the Default Tariff Cap. New market innovations could lead to more nascent sections of the retail energy market emerging, where a tolerance for price differentials and varied outcomes is entirely consistent with a vigorously competitive market.

### **Need to consider the dynamic effects of competition**

uSwitch appreciates, not least as a price comparison service, how important price is as a competitive differentiator in the retail energy market. The role and prevalence of PCWs in the energy market currently goes some way to suggest that the process of discovery has a strong foundation in this market. However, we are aware of the emphasis that Ofgem has rightly placed on the need for market innovation in the retail market in the coming years as a central plank of the Future Retail Energy Market work.

We suggest therefore that market and product innovation, and the ability of consumers to engage with it, should be placed more centrally to Ofgem’s proposed analysis. This should include limiting the weighting that Ofgem places on price as the primary consumer outcome if there is evidence of increased market competition to provide innovative offerings that meet consumer demands. One could certainly imagine scenarios where some consumers opt for higher priced services that offer more value, such as bundles with other products.

We also note that Ofgem proposes to consider effective competition as involving “[vigorous] rivalry between firms to win and to retain customers, and it results in good outcomes for most consumers”. We consider how Ofgem define “most customers” will be important in its assessments. Clearly, competition being effective for most consumers does not necessarily require that most consumers switch regularly. As Ofgem acknowledges, competition should also result in firms making an effort to retain customers. This would lead to better outcomes as long as enough consumers remain engaged that a credible threat of customer churn exists across a firm’s customer base.<sup>1</sup> Such positive impacts of customer retention efforts could in some circumstances be observed through price discounting, but may also be observed through improved customer service or product innovation.

### **Considering likely post-Default Tariff Cap vulnerability protections as part of the assessment**

Ofgem has on several occasions said it is likely that a level of enduring “backstop” price protection for vulnerable customers will be necessary following the conclusion of the temporary Default Tariff Cap.<sup>2</sup> uSwitch is supportive of this principle and considers it likely that such an approach would lead to better consumer outcomes across the market than the status quo. We believe it may be desirable that Ofgem recommends moving to such arrangements earlier than the sunset provisions in the Domestic Gas and Electricity (Tariff Cap) Act (the Act) for 2023.

Section 9(2)(b) of the Act requires that Ofgem carries out reviews of whether vulnerable customers are in need of protection before the Default Tariff Cap ceases to be in effect, and afterwards at appropriate intervals. uSwitch’s view is that, in the first instance, an appropriate interval for such a vulnerable customers protection review would be alongside each Section 7 assessment.

We note that Ofgem does not consider that Section 9 assessments require it to determine any exact form of protection. Still, in the event that the Future Energy Retail Market Review does not provide clarity on this in time for Ofgem’s initial Section 7 review, Ofgem should develop a counterfactual form of vulnerability price protection. This counterfactual protection should be tested in

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<sup>1</sup> Save for vulnerable customers where regulatory incentives arising from vulnerability protections may be the primary driver of good outcomes.

<sup>2</sup>

[https://www.ofgem.gov.uk/system/files/docs/2018/12/mary\\_starks\\_keynote\\_speech\\_at\\_the\\_future\\_of\\_utilities\\_smart\\_energy\\_conference.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/12/mary_starks_keynote_speech_at_the_future_of_utilities_smart_energy_conference.pdf)

its economic analysis as a device for understanding whether the Default Tariff Cap is the most effective remedy possible to address the different outcomes experienced by specific consumer groups.

The ability of Ofgem to protect vulnerable customers as part of targeted specific price protection can itself be considered a condition for effective competition. Doing so safeguards a pool of customers less likely to engage with market and allows competition to focus on the majority customer segments it is most likely to benefit. With this in mind Ofgem should consider its assessments under Section 7 and 9 to be interdependent.

Regardless of whether it is required in the Act or not, we firmly believe that a policy scenario of removing the Default Tariff Cap in favour of targeted vulnerability protection should be considered annually alongside the conditions for effective competition review, starting by August 2020.

### **Practical approach to data and consultation**

We note that paragraph 4.5 of Ofgem's discussion paper says it will consider the impact of third party intermediaries (TPIs) including switching websites as part of its assessment, but that it may be harder for Ofgem to measure owing to lack of publicly available data. While we appreciate that Ofgem does not have the same formal information gathering powers it has with energy suppliers over TPIs such as uSwitch, we would encourage Ofgem to approach such organisations for data where it might be useful.

uSwitch has provided detailed data and analysis to Ofgem in the past on a voluntary basis that considers millions of data points with respect to consumer switching behaviour. This data can help to show how different customer demographic groups respond to product offers in the market, demonstrating consumer propensity to switch by price, supplier brand, wider offerings or other decision factors. Such data may provide Ofgem some greater insight into how retail market competition is operating in practice on a more robust basis than consumer research reliant on self-declarations. If Ofgem considers this might be useful as part of its conditions for effective competition assessment, we would encourage Ofgem to reach out to us to explore further.

More broadly, we expect many stakeholders will have data and insight on how competition in the market is progressing. Ofgem's framework needs to have a level of flexibility, but stakeholders are unable to have a reasonable level of certainty on how Ofgem's assessments may land in advance. Given this, we consider that it would be good practice for Ofgem to consult on its proposed Section 7 assessment before the final version is given to the Secretary of State. This will help to ensure that stakeholders have more visibility on the direction of travel and have opportunities to provide Ofgem with evidence that supports good regulatory decision-making.

Yours sincerely



Richard Neudegg  
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