

Discussion paper response: Developing a framework for assessing whether conditions are in place for effective competition in domestic supply contracts

Which? is the largest independent consumer organisation in the UK with more than 1.3 million members and supporters. Which?'s purpose is to tackle consumer harm and help individuals to be as powerful as the organisations they deal with in their daily lives. Which? empowers consumers to make informed decisions and campaigns to make people's lives fairer, simpler and safer.

Many thanks for the opportunity to respond to this discussion paper. Which? has long been concerned that the energy market has not been delivering good outcomes for the majority of consumers. Prior to the introduction of the default tariff cap, we advocated for it to be a temporary measure and for outcomes to be monitored carefully to minimise any adverse unintended consequences. To that end, we welcome the opportunity to comment on Ofgem's proposed framework as set out in the discussion paper.

Below we detail our responses to each of the questions set out in the paper.

Q1: Are there any features of effective competition that are not covered in our definition?

We broadly agree with the features of effective competition covered in the proposed definition.

We agree that 'rigorous rivalry' and 'good outcomes for most consumers' should be considered side-by-side. Rigorous rivalry' may be a necessary condition for effective competition but is not sufficient in its own right. Where suppliers are easily able to segment customers into engaged and disengaged groups, even rigorous rivalry for engaged consumers may lead to good outcomes for those consumers only and potentially poor outcomes for the disengaged. The degree of consumer engagement in the market, then, is an essential link between rivalry and outcomes for most consumers.

We would however note that, although you build on this definition to say that rivalry is driven by the “willingness of consumers to choose the best deal for them in the market” (p.15), it is well-established that individuals’ stated intentions do not always correlate with actions. Thought will need to be given as to how to establish whether general consumer ‘willingness’ to switch is providing a credible incentive for firms to compete to attract and retain customers.

Q2: 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?

We are broadly supportive of the proposed conditions for effective competition, though note the following points.

In relation to the above definition (taken from the executive summary, p.6), we have identified a consistency issue in terms of its focus on ‘most consumers’.

Firstly we note a lack of consistency around the extension of ‘most consumers’ as identified in the definition. For example p. 6 says “...including for those who are less active in the market” while p.23 says “...including those who do not switch or rarely switch suppliers”. We would support a consistent definition that incorporates those consumers who are ‘less active’ in the market, as switching is not the sole criteria for effective measurement of consumer engagement, as you acknowledge (p.7, p.21).

As a second point, we feel that greater consideration needs to be given to consumer understanding. Currently, it seems that there is an implicit link from “consumers should be readily able to access information on different product offerings...” to “...ensuring that consumers have confidence and trust in the market.” (p.17) For example, information can be readily accessible, but if consumers are not able to understand it, they will not be able to act on it.

Therefore, we would strongly recommend more explicit recognition of the crucial role of consumer understanding in this process, which is necessary to build trust and confidence in the energy market.

Q3: 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?

We agree that the structural changes Ofgem has identified will need to be considered in order to assess any likely changes in competitive conditions.

We also note that, in line with our point above on consistency, this section identifies the objective as “generate better outcomes for consumers on default tariffs” (p.19).

As above, we would be concerned if the improvements in outcomes were only focused on those who have default tariffs.

Q4: Are there any indicators of the competitive process not listed here that you think we should consider in our analysis?

We understand the need to avoid firm thresholds for some indicators, and acknowledge that any assessment should be holistic and not a 'tick-box' exercise. However, some degree of interpretation will be necessary on some indicators and there is a lack of clarity about that - for example, when looking at the number of energy tariffs available in the market it is unclear whether a 'high' number will represent a 'good' outcome, or whether the converse might be true. In addition, it is unclear how much information (if any) is currently available for potential indicators, as a baseline assessment will be necessary to ensure that an assessment can be made about potential improvement in market conditions.

Nevertheless, we have set out some preliminary views on some of these indicators below:

- On supplier exit, it is important to distinguish between exits as a result of commercial decisions and exits as a result of bankruptcy, that result in Supplier of Last Resort (SoLR) arrangements.
- On potential structural indicators, whilst it might be helpful to consider how many smart meters or in-home displays have been installed as context, this is a meaningless statistic if consumers are not engaging with them. For example, consumers may have a non-operational smart meter installed, or their in-home display might not be prominently displayed or hidden, so that it is not providing them with useful information about their consumption, or influencing their consumption and/or switching behaviour.

Q5: What are your views on the consumer outcomes that we propose to assess in determining whether the conditions are in place for effective competition?

Our evidence - in line with Ofgem's consumer engagement survey - identifies price as the most important factor for consumers in making choices of potential suppliers. However, we agree that with Ofgem that, in order to assess whether competition is effective, it will need to measure a broader set of outcomes that include customer service, trust and confidence.

We consider that trust and confidence are crucially important for consumers in driving engagement with the energy market. We track levels of consumer trust across a range of industries through our Consumer Insight Tracker. This shows that trust in energy companies has improved over the long term, from an all-time low net

balance of -44% (15% trust, 59% distrust) in late 2013 to only -4% (31% trust, 35% distrust) in May 2019. However, in the shorter term these figures have not markedly improved since mid-2016. Data from our Tracker could be included in the list of outcome indicators.

Also regarding trust and confidence outcomes, we note that the table in Annex 3 includes metrics on how quickly complaints are resolved but not on the number of complaints received. We suggest the inclusion of both.

On customer service, it is unclear how Ofgem proposes to quantify and measure this. For example, clear and consistent methodologies have been established for some price comparison websites operating under the Confidence Code scheme, but any market-wide measures will need to be standardised in order to provide a meaningful indicator of the consumer experience.

As set out above, for some factors (e.g. tariff choice) it may not be easy to define a 'good' or 'bad' outcomes. The mere existence of broad range of tariffs is not sufficient on its own, with concerns of 'confusopoly' arising in the past. Ultimately, we would expect the outcome to be that consumers can find the tariff that they want and best suits their needs.

On switching, we also note the potential for including Energy UK data from Energy Switch Guarantee members in the indicators listed in Annex 3.

Lastly, on price differentials it is unclear whether this is primarily about differences between firms across the market, or differences within a given firm. Some clarity on this point would be helpful in assessing the value of this potential indicator.

Q6: Is there any other aspect of effective competition that the framework should consider?

We have no additional points to add here not covered in the answers above.

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