



# Response to call for input on the development of a competition framework for the domestic retail market

## 1) Do you agree with the aims and objectives of developing and implementing a competition framework?

Yes. We supported the findings of the Oxera review of Ofgem's regulation of the energy supply market, including the development of clear frameworks through which it considers consumer interests and effective competition. This should set out how Ofgem expects policy changes to lead to positive outcomes and help identify any risks that need to be mitigated, including where some groups of consumers lose out from changes.

The competition framework relates to domestic customers only, but an adapted version for the non-domestic market may also be useful, especially as the Consumer Interests framework it works alongside is applicable to both domestic and non-domestic consumers. While recent supplier failures in the retail market generally affected domestic or predominantly domestic suppliers, there are other issues related to competition in the non-domestic market, including under-served groups, barriers to engagement and low levels of innovation.

In relation to the application of the framework, the wording of the document suggests that this will be *during* policy development by Ofgem, but *after* policy change has been announced by the Government. Given the importance of close working between the regulator and government in policy development, as previously highlighted by the NAO and CMA, Ofgem should be clear that it will use the framework in its public and private engagement as the Government develops policy in relation to the energy market.

Ofgem should also set out how it will use the framework in order to regularly report on the state of the market. This was previously achieved through the State of the Market report (published from 2017 to 2019) and the Conditions for Effective Competition assessment (published from 2020 to 2022). It is unclear what, if any, regular reporting will replace these outputs. Reporting should help stakeholders understand the regulator's overarching view of the competition and consumer interests. It would also

align with recommendations made by the CMA that Ofgem report annually on these matters<sup>1</sup>, and by the NAO that it report annually on its performance in relation to key consumer outcomes.<sup>2</sup> The key data being used for different indicators should also be provided on an ongoing basis via Ofgem's data portal.

This competition framework follows a similar one previously developed to support the assessment of conditions for effective competition to support decision-making on extensions of the price cap. In many areas the two are similar, but there are differences in overall structure and some measures have been dropped. To help stakeholders understand continuities and disjoints between Ofgem's previous approach and the new competition framework, Ofgem should more clearly set out the differences between the two frameworks, and why its thinking on competition has developed.

**2) Do you agree with the sources of evidence and measures we are proposing to use in the competition framework. Are there any important evidence sources missing? How should these measures all fit together?**

In its recommendation to create a new competition framework, the Oxera review specifically referenced 'financial resilience, supplier exit or mutualised costs' and the extent to which 'competition delivered innovative business models that were in the consumer interest'. These are not directly included in the list of measures. As such we recommend that:

- The entry/expansion measure should also include supplier exits. Given only a few entries/exits may occur much of the time we also recommend that this measure take a broad view of evidence, to include those in the process of entering, and demonstrating that they may exit.
- Ofgem should include a measure of resilience in its market rivalry theme measures, as this is essential to understanding whether competition is effective and sustainable. Profitability is unlikely to be a sufficient measure, as some firms may be profitable in the short term through risky strategies or being over-indebted.
- Innovation is discussed in the outline for the market rivalry theme but without a specific measure- Ofgem should include one. In its price cap framework Ofgem said this could be measured based on the demand for Ofgem's sandbox.

The development of third party intermediary services (TPIs) is also highly relevant to competition and should be added to the structural theme. These have previously been a

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<sup>1</sup> CMA (2016) [Energy market investigation](#)

<sup>2</sup> NAO (2022) [The energy supplier market](#)

key route to the market for many consumers, predominantly through price comparison websites, but also auto-switching and auto-searching services, and collective switches. In future, smart TPIs may also play a more active role in managing energy usage. Digital disadvantage and exclusion is an associated factor that causes some consumers to face more barriers to engaging with the market.<sup>3</sup> This occurs because they cannot use TPIs to simplify the search process, sign up to online exclusives, or use digital-only services which were offered by some suppliers in recent years.

Consumer financial strength/indebtedness should be included as a social factor related to the structural parameters of the market, given the impact it is likely to have on switching propensity. Customers with energy debt face additional barriers to switching between suppliers, or can be prevented from doing so altogether. Many more consumers are struggling financially and may be unable to pass credit checks or provide a security deposit if their supplier asks for one. In recent years competition has been highest for Direct Debit tariffs, but many people with low or uncertain disposable income also prefer not to use this payment method in order to retain flexibility with their budgets. As we enter a period in which debt and financial distress are likely to be elevated for some time, these factors could significantly reduce the scope for engagement in the market.

In relation to how the measures fit together, the former price cap framework considered the 3 conditions for effective competition to be structural changes, a well-functioning competitive process and fair consumer outcomes. For clarity Ofgem should set out the extent to which it still considers this to be the case, and to which these conditions map onto the three themes identified in the new framework.

**3) Ofgem has a primary statutory duty to protect the interests of current and future customers, as part of which it must consider their interest in the achievement of the net zero targets. Ofgem also has a secondary duty around the promotion of competition. We welcome views on how we should trade-off competition effects against other impacts of regulation, given our wider statutory duties.**

Ofgem's primary duty should remain paramount, and given the retail market framework it is logical to consider whether competition can meet these objectives before moving to other approaches. However, Ofgem should be clear-eyed in identifying risks and distributional impacts on different groups of consumers in different market circumstances. Over the last decade as the number of suppliers grew there were a minority of consumers who benefited from lower prices, but the majority remained

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<sup>3</sup> Citizens Advice (2022) [Access Denied: Digital disadvantage and exclusion in the energy market](#)

disengaged, and had to help fund the mutualised costs when many of the new entrant companies failed. An assessment conducted at a time of benign market conditions may have shown generally positive consumer outcomes, but this now looks very different in hindsight.

Managing the trade off between risks and benefits for current and future consumers is important during the transition to net zero. A more innovative retail market should help develop new products and services that support demand side flexibility and take up of low carbon technologies, but Ofgem has signalled that it believes the current price cap protections may prevent its development. This could be considered as a direct trade off between consumers today, who benefit from less price discrimination, and those in the future, who may lose out on innovation as a result.

In its assessments Ofgem should also be clear about the extent to which it can mitigate risks through its own powers. There may be policy changes that would be beneficial overall but cause detriment to in a way that Ofgem cannot mitigate - for example, changes that lead to price rises for a particular group of consumers that can only be ameliorated by government intervention. Alternatively, Ofgem may identify harms in the market which sit outside its vires to resolve, or where its ability to mitigate risk is constrained. This could include harms related to TPIs or bundled products sold with gas and electricity contracts. In these circumstances Ofgem needs to be clear the extent to which its room to manoeuvre depends on government policy, changes to its own powers or actions by other regulators, and to set out where policy changes are incompatible with its duties in the absence of wider reforms.

The Government's new Strategy and Policy Statement for Energy Policy (SPS) should help Ofgem make policy trade offs, by clearly setting out the Government's aims. However, the draft SPS is currently very limited in its steer related to the retail market, which may reflect the Government's ongoing development of its own retail market strategy. Ofgem should work closely with the Government as it develops the SPS to ensure that it is as useful in managing trade offs as possible. Ofgem is also required to provide a statutory response to the SPS, and should use this to reflect back the constraints wider policy choices put on its room for manoeuvre.

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