

# The competition assessment framework for the retail energy sector: some concerns about the proposed interpretation

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## Abstract

The framework proposed by Ofgem, OFT and CMA invokes a well-functioning market, but the Competition Commission has not always used such a concept, and when it has done so it has been problematic. Here, the well-functioning market is Ofgem's vision of a successful market, not anchored in any actual market. Ofgem's indicators of a competitive market have changed since 2002: tariff variety and products tailored to different customer groups are now a harmful complexity rather than a potential benefit of competition. The proposed "theories of harm" ignore regulatory policy and coordinated conduct facilitated by regulation. The analysis of weak customer response fails to distinguish between competition as an equilibrium state and as the Competition Commission's rivalrous discovery process over time. The framework thus reflects Ofgem's perspective, but the assessment needs to be independent because regulation is at issue, and because Ofgem is no longer capable of a competition assessment.

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