



Review of Ofgem's enforcement activities - consultation on strategic vision, objectives and decision makers - reference number 43/13

Consultation response from the ESRC Centre for Competition Policy

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Response

Q1. Do you agree that this is the right Vision for Ofgem's enforcement work? Please provide us with any comments you have on the Vision.

The vision expressed in the consultation letter is: "To achieve a culture where businesses put energy consumers first and act in line with their obligations." It is difficult to object to the second half of the vision, since the role of the regulator includes ensuring that firms comply with their obligations included in the licence.

However the first part is far more problematic and it is important to be clear about its implication. While it is the regulator's duty to protect consumers, the privatisation process is based on the premise that companies are expected to pursue the usual objectives of maximising, or at least making adequate, profits. The first part of the vision statement expresses a clear break with previous policy of privatisation, deregulation and competition. While good customer relations may be part of a wider objective, no private firm has as its primary vision to put consumers first, and this would indeed be contrary to its fiduciary duty to shareholders.

The vision which Ofgem proposes is consistent with abandonment of competition in favour of re-regulation, but such a change should be more explicitly and widely debated. If the model of regulated profit motivated private firms has not been abandoned, then the vision is inconsistent with that model.

Q2. Do you agree with Ofgem's proposed Strategic Objectives, and principles for achieving them, and do you think it would be helpful to adopt annual strategic priorities? Please explain the reasons for your answer and any aspects which you think we should consider.

The objectives and strategies are "motherhood and apple pie" but lack sufficient detail to solicit meaningful comments beyond that.

Setting annual strategic priorities will involve costs for both regulators and firms; if these are significant, they might provide a basis for a reasonable complaint about red tape. In contrast, clearly established long term policies reduce company incentives to expend influencing costs in lobbying the regulator; provide stable incentives for the for companies in terms of both their short term and long term strategic decisions; and reduce the scope for inappropriate political intervention.

Q3. What obstacles do you consider that Ofgem may encounter in achieving its Vision and Strategic Objectives?

The companies want to generate profits, and (properly) have different objectives from those of the strategic vision. The strategy appears to be abandoning incentive regulation, and there will inevitably be resistance from the industry, and some misalignment of objectives. Regulated companies are usually one step ahead of the regulator, partly because they have more to gain or lose and partly because they have more resources. So attempting to make the companies conform to an objective which is not their primary goal may prove to be a considerable obstacle in pursuing this vision.

Q4. Do you agree with the proposals for an Enforcement Decision Panel and Secretariat to take decisions in contested enforcement cases? Please explain the reasons for your answer.

Have the costs of this design been assessed? It looks to be a substantially more expensive design compared to the existing one. What evidence is there that the existing panel did not do the expected job? What are the first and subsequent external appeal routes for companies? What are the implications of the new process for referrals to the CC or review by the CAT?

Q6. Do you agree with the proposed arrangements for the Authority's oversight of the Panel's work? Please explain the reasons for your answer.

What is the argument for less independence in cases of settlement than in enforcement cases?

Why would capture be a greater problem for the latter rather than the former? What incentives will these impose on regulator and companies to settle, and are such incentives always desirable?

Q7. Do you have any additional comments on the matters covered in this Letter?

No