

The UK Energy Price Cap: A Paradigm Shift?

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Energy price cap comes into force

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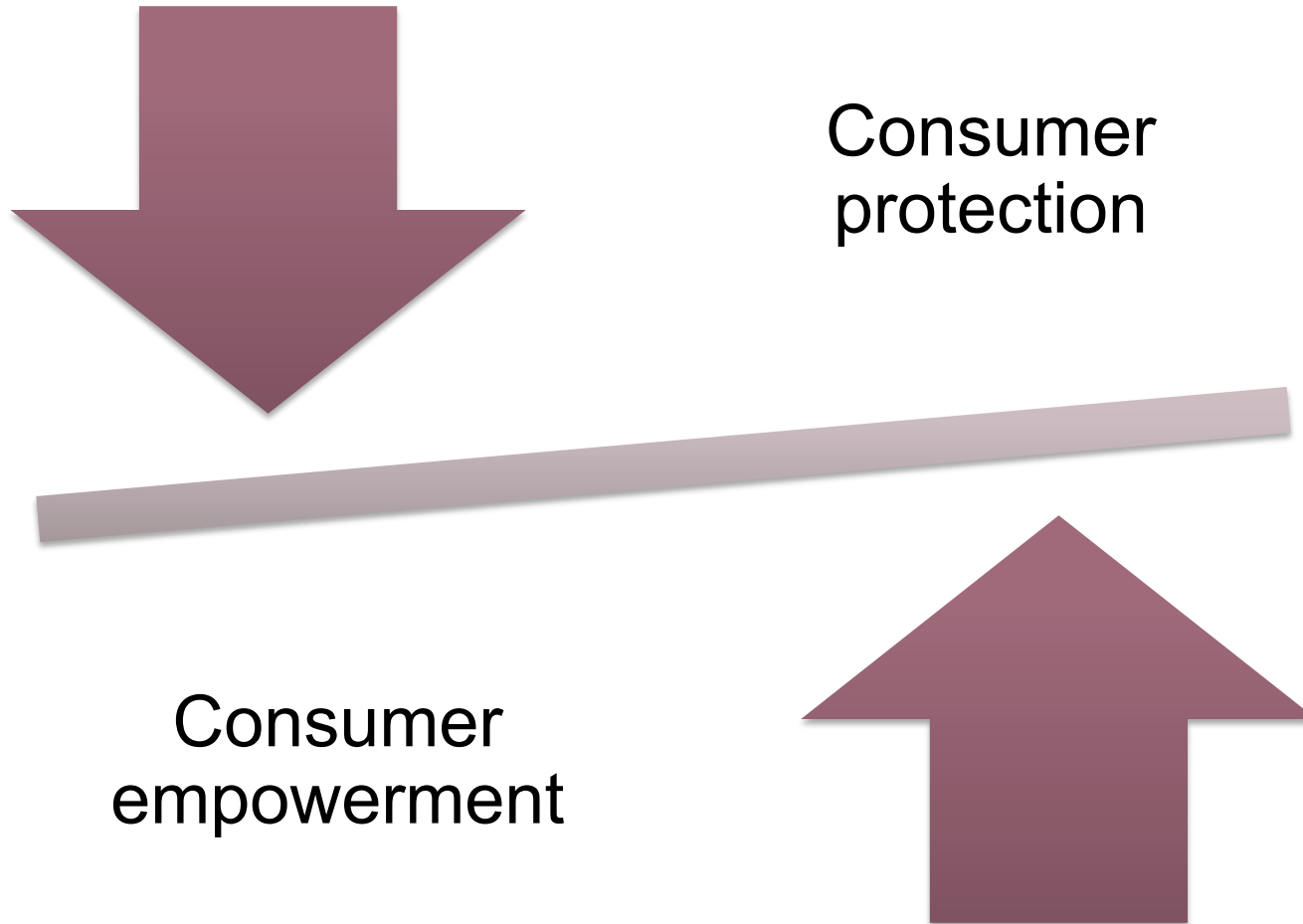
Why was the price cap introduced?

- *[t]here is in effect a **two-tier** market in operation whereby **active** customers save money by switching suppliers, but those **who can't or don't switch** remain on poor value tariffs. It is of particular concern that customers who don't switch typically **tend to be more vulnerable** than those who are getting the best deals. The difference between the cheapest available tariff and the average Standard Variable Tariff of a Big 6 supplier is around £300.*

- BEIS, Energy: Written Statement (26 February 2018)

CMA findings

- “... attempting to control outcomes for the substantial majority of customers would – even during a transitional period – undermine the competitive process, potentially resulting in worse outcomes for customers in the long run. This risk might occur through a combination of reducing the incentives of customers to engage, reducing the incentives of suppliers to compete, and an increase in regulatory risk.” (p. 656) – majority opinion
- **BUT** in a **dissenting minority report**, Professor Martin Cave took a different view:
- “The harm which is presently inflicted on households in this market (£2 billion in 2015, or an average of £75 for every British household) is very severe, But the remedies proposed for the large majority of households will take some time to come into effect, and are in any case untried and untested.” (p. 1415)



Consumer
protection

Consumer
empowerment

Consumer Empowerment

- Consumer empowerment measures aim to enable consumer participation in the market, through the provision of information or otherwise.
- Closely associated with the overarching competition paradigm enshrined in the UK and the EU energy acquis
 - The price of the supply of energy = the result of market forces and not set by the state – market forces being policed via the ex post application of competition law
 - the promotion of consumer empowerment has both an intrinsic and an instrumental value; in a sense that well-informed, empowered consumers able to engage with the market and switch to better deals can better stimulate competition between energy suppliers and render 'efficient' prices.

Consumer Protection – price cap

- The energy price cap = a paradigmatic example of a consumer protection measure implemented through state intervention in retail price setting and informed by **affordability** considerations.
 - One of the defining elements of services of general economic interest, such as energy supply.
 - ‘High levels of affordability’ feature in the new Protocol No 26 on Services of General Interest (inserted by the Treaty of Lisbon) among the ‘shared values of the Union’ in respect of services of general interest.
 - Though affordability can be achieved via various instruments, not necessarily lying within the market context (such as tax exemptions or subsidies) the common denominator is that they all involve a departure from the purely economic rationales for public intervention in markets so as to achieve a socially, rather than economically desirable outcome. Such an outcome is reflected in the concept of an ‘affordable price’. Affordability necessitates, in principle, a departure from cost-reflective prices set by the market mechanism.

Is the Road to Hell Paved with Good Intentions?

The UK Domestic Gas Electricity (Tariff Cap) Act: Re-Regulating the Retail Energy Market

Modern Law Review, Forthcoming

27 Pages • Posted: 6 Nov 2018

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Thank you!

- M. Ioannidou and D Mantzari, 'The UK Domestic Gas Electricity (Tariff Cap) Act: Re-Regulating the Retail Energy Market' (Modern Law Review, forthcoming May 2019)
- D Mantzari, 'The Quest for Reasonable Retail Energy Prices in Europe: Positive and Normative Dimensions (2017) 36 (1) *Yearbook of European Law*, pp.599-627.

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