

Policy Brief & Suggested Reform for Ofgem

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Abstract

The Office for Gas and Electricity Markets (Ofgem) is the energy regulator for England, Scotland, and Wales, with its primary role being to protect consumers' interests.² Its responsibilities include regulation, licensing, and monitoring of the energy supply chain.³ The energy trilemma of balancing affordability, supply security and sustainability is not unique to Ofgem and has been at the forefront of energy policy discussions.⁴ What is unique about Ofgem is its net-zero by 2050 policy, which came into force in June 2019.⁵ This requires Ofgem to reduce greenhouse gas emissions to 0% by 2050 while addressing the energy trilemma.⁶ On December 19th, 2024, the UK Government sought evidence and views from stakeholders to revisit Ofgem's role as an energy market regulator.⁷ The 'Review of Ofgem: call for evidence' concluded on February 28th, 2025.⁸ This briefing addresses a hypothetical situation where the views of a theoretical company, PowerSwitch, were requested. Questions posed to ascertain PowerSwitch's views were like those asked of stakeholders in the original call for evidence. The first question posed was 'Should Ofgem's duties be streamlined, and if they should, views on which goals might be prioritised'.⁹ The second question posed was "Views on Ofgem having enhanced investigatory powers and if they should be granted enhanced enforcement powers similar to CMA".¹⁰ This briefing outlines: (a) key historical events impacting Ofgem's role; (b) Ofgem's trilemma and order of priority; (c) Ofgem's effectiveness of regulatory and concurrent powers; (d) PowerSwitch's views which may be expressed in the call for evidence.

Keywords: anti-competitive behaviour, effective competition, energy sector, net zero, Ofgem, sustainability, UK energy, UK regulation

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² Ofgem, 'About Us' <<https://www.ofgem.gov.uk/about-us>> accessed 14 September 2026.

³ *ibid*

⁴ Department for Energy Security and Net Zero, 'Ofgem Review: Final Report' (GOV.UK, 22 April 2026) <<https://www.gov.uk/government/publications/ofgem-review-2026/ofgem-review-final-report>> accessed 14 September 2026.

⁵ The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI 2019/1056, Explanatory Note <<https://www.legislation.gov.uk/ukSI/2019/1056/note/made>> accessed 14 September 2026.

⁶ *ibid*

⁷ Department for Energy Security and Net Zero, 'Review of Ofgem: Call for Evidence' (GOV.UK, 19 December 2024) <<https://www.gov.uk/government/calls-for-evidence/review-of-ofgem-call-for-evidence>> accessed 14 September 2026.

⁸ *ibid*

⁹ Department for Energy Security and Net Zero, 'A Review of Ofgem: Call for Evidence – Summary of Responses' (GOV.UK, 22 April 2026) 11 <<https://assets.publishing.service.gov.uk/media/69ea165eed93f72cf81632e3/ofgem-review-cfe-responses.pdf>> accessed 14 September 2026.

¹⁰ *ibid* 19.

Introduction

This briefing outlines key issues affecting Ofgem, analyses the impact of relevant events and delivers recommendations in response to concerns raised by the Board of Directors of PowerSwitch and the Government of the United Kingdom ('UK'). The UK posed inquiries to PowerSwitch regarding their views on Ofgem's role. The first inquiry was 'Should Ofgem's duties be streamlined, and if they should, views on which goals might be prioritised'.¹¹ The second inquiry was 'Views on Ofgem having enhanced investigatory powers and if they should be granted enhanced enforcement powers similar to CMA'.¹²

This briefing is divided into four parts to address these inquiries. First, the relevant background information will be discussed. Second, an analysis is provided concerning Ofgem's trilemma of affordability, supply security, and sustainability and how these factors impact Ofgem's role. Third, how Ofgem's regulatory framework, regulatory powers, and concurrent powers have been ineffective in promoting consumer interests. Finally, answers will be provided to PowerSwitch's Board of Directors regarding any views they may express in response to the call for evidence. It will be demonstrated that Ofgem's duties should be streamlined with a focus on affordability, supply security and sustainability, in that order. Affordability is argued to align with Ofgem's primary role in protecting consumer interests. Supply security can be promoted by Ofgem and incentivised through legislation to attract capital investment in the industry. Sustainability is best addressed via legislation by incentivising capital investment into the emerging hydrogen solution. Additionally, Ofgem should not be granted enhanced investigatory or enforcement powers, as the CMA is better positioned to apply competition law.

Background: Ofgem's Role

Ofgem is a non-ministerial government department that functions as the energy sector's regulator. Ofgem's independence is provided for by statute, and it is enabled to cover its costs via a levy on licence holders.¹³ Ofgem applies ex-ante regulation

¹¹ Department for Energy Security and Net Zero (n9) 19.

¹² Department for Energy Security and Net Zero (n9) 19.

¹³ Utilities Act 2000 (UA 2000), s 8.

through primary legislation and possesses concurrent powers under the Competition Act 1998. Its policy objectives include creating affordability,¹⁴ maintaining supply security,¹⁵ and sustainability.¹⁶

Ofgem's Powers

Ofgem's regulatory powers enable it to (a) issue licences; (b) set licence conditions; (c) provide guidance; (d) manage changes to industry codes; and (e) enforce rules through its regulatory powers.¹⁷ Ofgem possesses concurrent powers under the Competition Act 1998 to enforce Chapter I and Chapter II prohibitions,¹⁸ and under the Enterprise Act 2002 to conduct market studies.¹⁹

Ofgem builds relationships with energy companies by providing guidance.²⁰ Applying competition powers requires significantly more time than regulatory powers, as the former often requires an investigation to determine if there was an abuse of power or anticompetitive agreements. Additionally, the appeal routes for applying competition powers lead to the Competition Appeal Tribunal (CAT), which can decide the case on the merits. In contrast, the appeal routes for applying regulatory powers go to a judicial review, which can send the decision back for reconsideration. Regulatory action for companies is often ex-ante through licensing standards, while competition action is often ex-post through rules applied after a breach. Applying regulatory powers becomes the default choice in most circumstances. This becomes obvious when Ofgem applied concurrent powers in only two cases (the National Grid and Dyball cases, discussed below under the effectiveness of the powers). These are the significant considerations for Ofgem when deciding whether it should apply regulatory or concurrent powers.²¹

¹⁴ Electricity Act 1989 (EA 1989), s 3.

¹⁵ Gas Act 1986 (GA 1986), s 4AA.

¹⁶ Energy Act 2023 (EA 2023), s 202.

¹⁷ Ofgem, 'What do we regulate' <<https://www.ofgem.gov.uk/about-us/what-we-regulate>> accessed 14 September 2026.

¹⁸ Competition Act 1998 (Concurrency) Regulations 2014, SI 2014/536.

¹⁹ Enterprise Act 2002, pt 4.

²⁰ Ofgem (n17).

²¹ Competition and Markets Authority, 'Concurrency Review: Call for Inputs' (GOV.UK, 24 August 2023) 2–6

<https://assets.publishing.service.gov.uk/media/64e5e1951ff6f3000d70ae41/Concurrency_review_call_for_inputs.pdf> accessed 14 September 2026.

Consumers

Consumers are typically either on a 'fixed-price tariff' (FPT) or a 'variable-price tariff' (VPT).²² FPT provides energy at a fixed price, but terminating a contract early may incur an exit fee. VPT offers energy at varying prices, but there is no exit fee for switching to a different provider. Customers automatically move to a VPT after their FPT contract ends unless they create a new deal with their current energy supplier or move to a new energy supplier.²³ The Competition and Markets Authority estimated that 70% of customers of the six largest energy firms on the VPT were overcharged by £1.4 billion per year compared with what would be charged in a fully competitive market.²⁴ In response, the Tariff Cap Act 2018 was passed to protect consumers by requiring Ofgem to implement a 'price-cap tariff' (PCT).²⁵

Supplier Exits

Between mid-2021 and spring 2022, the wholesale market price increased to unprecedented levels.²⁶ Wholesale energy prices increased significantly for energy suppliers, but they were constrained in passing these costs on to consumers because customers were either on an FPT or a PCT. Due to rising wholesale costs between July 2021 and May 2022, 29 energy suppliers exited the market, leaving 23.²⁷ Under the Supplier of Last Resort (SOLR) process, when a supplier fails, Ofgem transfers its customers to an existing supplier at a higher cost to consumers.²⁸

²² Simon Wood, 'Should I Choose a Fixed or Variable Energy Tariff?' (British Gas, 26 August 2026) <<https://www.britishgas.co.uk/energy/guides/fixed-vs-variable-tariffs.html>> accessed 14 September 2026.

²³ National Audit Office, *The Energy Supplier Market* (HC 2022–23, 68, 2022) 16 <https://www.nao.org.uk/wp-content/uploads/2022/03/The-energy-supplier-market.pdf> accessed 14 September 2026.

²⁴ *ibid.*

²⁵ Suzanna Hinson, 'The Domestic Gas and Electricity (Tariff Cap) Act 2018' (House of Commons Library, Briefing Paper CBP-8242, 2018) 4, 51 <https://researchbriefings.files.parliament.uk/documents/CBP-8242/CBP-8242.pdf> accessed 14 September 2026.

²⁶ National Audit Office (n23) 6.

²⁷ National Audit Office (n23) 6.

²⁸ National Audit Office (n23) 6-7.

Suppliers recover the costs they incur as an SOLR and pass these costs on to customers as part of their standing charge.²⁹ The standing charge is the portion of a customer's bill regardless of the amount of gas or electricity used.³⁰ Twenty-two supplier failures in 2021 resulted in a £94 per-customer standing charge increase, representing an 8% increase in average costs for consumers.³¹ About $\frac{3}{4}$ of these costs were due to the increase in the weekly average wholesale gas price.³² SOLR cost recovery can take 12-15 months from the point of appointment, contributing to the increased energy costs experienced by customers in 2022 and 2023.³³ Costs associated with SOLR likely represent transfer costs, and customers would have paid less if the small supplier had not entered the market.³⁴

Ukraine-Russian War 2022

Gas and electricity prices have increased significantly since the war in Ukraine.³⁵ These increased prices have a significant impact on UK consumers. UK Consumers paid, on average, 51% more for electricity and 98% more for gas in 2022 than the previous year.³⁶ The available data suggests that prices are unlikely to revert to their pre-2022 levels anytime soon.³⁷

Rough Gas Storage Facility

The “Rough gas storage facility” accounted for 70% of Great Britain's gas storage before its closure in 2017.³⁸ Without “Rough”, the UK has enough gas stored for nine days' use, while Germany, France, and the Netherlands have gas stored for 89, 103,

²⁹ National Audit Office (n23) 27.

³⁰ National Audit Office (n23) 27.

³¹ National Audit Office (n23) 28.

³² National Audit Office (n23) 29.

³³ National Audit Office (n23) 27.

³⁴ National Audit Office (n23) 30.

³⁵ Iona Stewart and Paul Bolton, 'Domestic Energy Prices' (House of Commons Library, Research Briefing CBP-9491, 30 June 2025) 8 <<https://researchbriefings.files.parliament.uk/documents/CBP-9491/CBP-9491.pdf>> accessed 14 September 2026.

³⁶ *ibid* 60.

³⁷ Iona Stewart (n35) 60.

³⁸ Competition and Markets Authority, 'Rough Gas Storage Undertakings Review: Final Decision' (GOV.UK, 13 December 2017) 2, 9–10 <<https://assets.publishing.service.gov.uk/media/5a30ff94ed915d2cf25281ac/rough-final-decision.pdf>> accessed 14 September 2026.

and 123 days, respectively.³⁹ Rough reopened in September 2022, becoming the UK's largest gas storage facility and is planned to be repurposed for hydrogen storage.⁴⁰

The Hydrogen Solution

Department for Business, Energy & Industrial Strategy indicated that Hydrogen could account for 20%-35% of energy production by 2050.⁴¹ Hydrogen as a fuel source carries a significantly higher cost than high-carbon fuel options.⁴² Hydrogen fuel may require new networks and technological developments to enable its use at great scale.⁴³ The nascent state of the hydrogen market would require significant government support to attract the investment needed for meaningful development.⁴⁴ Overcoming these challenges would require significant investment in new networks, technological advancements, storage capabilities, and regulatory support (especially for first movers setting up the initial high-cost networks).

Fracking & Reliance on Imports

A moratorium on fracking in the UK was placed in 2019.⁴⁵ 69% of the UK's gas supply comes from the North Sea continental shelf, 30% from 'Liquefied Natural Gas' (LNG)

³⁹ Katie Weston and Lewis Moynihan, 'Fears UK Has "Nine Days" of Gas Left Compared to France's 103' (Daily Record, 28 October 2022) <<https://www.dailyrecord.co.uk/news/uk-world-news/british-gas-nine-days-supply-28350173>> accessed 14 September 2026.

⁴⁰ Chris O'Shea and Martin Scargill, 'The Reopening of Rough Gas Storage' (Centrica Storage Limited, October 2022) 5 <<https://www.centrica.com/media/5790/rough-investor-and-analyst-presentation.pdf>> accessed 14 September 2026.

⁴¹ Department for Business, Energy & Industrial Strategy, *UK Hydrogen Strategy* (CP 475, 2021) 9 <https://assets.publishing.service.gov.uk/media/64c7e8bad8b1a70011b05e38/UK-Hydrogen-Strategy_web.pdf> accessed 14 September 2026.

⁴² *ibid* 54.

⁴³ Department for Business (n41) 15.

⁴⁴ Department for Business (n41) 71.

⁴⁵ Department for Business, Energy & Industrial Strategy, 'Government Ends Support for Fracking' (GOV.UK, 2 November 2019) <<https://www.gov.uk/government/news/government-ends-support-for-fracking>> accessed 14 September 2026.

and 1% from interconnector imports, as per Figure 1.⁴⁶ The UK's primary source of LNG is the USA, a country that strongly supports fracking.⁴⁷

Due to the territorial accounting of greenhouse gas emissions, shifting from fracking to greater reliance on LNG imports offers a direct way to reduce the UK's reported greenhouse gas emissions. The UK reports only the emissions of greenhouse gases occurring within its nation, in accordance with the United Nations Framework Convention on Climate Change,⁴⁸ and the provisions of the UK's Climate Change Act 2008.⁴⁹ According to a report by the Natural Resources Defence Council (NRDC), US emissions will increase due to LNG exports, while importing countries artificially lower their greenhouse gas emissions and underestimate their true climate impact by at least 31%.⁵⁰ The UK has artificially reduced its greenhouse gas emissions by increasing its reliance on LNG imports rather than pursuing fracking, ultimately imposing greater costs on consumers.

⁴⁶ Department for Energy Security and Net Zero, 'Midstream Gas System: Update to the Market' (GOV.UK, 20 March 2023) fig 1 <<https://www.gov.uk/government/publications/midstream-gas-system-update-to-the-market/midstream-gas-system-update-to-the-market>> accessed 14 September 2026.

⁴⁷ US Department of Energy, *Economic and National Security Impacts under a Hydraulic Fracturing Ban* (Report to the President, January 2021) ii–iii <<https://www.energy.gov/hgeo/articles/economic-and-national-security-impacts-under-hydraulic-fracturing-ban>> accessed 14 September 2026.

⁴⁸ United Nations, *United Nations Framework Convention on Climate Change* (1992) 10, 23 <https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf> accessed 15 September 2026.

⁴⁹ Climate Change Act 2008, ss 29(1)(a) and 94(1).

⁵⁰ Christina Swanson and Amanda Levin, *Sailing to Nowhere: Liquefied Natural Gas Is Not an Effective Climate Strategy* (NRDC Report R: 20-08-A, December 2020) 4 <<https://www.nrdc.org/sites/default/files/sailing-nowhere-liquefied-natural-gas-report.pdf>> accessed 15 September 2026.

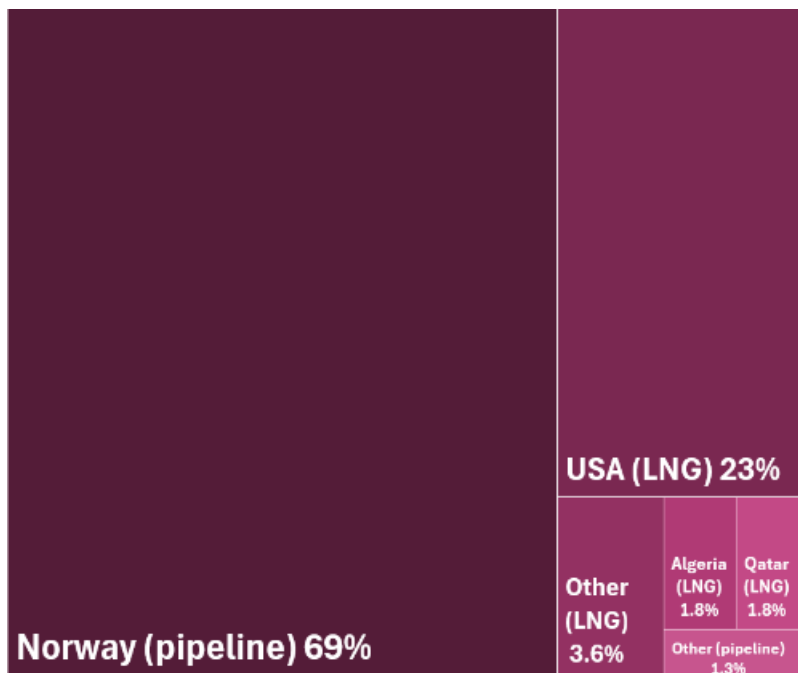


Figure 1: UK imports of natural gas by country of origin, 2025⁵¹

Analysis: Affordability

Affordability was threatened as the exit of suppliers concentrated market power and diminished consumer protection. Concentrated market power is evident, as the six largest suppliers (Octopus, British Gas, E.ON, OVO, EDF, and Scottish Power) account for over 90% of market share.⁵² Supplier exits have reduced competition in this sector, with twenty-three active suppliers remaining in the domestic gas and electricity retail markets.⁵³ The inability of new entrants to stay in the market is a consideration for any informed consumer, as switching to a new entrant places the consumer at risk of higher costs if the supplier fails. Increased costs to consumers are evident in the supplier failures of 2021, which resulted in all customers paying an average of £94, regardless of how much energy they consumed.⁵⁴ Potential regulatory measures to deconcentrate the market include temporary asymmetric regulation, such as reduced

⁵¹ Department for Energy Security and Net Zero, 'Digest of UK Energy Statistics: Annual Data for UK, 2025' (Statistical Release, 30 July 2026) ch 4, 3
<https://assets.publishing.service.gov.uk/media/688a0938a11f85999440922e/DUKES_2025_Chapter_4.pdf> accessed 14 September 2026.

⁵² Ofgem, *State of the Market Report: Energy Retail Markets Highlights* (April 2025) 14
<https://www.ofgem.gov.uk/sites/default/files/2025-04/OFG2296_State%20of%20the%20Market%20Report.pdf> accessed 14 September 2026.

⁵³ *ibid.*

⁵⁴ National Audit Office (n23) 28.

obligations associated with VAT, Policy costs, and Other costs for new market entrants, as cheaper tariffs were considered the top reason for customers changing suppliers.⁵⁵ Other regulatory measures include, but are not limited to, minimising regulatory obligations for applicants demonstrating greater financial resilience, streamlining licensing processes for suppliers with a lower likelihood of exiting the market, and supporting new entrants in attaining greater financial resilience. For asymmetric regulation to be utilised effectively, Ofgem may incur greater monitoring costs to address any potential regulatory arbitrage.

To promote competition and encourage the growth of small market players, Ofgem should provide easy access to infrastructure, supply, and essential facilities. Gaining access may be difficult if vertically integrated market players control the facility or infrastructure. Competition powers can be used to address refusal to deal/supply and access-to-essential-facility abuses. Small market players may lack the financial resilience to remain in the market until the issue is resolved. The CMA determined that vertical integration yields limited benefits for market players in the industry and does not adversely affect competition.⁵⁶ While vertical integration may yield limited long-run benefits, it is important to address how Ofgem should handle potential issues to reduce the market exits associated with it. Ofgem should utilise and continue to rely on an ex-ante regulatory approach to better protect small market players, encourage supplier entry through regulatory assurance, and reduce the likelihood of future supplier exits.

Supply Security

The closure of the Rough facility in 2017 reduced the UK's gas storage capabilities. The UK's 2019 moratorium on fracking reduced energy production by cutting off a potential source of natural gas. Diminished storage capacity and a moratorium on fracking reduced supply security and led to greater reliance on LNG imports to meet the UK's energy demand. After Russia's 2022 invasion of Ukraine, UK energy prices

⁵⁵ Ofgem (n52) 4-5, 9.

⁵⁶ Competition and Markets Authority, *Energy Market Investigation: Final Report* (24 June 2016) 347 <<https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>> accessed 14 September 2026.

peaked, primarily due to higher wholesale energy costs.⁵⁷ Increasing wholesale costs and significant reliance on LNG imports heightened volatility in the energy industry and associated market risks for stakeholders.

The UK's investment in hydrogen energy to meet net-zero goals requires significant upfront capital before any hydrogen is produced. It will be 2050 before hydrogen potentially accounts for 20%-35% of energy production, effectively leaving consumers with the high costs associated with LNG imports until then. Companies providing Demand-Side Response (DSR) energy solutions help to address supply security and affordability issues. DSR encourages consumers and businesses to reduce energy consumption during peak hours, thereby reducing the amount of power that must be generated. Some of the associated cost savings are passed to consumers as electricity is cheaper during off-peak hours. Smart meters are essential for providing DSR services to households, and stakeholders access the associated data through the Data and Communications Company, which is regulated and licensed by Ofgem.⁵⁸ Ofgem and the UK government should work to develop legislation and a regulatory framework that encourage investment in storage infrastructure, renewable energy sources, and DSR systems to ensure greater supply security while facilitating the UK's desired transition to renewable energy.

Sustainability (Decarbonisation & Net Zero)

The UK Government's Net Zero Growth Plan requires the decarbonisation of the power system by 2035 and net-zero carbon emissions (where total carbon emissions are equal to zero) by 2050.⁵⁹ The strategy undertaken by the UK has been more ambitious than that of other major economies, as per Figure 2.⁶⁰ To fulfil Government goals, there has been a push towards renewable energy sources, such as the hydrogen energy solution discussed. Reliance on other energy sources will continue, as hydrogen energy is expected to supply 20-35% of energy production by 2050. DSR can assist in integrating renewable energy sources into the network by encouraging

⁵⁷ Iona Stewart (n35) 10.

⁵⁸ Explanatory Notes to the Smart Meters Act 2018, paras 4, 9.

⁵⁹ The Climate Change Act 2008 (n5).

⁶⁰ Department for Energy Security and Net Zero, 'Powering Up Britain: Net Zero Growth Plan' (Policy Paper, 30 March 2023) figure 1 <<https://www.gov.uk/government/publications/powering-up-britain/powering-up-britain-net-zero-growth-plan>> accessed 14 September 2026.

flexible behaviour from users while reducing consumers' carbon footprint.⁶¹ Investment in other sustainable energy sources will also be required to eliminate reliance on natural gas. Incentivisation of investment can take the form of a monopoly window, monitored by the CMA, for the first mover to establish the new network, providing them with an opportunity to recoup a significant portion of the setup costs. The incentivization of capital investments is a significant obstacle to meeting the UK's sustainability goals, and the UK government would best address it through legislation, subsidies, investment contracts, and CMA monitoring.

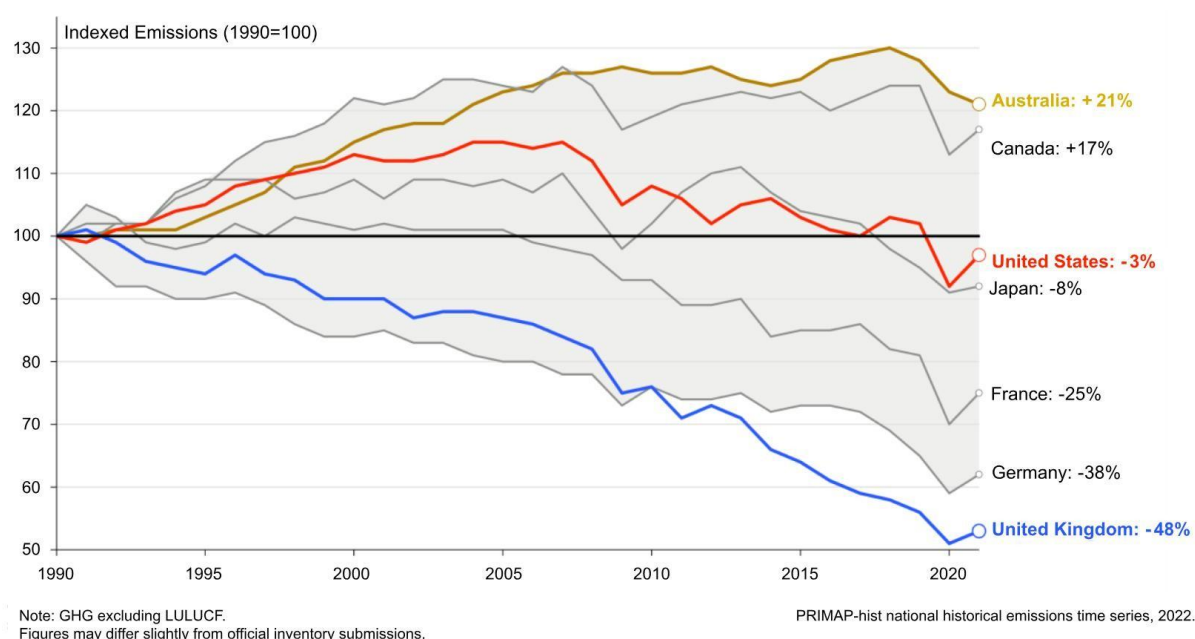


Figure 2: GHG emissions in the UK and other major economies, 1990-2021⁶²

Effectiveness of Powers

2024 data shows that over 90% of the market share is controlled by the top six energy suppliers, as shown in Figure 3.⁶³ The oligopolistic nature of the market has the potential for tacit collusion. Alongside vertically integrated market players and high market volatility, there are potential opportunities for firms to generate higher profits at the expense of consumers. Opportunities for market players to collude or act as a cartel can make it more difficult for new entrants to enter the market or maintain a

⁶¹ National Energy System Operator, 'On-Boarding Flexibility' (NESO) <<https://www.neso.energy/industry-information/balancing-services/flex-onboarding>> accessed 14 September 2026.

⁶² Department for Energy Security and Net Zero (n59).

⁶³ Ofgem (n52) 14.

market presence. As collusion can be difficult to detect, the CMA updated its cartel leniency guidance on October 28, 2025, to reward the first party to report collusion.⁶⁴ Market concentration can lead to decreased competition and require greater regulatory oversight to identify abuses of dominance or anticompetitive agreements.

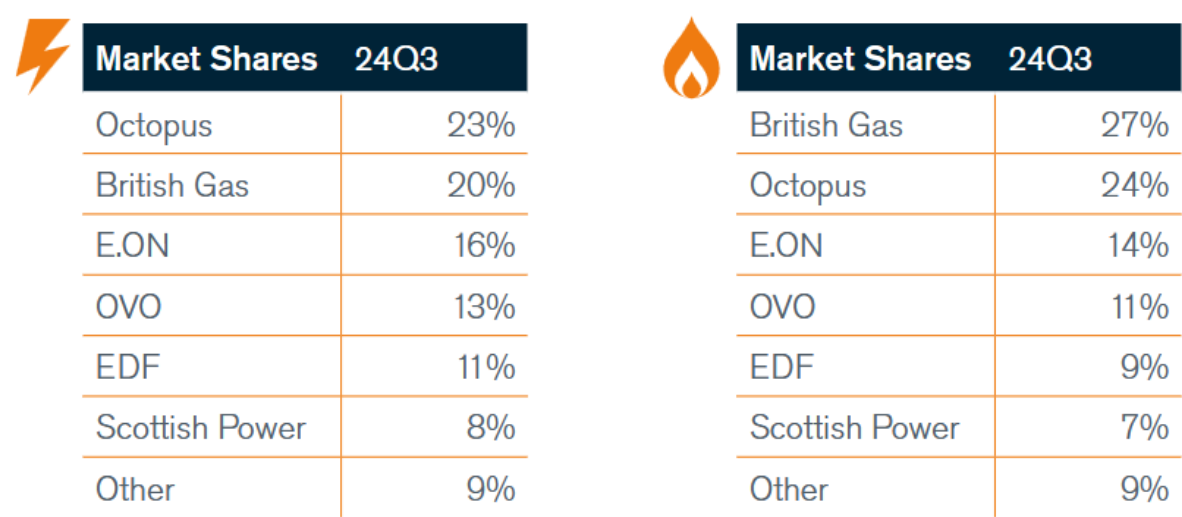


Figure 3: Electricity and Gas Market Shares in UK Domestic Retail Market, Quarter 3 2024⁶⁵

The UK energy market is at risk of pricing abuses, including but not limited to excessive and discriminatory pricing. Energy suppliers charged customers excessive prices on VPT, as determined by the CMA, leading to the introduction of the PCT in 2019. The number of consumers subject to the PCT increased from 15 million to 22 million between April 2021 and April 2022.⁶⁶ The increase in PCT consumers, alongside limited customer movement between suppliers, demonstrates a shift in the regulatory framework towards direct price intervention.

Discriminatory pricing was evident across tariff types, as many small suppliers had customers on FPT.⁶⁷ The small energy suppliers were unable to increase energy prices for FPT customers; therefore, as wholesale energy prices increased, these suppliers

⁶⁴ Competition and Markets Authority, 'Applications for Leniency and No-Action in Cartel Cases' (CMA210, 28 October 2025) 10–11 <https://assets.publishing.service.gov.uk/media/68ffa89b394b8c2a6ddf5dce/Applications_for_leniency_and_no-action_in_cartel_cases.pdf> accessed 14 September 2026.

⁶⁵ Ofgem (n51) 14.

⁶⁶ National Audit Office (n23) 44.

⁶⁷ National Audit Office (n23) 44.

lacked the financial resilience to remain in the market.⁶⁸ The customers of the exiting suppliers were transferred to a new energy supplier through SOLR into a VPT contract. On average, this transfer cost £30 more per month for the remainder of the customer's original FPT contract.⁶⁹ Discriminatory pricing by payment method resulted in average prepayment bills costing around £130 less than direct debit and almost £220 less than standard credit bills.⁷⁰ Where a supplier can demonstrate objective factors that justify the price differences, there is no abuse of dominance.⁷¹ While energy companies may justify these price differences, significant price disparities stemming from tariffs and payment methods demonstrate the limits of Ofgem's regulatory framework in fulfilling its role in protecting consumer interests.

Ofgem used its concurrent powers in relatively few cases to prevent anticompetitive behaviour. One action was against the National Grid in 2008,⁷² and another against Dyball and associated companies in 2019.⁷³ As discussed in the 'Ofgem's Powers' section, Ofgem has significant considerations when deciding to apply regulatory or concurrent powers, and it leans heavily on the former. These considerations include (but are not limited to): (a) relationships with energy companies; (b) competition actions taking significantly more time than regulatory actions; (c) the route of appeal for competition action is through CAT and for regulatory action is through judicial review; (d) regulatory action is often ex-ante while competition action is often ex-post. Based on these considerations and Ofgem's limited application of concurrent powers, it is evident that Ofgem will regularly utilise regulatory powers even if they may not provide the best solution. Without effective use of its competition powers, there must be a substantial reliance on the CMA to enforce competition laws and prevent anticompetitive behaviour in the concentrated energy market.

⁶⁸ National Audit Office (n23) 44.

⁶⁹ National Audit Office (n23) 7.

⁷⁰ Iona Stewart (n35) 30.

⁷¹ Case T-168/01 *GlaxoSmithKline Services Unlimited v Commission* EU:T:2006:265, [2006] ECR II-2969, para 177. Although this case concerns EU competition law under Article 101 TFEU, its reasoning remains persuasive in UK Competition law where similar principles arise under Competition Act 1998 Chapter I.

⁷² Ofgem, 'Supreme Court Refuses National Grid Appeal on Gas Metering Case' (Statement, 5 August 2010) <https://www.ofgem.gov.uk/sites/default/files/docs/2010/08/national-grid-statement5aug_1.pdf> accessed 14 September 2026.

⁷³ Ofgem, 'Ofgem Finds E Gas and Electricity, Economy Energy and Dyball Associates in Breach of Competition Law' (Press Release, 30 May 2019) <<https://www.ofgem.gov.uk/press-release/ofgem-finds-e-gas-and-electricity-economy-energy-and-dyball-associates-breach-competition-law>> accessed 14 September 2026.

PowerSwitch's Views

Ofgem should address the trilemma by prioritising affordability first, supply security second, and sustainability third. Before the events listed in the 'Background' section of this briefing, the CMA recommended, in 2016, that Ofgem's statutory objectives and duties may limit its ability to promote effective competition.⁷⁴ Ofgem's statutory objectives and duties have increased significantly since the 2016 recommendation, supporting the assertion that Ofgem's regulatory framework has been unable to protect customer interests. Sustainability obligations have moved the UK away from fracking and towards greater reliance on LNG imports, which significantly contribute to the volatility of market wholesale prices. Without pre-established networks and infrastructure for sustainable energy sources to replace the loss of energy storage and production capabilities, consumers are bearing the costs associated with greater reliance on LNG imports. Supply security can be improved by incentivising capital investment in sustainable energy sources and storage capabilities. The UK government can encourage these initiatives by mechanisms including, but not limited to, legislation, government contracts, and subsidies.

Additionally, Ofgem's regulatory framework and UK legislation can be used to encourage DSR systems to improve supply security and sustainability goals. Affordability would best be addressed by a strong regulatory framework which: (a) reduces market concentration by encouraging movement between suppliers; (b) provides support for small market suppliers to reduce supplier exits due to slow conflict resolution or high market volatility; (c) provides greater support to new market entrants through temporary asymmetric regulation and streamlined licensing processes; and (d) ease of access to facilities and infrastructure controlled by vertically integrated market players. For these reasons, Ofgem is best positioned to address affordability, supply security, and sustainability, in that order.

No, Ofgem should not be granted enhanced investigatory and enforcement powers. Ofgem has utilised its competition law powers in two cases. Over 90% of the market

⁷⁴ CMA, *Energy Market Investigation: Final Report* (24 June 2016) 76
<<https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>> accessed 14 September 2026.

share remains concentrated between the top six energy suppliers. The CMA is better positioned to enforce competition law due to its independence from sector-specific regulatory relationships, its expertise in procedural matters, and its enforcement experience gained from engaging with a variety of sectors. The CMA should work cooperatively with Ofgem to enforce competition law and develop a deconcentrated market in which new entrants with innovative solutions could help Ofgem address the trilemma.

Conclusion

Ofgem's role should be streamlined to clarify the priority of affordability, supply security, and sustainability goals, in that order. DSR systems should be encouraged through a regulatory framework and government intervention to manage supply security and sustainability. Ofgem should not be granted enhanced investigatory and enforcement powers but should work with the CMA to enforce competition law and investigate anticompetitive behaviour. Outlining Ofgem's role in addressing the trilemma would lead to a more robust regulatory framework, enhancing its ability to promote effective competition and protect consumer interests.