

Will the CMA's market study into heat networks help or hinder the Scottish Government's proposals?



A critical climate change challenge for the UK is the decarbonisation of heat, which, coupled with concerns around consumer protection, has brought regulation of heat to the attention of the Scottish Government and the Competition and Markets Authority (CMA).

Currently, heat networks supply around half a million UK homes. Unlike other utilities, regulation of heat is limited and there is currently no licencing regime. However there is voluntary self-regulation (for example the Heat Networks Code of Practice and the Heat Trust) as well as limited statutory regulation, namely the Heat Network (Metering and Billing) Regulations 2014.

Consumer protection is a key focus for the Scottish Government, which published a second consultation on local heat and energy efficiency strategies (LHEES), and regulation of heat in November 2017. This sets out specific policy proposals with the aim of introducing regulation. It also, sensibly, recognises the need for regulation – both to secure investment in heat in Scotland and also to protect customers. Those proposals include: placing a statutory duty on local authorities to develop a LHEES; the introduction of a new consent system to be managed by local authorities; and a licencing regime for the development and/or operation of heating schemes.

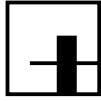
While the regulation of heat is not a reserved matter, consumer protection is – and is the responsibility of Westminster. As the Scottish Government fairly notes, it needs the UK Government to devolve powers to allow it to regulate for consumer protection or, for the UK

Government to develop those protections itself. This could be a significant 'Achilles' heel' for the Scottish Government, especially given the CMA's current interest.

The CMA launched a market study into domestic heat networks in December 2017. The competition watchdog is concerned that heat network customers are unable to easily switch suppliers and/or are locked into long-term, costly contracts and as such there is a risk those customers are paying too much and/or receiving poor service. The CMA will publish an interim report by 6 June 2018, by which time it is hoped its position will be clearer.

The Scottish Government will study the CMA's report carefully. The outcome could require it to change or adapt some of its proposals. For example, the CMA notes in its Statement of Scope that as part of their potential remedies it could consider recommending the introduction of competition into certain potentially competitive segments of heat networks, e.g. billing and metering. The Scottish Government does not appear to believe there is scope for competition, and it could be difficult for any meaningful competition to emerge in such a market.

The Scottish Government's proposals may formalise a monopoly regime, however they aim to deliver much needed protection to consumers through a licencing



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regime that enforces performance standards and potentially controls the prices operators charge. The CMA study could therefore emphasise the importance of regulation.

Whether the CMA study will help or hinder the Scottish Government's proposals will depend largely on the CMA's findings and proposed remedies. At the very least the announcement of the market study, 23 days after the Scottish Government published its consultation, may well cool progress for now.

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