

Protecting customers: Ofgem's enforcement powers

Ofgem's principal objective is to protect the interests of customers by promoting competition where appropriate. Ofgem wants to ensure there are no barriers to effective competition in the energy markets and that companies stick to their legal obligations.

In order to do this, it has the power to investigate and penalise companies that it believes are behaving improperly or not meeting their legal obligations to customers.

Ofgem's enforcement powers

Ofgem is the Office of the Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority, (the Authority) the regulator of the gas and electricity industries in Great Britain. The Authority's powers are provided for under the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000.

The Authority also has enforcement powers under the Competition Act 1998, as well as powers to enforce consumer protection law, under the Enterprise Act 2002.

Ofgem conducts **investigations** of companies that it believes may be breaking the terms of their licence conditions¹, acting anti-competitively or breaching consumer protection law. Any evidence of this is passed to the Authority for a **decision**.

Should the Authority find that a licence breach or Competition Act infringement has occurred, it has the power to impose large financial penalties, of up to **10 per cent of turnover**².

¹ As well as licence conditions there are requirements and standards of performance under the Gas and Electricity Acts that companies can be found in breach of.

² The penalty of up to 10 per cent turnover applies to the company holding the licence (for a licence breach) or the UK group turnover (for a Competition Act infringement).

Enforcing licence conditions

Any firm wanting to supply gas or electricity to customers, run a gas or electricity network or generate electricity has to be licensed by Ofgem. These Licences are issued by Ofgem under its powers in the Gas and Electricity Acts. One of the main areas it does not licence is the offshore gas industry, which is regulated by the Department of Trade and Industry (DTI).

Each licence comes with a series of obligations both to customers and to the industry that companies must fulfil. These are called 'licence conditions.'

For example, companies supplying gas and electricity have licence conditions which safeguard customers by:

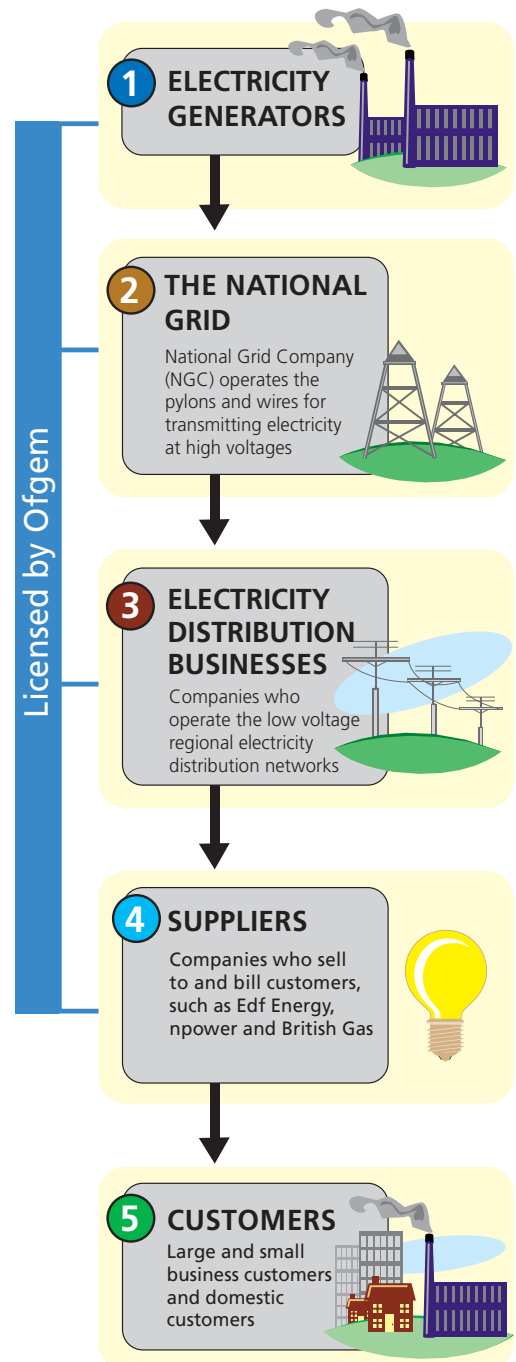
- preventing energy suppliers from disconnecting pensioners supply through the winter months
- requiring firms to monitor and control their sales and marketing staff to ensure customers are being correctly sold to
- ensuring suppliers provide debt prevention advice to customers who find it hard to pay bills, and
- offer free safety checks and special services to vulnerable customers.

Ofgem monitors companies to ensure that they abide by their licence conditions. The Gas and Electricity Acts provide for penalties of up to 10 per cent of a licensee's UK group turnover for failing to comply with relevant conditions. The Gas and Electricity Acts also provide for enforcement orders to be made which makes companies comply with their obligations.

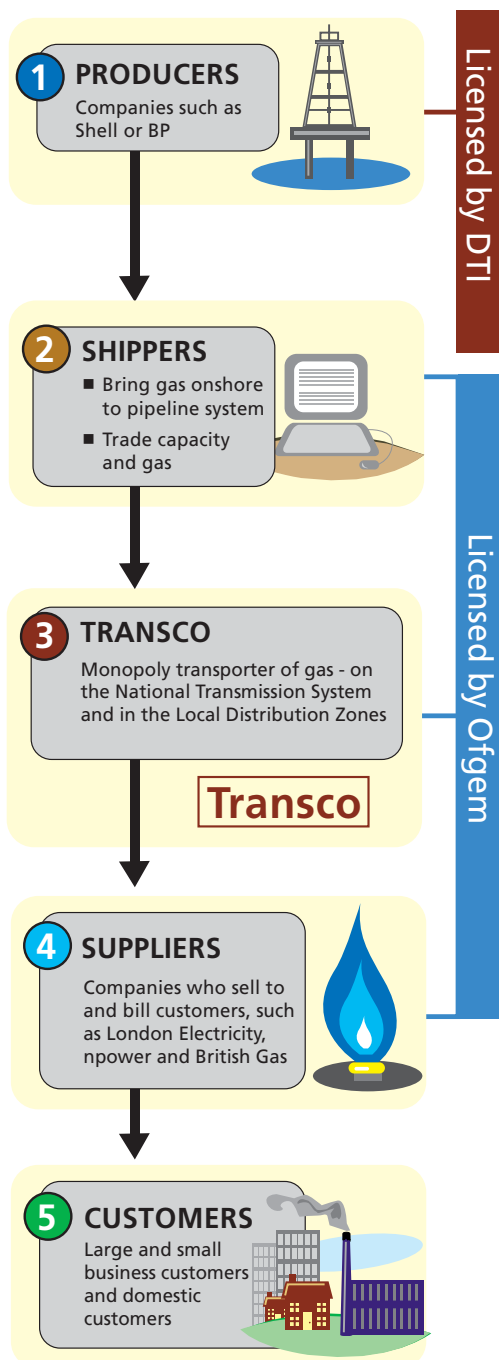
Ofgem can also "name and shame" companies that it believes are acting against the interests of consumers - a strong deterrent in a highly competitive market.

Further information on the factors that are considered by the Authority in relation to financial penalties for a licence breach can be found in the Authority's 'Statement of policy with respect to financial penalties (October 2003)' at www.ofgem.gov.uk.

The Electricity Supply Chain



The Gas Supply Chain



Enforcing the Competition Act

Ofgem monitors the energy markets constantly for any signs of anti-competitive behaviour or agreements.

Under the Competition Act, if a company is found to have acted anti-competitively it can face a financial penalty of up to 10 per cent of UK group turnover. The Competition Act also provides for directions to be made to order companies to stop acting anti-competitively.

Information on the factors that must be considered by the Authority in relation to financial penalties under the Competition Act can be found in the 'Director General of Fair Trading's Guidance on the Appropriate Amount of a Penalty' at www.ofg.gov.uk. See also the Competition Act 1998 Guideline 'The application in the Energy Sector' (OFT 428, March 2001) at www.ofg.gov.uk

Enforcing EC and UK Consumer Protection Law

Ofgem monitors companies to ensure that they comply with EC and UK consumer protection law. Under the Enterprise Act, the Authority can apply to the courts for an enforcement order to make companies comply with their obligations under consumer protection law.

Further information on the Enterprise Act is available in the Office of Fair Trading Guideline 'Enforcement of consumer protection legislation (OFT 512, June 2003)' at www.ofg.gov.uk

ofgem

Action taken

Since April 2002 when Ofgem was given powers to impose penalties for a licence breach, it has handed out or proposed penalties totalling £3.6 million to five companies:

November 2002	London Electricity (now Edf Energy), £2 million penalty imposed for mis-selling
June 2003	British Gas Trading, £200,000 penalty imposed for unfairly objecting to customers switching supplier
February 2004	npower, £200,000 penalty imposed for unfairly objecting to customers switching supplier
February 2004	Scottish Power, £200,000 penalty imposed for unfairly objecting to customers switching supplier
March 2004	Transco, proposed £1 million penalty for poor service in Transco's gas connections business.

For further information please contact:

Mark Wiltsher

020 7901 7006

email mark.wiltsher@ofgem.gov.uk