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Dear Annette,

Ofgem's Approach to Securing Compliance with Supply Licence Obligations and Consumer Protection Legislation - A Consultation Document

Thank you for the opportunity to comment on the above paper.

We welcome Ofgem's statement of intent on monitoring and enforcing the supply licence conditions, in the interests of greater transparency and certainty for customers and suppliers alike. We also support Ofgem's stated aim of not regulating aspects of quality that are or are likely to become dimensions of competitive differentiation, such as quality of customer service. This will stimulate innovation and provide for greater customer choice.

Against this background and the removal of all remaining controls on suppliers' prices from April last year, we do not understand why there is a (perceived) need to retain certain licence conditions, such as the conditions governing suppliers' general terms and conditions of supply. We understand that this is outside the scope of the above paper and will not therefore expand on this here, but we would urge Ofgem to undertake a review from first principles of the existing licence requirements.

We have set out our detailed comments on Ofgem's paper under two broad headings below.

Compliance Principles and Priorities

We firmly support the five stated principles that will govern Ofgem's compliance activity, namely to be proportionate, consistent, accountable, targeted and transparent.

However, we are concerned that Ofgem go on to state that *"there may be cases where Ofgem regards it as in consumers' interests for it to take enforcement action against suppliers who may not be in a worse compliance position than others, for example where this is important to*

sustain consumer confidence. The decision on whether subsequently to take action against other suppliers will be made on a case by case basis and in accordance with Ofgem's priorities." In our view, such an approach would be inconsistent with the above principles. In particular, we do not believe that enforcement action as described above could in any way be considered consistent treatment of licence holders, targeted or transparent and we would therefore not support such an approach by Ofgem.

Just to be clear, we accept that Ofgem's statutory duty does not specify that it should only take enforcement action in the most serious cases or that non-compliance by other suppliers would, of itself, be sufficient grounds for Ofgem not to take action. However, we cannot support the view that Ofgem may take enforcement action against one supplier for non-compliance but not take similar, consistent enforcement action against another supplier who is also (and perhaps more) non-compliant. To single out one supplier for enforcement action in such a way would unfairly prejudice one supplier over another.

Ofgem Investigations

Ofgem state that if, as a result of a formal investigation, it is recommended that the matter be considered for a possible sanction and that sanction could be a financial penalty, the investigating team will prepare a report of the facts which will be shared with the company before it is submitted to the Authority. In our view, it is both reasonable and fair for Ofgem to give the company concerned a last opportunity to make representations and correct any inaccuracies at this stage.

Ofgem also propose to provide on its website a summary of the formal investigations into breach of licence conditions that it is undertaking, including a summary of the allegations or complaints that form the basis of the investigation. While we support Ofgem's proposal to publicise its decision to undertake a formal investigation and the practice or issue to be investigated, in our view neither the identity of the company that has made the complaint/allegation or the company that Ofgem are investigating should be made public.

In particular, disclosure of the company's identity that is being investigated would have a significant adverse impact on their commercial interests before Ofgem had determined whether in fact the company was in breach. In addition to unfairly and unnecessarily damaging that company's interests, such an approach could lead to a proliferation of spurious complaints and allegations to gain competitive advantage. However, publicising details of an investigation (without company identities) would still give customers and other suppliers comfort that Ofgem was investigating bad practice and would, in itself, encourage greater compliance among suppliers in general.

Ofgem state that a formal investigation may take many months to complete. However, we believe that credible and effective enforcement arrangements require fast investigation and, if deemed necessary, enforcement action. This could be achieved by Ofgem undertaking to publish their initial conclusions within three months of the start of an investigation with sanctions being determined thereafter. We recognise that such an approach would probably require additional resources for supply compliance monitoring and enforcement activities, but we believe that this area is key to ensuring customers' confidence in the competitive market.

I hope the above comments are helpful. If you would like to discuss this further, please call.

Yours sincerely,

Rob McDonald
Director of Regulation