

Non-domestic suppliers, meter  
asset managers, meter  
operators, non-domestic  
consumers and their  
representatives and other  
interested parties

Date: 22 February 2017

Dear colleague

## **Second Open Letter on migration of consumers in profile classes 5-8 to half hourly settlement under P272**

As indicated in our letter of 28 November 2016, Ofgem is monitoring suppliers' progress in migrating Profile Class 5-8 customers to Half Hourly Settlement under P272.<sup>12</sup> We expect suppliers to fully comply with P272 on the implementation deadline of 1 April 2017 and remind suppliers once again that compliance with the industry codes is an obligation under their licence. We take regulatory deadlines very seriously and have taken enforcement action in the past when industry parties have failed to comply with them.

In this letter, we explain the separate actions that the Performance Assurance Board (PAB) and Ofgem may consider if a supplier is non-compliant with P272.<sup>3</sup> We also set out the links between the action taken by the PAB and considerations Ofgem may take when deciding to open enforcement proceedings. If non-compliant, we expect suppliers to fully engage with ELEXON, the Performance Assurance Board (PAB) and the Balancing and Settlement Code (BSC) Panel in order to comply with the agreed course of remedial action. We underline that Ofgem may follow separate enforcement proceedings and this may include cases where remedial action has already been completed by a supplier to meet PAB expectations.

### *PAB action towards non-compliant suppliers*

Ofgem expects licensees to meet their P272 obligations under the Balancing and Settlement Code. Following the 1 April 2017 implementation date, Ofgem expects non-compliant suppliers to fully co-operate with any compliance action that they are involved in with ELEXON, the Performance Assurance Board and the BSC Panel.

The Error and Failure Resolution (EFR) Process under the Performance Assurance Framework is focused on helping parties identify performance issues and put robust plans in place to correct them in a timely manner. The PAB may also decide to take corrective action where a Party may have breached a material provision of the Code. A Party may be deemed in default if it "is in breach of any material provision of the Code" and "the breach is capable of remedy by the Defaulting Party." The BSC sets out the steps open to the PAB upon the occurrence of a Default by a Defaulting Party.<sup>4</sup>

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<sup>1</sup> [Ofgem decision on P272](#)

<sup>2</sup> [Ofgem Open Letter on the migration of consumers in profile classes 5-8 to half hourly settlement under P272 and P322 \(28 November 2016\)](#)

<sup>3</sup> [The Enforcement Guidelines](#)

<sup>4</sup> [BSC, Section H, Paragraph 3.2](#)

### *Ofgem action towards non-compliant suppliers*

Separate from the EFR process and remedial action towards Defaulting Parties, Ofgem may decide to proceed with its own enforcement action. When taking any decision on whether to open an investigation, Ofgem will refer to the criteria set by our Enforcement Guidelines. These Guidelines set out our enforcement powers derived from various pieces of legislation and the process from the opening to the closing of an enforcement case.<sup>5</sup> When deciding whether to open a case for failing to meet the P272 deadline, factors we will take into account include:

- the impact on consumers;
- how close suppliers are to being compliant;
- whether suppliers are taking action to address the situation, including whether they have a credible plan for becoming compliant with the BSC;
- any actions taken by the supplier to remove consumer harm; and
- suppliers' progress with migrating recently acquired customers.

We underline that Ofgem may proceed with enforcement action where another body is already investigating or taking action. When taking a decision, we will consider ongoing investigations by another body and the impact of any action already taken, or to be taken by another body, such as a code body. Reasons why we may be more likely to launch a separate investigation include:

- the breach is still continuing;
- there have been repeated breaches;
- the action being taken by the other body appears not to deal with our concerns fully or does not cover all of the matters about which we have concerns;
- a financial penalty or consumer redress order may be merited (which the other body does not have the power to impose);
- separate action should be taken as a deterrent to the company or others.

Therefore, non-compliant suppliers who may be involved in – or have completed - the EFR Process, may find that Ofgem proceeds with its own enforcement process.<sup>6</sup>

### *Late acquisitions*

As stated in our previous letter, when considering the 1 April 2017 deadline, we understand some suppliers expect to acquire customers towards the end of the implementation period and are concerned that they will have less time to migrate them to half hourly settlement by 1 April 2017. We recognise the process required to migrate customers to half hourly settlement may make it difficult for suppliers to achieve it for all of their late acquisitions by the deadline. When deciding whether to take enforcement action for a breach of SLC 11, we consider that, where a supplier has credible plans in place to migrate new customers within 45 business days and is already in the process of doing so, this reduces any impact on consumers and, as such, the likelihood of Ofgem prioritising enforcement action in respect of such a breach.

### **Next steps**

We continue to work closely with ELEXON to monitor suppliers' progress against their Supplier Migration Plans. After the implementation date, we will continue to work with

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<sup>5</sup> [Enforcement Guidelines](#)

<sup>6</sup> These reasons (and other factors in the Enforcement Guidelines) extend beyond the compliance work that EFR is focused on.

ELEXON to monitor whether suppliers have complied with their obligations, including their compliance in respect of newly acquired customers. In the event of non-compliance, and separate from the actions by the PAB, we will consider whether to prioritise opening an investigation on the basis of the facts, as set out above.

Yours sincerely,

**Cathryn Scott**  
**Partner**