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Sent via email: confidencecode@ofgem.gov.uk

Dear Caroline

Confidence Code Review 2016

This letter sets out our response to the Confidence Code Review 2016, published on 3 August 2016. Our response focuses principally on the Personal Projection (**PP**) proposals and PCW access to industry data, although we also briefly consider proposed approach for implementing the Competition and Market Authority's (**CMA**) "Whole-of-Market" (**WofM**) proposals at the end of this letter.

We have significant concerns around the adverse impact these proposals could have on the levels of customer engagement. This could affect both customers active in the market and familiar with PCWs, whose engagement industry participants do not want to see diminished, as well as those customers venturing onto PCWs for the first time. Whilst we understand the challenge of addressing a comparability measure amidst many more and more different tariffs, we do not think that enabling PCWs to develop separate methodologies, to each other and to suppliers, is likely to be effective as a means of enabling customers to better understand the impact of available offers on them.

We have had some concerns around the calculation for PPs, which in our view led to misleading information being given to customers at point of comparison and ensured disappointment on subsequent comparison. These concerns centered around the use of the default tariff on fixed tariff expiry. We set out our concerns on this in our CMA



response and we won't rehearse those concerns here.¹

In our view, therefore, it is important that the underlying PP approach is consistent not only between suppliers, but also between suppliers and PCWs, aiming to prevent material differences in treatment of this important comparability measure. Customers would rapidly become disengaged if they obtained different information from their own suppliers to that of a sample of PCWs, and potentially other suppliers. Ideally, we see the most effective method as ensuring that suppliers and PCWs be consistent in how each calculates estimated annual costs across all tariffs and for all customers using the same, albeit amended, methodology, along the lines of the provisions in the pre-2015 Code. However, this may not be workable in the anticipated timeframe. At a minimum, Ofgem should ensure that PCWs are held to the same standards as are being developed for suppliers. We intend to comment separately on the standards being developed in this regard.

We also think that more work needs to be done around how best to address discounts and how they are portrayed in the PP calculation. Whilst we are broadly supportive of the proposal to return to the pre-2015 Confidence Code, guidance on how PPs would deal with discounts would be helpful. We recognise that there are the current range of discounts (e.g. those permitted under RMR rules), which many suppliers offer, and in the post-CMA environment, other discount types and approaches being developed. This could be addressed by specific guidance around the transparency needed for PCW discounts, and around supplier discounts, both flowing from, at a minimum, the standard of conduct around comparability being considered for suppliers applying to PCWs. This approach reflects that key to the customer will be understanding the full value of a tariff with all the benefits and discounts that can come with it: if this cannot be effected, customers could lose out. On a specific point, the clause under what discounts cannot be included, that 'depend on the consumer behaving in a certain way, i.e. those discounts which are not paid automatically²' could benefit from further clarification.

We are also concerned that without appropriate limitations, protocols as to use and data protection and privacy protections, permitting Price Comparison Websites (**PCWs**)

¹ Please see pages 16 and 17 of our response here:

<https://assets.publishing.service.gov.uk/media/5717468ded915d749d000004/first-utility-response-to-pdr.pdf>

² Page 23 paragraph 3.8 Ofgem Confidence Code Review Consultation 2016



access to the ECOES and DES (SCOGES) databases risks fostering material increases in communications, which risks disengaging otherwise engaged customers. If another purpose of PCW access to ECOES and DES is to reduce the level of erroneous transfers (**ETs**), an overall goal we support, without first improving the level of data quality, this remedy will in our view, have limited success. Given that the main issue around ECOES is the timely updating of information (e.g. from Plot number for new builds to proper addresses), we do not see sufficient evidence that providing industry data to PCWs would solve this issue. Overall, we believe that PCW access to ECOES and DES should be limited to matching addresses, MPRN, MPAN, and the current supplier.

We do understand the potential sensitivities that some consumer groups and certain suppliers have around removing the WofM rules in the Confidence Code in line with the CMA remedy. However, we believe that Ofgem has not adduced sufficiently strong a justification or further evidence to displace the CMA's conclusions to its two-year investigation on this aspect of the Confidence Code such that a longer or phased implementation is justified. Further, we see that Ofgem has not provided a date or a detailed timeline for that full implementation and would ask that clearer sign-posting be provided for this part of the CMA's remedies package. Whilst not commenting on the substantive elements on the phased changes, central to WofM is the league table principle: retaining this appears inconsistent with the approach to removing the underlying PP methodology.

We would also be concerned if this approach opens the door to stakeholders picking and choosing elements of the package of remedies, which will increase uncertainty, and potentially risk and costs, during the implementation period.



If you have any questions or would like to discuss any of the issues covered in this letter, please do not hesitate to contact me.

Yours sincerely

Malcolm Henchley
Head of Legal and Regulation Compliance