By email

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Last Resort Supplier Payment Claim from Ovo Energy Limited

As requested this is a response to your letter of 13th December on the above and your request for any representations on relevant matters.

We object to the claim.

Award of SOLR to supplier in financial default and breach of relevant requirement

While the letter provides a clear rationale for the proposed outcome and approval of the claim by the relevant supplier, it is less transparent on the wider context involved in this case. Specifically the status of suppliers within and after the Late Payment Period that is clearly set out in the Renewables Obligation Order 2015 (as amended). In short a supplier is in default and therefore in breach of a relevant requirement. That Ofgem may not levy a penalty in this period, or that full payment of interest by the end of the Late Payment Period makes the supplier compliant, does not change this.

In short Ofgem awarded an SOLR in this case to a supplier in financial default and in very material breach of an EA89 (as amended) s27A requirement. This calls into question the worth of the extensive financial questionnaires in the mandatory SOLR submissions by suppliers - and the legitimacy of Ofgem's actions in relation to financeability under EA89 s3(1)(a).

Application of the Ofgem Safety Net

As we have explained to Ofgem before, we believe the Safety Net is illegal, ultra vires, regressive and in direct contravention of Ofgem's statutory duty to protect the interests of current and future consumers. We do not repeat here the full explanation of this as Ofgem is familiar with our position.

We do recognise that OVO stated up front that they would claim final credit default from Ofgem and that they would limit this claim a portion. Whether that portion was made clear at the time is information that has not been shared by Ofgem. If it were not clear then the SOLR competition would have been unfair.

Administration

We note that Ofgem implies that OVO may be making claims to the administrator. It may be the case if OVO has entered into an agreement with the administrator in which it bought the debt or entered a sharing agreement. We have written to Ofgem before about the inexcusable occlusion by Ofgem on what is happening in administration. If the SOLR owns the consumer debt, it is highly collectable (and should be senior to payment for ongoing supply), with rates that should exceed 90%. If the SOLR buys the debt from the administrator at, say, 40% and receives 90% then:

i. this should have been anticipated by Ofgem and offset against final credit default by the exited supplier; and,

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ii. it may be that the SOLR had superior knowledge about the credit and debt status of the exited supplier's customers, thereby rendering the SOLR process unfair (winner's curse, lemons, etc.).

In allowing the sale of debt at below its full value, Ofgem would have directly harmed the interests of current consumers.

Other claims

We have stated previously that claims for wholesale costs and IT costs should not be recognised if a supplier volunteered to be SOLR. These should be factored into the bid price and not doing so would make the competition unfair. We are pleased to see that these were not claimed.

Wider concerns about Spark

As with Solarplicity and Toto, there are many unanswered questions about Spark. It behoves Ofgem to uncover what actually happened.

Interest on LRSP claims

Please can Ofgem publish the interest rate charged, by the supplier and the networks.

If you require any further clarification do not hesitate to contact us.

Yours sincerely

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