

## **Response to ICoSS comments on discrepancies between solution and legal text**

### **Eligibility Criterion and Application**

There is a lack of clarity on how the process for defining eligibility for the scheme, with regard to defining company groups. UNC TPD V3.1 allows for a User's Parent or Qualifying Company to provide surety and so relies on the organisation to provide this information. This is a voluntary process and so some organisations may be part of a large corporate group and not be relying on a Parent Company's surety. Information held by the CDSP is not therefore a reliable indicator. The CDSP is expected to confirm the corporate structure of the organisation, but it is not clear what steps they are expected to take to do so. The current process as set out in the legal text does not require the applying party to provide this information.

The party applying does not need to provide this information because the Transporters will provide this information to Xoserve. Before this modification was raised the Transporters already knew some information about whether companies had Investment Grade Ratings of sufficient quality and have since done a significant amount of work to establish whether a company in the Shipper's group has an Investment Grade Rating of sufficient quality issued by one of the three agencies recognised by Code. The test is not whether a Shipper relies on an Investment Grade Rating but whether one exists. Xoserve's role is solely to receive applications and check whether the Shipper is eligible or not but using the list provided by the Transporters.

### **Shipper with pre-payment agreements**

We believe that the intention under this agreement is to exclude Shippers with Pre-Payment Agreements from the scheme. It is not clear from current drafting whether they will become eligible for the scheme if a Shipper is no longer subject to the Pre-Payment Scheme, or if they cease to make payment under it, during the lifetime of the process.

The legal text fulfils the intent of the solution and a Shipper with a pre-payment agreement that has made a pre-payment for the relevant Billing Period is excluded from the scheme for that Transporter. They could apply to be an Eligible Shipper for a subsequent Billing Period but to do this they would need to provide sufficient surety or security to satisfy the requirements of TPD V3 before the pre-payment for the subsequent Billing Period was due and make arrangements to terminate their Prepayment Agreement with the Transporter if the agreement allows this within the required timelines

### **Warranty by Shippers**

In the modification it is stated that a warrant will be provided that bonuses to directors, etc will not be paid until the deferred amounts are repaid in full. The legal text by contrast does not require any form of warrant, but instead assumes an implicit agreement to the requirements set out regarding payments to directors, etc. It appears that there is no process anticipated for monitoring or verifying compliance with these requirements.

The legal text has put the requirement to not pay dividends or bonus as a requirement on Shippers. Although the word "warrant" is not used this delivers the

intent of the solution. There are consequences of breach and any breach that the Transporters observe or that it brought to their attention will be actioned accordingly.

### **Applicable Invoice**

The modification states that *“UNC TPD Section S1.5 will probably need to be amended to allow Applicable Invoices to be Divided Invoices and to provide for the relevant notices and the payment dates within that amendment.”* It should be noted that there is no reference to UNC TPD Section S1.5 in the legal text

The legal text does not reference because the view of the lawyers drafting the legal text was that this was not required to deliver the modification.

### **Additional Minimum Invoice**

The mechanism for managing the Additional Minimum Payment, where there is insufficient security is contradictory. In the modification, it is implied that this amount only be notified to eligible Shippers as an invoice, but for “information only” for those who have insufficient security but will be due within 5 business days (page 14). By contrast, the legal text (Section 9.5) make a clear requirement on all Eligible Users to pay within 5 business, the Actual Minimum Payment Amount (minus the Initial Payment Amount).

Shippers that do not have sufficient security or surety in place to allow them to pay on the invoice due date pay on the invoice issued date to avoid breaching the Value at Risk provisions in Code. The Additional Minimum Payment is due on the Invoice Due Date however for Shippers that do not have sufficient security or surety they have to pay this immediately to avoid VAR breaches. Since this payment cannot be made immediately, the scheme rules allow them 5 Business Days to make this payment.

The terms used in the solution and the legal text are not identical. The solution refers to the Additional Minimum Payment which is additional to the Minimum Payment but the legal text refers to the Actual Minimum Payment Amount that is the sum of what the solution refers to as the Minimum Payment plus the Additional Minimum Payment.

We appreciate that the legal text was only available for three Business Days and short consultation periods are a problem for urgent modifications but observe that this is the same period for which legal text was available for the four urgent modifications 0721 to 0724 that had had three Day concurrent consultation periods.

### **Cessation of Scheme**

It is unclear whether withdrawal of the scheme will also place shippers into default as bills can become overdue the day after notification and how this will be handled.

We appreciate that this is a drastic provision but it is absolutely essential that Transporters do not breach their covenants with lenders.

### **Treatment of Interest**

The modification does not cover how interest accrued by the GTs, outside of a high-level statement that the interest will be used to cover “bad debt”; this statement is not included in the solution. It is unclear as to what will happen to this interest if there is no bad debt. As currently drafted these proposals represent a potential profit-making activity for transporters as the only commitment made in the modification is to voluntarily cover bad debt.

We note that the Ofgem letter of 2 June 2020 indicates this will be treated as allowed revenue, but at present the modification does not make any explicit reference to any formal process to require this (such as a licence change) – at present we are reliant on the goodwill of GTs to undertake this.

Treatment of bad debt for DNs is entirely within Ofgem's gift and treatment of interest is defined in Transporters' licences and it is not part of collected revenue that counts against allowed revenue. Transporters have therefore stated that they will use any interest earned from this this scheme to offset bad debt arising from this scheme. It would be foolish to put arrangements in a modification that may conflict with future licence changes that Ofgem are clearly contemplating. If interest payments count towards allowed revenue then they cannot also be used to offset any bad debt as otherwise the revenue is being used twice.