TOTAL GAS & POWER LIMITED

Bryony Sheldon
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Office of Gas and Electricity Markets
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18th July 2003

Dear Bryony,

SPAA Gas Retail Governance– Response to Ofgem Consultation June 2003

Total Gas & Power Ltd (T G & P) welcome the opportunity to make comment on the above. For clarity our response is organised as follows. We have provided an overall summary of our views on the document which is followed by a more detailed section in which we provide our answers to a number of the specific questions that you have raised in your consultation. Finally we have added an appendix in which we have made our comments on the legal text of the Supply Point Administration Agreement Version 1.0 release date 3rd March 2003.

At the presentation on the 4th July you specifically asked whether or not companies were likely to be supportive of a suppliers licence amendment to require accession and compliance to SPAA. Based on our current understanding we confirm that T G&P would not be supportive of this. We are not convinced of the relevance of SPAA to suppliers such as ourselves whose focus is purely on the Industrial & Commercial (I&C) market. Our understanding is that SPAA offers most benefit to suppliers whose prime focus is on the domestic market where supplier to supplier communications are both common and crucial to the operation of the market. We have not seen a cost benefit analysis that demonstrates a similar benefit for the I&C market. We also have concerns that, because of the way the overall market has evolved, the constitutional construct of SPAA may not fully allow the interests of single focus players to be recognised to the possible detriment of competition in the I&C market.

Summary Comments

We are concerned that the document focuses overly on suppliers as a general concept without properly recognising that there are differences in the market as recognised by yourselves through the separation of the supplier licences between domestic and I&C. Our belief is that the document is specifically relevant to domestic gas suppliers and that this should be directly acknowledged. It also fails to recognise that there are significant differences between the needs of domestic and I&C consumers.

Most, if not all, of the impetus for the 'Supplier hub' and supplier to supplier communication arises from the complexity of the process developed to support the volume transaction levels that occur in the domestic market. As such, we recognise domestic businesses' desire for greater control over the governance arrangements that ensure such processes are developed in an appropriate manner and that all companies using the processes adhere to common standards. For these companies there may also be benefits in maintaining similar processes to those used in electricity as the majority of the domestic suppliers are significant players in both markets, who see major cost benefits in moving to a true dual fuel environment.

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The I&C market does not however share the same characteristics. Supplier to supplier communication is far more limited. I&C supplier concerns relate far more to customer experience issues, such as data quality, meter and supply point information, transportation issues and accurate meter reading. These communications are also closely aligned to the shipper processes to ensure that gas volumes are correctly attributed and that accurate forecasts can be agreed between the shipper and the transporter to ensure the integrity of the gas balancing process. Harmonisation between gas and electricity is of secondary importance due to I & C customers' lack of desire for dual fuel products. Where supplier to supplier communications are required these have been handled through the I&C Code of Practice which, although voluntary, appears to have worked satisfactorily and has allowed transfer problems to be resolved without impacting on the end consumer.

SPAA therefore does not offer the same benefits to suppliers whose primary focus is I&C as it does to those whose primary focus is in domestic gas (and electricity). In fact, SPAA as it has been proposed would appear to offer additional risks and disadvantages to such I&C suppliers.

The issue is further clouded by the need to provide some form of governance for the RGMA baseline once this is established and the project moves to a live status. Again in terms of volumes, RGMA is far more significant for domestic suppliers. We believe that for our purposes the change control of the baseline could be done through a simpler, more effective arrangement than that proposed by SPAA. This could be, for example, the extension of the I&C Code of Practice or a new Code of Practice being developed under the auspices of the Gas Forum. Any risks associated with non-compliance of parties to agreed changes would be evaluated and where seen to be necessary, mitigated through contractual conditions rather than through licence obligations. We are concerned that SPAA has developed this far without properly evaluating potential alternatives to look at costs and benefits (by market). The conclusions to the July 2001 Ofgem consultation[1] were clearly in favour of a full cost benefit analysis study being completed before any major change was initiated. To our knowledge, no such study has yet been done.

Whilst the initial costs for SPAA appear to be low we are concerned to note that this appears to be purely for the administration of the high level SPAA infrastructure. Once schedules are introduced and full change control processes are in place, then it is clear that costs could rise significantly, particularly based on the experience within the electricity industry.

Specific Comments including our answers to some of the questions asked by Ofgem

Chapter 1

RGMA will require increased communication to determine meter asset ownership but this will primarily be with their Meter Asset Managers (MAM's) rather than with other suppliers. We support Ofgem's aspiration that the introduction of metering competition does not adversely impact competition in supply. As a result, we recognise that in the domestic market, with its volume of transactions, there may be a case to be made for some form of supply governance. The very different circumstances and structure of the I & C market does not lend itself to such a case.

We believe it is misleading to say that suppliers have no influence or control over Supply Point Administration. Surely, suppliers have either inter company or contractual arrangements with their shipper? There has certainly been no shortage of Network Code modification proposals raised that relate to the SPA processes. At the same time Network Code is the contract between Transco and shippers and there is good reason why the shipper is key to the supply point transfer process in order to ensure that the gas balancing and capacity management arrangements are kept whole. We recognise the desire by some to harmonise gas and electricity transfer arrangements. However we do not believe that this can be achieved simply by transposing the arrangements in either market into the other. The supply industry must recognise the distinct characteristics of each market and ensure that any change maintains the full integrity of both the wholesale and retail elements of the transportation arrangements. As such, with respect to gas for example, it will be vital that shippers are fully involved in any proposal for change discussed within the SPAA environment.

Whilst we agree that there are no formal governance arrangements for IGT's all such are licensed entities.

Chapter 3

It is not surprising that the majority of respondents to earlier consultations were in favour of replicating the

[1] December 2001 Gas supply market : governance arrangements Summary of Responses and Way Forward

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supplier hub concept that exists in the electricity industry. The background of most of the large domestic suppliers is electricity and they are used to operating their processes along those lines. Unfortunately, gas is very different and will not necessarily support replication of the MRA. We are concerned that we have not seen an overall cost benefit analysis for SPAA and it is worth noting that SPAA recommends CBA when assessing changes. It is our belief that the change of supplier process in gas is in fact somewhat better than that operating in electricity and whilst harmonisation may result in cost savings for the large domestic suppliers, it may not produce much benefit for the end consumer of gas.

When it is claimed that there was general support for I&C suppliers to be included in the first phase, it is our belief that this support was principally from domestic suppliers with I&C businesses rather than from specialist I&C only suppliers.

Chapter 4

We do not believe that the establishment of separate constituencies gives I & C Suppliers any comfort with regard to influence over their own commercial operations. The structure of the industry is such that most of the domestic market is managed by companies who in addition to their domestic gas and electricity businesses also have significant I&C businesses, whilst there are few (if any) companies who are purely domestic. On the other hand the I&C market is well balanced between companies who are involved in the domestic market and companies who are I&C specialists. The latter do not have any domestic interests. It is our view that this has led to a highly competitive I&C market with a wide range of product offerings available to meet the often specialist requirements of many I&C consumers.

However, the proposed structure could have the effect that within the constituencies, a large proportion of the vote could be controlled by companies who will be guided by their domestic rather than I&C interests, irrespective of the constituency within which they are voting.

There is therefore also potential for the Executive Committee to be dominated by the companies with a primary domestic focus even though the theory would suggest that there will be the opportunity for I&C representation.

A possible solution to this risk could be to determine that an individual company (at its highest corporate level) could only elect to be in one of the constituencies, irrespective of the markets in which it operates.

Chapter 5

We generally agree with the principles of good governance set out by Ofgem although we would also like to see value for money as a principle, measured and supported by a robust Cost Benefit Analysis methodology. We have some reservations with respect to SPAA's conformance with these principles.

Effectiveness
We are not yet convinced as to whether SPAA is needed or whether there are simpler ways of achieving the intent behind the arrangement. There is a concern that, as currently envisaged, non compliance by another party could make ourselves non compliant and in breach of our licence. We are not convinced that the placing of financial incentives on service levels is appropriate in an area that is deemed to be fully competitive.

Efficiency
We agree that every effort must be made to ensure that the SPAA processes are as efficient as possible, if we are to avoid a large cost being placed upon the industry.

Transparency
The SPAA agreement would appear to be reasonably transparent although we do have some concerns over voting arrangements and the independence of the constituencies.

Whether a 10 day consultation period is appropriate?
We are in favour of a longer consultation period than the proposed 10 day which seems unnecessarily short. It should be recognised that companies may have internal procedures to be followed before their position can be represented externally. We see no obvious reason to move away from the 15 day period adopted for normal Network Code changes.

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Should criteria be developed for the granting of urgent status to a change proposal?
We would welcome clear guidelines as to what would constitute urgent status as we agree that within SPAA most changes are likely to be driven by commercial pressures rather than safety or security issues.

The preferred method for the introduction of schedules into SPAA
We agree that the schedules need to be clearly identified as to whether they have voluntary, elective or mandatory status. We also believe that schedules should be introduced with the status that they are intended to have. In particular, a schedule introduced as voluntary or elective should not later be allowed to be changed to mandatory status.

The appropriate degree of consumer representatives' participation in the SPAA
Whilst we have argued in the past against consumer representation in the Network Code change process, we believe that for SPAA such representation should be allowed as the prime focus for SPAA is to improve the processes that are directly associated with end consumers, and consumers should not suffer a degradation in the level of representation currently available to them. Whilst consumers should be allowed to propose and be involved in the discussion of change, we do not believe they should be allowed to vote on the adoption of any such change because they do not directly bear the financial consequences.

Whether issues of unfair prejudice should be determined as part of the change decision rather than holding a separate appeals procedures.
We would expect that issues of unfair prejudice would form part of the representations from Suppliers on change proposals, and decisions should be made on that basis when considering the change, regardless of the decision body. Irrespective, we would fully endorse the right of any party to raise appeals on the grounds that the decision would unfairly prejudice the interests of themselves or (their) consumers.

Whether the provisions referred to in Paragraph 5.34 should be afforded 'protected' status
We agree that the additional provisions identified by Ofgem (additional parties, status of schedules, change control and derogation) should also be given protected status.

Whether voting should be by reference to the percentage of votes capable of being cast
We believe the issue of whether or not voting should be by reference to the percentage of votes cast rather than the total votes capable of being cast is connected with the construct of the overall change control process. On the assumption that all parties are agreed that the change control process is fair and equitable, with sufficient time allowed to ensure that all parties can fully participate then we believe it is sufficient to use the percentage of votes cast. However, should it be possible to bypass the normal change control processes and/or reduce consultation periods, then we believe that voting should be by reference to the total votes capable of being cast under such circumstances with abstentions being counted as against the change.

The extent of Ofgem's role, if any, in the granting of derogations
We believe that Ofgem should review the decision of the EC or Forum to grant a derogation based on the relevant objectives of SPAA to ensure that it does not adversely impact the interests of consumers.

Chapter 6
Whether such a licence condition should be placed upon both domestic and I & C Suppliers.
T G & P do not believe that a licence condition should be placed upon I & C Suppliers. The precedent exists for differing licence obligations for domestic and I & C Suppliers. It appears inconsistent to increase the amount of licence obligations to which I & C Suppliers are subject at a time when Ofgem has made clear its aspiration to move to lighter touch regulation.

The proposed drafting of the condition
We do not believe that the licence condition should be imposed on I & C Suppliers. We have concerns with the drafting of the licence condition as envisaged, as we do not believe that this would allow us to operate in a way that is consistent with the interests of our consumers.

Whether the SPAA has, or is likely to have, any anti-competitive effects, especially in relation to small suppliers or new entrants.
It is unlikely that the SPAA will have any anti-competitive effects as long as only the minimum requirements are mandated through signing up. This is consistent with Ofgem's statement in paragraph 6.12, that the SPAA 'should contain the least restrictive means of achieving its aims.' Excluding I & C from any potential

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licence condition will aid the small independent Suppliers that tend to inhabit this market segment.

Chapter 7

Whether the I & C Code of Practice should be developed as a SPAA schedule

The I & C Code of Practice should remain outside the SPAA, and continue to be managed by the Gas Forum as currently. It is the view of T G & P that the existing arrangements in the I & C market work well, and there is little to suggest that the lot of I & C Consumers will be improved through the adoption of the SPAA proposals.

Chapter 8

Whether GTs should become party to the SPAA

A great deal of work is required to establish the impacts on transportation of moving SPAA outside the Network Code. The focus on the impacts on the GT should not be at the expense of the Shipper or energy balancing. There may be a case for the accession of GTs to the SPAA at a later date, but at this point, it is our view that this should not be a priority. One of the issues that requires careful consideration is how transfer of SPA from Network Code to SPAA can be managed in the eventuality that not all Suppliers are signatories to the SPAA. Further, an industry-wide cost benefit analysis must take place before such accession takes place.

Subject to the above, the appropriate timing of GT accession to the SPAA

GT accession to the SPAA should not take place until such time as the issues noted above have been resolved to the satisfaction of all relevant market participants.

Whether becoming party to and compliance with SPAA should be a condition of the GT licence?

At such time as it is decided that GTs should be party to the SPAA, this should be supported by an appropriate licence condition.

How the funding of change should be apportioned

All participants should bear the cost of their own changes. T G & P do not believe that any form of gain share should be supported. Making each participant responsible for their own costs incentivises all affected parties to introduce change at minimal cost, reducing as much as possible the costs that would have to be passed through to the consumer.

Chapter 9

With regard to the Statutory Framework discussion within this chapter, T G & P shares the view that the legislation is sufficiently robust, but would suggest that certain legislation such as the Connection and Disconnection of Meters Regulations 1996 (the C & D regulations) require review so that the market could be made to work more efficiently. We would endorse the view that licence obligations require immediate review. We note that you intend to publish a further consultation shortly to consider the need for existing licence obligations to be refined, in particular the introduction of a direct relationship between GT and supplier for the provision of domestic metering services. T G & P support the review of these licence conditions and believe it is important that any such changes be considered within the same timeframe as the current SPAA, RGMA discussions because of their potential impact.

Whether the transfer of the meter asset between Suppliers should be subject to collective governance under the SPAA

This may make sense in the domestic market where there already exists a licence condition (Suppliers Licence Condition 34) to support transfer of asset upon change of Supplier. However, no such arrangement exists in the I & C market, and the nature and structure of the market makes this unnecessary. Because in practice, assets will transfer between MAMs, the proposed MAM Code of Practice may be the most appropriate document to place recommended processes and valuation methodologies to support change of ownership.

Whether SPAA should have any role or influence over the Transco Metering Contract, and if so, to what extent

T G & P are aware of the ongoing discussions regarding contract governance taking place in the Metering Contract Group (MCG), where Transco is seeking the right to veto all changes, including RGMA changes, We are of the view that, given its role as a monopoly service provider, Transco must always be RGMA compliant, and must therefore commit contractually to RGMA compliance from go-live. Since SPAA is anticipated to own the RGMA baseline, at least for the domestic market, it appears that SPAA cannot but

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influence the Transco contract. If Transco acts reasonably and agrees to be and remain RGMA compliant, there appears little to be gained in creating a more formal link. Indeed, this could give Transco an inappropriate competitive advantage and influence over the shape of the market going forward. If Transco is not willing to behave reasonably in the MCG, it may be that the only route open is to make RGMA compliance a licence condition while Transco retains its monopoly.

Chapter 10
Ofgem request views on the timeline.
The published timeline appears ambitious. With the delay to RGMA that has been caused by Transco's position, there is the opportunity to introduce some contingency. While this relieves immediate pressure, T G & P would urge Ofgem to continue to work as hard as possible to deliver the SPAA in its final form at the earliest opportunity, having appropriate consideration for the complexity of the issues involved. T G & P would be very disappointed were work to be suspended, pending greater certainty around RGMA, or if SPAA was to be rushed through without appropriate consideration of the issues raised in our response.

We trust that the above comments will be properly considered in your future deliberation on the Gas Retail Governance. Should you have any queries regarding any issues raised in our response, please do not hesitate to contact myself for further assistance.

Yours sincerely,

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Appendix – SPAA Limited Contract Comments

Document Reference	Comment
Definition of Confidential Information	Too broad – covers all information and data provided pursuant to this agreement makes this unenforceable or prevents agreement from working. Should be specific to any information or data clearly marked as confidential
Definition of Designated Agreements	Only EC or Authority can define Designated Agreements? This appears unreasonable
Definition of Domestic Supplier	Would prefer this to refer to Licence rather than an entitlement
Definition of Gas Transportation Database	Should be redefined as a Gas Transportation Register – 'register' is the terminology used in the GT Licence (LC31)
2.1	Does this make sense?
4.1	Should reference be made to other parties, e.g. GTs?
4.2	This form of application appears very broad if new parties are going to have to provide any form of documentation that could arbitrarily be requested on the form by the EC. This should be specified more clearly.
4.4	Is the only reason that SPAA EC can refuse membership down to disclosure of this information – this is what appears to be implied, but then the contract states that the applicant will be informed of the reasons for the decision to turn them down – surely there can be only one. If there are more, then the acceptance criteria should be clearly recorded within this document. This underlines concerns re: exactly what documentation can be sought by the EC.
4.6	What happens if Accession Agreement remains unsigned?
4.7.2 (a)	This provision of licence or evidence seems a bit unreasonable
5.1	Should this also be subject to Clause 10
5.3 (and 5.6)	Suggests schedules can only gain a status as a result of a change request – this would imply that these schedules will not be in the agreement on the Effective Date, rendering the value of the agreement questionable. An alternative interpretation would be that as these Schedules will not have a Status, they will be binding as a result of Condition 5.2.
5.9	Don't see point of this. Would we want our competitors having visibility of this information (lack of clarity on what will be in the elective schedules is obviously increasing our anxiety)
5.12.1	What is the request for removal supposed to achieve? It does not appear to be sufficient incentive to perform
5.12.1	Does calling the Supplier 'the non-Compliant Supplier' infer a guilty until proven innocent approach? Note that Non-Compliant Supplier is not a defined term.
5.12.2	Surely it is not for the EC to tell the Supplier why they can appeal. They should be asking for evidence of compliance. This may take more than 10 business days to provide.
5.12.3	Again, fail to see where the incentive to comply exists

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5.12.4	Does not allow Non-Compliant Supplier to provide evidence of compliance within ten days to the EC. Suggest that this should be supported
5.12.5	We do not understand why a Party not complying with an ELECTIVE schedule loses their place at the EC, especially if the (only) sanction is that they are removed from the register of Suppliers supporting that that elective schedule. If a Supplier is not on that register, how can they be held to be in breach to an extent that would justify this sanction?
5.15	Appears to contradict 5.12.5
5.18	..determination should be final and binding in the absence of fraud, manifest error, *error of law or breach or any legal requirement.*
6.3	Why no large/small I & C players? SME rep perhaps?
6.7	Wouldn't it make more sense to align SPAA EC elections with the Gas Year?-October – September – see no rationale for introducing yet another calendar
6.8	Reference to Clause 20.2 for report of SN appears erroneous - should be 21.2
6.10	As for 6.8
6.12	As for 6.8
6.13	As for 6.8
6.14	Does this give Suppliers the right to fire EC members at will when they are representing their constituency? Appears to go against the principle of elections..
6.16	Wouldn't it be more sensible just to leave the seat unoccupied pending it being taken up?
6.35	Would the non-accidental omission invalidate proceedings? How can the accidental element of this be proved?
6.36	What comfort do we have that the EC will remain within the scope of the SPAA business and not seek to extend its influence? The terms of reference for this group are in no way clear.
6.37	Slightly concerned about observers not being able to speak or being arbitrarily excluded
6.41	Should be able to appeal minutes at any point up to their approval at the next meeting
6.44	A right of appeal to the Authority should be available to participants. In the penultimate sentence delete the words 'appeal the SPAA EC decision to the Forum for its determination' and replace with 'appeal the SPAA EC decision to the Authority for its determination'.
6.49	Appears to include consequential loss
6.50	signatories should not indemnify the Shadow SPAA EC for prior acts covered by insurance or taken in bad faith, therefore the following exception should be added at the end of 6.50 (as for 6.49), namely - "except for any costs and expenses which are recovered in accordance with the procedures set out in Clause 8 and any such costs, charges, expenses, damages or other liabilities which are recovered under any policy of insurance in favour of any or all of the persons and Parties referred to in paragraphs 6.49.1 to 6.49.5 or suffered or incurred or occasioned by the wilful default or bad faith of, or breach of contract by, the relevant person."
6.51	Should the SPAA Forum approve the ToR of any sub-groups? Should these groups be formed by the Forum?
6.53	Surely whether these decisions have binding effect is based on whether they are relevant to elective or mandatory areas. Even then, these should be subject to the approval of the SPAA Forum
6.54	This would appear to give the EC the right to employ various consultants as it sees fit- would these be employees of SPAA Limited?
6.56	How is this policed to ensure that the industry is getting value for money?

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7.22	Given the very different constitutions of the domestic and I and C market, is it appropriate that both markets have the same structure? We do not believe that even the 20% capping will allow voting in the two markets to be comparable.
	.
7.11	A further 20 Working Days from when?
7.15	Seems to imply the Forum cannot create sub-groups for investigating issues. Uncomfortable with this
7.16	As for 6.8
7.19	Don't understand requirement for restriction on work of adjourned meetings
7.20	Should the reference to resolution of the meeting refer to resolution of the issue upon which participants are voting?
7.23	Typo – each suppliers' should read 'each Supplier's'
8.1	Why is the EC able to recover its cost in this way? Does this include travel expenses of EC members? Deeply concerned about this – what incentives exist to keep costs down?
8.1.2	How can we ensure these costs are minimised? What checks are put in place to ensure the EC gets value for money.
8.2	Welcome commitment to £200k limit between September (?) this year and end-March next, but would like to see a commitment to limit the budget to £250k(?) every year thereafter – could agree RPI – X type arrangement.
	We do not see why clause 7.12 and 7.13 need to be suspended for the first SPAA Forum
8.4.1	It is not appropriate for all non-committed work to be held in abeyance until we agree to give SPAA its money.
8.4.2	It is not appropriate for Ofgem to set the budget if the funding parties do not support it
8.5	So even if the Forum approves only a certain budget, the EC can arbitrarily vary it? This is not acceptable
8.6, 8.7	What about unapproved costs?
8.10	So is SPAA's incentive to perform that if it exceeds its budget, it carries the cost? Surely this is an incentive to inflate the budgets?
8.12	Need to ensure absolutely every service is specified in the highest possible terms within the contract as SPAA Limited is reserving the right to charge us for any other work completed.
9.1	Typo in line 2 – Change of Proposal should read Change Proposal
9.7	Why not Gas Year?
9.8	Do not believe that 10 working days is sufficient notice – should be 15 as per existing process
9.9	Seems unusual that Change Proposer is not asked or given opportunity to present change to EC
9.10	How robust is this – experience of Mod Panel suggests that Ofgem will take as long as it takes. Not sure that limiting their period for review is warranted or enforceable as they are not parties to the contract. In fact, in the consultation, Ofgem makes it clear that it will not have its discretion fettered.
10.1.3	Typo. The word 'is' in the sentence 'A Party has an administration order is made….' Should be deleted
10.1.4	Could the first part refer to refinancing? Why should this be a default if SPAA debts are unaffected/continue to be paid?
10.1.6	Do not understand why this is a default. Why is obligation to pay included in Force Majeure?
10.4	Would prefer reference to timescale to refer to Condition 10.1.1 rather than to 'the aforementioned' as Condition 10.1.1 is not aforementioned.
11.2.2	This would suggest we have to give prior notice to other parties that we intended to use information provided by them in ISDs, for example to sort out the customer's problems. This does not seem very sensible.

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11.4.3	This marking should be on all confidential information provided and should be included in the definition of Confidential Information
11.9	Would like some governance around what SPAA EC can request and some liabilities if any member of SPAA EC fails the obligation to keep this information confidential
14.1	Right to grant or revoke derogation appears sweeping – should be a notice period for revocation of derogation – currently SPAA EC can grant or revoke 'as it sees fit.'
21.1	Misnumbered – numbered 20.1 in contract
21.1	Not overly keen on right to audit past 28 months data
24.2	Missing opening bracket on (or other third party notice)
Schedule 5 2.3	RGMA is supposed to be the raison d'être of SPAA. Why is it listed as a future development?
Schedule 6	No products? Why is the RGMA Baseline not listed?