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Draft Guidance on impact assessments 172/04

Dear Michael

Thank for the opportunity to respond to the above consultation.

We agree with Ofgem's view that conducting an assessment of the impacts of change is an integral part of policy development and encourages a structured approach to decision making. We are concerned however that the proposals outlined give Ofgem considerable discretion over when and how an impact assessment will be carried out.

It is proposed that Ofgem will decide when a proposal is not 'important'. Although they will set out the reasons for taking this view, a clear process should be established to address those instances when market participants or the public disagree on whether a policy is 'important'.

We agree that in certain circumstances such as urgent changes, it may not be possible to conduct an impact assessment in a timely manner however if an issue has urgent status, it is even more imperative that the impact is assessed at some stage. The BSC, for example, contains a provision for retrospective review of urgent modifications following their implementation. A similar approach whereby a retrospective impact analysis can be carried out should be introduced for urgent policy decisions generally.

The consultation asks for responses on the impact assessments carried out to date. We have a number of observations in relation to the proposed sale of the gas distribution networks. We recognise that Transco have been seeking an early decision on this issue but are concerned that only 28 days consultation was allowed for each RIA despite them meeting many of the criteria referred to in paragraph 5.7.

These RIAs contained a relative large number of options, particularly those on Interruptions Arrangements and Agency and Governance. These were presented at a high level, making it impossible to accurately assess the likely impact of the proposals. In the case of Interruptions Arrangements, Ofgem are proceeding on the basis of an option that was not specifically consulted upon.

The RIAs on Offtake Arrangements and Interruptions Arrangements made little effort to

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quantify the problems that Ofgem asserted existed or why these were considered unduly discriminatory. A number of the issues being consulted upon had been the subject of extensive discussion between Ofgem and the industry over a period of years yet the RIA did not reflect the difficulties encountered over this period and reverted back to discussion of the high level principles.

A number of the RIAs issued in relation to the proposed DN sales have relied heavily on qualitative analysis, particularly the one on Agency and Governance. Where quantitative analysis was undertaken this was subjective with little assessment made to ascertain the robustness of assumptions. Where industry was asked to provide cost information to inform the process, timescales were short and then the information requested was subsequently presented in an unstructured and confusing form.

In the case of the RIAs on Offtake Arrangements and Interruptions Arrangements, a number of significant risks and uncertainties were identified by respondents. There seems to have been little analysis undertaken of the 'robustness to external shocks or flawed assumptions that could jeopardise the success of the policy identified and lead to the outcome being other than forecast'. As yet we are also unaware of any proposal to 'assess the success of the policy once it is implemented'.

We are pleased to see that the impact assessment regime is extended to include Industry Codes. We have been concerned in the past that modifications have been approved subjectively on the basis that they will better facilitate the Applicable Objectives. An impact assessment containing a cost/benefit analysis may reveal the contrary. We believe that this may have been the case with approved BSC modification P98 'Dual Notification of Contract Positions' where both the majority of the industry together with the BSC Panel recommended rejection.

Finally, it is important that impact assessments are revisited after implementation of the proposed policy and/or Code modification to ensure that the assumptions made and impacts anticipated were correct. This will help ensure continual improvement of the impact assessment process.

If you wish to discuss any aspect of our response, please do not hesitate to contact me.

Yours Sincerely

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