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Dear Jon,

**Role of code administrators and small players/consumer participation,
BWEA Response**

BWEA is pleased to respond to your Code Governance initial proposals on "*the role of code administrators and small participant / consumer initiatives.*"

Our comments reflect Ofgem's proposals as set out in Chapter 3.

The "critical friend" approach for code administrators

Overall, BWEA welcomes the "critical friend" approach (3.2). BWEA noted in its previous response that we believe the codes do already endeavour to provide this kind of service. We do however think there is value in formalising this role, to provide some consistency for customers and guidance for the code administrators.

BWEA notes the "primary" and "secondary" activities which Ofgem is proposing to define for the critical friend role. We agree that this kind of guidance should be helpful, but note that there is an overlap with some of the other proposals which could result in blurred responsibilities. For instance:

- Ofgem is proposing that the code administrator alert the Panel chair of any inadequacies in analysis. Ofgem is also separately proposing that Ofgem itself would "*issue directions/instructions on analysis that must be undertaken on a proposal before it is submitted to the Authority*" (3.48) as part of its call-in and send back powers. BWEA believes that it would be helpful for the critical friend to challenge both the Panel and Ofgem's thinking, but that Ofgem should take final responsibility for setting out an acceptable standard of analysis. Any instruction from Ofgem should be cognisant of available resources to carry out the analysis.
- The responsibilities which Ofgem calls "secondary" activities are similar to those described under the proposed duty to assist small participants and consumer groups. Again, any guidance should be harmonised across these two objectives, with clear lines of responsibility.
- Implementation of the critical friend role through code changes is interactive with

the content of the voluntary code of practice. BWEA does not have strong views on whether voluntary or mandatory standards should apply. We believe, however, that some kind of review and evaluation of the code administrators' performance would be useful.

Ofgem has estimated the impact of providing a critical friend role as an additional 0.75-1.00 FTE per code administrator. BWEA cannot really comment on resource requirements, which are a matter for the code administrators. However, we believe that there is a general improved baseline standard that is implicit in these proposals, in addition to the specific role as a critical friend. Our experience is that the present administration of the CUSC is quite significantly resource-constrained.

Obligations to assist small participants and consumer representatives

BWEA very much supports the scope of activities listed where the code administrators could assist small players. BWEA would add the requirement to ensure the use of understandable and much less 'code-centric' language – wherever appropriate, plain English should be used.

As noted, BWEA does not yet have strong views on whether these kind of obligations should be embedded in the codes or otherwise made mandatory. As the arrangements develop, and as more parties hopefully engage and use the new arrangements, we may form a stronger view.

Independent Panel chairs

BWEA welcomes the proposal to appoint an independent chair for each of the code panels (3.38) and agrees that cost recovery through the price controlled allowance of the code administrator is suitable. BWEA does not necessarily object to the Authority appointing the Chair. However, we would be supportive of, at least, industry being able to nominate possible candidates.

We are also concerned about the consequences for the Competition Commission (CC) route for appeal – which is currently only available where Ofgem's decision differs (in the case of the CUSC, at least) from that of the Panel's recommendation. Where an Ofgem-appointed person has voting rights and Chairmanship of the Panel, is this still appropriate? Or should the CC right of appeal be available regardless of the Panel's recommendation?

Call in and send back powers

BWEA generally supports the notion of Ofgem providing guidance to the modifications process on the scope and content of development and assessment work. This would formalise some informal practices and in that respect would be helpful for transparency purposes. We would ask that Ofgem is cognisant of time and resources when issuing directions – our experience during TAR is that Ofgem has quite high expectations on the quality and content of work, which is appropriate and which we support. However, we feel the timescales expected with this can sometimes be unrealistic.

BWEA would expect any call-ins or send backs to be accompanied by properly formulated reasons for the Authority's action and instructions.

Panel's reasons for decisions

BWEA agrees with Ofgem's proposals for publishing the reasoning behind Panel recommendations. We acknowledge that this would formalise some existing practices.

BWEA has also found it helpful where code administrators have reviewed consultee responses and provided feedback against all of the main views put forward. This has

also, on occasion, included constructive counter-challenge of those views, which we find a good discipline for future responses and which is much more helpful than an empty statement of disagreement or dismissal. Whilst provision for this kind of feedback may not be suitable for a license condition, we would commend it for any voluntary code of practice for the Panel and/or for Working Groups.

Performance scorecards for code administrators

BWEA supports the introduction of a scorecard evaluation (3.59) and would not be averse to similar assessments for Ofgem. The latter would provide a valuable perspective for Ofgem when it assesses the performance of other organisations.

With regard to the design of a scorecard, we believe essential perspectives highlighted in the voluntary code of practice for code administrators (in particular the customer perspective, e.g. the consideration of smaller participants) should be translated into scorecard indicators to ensure that voluntary tasks and behaviours are monitored. In addition, in line with a scorecard evaluation we believe code administrators should be made accountable for organisational effectiveness and efficiency on different levels such as: financial, environment, customer/social (which is sometimes referred to the 'triple bottom line').

- **ISO9001 accreditation for code administrators**

BWEA does not believe that code administrators should be required to obtain and maintain ISO9001 accreditation (3.63). Whilst ISO9001 focuses primarily on quality management, efficiency is not considered by ISO9001 (but would be e.g. by ISO9004).

Furthermore, ISO9001 requests the monitoring of customer satisfaction. We would prefer not to be constrained by the requirements of ISO9001 in monitoring customer satisfaction, instead focusing on the voluntary code of practice for code administrators, the results of which would be published in line with a scorecard evaluation.

Ofgem's estimate of the costs of ISO 9001 only includes estimated audit fees. The cost to the organisation in time and resources is much, much more. If Ofgem still considers that ISO accreditation would be beneficial, BWEA would recommend consideration of alternatives such as ISO 26000 Corporate Social Responsibility (which is now moving to the status of a Draft International Standard by October 2009, with potential publication by the end of 2010).

Code of Practice for the code administrators

This is mentioned briefly and Ofgem states it will be discussed further in its response to the Code Administrators Working Group (CAWG) report. BWEA supports a code of practice.

BWEA hopes you find these comments useful. If you wish to discuss any aspect of this response, please don't hesitate to contact me.

Yours sincerely,



Dr Gordon Edge, Director of Economics & Markets, BWEA