

2 July 2009

Lesley Nugent
Senior Manager - Transmission
Ofgem
70 West Regent Street
Glasgow G2 2QZ

Dear Lesley,

CAP170 Impact assessment and consultation

Many thanks for the opportunity to respond to this impact assessment. Our views on the CAP170 impact assessment and associated consumer related issues are set out below.

Consumer Focus is the statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland and, for postal services, Northern Ireland. We are the voice of the consumer and work to secure a fair deal on their behalf.

The context in which CAP170 has been raised is a major concern for Consumer Focus: dramatic increases in the actual and forecasted cost of constraint management. Constraint costs have increased from £70m in 2007/08 to approximately £216m in 2008/09, and are forecast to reach £249m in 2009/10. All the indications are that a connect and manage approach can exacerbate the problem further. These costs are, of course, ultimately borne by the consumer.

In its impact assessment, Ofgem estimates that, if implemented, CAP170 could reduce the costs to National Grid Electricity Transmission (NGET) of managing constraints by £40m per annum. Taken at face value, this can only be a good thing in terms of impact on consumers. Therefore, Consumer Focus supports the implementation of CAP170 and any mechanism that limits the ability of generators to benefit from locational market power. However, there are some fundamental issues and questions that arise in relation to CAP170. These are addressed below and in our responses to the detailed questions posed by Ofgem (see Appendix 1).

The CAP170 analysis brings once more into focus some important issues on market power. In its letter dated 19 January 2009 informing the industry of its decision to close the Competition Act investigation into the conduct of Scottish Power (SP) and Scottish and Southern Energy (SSE), Ofgem stated *"We have concerns with the behaviours observed during the periods under investigation. In particular it appears that both SP's and SSE's output has been much more expensive than that of comparable generators in England and Wales at times of constraint"*. The

letter also cited evidence of instances where SP and/or SSE may *“have behaved in ways that exacerbated, and in some cases created, constraint situations in relation to Scotland”*.

The same themes were reflected in the recent consultation on the proposed market abuse licence condition, which Consumer Focus strongly supports.

Similar concerns are raised again in the CAP170 impact assessment, with Ofgem acknowledging that it has concerns about market power behind the Cheviot boundary. As we noted in our response to the initial policy proposals on addressing market power concerns in the electricity wholesale sector, it is Consumer Focus’s view that market power is a real and recurrent problem, exacerbated by the limited scope for demand response and limited information made available to consumers on price. It is our view that remedial action needs to be taken immediately.

CAP170 goes some way to addressing the symptoms of the behaviours described but, if it is Ofgem’s view that constraint costs are excessive due to the abuse of market power by certain participants, then we would question why Ofgem closed off its investigations and invite it to investigate further under the Competition Act 1998 so that the appropriate sanctions can be applied for any breach.

Despite being supportive of CAP170, Consumer Focus does have reservations about the reduced timescales within which CAP170 has been progressed as an example of good governance, and there are clearly interactions with other changes in process (for instance, GB-ECM-18, proposing locational BSUoS charging). We also question why it has been cited by Ofgem only as an interim solution if, as is suggested, it could deliver steady-state benefits to consumers.

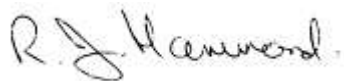
We also note the fact that in a competitive market, high constraint costs can be a reflection of the need for investment in the network, and wonder what steps Ofgem is taking to ensure National Grid thoroughly explores the linkages between SO costs and TO investment. CAP170 in itself will not resolve this issue.

All in all given the proven detriment to the consumer interest and the partial nature of the response evidenced by CAP170, we would question whether National Grid is responding to the concerns adequately enough. We would also ask whether Ofgem itself is pressing it and the industry hard-enough to bring forward a proportionate, rounded solution that is likely to be enduring.

Please refer to Appendix 1 for our detailed response to the impact assessment.

I hope these comments are helpful. My colleague, Victoria Moxham, would be pleased to follow them up with you either in person or via telephone (Victoria.moxham@consumerfocus.org.uk; 0207 99 7935).

Yours sincerely,



Robert Hammond

Head of Regulated Industries

Appendix 1

CAP170 Impact assessment and consultation

Response to questions by Consumer Focus

CHAPTER: Three

Question 1: Do respondents consider we have appropriately identified, and where possible quantified, the impacts of CAP170, including environmental impacts? If not, what additional quantification is required?

The quantitative analysis provided in the impact assessment demonstrates that CAP170 offers a cheaper solution to managing constraints. Ofgem's analysis indicates a positive impact on suppliers and ultimately consumers by reducing the costs associated with managing constraints. However, the impact assessment also includes debate on whether the administered price applied to Category 2 and Category 4 Intertrips is appropriate. Given this, it would be helpful to see some analysis of the impact of CAP170 with different levels of administered price applied. Is the outcome as favourable if different prices are applied?

Consumer Focus agrees with Ofgem's conclusion that there is no quantifiable environmental impact associated with CAP170. However, from an environmental/sustainability viewpoint, we note Ofgem's indication of the potential to speed up the connection of up to 450MW of Scottish renewable generation. Consumer Focus would be supportive of this, but we question the relevance of this issue in the context of CAP170. We base this opinion on two key factors: Scottish Renewable's claim (in its response to NGET's CAP170 Consultation Document) that, if given the go-ahead, these projects would take up to three years to build before connecting to the electricity network; and, the fact that by this time, the Cheviot boundary reinforcements will have been completed and constraint costs should naturally have been driven down.

Question 2: Do respondents consider that there are additional impacts that have not been fully addressed? Where respondents consider that there are additional impacts, what are these impacts?

No response.

Question 3: Do respondents wish to present any additional analysis that they consider would be relevant to assessing the direct and indirect impacts of the proposals?

No response.

Question 4: Do respondents wish to raise any other issues that they have not had the opportunity to raise in the course of NGET's consultations on CAP170 and the consequential changes given the urgent timescales?

It is Consumer Focus' understanding that the enduring solution to managing and minimising the cost of constraints is appropriate investment targeted at reinforcing the transmission network. Consumer Focus seeks reassurance that, regardless of whether CAP170 is implemented, Ofgem will take steps to ensure that an optimal solution is found (either via the Transmission Access Review or otherwise) to encourage adequate network investment.

Ofgem's impact assessment suggests that CAP170 would only ever be a short term measure, staying in place until enduring transmission access arrangements come into force. Is Ofgem satisfied that the benefits of implementation justify the costs (although we note that the impact assessment reports that implementation costs are likely to be minimal)? Would a solution that's only ever intended to be short term introduce turbulence and uncertainty into the market?

Despite these questions, we do note that constraint issues are likely to be exacerbated by works being carried out on the Cheviot boundary over the summer months, and sympathise with the need to find an urgent solution to help curb spiralling constraint costs.

Question 5: Do respondents have any views on the implementation issues associated with CAP170, including the nature, scope and development timescales for consequential changes to other documents?

No response.

Question 6: Do respondents consider there are any further risks and unintended consequences associated with CAP170 which the Authority should consider in reaching its decision?

There is a suggestion in the Ofgem impact assessment (also supported by responses to NGET's Consultation Document) that CAP170 could have an adverse impact on levels of investment in the GB generation market. This, combined with the potential for generation plant closure due to reduced intertrip payments to generators, could conceivably lead to concerns around security of supply. Has an impact assessment been undertaken on the severity of this impact? Perhaps mitigating action could be undertaken to guard against unintended consequences on generation plant investment and subsequent impacts on security of supply.

CHAPTER: Four

Question 1: Do respondents have any views on both the process and timetable that are proposed for the Authority making its decision on CAP170?

Consumer Focus shares some of the concerns on the urgent nature of CAP170 raised by responses to the NGET Consultation Document. However, we do take comfort from the fact that Ofgem has built a 6 week consultation window into the CAP170 timetable. We support the suggestions made in responses to the NGET Consultation Document that a working group should be set up immediately after the implementation of CAP170 (if approved) to allow more considered discussion and analysis of the issues raised.