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Dear Catherine,

Re: Open letter consultation: Code Administration Code of Practice 31 March 2010

I am writing to you as CUSC Amendments Panel Chair on behalf of the CUSC Amendments Panel. I would also like to thank you for the opportunity to respond to the above consultation.

To begin with, the Panel broadly agrees with many of the high level principles, however, there are a few observations which the Panel feel should be addressed.

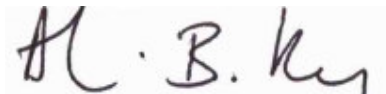
The main concerns are over Principle 4 (The code of practice will be reviewed periodically and subject to amendment by Users), Principle 10 (Modifications will be consulted upon, be easily accessible to users and allowing proportionate time for responses) and the proposed KPIs. Answers to the specific questions asked within the consultation can be found in Annex 1. In addition, under the wider code governance review the Panel has concerns over the timescales for implementation as discussed at April's CUSC Amendments Panel meeting, which Ofgem attended.

The Panel also has concerns that the introduction of the Code of Practice on a mandatory basis may not be entirely appropriate due to its evolving nature. It is the recommendation of the Panel that once the Code of Practice has been trialled and any lessons learned implemented, the Panel could then look to mandate its use.

Once these concerns are addressed, in the view of the Panel, the proposals outlined in the consultation document are broadly supported.

If you wish to discuss further please do not hesitate to contact me.

Yours sincerely



Alison Kay
Amendments Panel Chair

ANNEX 1: Responses to the specific questions raised in the consultation document.

Question 1. Do you agree with each of the principles listed in the CoP?

Question 2. Is the description of the change process in the CoP sufficiently detailed?

The Panel has chosen to answer questions 1 and 2 together.

The majority of the Panel agree with many of the high level principles listed in the Code of Practice (CoP). However, with regards to Principle 4, it should be the CUSC Panel's role to propose amendments to the CoP. The Code Administrator should not be able to raise a change directly to the CoP without the consent of the CUSC Panel for the amendment to be raised in the Panel's name. There are also concerns as to how the Code Administrator will be able to raise modification issues that are relevant to small market participants as the Code Administrator will not have direct experience of the small market participants' business.

Turning to Principle 10, the Panel believes that further clarity needs to be provided with regard to the 15 day consultation period, whereby it should state that the time period applies per consultation as there may be multiple ongoing consultations at any one time.

The majority of the Panel also believes that the 15 business day consultation period may lead to the consultation paper being slipped beyond the next panel meeting which normally takes place approximately 25 days after the previous Panel meeting. However, papers are submitted 5 days before the Panel meeting leaving only 20 days allowing for the following:

1. Code Administrator to write up document for consultation allowing for feedback
2. 15 day consultation period
3. Code Administrator to incorporate responses in the document allowing for feedback

With regard to "Report to Panel and Panel recommendation, the CoP states that the "proposers will be entitled to attend and speak at Panel meetings." This statement is supported by the Panel. However, where a recommendation is to be made, the majority of the Panel believes that the proposer should not have the right to speak as the proposer could provide a distorted view of the counter arguments. This could potentially put other Code Parties at a disadvantage as they would not have the opportunity to attend the Panel meetings to put forward any counter arguments.

The issue of proposer's rights to address the Panel has been debated previously in a BSC modification proposal (P247 – Proposer 'ownership' of modification Proposals) which is currently awaiting a decision from the Authority. The BSC Panel recommended that the Proposer's right to attend the Panel should be removed as the BSC Panel believes that this can already be achieved under the current arrangements.

Question 3. Is there anything missing from the CoP that you feel should be covered?

A minority of the Panel believes that the recording of the cost of contributions from stakeholders in the development of code change proposals should be captured within the CoP.

Up to now the cost of developing (as opposed to implementing) an individual change proposal has been limited to just those costs incurred by the Code Administrator. Given that the number of Working Group attendees is known; and allowing (i) say a 1.5 multiplier per Working Group meeting day (to take account of reading / thinking time and ad-hoc discussions etc..) and (ii) 2.5 days per consultation response received (to take account of assessment of the impact); it should be possible to work out the amount of time contributed, per change proposal, by industry.

Question 4. Do you agree that the CAs should be required to report on their KPIs?

The Panel agrees that CAs should be required to report on their KPIs.

Question 5. Do you agree that those KPIs should be set out in the CoP?

The Panel believes that it may be useful for the KPIs to be set out in the CoP.

Question 6. Should the results of the KPI reporting influence future revisions to the CoP?

The Panel believes that it may be useful for the results of the KPI reporting to influence future revisions to the CoP.

Question 7. Do you have any comments or suggestions on the proposed KPIs?

The majority of the Panel agrees that “the number of final decisions in line with Panel recommendations” should be recorded. However the panel disagrees that there should be a target increase in this number. In order for the Panel to meet this KPI, it would require the Panel to predict what the Authority required, which may not always align with the Panel’s recommendation.

Given the Authority’s wider statutory duties, there are many reasons why the Panel’s recommendation would be different to the Authority decision, the view of which is supported by the introduction of the Competition Commission appeal route.

The majority of the Panel has concerns over the performance metric to increase the number of respondents to a consultation. Resource constrained parties may not submit a response and the Code Administrator cannot force responses from stakeholders. Whilst the KPIs can be a useful monitoring tool, it would be inappropriate to consider all of them as a Code Administrator performance measure as they cannot fully influence the targets.