

Angelita Bradney  
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Ofgem  
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SW1P 3GE

10<sup>th</sup> February 2012

Dear Angelita

### **RIIO-T1 Implementing competition in onshore electricity transmission**

Transmission Capital Partners is the leading offshore transmission owner in the UK and we welcome the opportunity to contribute to the design, build, financing and ownership of onshore electricity transmission.

We expect that there will be synergies between the further development of the offshore regime (the enduring OFTO build model) and this development in the onshore regime, as the same independent companies can be expected to be willing to pursue these opportunities, providing increased confidence of delivery and cost reduction for users onshore and offshore, and ultimately consumers.

We note that the criteria for the selection of what can be put out for third party delivery remains largely unchanged and consider that it would be useful if Ofgem produced a list of projects that might be considered for third party delivery. In our view there are few significant sized projects (>£50m) that cannot be separately defined and would therefore in general include projects that might be deemed to be “meshed” unless there are specific reasons to exclude them. It is important to note here that every OFTO project connects two networks (with an inter-array network at the offshore end) and therefore in that sense can be considered meshed. Furthermore, additional circuits running in parallel with a third party owned asset should not present any particular problems in respect of delivery, ownership and operation. We have concerns that onshore TOs may be incentivised to design systems in a “meshed” way if this enables them to avoid competition. We believe that this may already have been a driver behind designs put forward for the offshore network.

We agree that critical infrastructure should not be exposed to significant risks to timely delivery. However, we consider that third party delivery should be able to match and in many cases exceed delivery speeds of incumbent TOs. We also consider that there is a risk that if timing is used as an excuse not to allow third party delivery, incumbent TOs will be incentivised to delay the development of assets that might otherwise fall into this category until timing is critical, in order to avoid

competition.

Whilst we consider that onshore TOs should remain responsible for the development of all assets in their area, we believe that the most effective process will result if:

- an independent organization designs the onshore grid; and
- the development of assets to be competitively procured is not carried out by a party taking part in that competitive process.

We still have a significant concern if the incumbent TO were allowed to bid. At the very least we would expect to see business separation arrangements no less stringent than placed on the TOs in respect of offshore transmission, but would consider there is still a strong argument that the incumbent TO should not be allowed to bid at all.

Responses to the specific questions raised by the consultation are contained in the attached annex.

We are of course available if Ofgem would like to discuss further the issues raised in our response.

Yours sincerely



**Chris Veal**  
Director, Transmission Capital Partners

## **Annex 1**

### **CHAPTER THREE**

**Question 1:** *Do stakeholders consider that we have correctly identified the changes to industry codes that would be required to enable third party involvement in onshore electricity transmission?*

As an Offshore Transmission Owner and member of the STC Committee, our expertise is focussed on the SO-TO Code. We have reviewed your identified changes and consider these are most consistent with a model based on the arrangements for offshore. The arrangements for offshore essentially treat the OFTO network as a generator. The technical requirements and operational procedures are based around an interface between the TOs that is akin to what an onshore generator would be expected to provide under the Grid Code. If the network being provided by the third party is not capable of being considered in the same way, then further code modifications may be required. For example; offshore networks are required to provide reactive power at the onshore interface, this may not be appropriate if a party was building onshore.

**Question 2:** *Do stakeholders have any comments on the changes proposed to the industry codes in Appendix 2?*

Our response to this question largely follows our comments to Question 1. From our experience of participation in the STC Committee; we believe that the necessary code changes are best delivered through the normal industry governance. This is particularly important in this case, as there are likely to be implications from the changes for both existing onshore and offshore TOs. We note that in order to deliver the necessary changes it is important that the model being considered is sufficiently well defined at the time the review takes place.

**Question 3:** *Do stakeholders have further comments on the proposed process and timetable for enabling the industry code modifications?*

We agree with the timetable and as a holder of three Transmission Licences we would be willing to assist in initiating STC changes if necessary.

### **CHAPTER FOUR**

**Question 1:** *What level of detail would be required for the following pre-construction outputs in order to hold an effective selection process:*

- *project design*
- *technical specifications*
- *route identification*
- *site studies*
- *environmental impact assessments and stakeholder consultation?*

There is a large degree of overlap between the information required for this exercise and that required to initiate an OFTO Build tender exercise, we would therefore recommend that Ofgem adopts a consistent approach to these similar processes. In respect of the above items, we would suggest the following are necessary and should be made available in an electronic data room:

Project design	Should include full consent application, setting out "Rochdale envelope" within which project needs to be built, any deviations/derogations from industry standards (SQSS, STC, Grid Code etc.), how losses
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	are going to be assessed in the bidding competition.
Technical specifications	<p>Should include interface agreements with the network owner at each end, a draft of the TOCA required under the STC, any other technical standards that need to be met.</p> <p>We would also expect that a full set of system data would be provided so that bidders can carry out detailed design on all parts of the assets to be provided including HV plant and protection systems. Frequently this will need to include highly detailed technical data, for instance the harmonic impedances of the system.</p>
Route identification	We would expect the incumbent TO to provide a route corridor and be responsible for providing all necessary landowner consents (onshore and offshore if applicable). Agreements should be made available in time for bid, if not available cost consequences of agreement terms (e.g. increased insurance requirements) should be a pass through item.
Site studies	<p>Site surveys should be carried out by the incumbent TO in time for bid to a project-specific specification developed in accordance with good industry practice with reliance at a meaningful professional indemnity limit, and/or with the successful bidder able to pass-through on elements where a successful bidder's survey shows errors or gaps in the TO's survey.</p> <p>This should be relatively easy onshore where boreholes at the locations of substations and towers would be required. The specific location should be known as these will be required as part of the consent application.</p> <p>Offshore (if applicable) whilst the route should be known, survey requirements are less objective. Whilst geophysical and geotechnical seabed surveys should be undertaken by the developing TO, there should also be a mechanism for adjusting the tender revenue stream in situations where the level of detail proves inadequate. This may also be required for onshore works that are particularly sensitive to ground conditions (e.g. tunnels or long directionally drilled bores).</p>
EIA and stakeholder consultation	All EIA and stakeholder information should be made available in the electronic data room.

**Question 2:** *Should planning consents be in place before the selection process?*

As for the OFTO Build model under the enduring offshore regime, we would consider that it is not necessary that consents are in place prior to commencement of the tender exercise, but that in general Preferred Bidder should not be awarded prior to consents being obtained. This would allow Ofgem the flexibility of seeking revised tenders if planning consents required, for example, significant lengths of undergrounding not originally foreseen. However, we would expect Ofgem to retain some flexibility to award Preferred Bidder

without all consents in place if time is of the essence and there is a mechanism to assess the cost consequences of outstanding consents.

**Question 3:** *Should land be purchased or wayleaves obtained by the incumbent TO before the selection process?*

Yes, this should be carried out by the incumbent TO and bidders should not take the risk of landowner consents not being obtained or of the terms contained in landowner agreements. Whilst in theory this could be done by a bidder, it would not be sensible for this to be carried out by bidders during the tender process as the situation would potentially arise whereby several bidders were approaching the same landowner (who is likely then to refuse to deal with any of them at that stage). If left to post bid stage then there will need to be arrangements to deal with the consequences of delays obtaining these wayleaves or in not obtaining them in the form envisaged.

**Question 4:** *What are stakeholders' views on the desirability of Ofgem seeking independent verification of the needs case and solution proposed by the incumbent TO in advance of any selection process?*

We consider that the need case for the project should have been irrevocably determined prior to the tender being commenced and inability to obtain planning or landowner consents should be the only reason for the project not proceeding. Bidders should not be exposed to bid costs or lost opportunity costs on tender exercises that do not result in a project proceeding and to do so would increase costs to bidders and ultimately consumers.

**Question 5:** *Do stakeholders have a view on whether pre-construction outputs could be retained by the incumbent TO or transferred to the eventual asset owner? Is there a difference depending on the output in question?*

In general we consider that all pre-construction outputs should be transferred to the successful bidder unless there is a very good reason not to. A potential example (from offshore) is the MMO licence which may not be transferable. In particular all land rights should be transferred as it is questionable as to whether projects will be bankable without these.

**Question 6:** *What kind of commercial arrangement, if any, should be used to facilitate the sharing or transfer of pre-construction outputs between an incumbent and third party TOs?*

An Ofgem defined standard transfer agreement should be adopted (as has been done for the offshore regime). Bidders should be neutral to the price for the assets transferred and during the tender process they should be asked to assume a certain price and be allowed to pass through the consequences of any deviation from this price that have been approved by Ofgem prior to transfer.

**Question 7:** *Do stakeholders consider that the staged approach we have outlined, which would allow interested parties obtain a 'light touch' licence, is appropriate?*

We consider this may be appropriate. We are unsure of the rationale to award a light touch licence prior to appointment of successful bidder as opposed to the process in the offshore regime where the licence is only awarded at that stage. However either can work.

**Question 8:** *Do stakeholders agree that some form of business separation arrangements will be necessary for incumbent TOs?*

Yes – please see below.

**Question 9:** *What form of business separation arrangements do stakeholders feel would be appropriate for incumbent TOs?*

We consider that the incumbent TO should not be allowed to bid for assets that are put out for third party delivery. In respect of a project put out for third party delivery, and unless Ofgem is going to take a broader view on what projects to invite competition, the incumbent TO has already failed to demonstrate that it is the best party to deliver it. Incumbent TOs, who will be responsible for the development of assets to be put out for third party delivery, if also allowed to bid, then may seek to gain a competitive advantage in this process by:

- Developing assets in such a way that they have a competitive advantage in procuring and building (e.g. by using technologies or equipment layouts specific to a particular manufacturer with whom they have a preferential relationship, or in such a way that would make them unattractive to project finance); or
- Using the development process to minimize their bidding costs (i.e. by avoiding the due diligence costs that other bidders will need to incur).

In our view the incumbent TO(s) in whose area the project falls should not be allowed to compete to deliver competitively delivered assets.

If Ofgem does allow the incumbent TO to bid then the most stringent business separation arrangements should be put in place, at least as stringent as those in respect of the offshore regime, and preferably more so, including:

- Separate legal entity, not a subsidiary of the TO but may share the same ultimate shareholder(s).
- New transmission businesses must comply with unbundling legislation.
- Separate office locations and IT systems
- Separate boards (with no common directors)
- No transfer of personnel from TO to bidding entity
- No use of incumbent TO design, procurement or project management functions
- No use of incumbent TO supplier relationships

Ofgem states that “*we do not want to create barriers to entry for incumbent TOs through unnecessarily onerous business separation requirements, particularly as, where no suitable third party proposals are received, the incumbent could be responsible for delivering the project.*” Our proposed business separation arrangements comply with this principle since:

- i) The restrictions are necessary as otherwise third party bidders will be dissuaded from taking part at all and are unlikely to incur the significant bid costs required.
- ii) These restrictions build on the business separation arrangements already required for OFTOs and on the requirements of unbundling legislation.
- iii) If no suitable third party bids are received, then we would consider the project should revert to the incumbent TO. Thus in this situation business separation ceases to be an issue.

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