

From the Chairman of the Distribution Code Review Panel

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Dear Lisa

Code Governance Review Phase 2

I am responding to this consultation on behalf of the Distribution Code Review Panel. Accordingly the answers below are only in relation to those questions that relate to the Distribution Code. As will appear in the answers below, the Panel is unaware of any particular defect in the Code's governance and administration, and does not see that minor differences in administration compared to other codes as sufficient grounds for making changes at this time. The Panel recognizes the significant changes to the Distribution Code that will flow from implementing the EU Network Codes and believes that it would be more appropriate to consider these issues again once the new GB code landscape has become clear.

Chapter 2 Question 1 *Do you consider that a "fast track" self governance process should be available in the industry codes for minor housekeeping changes?*

The Panel agrees that this is desirable. However in general such changes to the Distribution Code have been held over until a more significant code change is required and implemented at that time. It is possible that an urgent but minor change could be required. However there has been very little historic requirement of urgent changes. The Panel notes in 2.32 the assertion that 50% of code changes could have been done under self governance. The Panel does not believe that this is a true representation of Distribution Code changes. Of the 18 amendments to the Code since it was written, at most only 3 of these could be considered to be sufficiently minor that they would not need Ofgem scrutiny and sign off. In assessing Distribution Code changes it must be remembered that a simple change to Annex 1 will usually represent a significant change to an Annex 1 document, which will have a material effect on Users and is subject to the same governance requirements as the Code itself.

Chapter 2 Question 4 *Do you consider it appropriate to apply the same governance principles to the Grid and Distribution Codes as are applied to the commercial codes?*

In general yes. However it is also important to take a pragmatic approach to what is required. There is no benefit to Users or customers from imposing a significant bureaucratic overhead compared to the historic arrangements, especially as no particular defect has been identified.

Chapter 2 Question 5 *Do you consider that both the Distribution Code and the Grid Code should be modified to allow for an open governance framework? In particular, allowing code users to raise code modifications; enabling code panels to have a more formal role in evaluating and recommending code changes; and the governance procedures brought into the codes? Are*

there any other areas of governance that you consider could be improved in Distribution Code and Grid Code?

The Panel believes that they, or indeed any User, can raise modifications to the Code. This is enshrined in DGC 4.2(c). Although the language is different from other Codes, the principle is that any legitimate person can initiate a modification to the Code. There would be no practical change to the operation of the Code or the Panel if such a change was made.

The Panel notes that in Appendix 3, 3.29 states that only DNOs can review the code and propose changes. The Panel does not believe that this is a correct description. Any User can request a change and the Panel is bound to consider this. It is the DNOs who make the recommendation for the change to Ofgem following consideration by the Panel. Whilst it is true that DNOs might not agree with proposals, they are bound to include the view of the Panel and of any consultation responses, in their report to Ofgem.

Chapter 4 Question 1 *Do you agree that all industry code panels (or their equivalent) should provide substantive reasons for their recommendations/decisions?*

Yes. In recent years any proposed changes to the Code have been accompanied by appropriate reasons and benefits, and where appropriate an impact assessment.

Chapter 4 Question 3 *Do you agree that the Authority should be able to “send back” final modification reports in all codes, where a deficiency/ flaw in the report is identified?*

Yes. But in fact the Authority can already do this as there is nothing to fetter it sending back a Distribution Code change for further work. Furthermore the Authority has the power to direct code changes following submission. So although again the language in the Licence and the existing Distribution Code governance might not use terms like “send back”, the practical effects are likely to be much the same.

On the other hand, the Panel would welcome a little more clarity about the Ofgem process authorizing Distribution Code changes. In the case of the recent ER G59 and ERG83 proposed changes, Ofgem has sought separate consultant input to review the proposals, and in the case of G83, effectively reconsulted on the proposals. Whilst this has produced useful new comments from affected parties and Users, it has effectively elongated the process considerably. It would probably be more efficient for Ofgem to consider undertaking these checks or consultations earlier in the process. The Panel would be happy to work with Ofgem to review the process.

Chapter 4 Question 4 *- Do you agree with the proposal to require all codes to have regard to and, to the extent relevant, be consistent with the CACoP principles?*

Yes. The Panel has already embraced the CACoP principles to the extent that they are helpful and applicable. We note that Appendix 2 of the consultation paper notes that the principles should be applied to the extent that they are helpful recognizing the different nature of the Codes.

Chapter 4 Question 5 *Do you consider that a requirement on code administrators to fulfil a “critical friend” role should be set out in the relevant licence?*

The Panel is supportive of the concept, but notes that there is no specific code administrator for the Distribution Code. The administration is also undertaken by the DNOs, albeit contracted to the ENA. It is not clear how this concept could be applied to the Distribution Code.

Chapter 4 Question 6 *- Do you agree with the amendments to the CACoP (Appendix 2) and do you consider that the standard process and templates described by the CACoP should have the status of guidance (rather than being mandatory) at this stage?*

For the reasons given in earlier answers to this Chapter the Panel believes that CACoP should have the status of guidance as far as the Distribution Code and the Panel are concerned.

Chapter 5 Question 1 – *do you agree with the timetable proposed?*

No. The process of assimilating EU Network Codes into the GB arrangements is likely to have started in earnest by Summer 2013. It seems inappropriate to be changing the Distribution Code governance arrangements when there might not even be a separate Distribution Code in the long term. The implementation of EU Network Codes into GB is a complex and all encompassing task, and it seems a waste of effort to make modifications to a regime that will both change substantially and has not been shown to have any significant defects.

Yours sincerely,

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Chairman of the Distribution Code Review Panel of Great Britain