

All Transmission System  
Operators and all interested  
parties and stakeholders.

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Dear colleague,

**Consultation on Ofgem's Minded to Decision to assign TSO obligations under the Capacity Allocation and Congestion Management Regulation (CACM Regulation) within GB.**

Our<sup>1</sup> 18 December 2014<sup>2</sup> open letter set out the general principles we intend to apply in order to assist in the implementation of the EU "electricity network codes" (ENCs) in GB, and the critical first steps to implementing the CACM Regulation.

This letter sets out Ofgem's minded to decision on assigning the new obligations under the CACM Regulation to the Transmission System Operators (TSOs)<sup>3</sup> that currently operate in GB. This letter sets out: Ofgem's application of Article 1 (3) in the CACM Regulation; the four step process we have followed in order to assign TSO obligations in GB; and the principles we have applied in coming to our minded to decision. This letter also discusses our current view of how to address future changes to the assignment of obligations.

We welcome views on: (a) the CACM Articles that we think have TSO obligations; (b) our application of Article 1(3); and (c) the assignment of responsibility for the obligations under the CACM Regulation as set out in Annex 1 of this letter.

It is likely that the other ENCs will include Article 1(3) or a similar provision allowing for the assignment of TSO obligations. This will become clearer once the remaining ENCs are finalised. If a similar provision is included, and DECC wish us to do so, our current intention would be to run a similar process.

**Ofgem's application of Article 1(3)**

The CACM Regulation places multiple obligations on all TSOs in all EU member states (MS). The default position under the CACM Regulation is that all TSOs within a MS are required to comply with all of the obligations placed on TSOs under the CACM Regulation<sup>4</sup>. However, where there is more than one TSO in a MS, Article 1(3) of the CACM Regulation allows MS to provide that the responsibility for complying with the obligations of the CACM Regulation be assigned to one or more different, specific TSOs.

Article 1(3) of the CACM Regulation states that:

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<sup>1</sup> The terms "the Authority", "Ofgem", "our" and "we" are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority (the Authority).

<sup>2</sup> The open letter can be found [here](#).

<sup>3</sup> We are focusing on those TSOs that have a cross-border impact. We are considering the best method for assigning obligations to OFTOs.

<sup>4</sup> See Article 1(3) of the CACM Regulation.

*"In Member States where more than one transmission system operator exists, this Regulation shall apply to all transmission system operators within that Member State. Where a transmission system operator does not have a function relevant to one or more obligations under this Regulation, Member States may provide that the responsibility for complying with those obligations is assigned to one or more different, specific transmission system operators."*

We consider that Article 1(3) of the CACM Regulation provides a discretion to a MS, where *"a transmission system operator [in that MS] does not have a function relevant to one or more obligations under [the CACM Regulation]"*, to decide whether all TSOs in that MS should be required to comply with all of the new obligations placed on TSOs under the CACM Regulation.

DECC has asked Ofgem to assess whether all of the GB TSOs have the relevant functions required under the CACM Regulation and to decide whether to utilise the discretion under Article 1(3). DECC has also given Ofgem the responsibility for determining the most appropriate assignment of TSOs obligations in GB. There are multiple TSOs that currently operate in GB and who will be required to comply with the CACM Regulation when it comes into force. It is our view that obligations should only be assigned to operational TSOs because these are the only TSOs who can currently comply with the requirements of the Regulation. It is our view that, potentially, not all of the TSOs in GB currently have all of the relevant functions required to comply with all of the obligations under the CACM Regulation (for the reasons set out in our minded to decision in Annex 1), and so we consider it appropriate to use Article 1(3) to assign responsibilities amongst GB TSOs.

We consider that our role is only to assign responsibility for the specific obligations under the CACM Regulation to the most appropriate TSOs. We do not consider that Article 1(3) requires us to decide how TSOs will comply with these obligations once assigned. It is our opinion that the TSOs themselves are best placed to determine the most appropriate method of compliance with these new obligations. Any TSO may choose to utilise Article 81 of the CACM Regulation to delegate any element of any obligation to a third party. The TSO delegating an obligation in this way remains responsible for compliance of that obligation.

Once it enters into force, the CACM Regulation requires TSOs to develop terms, conditions and methodologies. We are running this process now so GB TSOs are ready to contribute to these within the timeframes set out in the Regulation. We intend to publish a final decision in June. Our current intention is to formalise that decision via a modification to each TSO licence. The assignment of TSO obligations is also a pre-requisite for the MS task of the allocation of TSO voting rights in GB<sup>5</sup>.

### **Ofgem's approach to assigning TSO obligations**

We have set out and are completing a four step process in order to assign TSO responsibilities. The four step process developed was:

STEP 1: Liaise with key parties that will operate market coupling and for those key parties to provide information to help inform our minded to decision.

STEP 2: Ofgem consultation on our minded to decision (the current stage in the process).

STEP 3: Ofgem's final decision on the assignment of obligations under the CACM Regulation to GB TSOs<sup>6</sup>. In reaching our final decision, we will work closely with and have the utmost

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<sup>5</sup> CACM Regulation Article 9(2) states that for TSO decisions under Article 9(6), one vote shall be attributed per MS. If there is more than one TSO in the territory of a MS, the MS shall allocate the voting powers among the TSOs.

<sup>6</sup> We understand that the Regulatory Authorities in Ireland and Northern Ireland (CER and UR), with the agreement of their respective Departments, expect to carry out a process for assignment of TSOs functions under the CACM with regard to the East West and Moyle Interconnectors as part of their decision making on roles and responsibilities for the I-SEM.

regard to the views of our neighbouring Regulators. This is important to ensure consistency of applying the Regulation to Interconnector TSOs. Therefore, we would particularly welcome their views on this consultation.

STEP 4: Formalising our Final Decision on the assignment of obligations under the CACM Regulation to GB TSOs. Our current thinking is that we will do this via a licence modification.

### **The principles Ofgem has applied in coming to a Minded to Decision**

We have reached the minded to decision in Annex 1 by applying the following criteria:

1. Does an article of the CACM Regulation confer an obligation on TSOs?
2. If so, have we been provided with evidence to suggest that it would be appropriate to remove an obligation from a TSO?
3. If so, are we convinced that there would be a benefit in so doing?
4. If so, would there be a need to apply the same approach to other TSOs performing similar tasks in the interests of maintaining a level playing field?

Ofgem had expected that, in a relatively large number of areas, obligations would have been allocated to a smaller subset of TSOs than is currently shown. However, on the basis of the evidence received to date, we consider that there is insufficient justification for bringing forward such a proposal. We would like to reiterate the importance of TSOs which consider that there would be a cost or efficiency saving associated with removing an obligation from them, providing evidence to support this position.

### **Future changes to the assignment of obligations under the CACM Regulation**

We recognise that the assignment of obligations under the CACM Regulation for GB TSOs may change over time. We foresee that such a change could be driven by four different sets of circumstances. We are minded to place the onus on the TSO(s) to provide evidence and justification as to why their obligations should change. We would welcome views on this and how to assess these potential changes.

1. **The development of the terms and conditions and methodologies under the CACM Regulation.** The CACM Regulation requires TSOs to develop a number of terms and conditions and methodologies. Once these methodologies are developed and approved, we may have to review TSO obligations to reconsider whether the allocation of responsibilities remains appropriate.
2. **A new GB TSO becomes operational.** We expect new TSOs to begin operating in GB over the next couple of years. If a new TSO considers that it is unable to comply and would like Ofgem to apply the discretion set out in Article 1(3), we would expect the new TSO to notify us and provide an explanation of which obligations it considers it is unable to comply with along with supporting evidence.
3. **Operational TSO change in activity.** We would expect the TSO in question to notify us of the material changes to its operational activity that could warrant a review of their assigned obligations under the CACM Regulation.
4. **Amendments to the CACM Regulation.** We would expect the GB operational TSOs to provide reasons backed up by evidence if a review of the assignment of obligations under the CACM Regulation needs revisiting.

## Consultation on our Minded to Decision

We invite all stakeholders to provide their comments on our minded to decision. Specifically, we are seeking views on the following four questions:

1. Do you agree that we have correctly identified the Articles of the CACM Regulation which place an obligation on TSOs?
2. Do you agree with Ofgem's application of Article 1(3) in assigning obligations to GB TSOs?
3. Do you agree with Ofgem's minded to decision on the assignment of obligations under the CACM Regulation to GB TSOs as set out in Annex 1?
4. How do you think Ofgem should assess future changes to the assignment of TSO obligations under the CACM Regulation?

Respondee are asked to provide evidence and justification to support any views that differ to our minded to decision.

We welcome the views of stakeholders on the issues discussed in this letter. Responses should be received by close of business Friday 24 April 2015 and should be sent to [michelle.murdoch@ofgem.gov.uk](mailto:michelle.murdoch@ofgem.gov.uk).

Unless marked confidential, all responses will be published on our library and on our website, [www.ofgem.gov.uk](http://www.ofgem.gov.uk). You may request that your response be kept confidential. We will respect this request, unless the law requires us to disclose anything, for example under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you'd like your response to remain confidential, clearly mark the document to that effect and include the reasons for confidentiality. Put any confidential material in the appendices to your response.

Yours sincerely,

Mark Copley  
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