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Dear Katie,

Consultation on licence changes to support electricity transmission competition during RIIO-T1

This response is on behalf of National Grid Electricity Transmission plc.

Executive summary

We welcome the continued work to explore the potential for extending competition in electricity transmission. This informal licence consultation represents a further helpful step and we look forward to contributing to the next stage of the process.

There are elements of the consultation that we support. In particular:

- **Tender Support Activities:** The high level proposals around managing incumbent Transmission Owner (TO) conflicts of interest are generally workable and are consistent in terms of principle with many of our existing ways of working. We will support the implementation of any transitional tender process that is deemed to be in the interests of consumers and communities. We welcome the clarification within the Decision Document that any activities undertaken by incumbent TOs to support a competitive tender will be funded.

- **Role of the SO:** We support the proposal that the role of the SO should be limited to identifying projects within the NOA which meet the competition criteria, and desktop studies, as this is consistent with the SO's existing capabilities. However, we think that this could be given clearer effect within the draft licence wording of Standard Condition C27 by clarifying what is meant by "early development" of SO-led options. We are supportive of more transparency within the NOA process. We would also like to see further explanation of the term "desktop" studies, as it is worth noting that some desktop assumptions, such as the extent of undergrounding required for a new line, are complex and could be sufficiently material to change the NOA outcome.

- **Conflict mitigation for all participants:** We welcome the fact that Ofgem has addressed the need for conflict mitigation measures to apply to all Transmission Owners and other participants who might have had some role in developing a project prior to tender, through some other part of the supply chain. These proposals will help ensure that all parties can be confident that a level playing field will exist for those entities wishing to participate in a tender. We would welcome further clarification of how conflict mitigation measures would be implemented and enforced in relation to parties who are not already licensed entities.

There are also elements of the consultation where we believe further thought is needed. In particular:

- **Primary Legislation:** It is not possible to award a Transmission Licence to a CATO without Primary Legislation being in place. It is therefore essential that more clarity is given as to the planned process and the timings for this work, particularly given that Ofgem are now in the process of consulting on specific projects that might be contested.

- **Licence wording:** The proposed modifications to the licence go some way to implement Ofgem's policy intent. We have included, as an appendix to this document, some suggested amendments to the licence drafting provided by Ofgem, as a starting point for further discussion. These amendments are not intended to be taken as a definitive view of what the licence should look like, but rather as a few initial suggestions that can be explored further. In particular, it is important that the role of the SO is properly defined, such that it does not go beyond desktop work, and that where the SO identifies further transmission build options, the subsequent detailed development work is undertaken by the TOs.

- **Competition criteria:** Ofgem's proposals to review the competition criteria periodically have the potential to create uncertainty, which could impact on investment decisions in Critical National Infrastructure. Moreover, we do not think there is much scope to deliver value to consumers beyond the current proposed criteria. We would encourage Ofgem to provide the industry with more certainty that the existing criteria will be given a proper opportunity to bed in before further changes are considered, and an assurance that any further potential changes will be rigorously assessed from a consumer benefit perspective.

- **Role of the SO in the transitional regime:** We do not see a role for the SO in supporting the competitive tender process in the transitional regime – this support role will sit with the incumbent TO that has developed the project to be tendered. We do, however, see a role for the SO in defining the need for the asset, and its criticality, which should feed into reliability and restoration strategies for the CATO asset.

- **Incumbent TO liabilities:** It is our understanding that Ofgem recognise that should a TO ultimately transfer over to a CATO a project that it has developed up to the point of tender, then the CATO will take on all liabilities from the TO at the point of transfer. We welcome this, but would like to see more clarity in the Licence drafting.

- **Generation and Demand connections:** For RIIO-T2, although we agree that some generation and demand connections may meet the competition criteria, careful consideration needs to

be given to the deliverability of such projects under a competitive tendering regime. There is a significant amount of churn in generation and demand projects, and currently the costs of such projects are efficiently minimised by the incumbent TOs, who due to their large portfolios are well placed to manage the risks associated with delay and termination. Extending the lead-time for the transmission construction by introducing a competitive tendering process is likely to introduce inefficient costs due to the early or unnecessary development of transmission work. When identifying projects for competition, Ofgem would need to demonstrate that the savings associated with the introduction of competition would outweigh these costs, in order to demonstrate that the competitive tendering of such projects is in consumers' interests.

- **Non-load related projects:** For non-load related projects, we would suggest that the existing asset owners are best placed to manage their own portfolios. Allowing replacement assets to be built and owned by another party would lead to a loss of the synergies and opportunities for efficient asset management associated with TOs owning a large portfolio of assets. Furthermore, although such projects may qualify as separable, the separate ownership of these projects may be problematic in operational timescales, particularly in a situation where CATO assets form part of a meshed network with the incumbent TO's assets.

  Splitting the identification of asset replacement schemes from the asset management capability may have safety implications, as the incumbent TOs would retain their legal obligations in terms of public safety and environmental management of the original assets, without being responsible for the replacement project. Competition would create an additional layer of complexity for incumbent TOs, who would be less able to manage their own network risk by taking the most efficient actions. This is also inconsistent with the integrated and transparent asset management approach promoted within the Network Output Measures, and may reduce the opportunity for consumers to benefit from innovative measures to extend asset life.

  The identification of the preferred solution relies on a detailed understanding of the capability of the existing assets: NGET has delivered consumer benefit in RIIO-T1 by targeting the part of the asset which needs to be replaced. Identification of projects by the SO, who would not have this capability or visibility, may lead to the unnecessary replacement of all or part of an asset. It is therefore difficult to understand how the competitive tendering of such projects would be in the interests of consumers.

Whilst beyond the scope of this particular consultation, we would like to highlight again some of our more general key considerations in this area.

- **Early model work:** We welcome the work which has taken place within the ENA working group to develop a workable early tendering model, and think that this would form a useful addition to the late tendering model.

- **Separability:** We would like to see a clearer definition of "separable" within the Criteria Regulations, when these are published. The ability to clearly delineate ownership boundaries

is not particularly meaningful: we would like to see that the entire project is electrically contiguous, and electrically separable from the incumbent TO's assets, and that work is appropriately bundled so as to minimise overall cost in terms of outage and resource availability.

- **Project funding**: The Decision Document refers to a situation where part of a project is competitively tendered, and the remainder no longer meets the SWW threshold, and will be delivered through "other appropriate regulatory frameworks". We would welcome clarification as to how such regulatory frameworks would be used, given that the works would not have been included within the RIIO-T1 allowances.

- **SO-TO separation**: We welcome Ofgem's current consultation on SO-TO separation, which is now running in parallel to ECIT consultations. It will be important to ensure that Licences, Codes and Interfaces are developed consistently and as efficiently as possible across these two change programmes.

- **Enduring CATO obligations**: We would welcome clarity within future publications of the enduring obligations for a CATO once their asset is in service. The operation and maintenance of such Critical National Infrastructure will require ongoing co-ordination between a CATO, neighbouring TOs, the SO and any connected parties. It is also extremely important to consider how the regime will work at the end of a CATO's 25-year term, and what obligations the CATO will have to keep its assets in good condition until the end of this period and beyond. Under the proposed regime, the asset's technical life could easily be longer than its economic life, but only if it is properly maintained.

Appendix 1: Answers to consultation questions

CHAPTER: One

Question 1: What are your views on our proposed approach to licence modifications, as outlined in this document, and whether they effectively implement the policy outcomes in our Decision Document?

The proposed licence modifications go some way to implement the policy outcomes in the Decision Document, although we have included some suggested changes in the appendix as a starting point for further discussion.

We are comfortable with the incumbent TO's obligations in supporting a tender, however it remains a key point to us that the incumbent TO will not be subject to any liabilities associated with preliminary works, which will be carried out on a reasonable endeavours basis, and we would welcome definitive clarity on this in the licence drafting

. We welcome the clarification that Tender Support Activities will be funded.

For the SO, we would like to see a confirmation that its role is limited to desktop activities. For SO-led options, which involve physical engineering work, the SO's role should be to recommend that the incumbent TOs progress these options. The TOs will have access to the relevant cost information and

supply-base innovations required to develop the option, and will have the capabilities to do this work, which is not a good fit with the role of the SO.

As already highlighted, we have reservations as to whether the competitive tendering of customer connection projects would work in practice, as the significant amount of churn within such projects is best managed by the incumbent TOs due to their large portfolios of work. It is also difficult to envisage a situation where introducing a two-year tender process would not result in either a delay to the customer's connection date, or starting work on a project before it would have otherwise been required.

We generally support Ofgem's suggested measures for conflict mitigation where incumbent TOs (or an entity in their group) bid for projects within their own transmission area. We believe that we are well placed to implement the necessary compliance obligations. However, we believe that some changes to the proposed wording within the licence drafting will be required to fully implement Ofgem's policy intent.

Question 2: Do you think that anything is missing from our proposed approach to licence modifications to implement our policies?

We believe that the proposed policy wording goes some way to implement Ofgem's policy intent, and we have included some suggested wording within the appendix as a starting point for further discussion. We look forward to further detail in the future regarding the enduring regime, particularly the role of the SO. We also recognise that some changes to industry codes will be required in order to fully implement the policies described in the Decision Document.

We would welcome an explicit clarification within the licence that not all projects identified by the SO as meeting the criteria for competition will eventually be put out to tender, and the NOA report is simply flagging that the question should be considered further via a bespoke impact assessment of consumer benefits and risks. It is important for potential bidders to be aware that the scope of a particular project may change over time, meaning that it may no longer meet the competition criteria, or future study work carried out by the SO may show that the project in its current form is no longer required: these risks would need to be factored into an assessment of whether a particular project should be subject to competitive tendering.

Regarding the transfer of consents, permissions and rights to enable CATO construction, there are a number of contractual issues that need to be worked through to ensure these proposals are viable. We agree with the principle that non-physical assets associated with a project (consents and rights etc.) would need to be transferred in order for the CATO to successfully undertake construction and operation of those network assets, however various complexities need to be worked through to ensure that all these consents and obligations are fully transferred. Development Consent Orders (DCOs) can be transferred to a third party under current legislation in England and Wales, although it is worth noting that this process has not been done before, and could last a long time, introducing delays to the project. We note that issues also exist in Scotland in these areas, and we would welcome a further steer from Ofgem as to how they see these questions playing out in a Scottish context.

More generally, further work is required on the interactions and handovers between the TOs and SO in relation to projects that span the RIIO-T1 and RIIO-T2 price controls. Whilst we do not support the idea of the SO taking on a role in consenting and engineering as a matter of principle, it is also unclear to us how Ofgem envisage that this might work in practice. Preliminary works are currently underway for a number of projects that might be determined as suitable for competition in RIIO-T2 and it is unclear to us how any potential handover between TOs and SO (if any) might be managed for in-flight projects. This has a significant impact on project planning, resourcing and stakeholder management and we would like to further understand the proposals. We would also welcome more detailed implementation plans from Ofgem, particularly in relation to Code based drafting, and how the handover from a TO developed RIIO-T1 project to a CATO would work, given the aspiration to run competitive processes from 2018.

We would like to further understand what will be covered in the Tender Regulations. There are various items we would like to see clarified, and referred to in the licence, for example the governance of the Authority's decision-making process (which could be referred to in Special Condition 6I.41), the Final Tender Checkpoint process (Special Condition 6M.11) and the duration of the Competitive Tender (Special Condition 2P.14).

We would also highlight that DNOs will be impacted by onshore transmission competition, and believe that further work and consultation is required in this area.

Question 3: What role do you consider the SO could play to support a tender during the RIIO-T1 price control period in gathering and providing information? Do you think this activity should be implemented through modifying the SO's licence or by making provisions in tender documentation?

We do not believe that supporting a tender in this way sits well with the SO's role and expertise: this is also inconsistent with the offshore model where such activities sit with E-Serve. We think that running the tender process sits logically with Ofgem, who could take ownership for the end-to-end process, including making the initial tender decision, running a pre-qualification process for bidders, receiving bidders' questions and eventually appointing the successful CATO. We believe that any technical information required relating to a project should be sought from the incumbent TO as part of the clarifications process. The SO adds the most value when discharging its NOA obligations and identifying the projects which meet the competition criteria.

CHAPTER: Two

Question 4: What are your views of our proposed amendment regarding generator connection offers and demand connections? Do you consider SLC 27 is the correct condition to implement this policy, or are there other conditions/reports where this assessment should be placed?

We do not feel that there will be a significant number of generator connection offers or demand connections which will meet the competition criteria. For those which do, it is necessary to consider whether the competitive tendering of such projects is truly in the interests of consumers. There is significant churn in transmission projects, so the need case or scope of a project may always be subject to change, and any potential CATO must be able to accommodate this level of uncertainty. Incumbent TOs are well placed to manage this uncertainty due to their large portfolio of work.

SLC 27 would be a suitable condition to implement the policy relating to the SO's identification of projects meeting the competition criteria. However, it is necessary to consider how well the identification of generation and demand connections which meet the competition criteria fits with the NOA process, as generation and demand connections are based on a contracted background, and the NOA is based on the probabilistic assumption of a smaller percentage of projects connecting depending on the likelihood of different Future Energy Scenarios. The proposed modifications would mean tendering different types of projects based on different views of the future: adding cost, complexity and uncertainty for all stakeholders.

Question 5: Do you agree with our assessment that our proposed amendments to SLC will not require any subsequent amendments to either SLC B12 or NGET's SpC 2O? If not, please specify what amendments you consider would be required to these licence conditions?

We agree that no modifications will be required to SLC B12 or SpC 2O, although any successful CATO will have to become a party to the STC.

We believe that the drafting of the new Special Condition 2P does not exactly reflect Ofgem's policy intent, and we have included some suggested changes to the drafting in the appendix to this response. We understand that it is the intention that an incumbent TO will have to produce and comply with a Compliance Methodology Statement regardless of whether it, or an associate with its group, decides to bid. We do not believe that this is consistent with paragraph 4.11 of the consultation document and the bold text of paragraph 4.42 of the Decision Document. It should also be clarified that if the incumbent TO or an associate within its group bids, then parts A-E inclusive apply, and if no bid is made within the TO's group then part B does not apply. Suggested changes to implement this are shown in the appendix.

Question 6: What are your views on our proposed definition of SO-led Options as relating to options not identified by transmission licensees? Do you consider that this is wide enough, or do you think that this narrows the scope of what the SO should be considering?

We would like to clarify here that the SO's role in "leading" these options should be limited to desktop analysis and leading on non-build options, with no involvement in fieldwork or physical surveys. The SO should be focussed on identifying option gaps and then ensuring that the relevant experts in the TOs take these projects forward.

We generally believe that the definition of SO-led options is too wide, and would like to clarify Ofgem's expectations here, as the construction of new transmission capacity does not sit well with the SO. It is also worth noting that the SO will not have any visibility of non-load projects (through either the NOA or connections processes), so would not be well placed to recommend whether such options meet the competition criteria.

Question 7: Do you consider that an update to industry codes would be required as a result of our proposed amendments to SLC C27? If so, please identify what amendments you consider would be required?

In general, the industry codes are written to govern the interactions between the SO, incumbent TOs, and a small number of radial OFTOs, as well as Distribution Network Operators and generators. In a world where there are also multiple CATOs, which may be more integrated within the

transmission network than OFTOs, it will be necessary to further consider how these parties interact with each other. It will also be necessary to clarify the arrangements for handing over both physical and non-physical works when a CATO is appointed, and the obligations on the CATO to undertake due diligence to assess the risks and opportunities associated with these works.

We believe that the STC would need to be amended to cover the relevant responsibilities and liabilities associated with bidding for a CATO licence. It would also need to be amended to ensure that new CATO parties, in addition to new OFTOs, are able to accede to it.

The CUSC will need to be modified to cover the situation where works required to connect a customer are carried out by a CATO, rather than the incumbent TO. This should replicate the arrangements which are currently in place for onshore TOs, and we assume that Ofgem will take appropriate precautions during the pre-qualification process to ensure that a successful CATO is able to deliver on its obligations.

The Grid Code will need to be amended to add in a definition of a CATO, which could be defined as a Relevant Transmission Licensee.

Question 8: Do you agree the proposed obligations on conduct effectively implement our policy on ensuring the quality of works?

We generally agree that the proposed obligations are suitable to ensure the quality of works ahead of a competitive tender process taking place, and have experience in producing the materials which will form part of the Tender Specification Outputs. We are comfortable with the requirement to place the Tender Specification Outputs into a data room hosted by Ofgem, and provide answers to bidders' clarifications. However, we would prefer for the TO to agree with Ofgem on a case-by-case basis which information is required, to prevent the TO from being subject to an open-ended obligation to supply all information which could be of relevance to tender participants, which may slow or complicate the process, and place an unfair burden on the incumbent TO.

Paragraph 3.8 of the Decision Document refers to 'Placing obligations on conduct in the TO's licence that we can enforce against in the event of poor performance.' We would like to clarify what this would involve.

We would also welcome additional clarity on the transfer of property, rights and liabilities to the CATO after appointment, the mechanics of how any such transfer will be effected, and where such arrangements will reside in the regulatory framework. We would prefer for there to be specified timescales for this handover to take place, and some clarification of the transitional arrangements. As stated in our previous consultation responses, we believe that it is each CATO's responsibility to undertake sufficient due diligence during the tender process in order to ensure that it is comfortable with the preliminary works which have been carried out, and that no risk or liability should sit with the incumbent TO for the work which has been carried out to date. The CATO should take over all liabilities when it is appointed, and any significant changes to the programme of work could be funded via a re-opener with Ofgem.

We welcome the confirmation within the Decision Document that the Tender Support Activities carried out by the incumbent TO will be funded by the successful CATO. We feel that an ex-post review, treating the efficient incurred costs as a pass through, would be the best way of establishing

the amount that the incumbent TOs would be funded for this work, as this would avoid the risks to consumers of an ex-ante approach where there are significant difficulties in estimating the volume and cost of this work in advance, and it would remove the risk on the incumbent TO of undue retrospective disallowances of funding for Tender Support Activities.

We would welcome further clarification of the mechanism under which the incumbent TO will be able to recover such funding. We would suggest that the costs incurred should be included in TOTEX, with the revenues recovered included as offsetting negative TOTEX. This would avoid the need to introduce additional complexity to the licence formula for Maximum Allowed Revenue or to make further changes to charging arrangements.

We would also like to clarify the extent of Detailed Design work that the incumbent TO will have to carry out in order to populate the data room.

Question 9: Is the TO providing an update every 2 months sufficiently frequent, or overly frequent, given the likelihood of information availability over that time?

We believe that an update on Tender Specification Outputs every two months following the Initial Tender Decision would be reasonable, as it provides an appropriate balance between information sharing and reporting burden. It is also sensible for a TO to submit an additional update when there is a material change, and for Ofgem to reserve the right to ask for additional information as required. We welcome the provision for the TO to develop the format of the reporting.

Question 10: Do you have any additions or subtractions from Schedules 1 and 2 of the proposed new licence condition 6M/6J? Where suggested, please also provide an appropriate reasoning.

We generally believe that Schedules 1 and 2 are a suitable list of items, although it is worth noting that the list of relevant documents will vary by project. It is therefore our preference that, on a case-by-case basis, the incumbent TO will agree with Ofgem which documents will be required. However, we believe that the following information should be added to the schedules:

- Land plans, specifying where CATOs and their contractors are able to work, should be included in Schedule 1
- Information on interface points
- Practical safety information (such as management of isolations and permitting)
- Arrangements for discharging the obligations within the DCO
- Details of contractual arrangements with third parties (such as side agreements, commercial agreements and land agreements)
- Habitats Regulations Assessment (HRA) report (this is a key requirement in meeting EU Habitats and Birds Directives)
- Hydrology Surveys
- Utility Records
- Schedule of Crossings (such as roads, public rights of way and utilities)
- Item 42 should include all documentation from the DCO examination process , including documents associated with the consideration of any consent application, such as answers to Written Questions, briefing/technical notes, Statements of Common Ground with statutory bodies and others

- Item 44 should also include a Preliminary Environmental Information report, and it would be better to refer to the "Environmental Information" rather than "Environmental Statement", as this would also include any additional material considered under the Environmental Impact Assessment regulations. The Construction Environmental Management Plan must be included here, as it defines how the environment will be looked after during construction
- Item 45 should include a list of all finalised land agreements, including copies of these agreements
- Item 46 is not required: items 45, 47 and 48 should be sufficient to cover all agreements in principle relating to land rights
- In item 48, rather than "involuntary agreements" it would be more accurate to say "compulsory rights to acquire rights over land"

The lists currently contain some duplication, as the Environmental Statement and associated documents referred to in item 44 would form part of the DCO documentation referred to in item 42. Many of the detailed reports listed in items 25 to 34 would also be covered by the Environmental Statement.

Question 11: Is the split of items across Schedules 1 and 2 correct?

In our view, the Tender Specification Data and Tender Specification Document definitions in Special Condition 6M.11 are not sufficiently clear. We would expect Schedule 1 (Tender Specification Document) to define the scope of the project and the restrictions associated with it, and Schedule 2 (Tender Specification Data) would be supplementary information. However, the items are not currently split in this way.

Question 12: Do the items in Schedules 1 and 2 require further detail to be provided, or are the descriptions provided sufficient, in the context of application to specific projects?

We believe that the descriptions provided are generally sufficient.

Question 13: Is Chapter 6 the appropriate place for the proposed new condition M/J? Should the letter vary by licensee, or should we seek to align the letters across licensees?

Chapter 6 relates to the Annual Iteration Process and is perhaps therefore not the most natural home for the proposed condition relating to Tender Support Activities, which are not related to adjustments to the revenue restriction. We would suggest that Chapter 2 of the Special Conditions (General Obligations) is perhaps a more appropriate place. Whilst it would be helpful to align licence condition letters across licensees, it is appreciated that this is not always possible because of differing obligations. Accordingly, provided that licence drafting is consistent, we do not regard licence condition letter alignment as essential. Nevertheless, given that certain conditions with Chapter 2 are currently "Not Used", there may be opportunity to align the condition lettering if this chapter is used for the condition instead of Chapter 6.

Question 14: What are your views on our proposed modification to implement policy in connection with a TO's conduct prior to and during a tender?

We believe that it is reasonable to implement conflict mitigation measures in order to ensure that an incumbent TO does not obtain an unfair commercial advantage from its participation in Tender Support Activities. We are confident that we can implement suitable business separation measures to ensure that no unfair advantage is obtained, and have relevant experience of demonstrating compliance with similar obligations within other licence conditions.

We would welcome further clarification in relation to the management separation arrangements described in the consultation, given that the licence drafting at Special Condition 2P.5 appears to differ from paragraph 4.20 of the Decision Document. The former contemplates separation up to but not necessarily including members of the licensee's board of directors, whereas the latter envisages separation at least as far as parent company board level. It is our assumption, based on the drafting of Special Condition 2P.5, that should a TO wish to bid for a competitively tendered project itself, both the Tender Support Activity team within the TO and the Bidding Unit within the TO could report to the licensee's board of directors as long as the conflict mitigation measures described in the consultation and set out in the proposed new Special Conditions 2P/O (and the resulting Compliance Methodology Statement) are implemented and complied with. We would welcome clarification that this assumption is correct, and that such arrangements are compatible with the envisaged managerial separation requirements.

It would be helpful if the treatment of any TO Bidding Unit activity under the transmission licence could be clarified. As this activity will not be transmission business, in order that it falls within the definition of a Permitted Purpose, it will either need to be treated as de-minimis business or an activity to which the Authority has given its consent under paragraph 3(d) of Condition B6. There should be a consistency of approach on this issue across transmission licensees. It would be our preference for TO bidding unit activity to be treated as an activity to which the Authority has given its consent, so that it does not count towards the capped level of de-minimis activities and therefore unfairly disadvantage incumbent TOs when putting together a bid.

It is logical to implement physical separation between the Bidding Unit and those engaged in the Tender Support Activities. It is important to ensure that a bidding unit associated with an incumbent TO is not perceived to have an unfair advantage.

We also support the information systems separation measures proposed in this consultation. We have experience of populating data rooms for tenders, and removing access to sensitive information as individuals transfer between different entities.

We do not believe that the current wording of paragraph 2P.14 relating to the incumbent TO's Compliance Methodology Statement (CMS) is consistent with paragraph 4.11 of the consultation document and paragraph 4.42 of the Decision Document. Following correspondence with Ofgem during the consultation period, we understand that an incumbent TO will be required to produce a CMS, and comply with sections A, C, D and E of Special Condition 2P through the measures set out in the CMS regardless of whether it, or any associate within its group, decides to bid. If it, or an associate within its group, decides to form a bidding unit then compliance with section B of Special Condition 2P will also be required through the measures set out in the CMS. However, we do not feel that this is currently captured within the licence drafting, and have proposed minor amendments to the proposed licence wording which we believe would implement this intent.

Under Paragraph 2P.14(a), certain provisions of the CMS must be complied with "during the Competitive Tender". Whilst "Competitive Tender" is defined, there needs to be clarity in respect of the duration of the tender process in order to ensure that Special Condition 2P can be complied with.

Question 15: What are your views on our proposed modification to put in place timing requirements for when the TO must confirm its intention to bid and put in place conflict arrangements?

We believe that an eight week window following the Initial Tender Decision for an incumbent TO to confirm its intention to bid is sufficient, as long as this is not shortened by the restriction that this must be more than six months before the start of the Final Tender Checkpoint. We expect Ofgem to take this into account when setting timescales for project tendering. We would also like to seek clarification as to whether this restriction applies to an Associate company within the incumbent TO's group that may propose to bid: if so, this should be clarified within the draft licence wording.

In practice, we will require eight weeks for the incumbent TO to decide whether to bid, followed by ample time to implement separation arrangements before the deadline six months ahead of the Final Tender Checkpoint. It is important to note that employee transfers and restructuring, and appropriate physical separation, will take some time to implement. Consideration should be given to these timelines, in order to ensure that the incumbent TO is not unfairly disadvantaged if it wishes to bid.

Question 16: What are your views on our proposed modification to restrict the transfer of TO employees between the Bidding Unit and the team undertaking the Tender Support Activities and pre-construction activity?

We think that it is reasonable to restrict the transfer of employees from the Tender Support Activities Team to the Bidding Unit after the date specified in the CMS, until a CATO has been appointed.

However, we feel that it is overly restrictive to prevent an individual who has worked in the Bidding Unit from transferring back to the TO until the end of the Competitive Tender: it should only be the Tender Support Activities team which they are not able to join. Given the duration of the bidding process, the restrictions as currently described would seriously restrict the career opportunities of individuals who have been involved in Bidding Unit activities, and the flexibility of organisations to move employees between teams. We also do not believe that there would be any negative consequences arising from an individual transferring to the TO after working in a Bidding Unit, as long as they do not join the Tender Support Activities team.

We think that it is important for similar separation arrangements, between the bid team and the team involved in preliminary works, to be implemented for other bidders who have also been involved in the preliminary works for a project which will be tendered. There should be an explicit obligation on all bidders and their supply chain to confirm that no individuals who have contributed to the Tender Support Activities are involved in their bidding unit. Thought must be given as to how such arrangements can be implemented and enforced in respect of parties who are not already licensed entities.

We would like to see a more specific description of the term “pre-construction activity” within the licence, so that we can better understand how the restrictions will apply. We would like to clarify whether “pre-construction activity” is the same as “pre-construction engineering”, which is already defined within the licence.

Question 17: Our current drafting allows for the independent compliance officer and single appointed director to fulfil their duties across multiple compliance roles (as set out in several conditions). Do you consider this would present any conflicts of interest or wider issues?

We do not foresee any conflicts of interest, or wider issues, associated with the Independent Compliance Officer carrying out multiple compliance roles. We agree that the Independent Compliance Officer should be independent of the entities, and it is of high importance that this role has an independent managerial reporting line into a non-entity team such as Legal. Different Single Appointed Directors must be personally accountable for signing off the compliance certificates which are relevant to their entity. Within National Grid, this is an established and effective process, and we would be comfortable with other companies implementing such a control if it is carried out to a suitably high standard.

We would also like the licence to further clarify the frequency and timings with which compliance reports will be directed, and whether the reports will only be directed when a tender takes place.

Question 18: Do you consider that our proposed location for the new SpC in both NGET’s and Scottish licences is the best location? Specifically, is Chapter 2 an appropriate location; should we be seeking to fill unused SpCs instead of adding extra letters; should the letter vary by licensee, or should we seek to align the letters across licensees?

Chapter 2 of the Special Conditions (General Obligations) appears to be the most appropriate location for the new Special Condition, as a number of existing NGET business separation conditions currently appear in Chapter 2. Whilst it would be helpful to align licence condition letters across licensees, it is appreciated that this is not always possible because of differing obligations. Accordingly, provided that licence drafting is consistent, we do not regard licence condition letter alignment as essential. Nevertheless, given that certain conditions with Chapter 2 are currently “Not Used”, there may be opportunity to align the condition lettering.