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| Modification proposal: | Uniform Network Code (UNC) 666: Establishment of a CSS Bid Group for CDSP central switching system bid activities (UNC666) | | |
| Decision: | The Authority ¹ directs this modification be made ² | | |
| Target audience: | UNC Panel, Parties to the UNC and other interested parties | | |
| Date of publication: | 11 September 2018 | Implementation date: | 11 September 2018 |

Background

The Data Communications Company (DCC) is currently inviting tenders for a range of services including the Central Switching Service (CSS) that together will implement the outcomes of the Ofgem Faster and More Reliable Switching Programme. The Central Data Services Provider (CDSP) has agreed with its customers under the Data Services Contract (DSC) to bid for some aspects of the central switching system services.

The Shipper Users under the DSC are funding the costs of the CDSP bid(s) in their entirety. That bid(s) would be submitted in the company name of Xoserve Ltd.

The modification proposal

To enable the CDSP to participate in the DCC CSS tender activities, the CDSP needs to be able to discuss bid matters, which may include commercially sensitive/confidential information, directly with Shippers Users only, as the funding parties of the CDSP bid. It is therefore proposed that a '*CDSP Bid Group*' be established, comprised of the CDSP and Shipper User representatives only.

It is further proposed that the CSS Bid Group is not subject to the usual governance or oversight of the UNC committee, allowing for discussions to remain confidential. The CDSP, rather than the Joint Office, would chair and provide secretariat support for the CSS Bid Group. It is not expected that notes of its meetings would be published or placed in the public domain.

The arrangements proposed under UNC666 would be transitional, falling away upon notification from the DCC that the CDSP's bid(s) have or have not been successful. It is noted that in the event that the CDSP is successful wider governance changes may be required, which would be progressed separately if and when required.

It is noted that the earliest closing date for bid submissions to the DCC is 17:00 on 19 September 2018. This date applies for the Registration Service and combined Registration and Address Service bids. The CDSP considers that it needs a mechanism to be in place under the DSC to consult with Shipper Users as funders of any bid, prior to submission. The proposer of UNC666 therefore considers that the changes proposed are time critical, and that if they are not made, there would be a significant commercial impact upon the CDSP and potentially to Shipper Users.

UNC Panel³ recommendation

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

At its extraordinary meeting of 10 September 2018, the UNC Panel voted unanimously to recommend that UNC666 be implemented.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 10 September 2018. We have considered and taken into account the responses to the industry consultation(s) on the modification proposal which are attached to the FMR⁴. We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the UNC;⁵ and
- directing that the modification be made is consistent with our principal objective and statutory duties.⁶

Reasons for our decision

We note the strong support for the proposal, with six of the eleven representations received being in support, with each of the remaining five offering qualified support. All of the respondents and subsequently the UNC Panel considered that the proposal would further relevant objective (d), though the UNC Panel also considered that the proposal would better facilitate relevant objective (f). We agree with the UNC Panel and have assessed the proposal against relevant objective (d) and (f), and consider that it would have a neutral impact upon the other relevant objectives.

(d) the securing of effective competition between relevant shippers

We note the panel comment that although respondents generally considered that UNC666 would further facilitate effective competition, there were few comments elaborating on why they considered this to be the case.

We agree with the UNC Panel that as a purely facilitating proposal, the benefits or otherwise relate to any option or opportunity that may be created, rather than whether that option is exercised and any opportunity realised. In this case, the proposal simply facilitates the development of an Xoserve bid into the DCC procurement process; it does not obligate Xoserve to pursue such an option, or guarantee its success. It is therefore difficult to quantify any benefit that may arise from the implementation of this proposal, though we consider that there will be positive value in having such an option. To the extent that this may provide Xoserve opportunities to provide a better service to shippers and suppliers, this can be expected to benefit competition, as noted by respondents.

One respondent, whilst offering qualified support for UNC666, noted that the current DSC arrangements operate the contract, including any liabilities Xoserve may incur, at an all-party level. They considered that this is appropriate while all parties have an element of

³ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

⁴ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

⁵ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, available at: <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

⁶ The Authority's statutory duties are wider than matters which the Panel must take into consideration; they are detailed mainly in the Gas Act 1986 as amended.

control through the DSC Contract Committee, but that in carving out a constituency from the control of funding of certain activities, as proposed under UNC666, this carve out principle should also extend to which constituencies are exposed to potential liabilities.

We have some sympathy with this view and agree that it is not addressed by this proposal; however, we also note the limited scope of the proposal. We consider that there will be opportunity to give further consideration to this and other contractual and governance issues if Xoserve is selected to progress further in the procurement process.

(f) the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code

To the extent that the provision of additional services would allow Xoserve to broaden its cost base, we agree that the opportunity facilitated by this proposal may lead to reduced costs to DSC parties. This would arguably make the operation of services governed by the UNC, if not the administration of the UNC itself, more efficient. We also note and agree with the UNC Panel members who considered that if this proposal was not implemented, it may necessitate wider ranging changes to the DSC governance in order to remove any undue barriers to an Xoserve bid. Such changes may yet prove necessary, as previously highlighted in our consultation and decision paper on the use of UK Link for CSS services.⁷

We consider this proposal to be a proportionate measure to deal with the immediate issue of enabling commercially sensitive discussions to take place. However, we also agree with those respondents who suggested that this should set no precedent for the exclusion of GTs from DSC discussions, or for removing transparency from UNC/DSC governance more generally.

For the avoidance of doubt, this decision should not be taken as any indication of our view on the merits of any tender submission, which will be a matter for the DCC alone.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters licence, the Authority hereby directs that modification proposal UNC666: *'Establishment of a CSS Bid Group for CDSP central switching system bid activities'* be made.

Rachel Clark

Programme Director, Consumers and Markets

Signed on behalf of the Authority and authorised for that purpose

⁷ See: www.ofgem.gov.uk/system/files/docs/2017/07/consultation_on_uk_link_and_css_final.pdf