TRANSMISSION CAPITAL PARTNERS

James Norman
Commercial, Networks
Ofgem

BY EMAIL ONLY

8th May 2018

Dear James,

OFTO Tender Process – Consultation For Future Tender Rounds

Transmission Capital Partners ("TCP") – a joint venture formed of Amber Infrastructure Group ("Amber) and Transmission Investment LLP ("TI") with in-depth knowledge of financial, technical and regulatory issues associated with electricity transmission in the UK – is pleased to provide you with a response regarding the "*OFTO Tender Process – Consultation For Future Tender Rounds*". TCP manages one of the largest offshore electricity transmission portfolios in terms of the capacity of offshore wind connected. Our managed portfolio of Offshore Transmission Owner (OFTO) assets includes the connections to the Robin Rigg, Gunfleet Sands, Barrow, Ormonde, Lincs and Westermost Rough offshore wind farms - a portfolio of over 1000MW (circa £800m in capital employed).

In addition, Amber and TI have a strong and proven track record in the procurement of large scale infrastructure projects through their respective involvement in the Tideway Tunnel ("Tideway") and the France-Alderney-Britain ("FAB") interconnector.

International Public Partnerships ("INPP") a FTSE-250 listed investment company managed by Amber is a primary investor in over 125 infrastructure projects, including all OFTOs managed by TCP, Tideway and in Cadent (formerly known as National Grid Gas).

We also remain strong advocates of introducing competition into the delivery of onshore transmission and TCP continues to support the development of the required arrangements *inter alia* through industry groups, responding to consultations such as these and, when called upon, providing evidence to parliament.

We welcome Ofgem's review of the OFTO tender process at this juncture. The projects in TR6 are all expected to be large (we understand the average asset transfer value of each project is expected to be circa £800m).

Ofgem notes in the consultation document the successes of the current tender process, notably:

- The savings for consumers; and
- The excellent availability record.

These successes combine to demonstrate robustness of the process. It is this robustness that has largely enabled high levels of availability to be maintained even in the face of a significant number of offshore cable faults caused by latent design, manufacturing or installation defects which have had to be responded to by the OFTOs. As projects get larger, more complex and further from shore, it is even more important that this robustness is maintained.

The OFTO regime is now regarded as an example of a successful competitive process in a

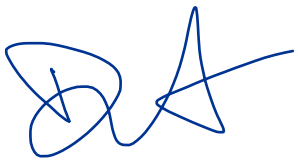
monopoly utility network area. It is held up as an example upon which to base competition in other hitherto monopoly utility network areas. Notably there are now plans to introduce competition in the delivery of:

- Onshore electricity transmission;
- Other RIIO-2 regulated gas and electricity networks; and
- Water network assets (via the Direct Procurement for Customers model).

It is important not only for the success of the OFTO sector, but also for these other sectors, that the robustness of the OFTO model is retained, and that it continues to produce high quality and cost competitive OFTOs in the future.

Our responses to the detailed questions in the consultation document are attached as Annex A.

Yours sincerely,



Dominik Adamus
Commercial Director

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Annex A – Responses to detailed questions

NO.	QUESTION	RESPONSE
CONSULTATION FOR FUTURE TENDER ROUNDS		
1	Have we identified (in Chapter 1) the right drivers for possible change to the OFTO tender process? Are there other drivers for change we should consider?	Ofgem notes in the consultation document the successes of the current tender process, notably: • The savings for consumers • The excellent availability record which in combination demonstrate the robustness of the current process. We would also note that there have been a significant number of offshore cable faults caused by latent design, manufacturing or installation defects which have had to be responded to by the OFTOs. In general, we agree with Ofgem's drivers for review (and to consider changes) but would also add that the OFTO regime is now regarded an example of a successful competitive process, upon which to base competition in other hitherto monopoly network areas (onshore electricity transmission, other RIIO-2 regulated gas and electricity networks, and water network assets via the Direct Procurement for Customers model).
2	Are the objectives of our review appropriate? Are there any other objectives that we should consider?	Although we agree with the drivers for review (and possible change) in chapter 1, we do not agree with the addition of the fourth objective of "*Undertaking streamlined and efficient tender process*". In our view the drivers set out in chapter 1 should strengthen the focus on the first two overarching objectives: i) Deliver transmission infrastructure to connect offshore generation, on a timely basis, and ensure that OFTOs are robust and can deliver transmission services successfully over the licence period; and ii) Provide certainty and best value to consumers through the competitive process. Larger projects and more complex projects mean it is even more important to get the best answer from the tender process in terms of robustness and price. In fact, the complexity and size of the projects could justifiably be reasons to increase the complexity and cost of the tender

NO.	QUESTION	RESPONSE
		process if it resulted overall in more robust and cost effective OFTO solutions. In respect of certainty and best value to consumers, Ofgem should be seeking to take a holistic approach rather than a simple lowest TRS approach. For example, a bidder offering a slightly lower TRS but with a markedly worse availability performance would result in higher costs to consumers. Robustness of the deliverability of bids (including availability) over the life of the OFTO (and not just to licence grant) is the important issue for consumers. We would suggest that objective (iii) seeks to attract new entrants with relevant experience (i.e. including managing and operating offshore transmission assets). The reason for this suggestion relates to Ofgem's drivers for change: • As future OFTOs will be larger, more complex and further offshore, relevant experience in operating and managing such assets will be key to ensuring maximum availability and long-term asset integrity. In addition, procurement of suitable insurance packages by parties with limited relevant experience and understanding offshore transmission assets, may lead to sub-standard commercial protection, large claims and consequently the insurance market hardening for all other OFTOs. • The lack of experience may also lead to solvency issues if new entrants underestimate the risks in operating HV offshore transmission assets, carry out sub-standard due diligence and/or do not obtain suitable commercial protections which in turn may lead to higher overall costs for consumers because of higher unavailability levels of the transmission assets.
3	With respect to the existing tender process arrangements:	
3(a)	Are any different or additional arrangements needed to mitigate the risk of OFTOs not being financially or operationally robust?	We welcome Ofgem's preferred position for OFTOs to be obliged to procure LEG 3 insurance or better (i.e. no design exclusion at all). We also suggest that comprehensive insurance packages which may also include business interruption insurance should be appropriately evaluated, so that the additional cost of quality insurance is balanced by a higher (if appropriate) score for the quality of the insurance package. Whilst we believe the current assessment already includes an evaluation of the detailed

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		operating and maintenance budget, the evaluation should also consider the contingencies available which can increase asset integrity and availability. Whilst timely asset replacement, bathymetric and depth of burial surveys, associated risk assessments ensuring export cable integrity and structural surveys should form part of a standard O&M budget, there should also be contingency for ad-hoc activities that ultimately protect the integrity of the transmission assets and maximise availability. Ensuring long-term asset integrity, results in higher whole-life availability of the asset and therefore lower whole life costs for consumers, including reducing the need for utilising regulatory protections such as Exceptional Events and Income Adjusting Events.
3(b)	In particular, do you consider that our tender process would be robust to a Carillion-type scenario? Are there additional questions we should ask at EPQ or ITT?	We believe that questions included in the current tender process, which requires bidders to present information of their relevant offshore transmission experience, financial robustness, O&M strategy and sub-contractor terms, provide Ofgem with sufficient information to assess a bidder's credit quality and therefore the ability to withstand a Carillion-type scenario. This supports our view of why Ofgem's assessment should continue to include deliverability and not be on price alone otherwise this type of assessment would not be possible. To strengthen the tender process further, Ofgem could consider introducing a question for bidders to specifically respond to a sub-contractor default scenario and invite them to outline how they seek to mitigate this risk and why they believe their solution is sufficiently robust to avoid such a scenario.
3(c)	Do you have any other specific feedback on the existing tender process?	We have previously provided feedback on historic tender processes. Our feedback focused on the importance of evaluating the robustness of bids, a standardised data room structure and the timely provision of critical information.
4	With respect to the moderate change package:	
4(a)	Do you believe this option would be an improvement over the current tender process?	We believe that any change which shifts the evaluation criteria towards a 100% weighting on price would reduce the robustness of bids and increase the risk of failure of delivery during the life of the OFTO. By default, lowest price will result in lower quality contractors, inferior O&M maintenance plans and poorer insurance coverage, or a mixture of all three. As explained in 3(a) above, the bid evaluation should look to promote OFTOs that consider not

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		only price, but also the whole-life asset integrity with a view to maximising availability. Recent issues with export cables show that dealing with major fault events, learning from such events and continually looking to improve response planning, are key mitigants in limiting future faults and increasing asset availability. These mitigants are also necessary to satisfying and retaining the confidence of the insurance community in order to secure comprehensive insurance packages on an ongoing basis. OFTOs with potentially inadequate budgets would struggle to implement lessons learnt from major fault events as such an implementation is very often costly.
4(b)	Do you agree with our assessment of this package against the objectives?	We disagree with Ofgem's assessment set out in Table 3 in the consultation document that 100% weighting on price will "*provide certainty and best value to consumers through competitive process*". Such a weighting will provide the cheapest outcome at the tender stage, but that does not necessarily mean "*certainty and best value for the consumers*" for the entire life-cycle of the asset. We would give this a cross rather than a tick. Again, as set out above we do not agree with the inclusion of the fourth objective. Consumers may have increased exposure to Income Adjusting Events where service providers are unable to secure high quality insurance packages, therefore increasing the whole-life cost for consumers and generators. In addition, generators may be exposed to greater revenue losses where OFTOs long term availability is not maximised due to inexperience, or inability to fund asset improvement measures because of their underestimated TRS. Consequently, we do not agree that this package will have a positive impact against this objective as instigated in the consultation document.
4(c)	Do you consider that there are questions that could be removed from the ITT questionnaire (for example, where there is overlap with the EPQ, or where the approach is mandated elsewhere)? For what reason and benefit could they be removed?	We think that Sections 3 and 4 in the ITT are somewhat a duplication of Sections 4, 5 and 6 in the EPQ. If the EPQ stage is retained, it would perhaps be more efficient to expand Sections 4, 5 and 6 in the EPQ in order to remove Sections 3 and 4 from the ITT stage and therefore reduce the burden on bidders and evaluators.
4(d)	Are there any amendments to this package that	We would suggest that the variant where unnecessary questions are removed from the tender questionnaire, and the tender process remains broadly similar to the current tender process,

NO.	QUESTION	RESPONSE
	would improve it?	would be most effective and continue to deliver large savings to the consumer with no compromise to the quality of service delivery.
4(e)	What are your views on the most appropriate ways to mitigate the challenges of this package?	Our response to this is the same as set out in 4(d) above.
4(f)	Are there other considerations we should have taken into account that present practical or other challenges to implementation?	None
4(g)	Where we were to allow conditionality only on particular elements of a bid, how should we take into account conditionality in bids which cumulatively raises concern about the overall robustness of the bid?	It is important that bidders are given an opportunity to qualify their bids as quite often developers are unable to provide all necessary information at the ITT stage (e.g. burial data confirming that the cable(s) are fully buried, or number and criticality of snags). Bidders could be requested to price such qualifications in their bids, but keep them outside of the TRS, however this is unlikely to be best value for the consumer. We therefore recommend that, subject to the constraints of the 18-month deadline under the Generator Commissioning Clause, the OFTO tender process commences once construction is close to completion to allow the greatest level of information which will in turn drive a high degree of competition and lowest possible TRS.
5	With respect to the significant change package:	
5(a)	Do you believe this option would be an improvement over the current tender process?	We do not believe this option is an improvement to the current tender process. Please see our comments in 4(a) above. In addition, we do not think the assumption that the Transfer Agreement can be agreed at the ITT stage is correct, neither do we think that full unconditional due diligence can be carried out at the ITT stage. Our experience shows that very often critical snags requiring outages and therefore commercial resolution are found/disclosed at the PB stage. This in turn requires extensive drafting to the Transfer Agreement to ensure that the risk allocation is fully agreed and captured. Furthermore, burial condition of cables is always finalised late during commissioning of the project and therefore requires discussion at the PB stage.

NO.	QUESTION	RESPONSE
5(b)	Do you agree with our assessment of this package against the objectives?	Similarly to 4(b) above, we do not agree that 100% weighting on price will keep the certainty and best value as is. We believe that continuous downward pressure on price without retention of a robustness measure will reduce certainty and quality of service delivery, and therefore will not provide best value for the consumers.
5(c)	Are there any amendments to this package that would improve it?	We do not think this package would offer best value for consumers even with further improvements.
5(d)	What are your views on the most appropriate ways to mitigate the challenges of this package?	We do not think this package would offer best value for consumers and believe it should not be implemented.
5(e)	Are there other considerations we should have taken into account that present practical or other challenges to implementation?	None identified.
5(f)	What do you think of potential bid bond arrangements, pain/gain share mechanism and consequential changes to allow efficient unconditional bids?	As we don't agree with 100% weighting on price, we believe a bid bond is not necessary. We agree with Ofgem's assessment that this will add to costs which we would expect to feed through into the TRS (i.e. development costs will include a bid bond fee). This cost does not exist under the current procurement process and therefore does not improve Ofgem's "…*best value to consumers*…" objective. Terms of the bid bond would need to be agreed including clear structure to determine which party is at fault (e.g. whether a delay is due to the preferred bidder, the developer or extenuating circumstances). Ofgem's consultation notes in Table 1 that the PB stage "varies" which suggests it will be difficult to establish a standard time period a bid bond can be called and will need to be assessed on a project by project basis. The pain/gain share example of an uncommitted finance solution, such as a public bond, is difficult to implement as this risk is market driven and therefore equity/debt will struggle to accept a pain/gain share without the risk of building in a buffer to manage the risk which in turn is likely to increase the TRS.
6	Are there other packages of change that we	Any proposed package should concentrate on a mixture of quality (robustness) and price. In

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	should consider that would better deliver against the objectives?	our view the drivers for review (larger projects, more complexity, a history of cable faults) actually strengthen the case for robustness to play a bigger role and not a smaller role. As projects get larger the costs of taking part in and running the tender process will become less and less significant as a proportion of the value provided by the tender process, and so streamlining this process should not be an objective in itself.
7	With respect to the other tender process changes considered that could apply to either the current tender process or any of the potential packages for change:	
7(a)	Does Vendor Due Diligence (VDD) in practice reduce the total cost of a tender process? Are there any benefits in broad VDD? Are there benefits in a more focussed approach to VDD (for example a Certificate of Title)? Under what conditions and to what extent would bidders base their bid on VDD?	A VDD report does not reduce the total cost of the tender process as in most instances it lacks the necessary detail and focus to make investors, debt providers and rating agencies comfortable about the technical risks involved in the relevant project. In some instances, VDD reports raise more questions than provide answers. Often, investors, debt providers and rating agencies require direct engagement with the Technical Adviser to understand technical issues in more detail. This would be difficult, or impossible to arrange, if the VDD report would be the only source of technical due diligence. As it stands, and based on VDD reports we have seen to date, we would not be able to base our bids on such reports. We support the idea of Certificate of Title (CoT) being provided by the developers. CoTs gather all property agreements and information relevant to those in one place which is easily identifiable. This in turn reduces the amount of resources needed to review the property agreements.
7(b)	Are there other cost–effective ways in which the bidder data room could be improved to the benefit of all parties? Are there specific ways to further standardise the structure?	A well-structured, populated and frequently updated with critical information data room is advantageous to both the relevant vendor and the bidders. Information from such well-structured data rooms can be easily identified and obtained without the need for asking clarification questions and requesting further information. Consequently, the vendor has less clarifications to answer. In addition, we would also advocate for critical information that has significant impact on TRS such as cost assessments, information relating to insurance, export cable storage arrangements and provision of spare parts to be provided early in the process rather than just before the data

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		room is frozen. We have seen recently that such information, when provided late, can be fairly disruptive to the bidding process. If the number of clarification questions asked is of concern, we would suggest limiting the number of questions any single bidder can ask. We also suggest the last date new data can be put into the bidder room at ITT stage is brought forward to one month ahead of bid date. This would incentivise the developer to put data into the data room at an earlier stage and reduce the amount of rework required by bidders.
7(c)	What changes, if any, should we consider to our current bond spread methodology? Would an appropriate pain/gain share mechanism for bond-financed bids allow us to fairly assess bond and bank-financed bids on the same committed finance basis?	We do not suggest any changes to the current methodology as we believe the OFTO asset class is now well established with sufficient comparability with other network companies which provide adequate benchmarks and reference points. We believe additional transfer of risk to bidders, such as interest rate risk, will reduce value for money to the UK consumers as in order for bidders to take the risk of changes in bond credit spread margins they will need to include buffers to the credit spread which could result in higher cost to the UK consumers. Given that OFTOs are expected to be larger, public bond issuances are likely to be the only feasible route to attain sufficient liquidity. As such we believe the evaluation criteria between funding sources (e.g. committed pricing that may be received from commercial bank vs public bond naturally uncommitted at the time of ITT) will normalise as all bidders are likely to increasingly assume a public bond issuance as their preferred funding solution.
7(d)	Do you consider that we could adequately rely on a more confirmatory approach to questions? Are there particular documents or questions we could consider not requiring the bidder to produce, but instead confirm? Are there particular documents/requirements that are better left to the PB stage?	It is difficult to have a confirmatory response for issues other than threshold issues. A confirmatory approach could be required for some of these but not all (for example assessing a bidder's capability to manage the assets). Whilst Ofgem may not review all documentation attached to bids at the ITT stage, it does provide an evidence base against which to review any proposed changes to the TRS, either at PB stage or post-licence award.
8	Do you think the approach of Ofgem, developers, and bidders to the tender process will need to change as projects become larger, further from	We do not consider the size or location of projects to lead to a need to change the tender process. Other than as outlined above, robustness of delivery will become more important and not less important.

NO.	QUESTION	RESPONSE
	shore and more expensive? What do you see as challenges from this change?	Operationally for example, bidders will need to consider certain challenges including access to the offshore substation platforms (e.g. by helicopter) or establish offshore accommodation.
OTHER POLICY CHANGES		
9	With respect to end of revenue term arrangements, where there continues to be a need for the OFTO, what factors should be taken into account when making decisions on OFTO revenue at the end of the normal 20 year term? When should we begin to make these decisions?	In bidding for the OFTO assets we have made assumptions regarding the expected value in use of the OFTO assets after the initial 20-year revenue period. Such assumptions have been reflected in the TRS that the OFTO receives during the initial 20 year period. The assumptions made by the OFTO regarding the value in use forms part of the savings that the OFTO regime has brought to the UK consumers, therefore as owner of the transmission assets the OFTOs would expect such assumptions will be taken into account when making a decision on revenue post 20 year initial revenue period. We expect additional capital expenditure will be required to maintain the asset in accordance with good industry practice, we believe the level (and the most appropriate financing method) of such capex will need to be assessed to determine the adequate level of revenue that the OFTO will require to continue its operations beyond the initial revenue term. The OFTO constitutes a vital link between the windfarm and the wind turbine generators, to the extent a wind farm operator decided to replant a new wind farm, the OFTO is expected to be of use and as such the OFTO owner should receive returns for the continuous operation and maintenance of the OFTO assets. In particular it will be necessary to determine how deductibles under insured events are expected to be recovered by the OFTO. In order to maximise value for money for the UK consumer, we recommend that clarity is given to the OFTOs as early as possible to allow for efficiencies and the best possible structure to be implemented potentially ahead of the end of the initial revenue term.
10	Is there demonstrable evidence that we should consider changing the default revenue period away from 20 years for future projects? If so, what would be the most appropriate revenue period?	As the OFTO assets are by nature closely tied to the offshore wind farm and offshore wind farms have a design life and decommissioning plan after 25 years of operations, we would recommend considering extending the initial revenue period from 20 years to 25 years.