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Dear Lesley,

Code Governance Review (Phase 3): Initial Proposals

Please find below a response from the DCUSA Panel to Ofgem's CGR3 consultation, issued 23 October 2015.

Overall, the Panel is supportive of Ofgem's aims to make code governance more effective and efficient, and align processes across the different codes. There are a number of points the Panel members would like to draw to Ofgem's attention.

Cost-benefit of change

Panel members are mindful of the cost of delivering these reviews: of assessing the potential impacts, joint working with DCUSA Parties and other code bodies to develop changes, progressing modifications through the change process and operating to the new working practices.

The Panel therefore would look to ensure that such investment is made only where it can be shown to provide sufficient benefits to DCUSA Parties and the wider industry. This is especially relevant given the CMA's findings are due out in six months, and will potentially include other recommendations to significantly change code governance procedures. It is therefore important that Ofgem's review works in conjunction with the CMA's recommendations to deliver tangible, cost effective improvements.

Drivers for change

The Panel is keen to have a clear view of the situations and processes that Ofgem considers could be made more efficient and/or effective, and would welcome specific examples. This will be important not only in supporting the cost-benefit case noted above, but ensuring any solutions do resolve the root cause of the concern. It may be that one code is more affected by an issue than others – in which case, it may not be appropriate for all codes be required to amend their version of that process, which in the main is fit for purpose.

Code process alignment

Equivalent processes do vary between the codes, and the Panel recognises that this can cause confusion and additional work, especially for smaller and newer organisations. However, there may be reasons why the processes have developed with variations to suit the types of parties that accede to the code, the nature of its provisions, the existence (or not) of central systems etc. It would be useful to understand Ofgem's view on the extent of alignment required.

Modification prioritisation

As part of a forward work plan, it's proposed that panels set out their strategic priorities. However, without the ability to actively prioritise the progression of modifications (e.g. delaying those that fall outside the forward work plan), the Panel's ability to actively manage code change could be limited. It would be useful to understand how Ofgem sees this working in practice.

Panel voting

In relation to the proposal for panels to vote on DCUSA Change Proposals, the Panel would note that this would be a material change to the DCUSA governance process and the founding principles on which DCUSA was established, of parties' rights to modify the agreement.

Additionally, where other code panels do make a determination on modifications, those processes are not all consistent. Therefore it is not clear which model Ofgem considers is best practice and would recommend for the DCUSA change process. It may be useful here to understand what aspects of Party voting Ofgem considers problematic.

Independence

The initial proposals are for panels and working group chairs to be 'independent'. The Panel is seeking clarity on the definition of 'independent', for example could the chair still work for a Code Party, but acting only in the capacity of chair for that committee.

It should be noted that the DCUSA already requires all Panel Members and working group members to act independently, as per clauses 6.16 under duties of Panel Members, and 7.33 under duties of working group members:

A person appointed as Panel Member, when acting in that capacity, shall [6.16.1] act independently, not as a delegate, and without undue regard to the interests, of any Related Person

Those persons serving on a Working Group from time to time, when acting in that capacity, shall: [7.33.1] act independently, not as a delegate, and without undue regard to the interests, of any Related Person

Charging Methodologies

The Panel notes that Ofgem's proposal is for 'information' related to the Distribution Charging Methodologies Forum (DCMF), the Commercial Operations Group (COG) and the Methodologies Issues Group (MIG) to be brought under DCUSA 'governance' and to be 'administered' by a single party.

The Panel is seeking clarity on which aspects of the governance and administration of these Ofgem is seeking to include under the DCUSA. For example, whether it solely relates to publishing the documents related to the meetings of these groups and the charging methodologies themselves on the DCUSA website, or as a link to another website. Alternatively whether there should be a greater degree of integration, for instance whether these groups should become DCUSA Panel sub-committees or Working Groups.

The DCUSA Panel members support the aim of the CGR3 review, and would welcome the opportunity to engage further with Ofgem on the initial proposals, in particular the points made here.

Yours sincerely

Kevin Woollard
DCUSA Panel Chair