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11th January 2016

Dear James

Re: Consultation document “Extending competition in electricity transmission: arrangements to introduce onshore tenders”, dated 19th October 2015

Thank you for the opportunity to respond to the Ofgem consultation document regarding arrangements to introduce onshore tenders dated 19th October '15. Our response below is based on our past experience in projects we consider to be of similar nature, size and complexity, as well as our extensive market involvement and research over the last 6 – 9 months.

John Laing is a leading international developer, investor and manager of infrastructure projects and is active in the energy, transport and social infrastructure markets. The proposed Competitively Appointed Transmission Operator (CATO) projects are in line with our current business interests.

We are happy for you to consider our response as non-confidential. We are also happy to have a further dialogue regarding our response, if required.

Yours sincerely

M Westbrook
Managing Director, Primary Investments, UK and Northern Europe

[attachment: John Laing response to the Consultation document..., Oct '15]



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Attachment: John Laing Response to the Consultation document “Extending competition in electricity transmission: arrangements to introduce onshore tenders”, dated 19th October 2015

CHAPTER: Two

What will be the subject of competition and how will we identify those projects?

QUESTION	JOHN LAING RESPONSE
<p>Question 1: What are your views on the proposed detailed interpretations of new, separable and high value (the ‘criteria’)?</p>	<p>We support the current criteria and believe they are in line with other infrastructure markets where a 100m threshold is used (e.g. various states in Australia and provinces of Canada).</p>
<p>Question 2: Under what circumstances do you think asset transfer from an existing asset owner to a CATO would be required, recognising the principle that projects identified for tendering should be new?</p>	<p>In our view, asset transfer can be substantially avoided for most projects thus avoiding unnecessary complexity, if (subject to specific circumstances):</p> <ul style="list-style-type: none"> • The TO preliminary works involve a properly considered and designed interface with CATO main works, which takes into account physical and commercial separation of the assets • The CATO’s licencing arrangements work hand-in-hand with the TO’s licencing arrangements for neighbouring TO assets, in particular with respect to: <ul style="list-style-type: none"> ○ The CATO/TO interface and its specific design, as per the bullet above ○ Changes to TO’s licencing arrangements for their assets in question (if/as appropriate, on a case-by-case basis) ○ CATO’s operational incentives arrangements (on a case-by-case basis)
<p>Question 3: What are your views on our proposal that electrical separability should not be required at each interface, but that the SO can propose it to us if it thinks there is a cost-benefit justification based on system operability?</p>	<p>We support the proposed approach as we can envisage circumstances where the electrical separability will be the most cost-effective solution in the long run; we however think that in the majority of circumstances specific additional measures for electrical separability will not be required.</p>

<p>Question 4: What are your views on the suggested process and roles for identifying projects for tendering?</p> <ul style="list-style-type: none"> • We have proposed specific roles for the SO – do you think there are any additional roles the SO could take on to support competition. • What’s the most appropriate way to ensure that the network options assessment (NOA) considers the widest range of network options, including those that would be tendered? 	<p>We support the current proposals and make the following additional observations:</p> <ul style="list-style-type: none"> • The licence changes to the SO’s scope/role, as well as a detailed guidance for TOs (in terms of conflicts of interest, etc.) will be critical for the bidders’ confidence as well as tender efficiency/success • An important role for SO should be to ensure the quality, sufficiency, transparency and clarity of the SO provided tender documentation, both commercial (i.e. licences) and the project specific technical information in the data-room. SO should also have an enhanced/more active role during the TO preliminary works and the CATO main construction works in terms of monitoring the progress against the specific project outcomes and administering remedial actions in case of TOs/CATOs under-performance. The management of interfaces between preliminary works and CATO main works, as well as managing conflicts of interest should be also in the SO remit • The NOA work is probably the most important aspect of the SO work, and the most sensitive. This is where SO need to be fully independent and impartial. NOA work should involve: <ul style="list-style-type: none"> ○ Identify network needs: this process should involve a wide-ranging consultation with all relevant stakeholders for longer-scale periods (30yrs+), and the assessment-of-needs (i.e. “scenario-mining”) working backwards to 20yrs and 10yrs timescales for network forecasts. Based on these assessments, the SO through NOAs should provide “heat-maps” of future developments, showing areas of high network activity (this is similar to the current process, but over a longer period and with a more “generic” starting point) ○ Identify a clear set of criteria for separating TO-delivery from CATO-delivery, and apply such criteria to the NOA list of projects
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	<ul style="list-style-type: none"> ○ Perform such NOA processes yearly starting from basic principles (rather than starting the process from the previous year's NOA).
<p>Question 5: What incentives and obligations should the SO and TOs have for undertaking preliminary works for tendered projects, and is there any value in considering a success fee incentive?</p>	No view.
<p>Question 6: Should CATOs pay for the preliminary works at the point of transfer?</p>	Provided the amount or a provisional amount is specified so that bidders have clarity we don't have a strong view on this issue.

CHAPTER: Three

How will the tenders work and what will CATOs get?

QUESTION	JOHN LAING RESPONSE
<p>Question 1: What are your views on our proposed late CATO build tender model? Including:</p> <ul style="list-style-type: none"> • the basis of bids; • the use of cost sharing factors; and • what risks, if any, it would not be efficient for a CATO to manage during construction. 	<p>We support the late CATOs model as proposed in the consultation document. Our other comments are:</p> <ul style="list-style-type: none"> • The basis of bids, i.e. the point of entry to the process for CATO bidders under the late CATO model, seems appropriate • Cost sharing factors, or cost re-openers, are a useful tool to have to ensure more efficient tendering process where bidders are not in a position to make a good estimate as part of the bid process. In our view any costs where the cost risk is not under CATO's direct influence/control should be considered as re-openers - a good example is the business rates already mentioned in the consultation document
<p>Question 2: What are your views on our proposed early CATO build tender model? Including:</p> <ul style="list-style-type: none"> • what tender specification would best facilitate innovative but deliverable bids; and 	<p>The early build CATO selection process should be focussed on qualitative factors such as the experience/capability of the consortia and the deliverability and likely cost of their proposals.</p> <p>Cost uncertainty is best managed through transparency of the process to finalise costs (likely with some element of competition) and as noted a debt funding competition.</p>

<ul style="list-style-type: none"> • how we can best manage cost uncertainty after the tender. 	
<p>Question 3: Do you have any views on the best way to tender projects using high voltage direct current (HVDC) technology?</p>	<p>In most cases we query whether it would be preferable for the SO to develop a concept design (in consultation with the various equipment suppliers) which provides sufficient flexibility to accommodate a range of solutions. If the SO has a clear preference for one equipment solution (given the particulars of the application) then it would be better for this to be procured/specified by the SO. However, it is crucial that potential CATO bidders are consulted on the terms and conditions of such procurement as they will form a key component within each bidders solution, and the level of recourse to the OEM in relation to delivery, performance and defects will be fundamental.</p>
<p>Question 4: Do you have any views on our proposal to prioritise late CATO build? Do you have any views on specific circumstances where early CATO build might lead to better outcomes than late CATO build?</p>	<p>We support the proposal to prioritise late CATO to ensure the programme gets up and running successfully. Our view is that projects where consents are strongly dependent on technical solution may support early CATO build.</p>
<p>Question 5: Do you have any views on how we could mitigate the risk of a CATO not being in place?</p>	<p>We agree that the CATO-of-last-resort mechanism procured through the current SO/TO channels is the best option. The licence arrangements/changes to include for this activity for SO/TOs need to be considered, and a detailed process (triggers, monitoring/control, process management, remuneration/compensation, etc.) needs to be specified in the licence.</p> <p>With good procurement and the correct selection criteria in the early procurement stages this risk should be relatively small.</p>
<p>Question 6: What are your views on our proposed revenue package for CATOs? Including:</p> <ul style="list-style-type: none"> • the proposed duration of the revenue term, including how it links to the asset cost recovery period and whether operations and maintenance costs can be fixed over this period; and 	<p>Typically, we see concession terms matching available debt tenors and given the strong appetite of both bank and institutional lenders to provide tenors of 30 years, we would suggest a construction-plus-25-years approach as being a better term to secure the most competitive financing options available.</p> <p>We have commented that due to the fact that the duration of the revenue terms is different from the asset's life (25 v 45 years) a clear guidance regarding the treatment of the residual value and</p>

<ul style="list-style-type: none"> our proposed approach to indexation, refinancing and enabling new asset investment. 	<p>it's underwriting is critical, and needs to be clarified in advance to the first tender in order to enable the bidders to approach/consider the project finance options. Other than that we have no other concerns/comments in relation to this question.</p> <p>We believe that operation and maintenance costs can be fixed over this term (subject to indexation).</p> <p>We also support the proposed approach to indexation, refinancing and new asset investment.</p>
<p>Question 7: What are your views on our proposed package of financial incentives for CATOs? Including:</p> <ul style="list-style-type: none"> how we could structure an availability-based incentive to ensure CATOs operate their assets with a 'whole network' view; the proportion of a CATO's annual revenue that should be at risk; and whether there are circumstances under which 'payment on completion' would not be appropriate to incentivise timely asset delivery. 	<p>Our comments are as follows:</p> <ul style="list-style-type: none"> We support the availability-based incentive (based on the OFTO model). The "whole-network" approach is also acceptable and we believe could be addressed through specific cooperation provisions in the licence, as relevant to specific projects. More detail regarding the criteria for applying it to the CATO projects is required before we can make any further comments 10% at risk, as per the OFTO model, is acceptable As the assets are funded during construction the commencement of revenue on completion provides sufficient incentive and government counterparties would not normally require any other incentive unless in relation to specific interim deliverables.
<p>Question 8: Are there other types of incentives not covered in this chapter that you think should apply to CATOs?</p>	<p>None that we can think of for these type of projects.</p> <p>Our view is that "energy-delivery" based incentives are an unsuitable tool for CATO projects.</p>

CHAPTER: Four

Managing conflicts of interest?

QUESTION	JOHN LAING RESPONSE
<p>Question 1: Are there any risks or conflicts of interest arising from the SO's role that we haven't identified?</p>	<p>In our view the main risks in terms of conflict of interest are well understood and described in the consultation document.</p> <p>Please also refer to Question 4, Chapter 2 regarding our views on the most sensitive areas of SO involvement and their role in managing the CATO process, including the TO involvement.</p>
<p>Question 2: Are there any risks or conflicts of interest arising from the participation of incumbent onshore TOs that we haven't identified?</p>	<p>The only other area we can identify where any restrictions on competition might emerge is where under the current terms the TOs have access to specific equipment which would give them a clear advantage (e.g. major spares of the same type; this could potentially be dealt with through spares sharing agreements), or framework agreements where providers offer TOs beneficial discounts for equipment/services.</p>
<p>Question 3: Are there any additional conflicts of interest that we haven't identified?</p>	<p>None that we can think of at this stage.</p>
<p>Question 4: What measures do you think would be appropriate to mitigate the risks and conflicts of interest? What additional conflict mitigation measures would be needed if the SO takes on a broader role in supporting competition?</p>	<p>We consider that if SO remains part of the NG, there should be an independent regulatory body to oversee their CATO activities. This could also be a role for Ofgem in their enhanced CATO role.</p> <p>Please also refer to Question 4, Chapter 2.</p>

Other John Laing comments

There are a few other points we would like to mention in our response:

- **Size and pipeline of CATO opportunities:** We believe that clear visibility of the forward pipeline will be one of the most critical aspects of decision making for new entrants.
- **Unbundling:** We believe that there would be a benefit for the confidence of new entrants who have generating assets in their portfolio if a specific unbundling clarifications and guidelines are provided in relation to CATO projects. We will be happy to have a further dialogue on this subject.
- **Timeline to the first tender:** We believe that a shorter period to the first tender would result in more momentum gathering and more new entrants entering the market resulting in a more efficient/successful first tender.

Appendix 8

Feedback Questionnaire

QUESTION	JOHN LAING RESPONSE
<p>1.196. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:</p> <ol style="list-style-type: none"> 1. Do you have any comments about the overall process, which was adopted for this consultation? 2. Do you have any comments about the overall tone and content of the report? 3. Was the report easy to read and understand, could it have been better written? 4. To what extent did the report's conclusions provide a balanced view? 5. To what extent did the report make reasoned recommendations for improvement? 6. Please add any further comments? <p>1.197. Please send your comments to: Andrew MacFaul Consultation Co-ordinator Ofgem 9 Millbank</p>	<p>We consider the latest consultation process a success:</p> <ul style="list-style-type: none"> • The document is as informative as we believe it can be at this stage • The process, being based on the previous Ofgem consultations, is transparent and well managed • We believe that the consultation document provided a balanced view between the facts of the matter and Ofgem's own views on the way forward • We would recommend that there is another consultation in 2016 when during the next stage more details become available regarding revenue package/incentives, new SO/TOs roles and licencing arrangements, CATO legislation, etc.