

CORNWALL

CREATING CLARITY

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Industry Code Governance Stakeholder Event

January

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Nigel Cornwall

HELPING YOU MAKE SENSE OF THE
UK ENERGY AND WATER SECTORS.



Flexible governance

- Sir David Currie's remarks during Beesley lecture 2000:
 - “No system is perfect, so that any system of electricity trading is likely to need periodic adjustment and reform. The major virtues of NETA are twofold: that NETA moves the electricity market much closer to that of a normal market; and that it puts in place a governance structure that allows for relatively easy adjustment and change. In both respects, it represents a major advance on the Pool.....”
- NETA style governance
 - objective tests (applicable objectives)
 - regulatory determination
 - (mostly) independent panels and committees
 - hardwired processes
- Changes with Ofgem Code Governance Review

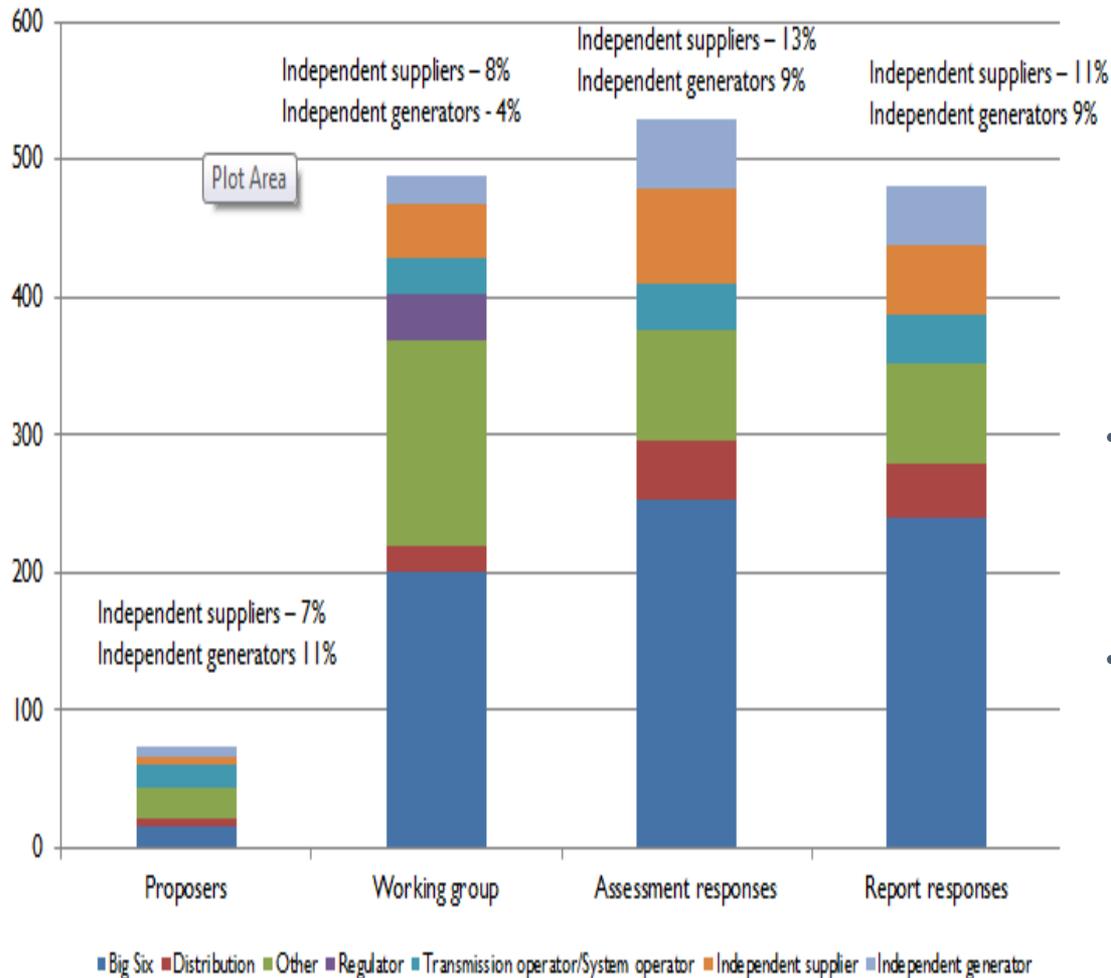
CMA findings

- The CMA's Energy Market review identified AEC's arising from Codes and Governance which are impacting consumer's interests and competition
- Key aspects of the structure and governance of the regulatory framework increase the risk of policies being developed which are not in customers' interests
- Significant cause for concern that some Ofgem duties constrain its ability to pursue competition-based policies
- Critical of relations between the DECC and Ofgem and argued that DECC had undermined Ofgem's independence and a lack of coordination had resulted in inefficiencies
- Governance structures give industry participants a key role in decision making, even where incentives *"not aligned with those of customers"* and differ between firms
- Lack of a formal role for Ofgem in decisions affecting competition and no mechanism for Ofgem to routinely and transparently express its views

CMA remedies & Ofgem response

- CMA:
 - To make code administration a licensable activity, allowing Ofgem to monitor performance, give directions and impose sanctions – more consistency and faster development
 - Grant Ofgem additional powers to project-manage and control modification timetables, complimenting existing SCR powers – ensuring modifications developed efficiently
 - Appointment of an independent code adjudicator to determine code changes in cases of dispute, taking over Ofgem's current approval/rejection powers and exercising control over timetables, helping to ensure the energy sector keeps up with market developments and resulting in better decisions through impartiality
- Ofgem:
 - Expanded role for code administrators – the code manager role. Code managers will be licenced by Ofgem and selected by a competitive process; possible consolidation of multiple codes under a single manager in the long term
 - A strategic direct for code development set by Ofgem –coherent vision for change
 - A consultative board to coordinate and prioritise code development, focussing efforts on the areas of most benefit to customers

BSC participation—P250 to P323



- The fundamental flaw of the current model is that every code change that gives £1 to consumers, takes £1 or more out of the pockets of the established players who have most of the control over the codes
- There is little incentive to increase the pace or scope of governance change
- As chart demonstrates, under current model independent suppliers and generators simply not able to significantly affect code change process. Some improvement but underlying issues remain

But is it enough?

- A seismic shift in code governance is overdue; the pace of code change is not keeping up with the ever increasing rate of technological and business change in the industry and does not adequately respond to customer and small participant concerns
- Ofgem's plans are welcome, but do not go far enough. We would like to see much more rationalisation:
 - A single independent code administrator to take over all the industry codes; disseminating best practice, requiring less regulatory intervention and keeping a single set of objectives
 - More than a critical friend, this body would produce its own workgroup reports and defend them. This strength would be enhanced by licensing, which can ensure it acts in a certain way and is properly accountable
 - Ofgem powers to intervene directly very carefully defined to prevent major change programmes becoming politically driven – CMA reported that recent major Ofgem decisions were not in customer's best interests
- But will this make a significant difference?

Strategy and Policy Statement

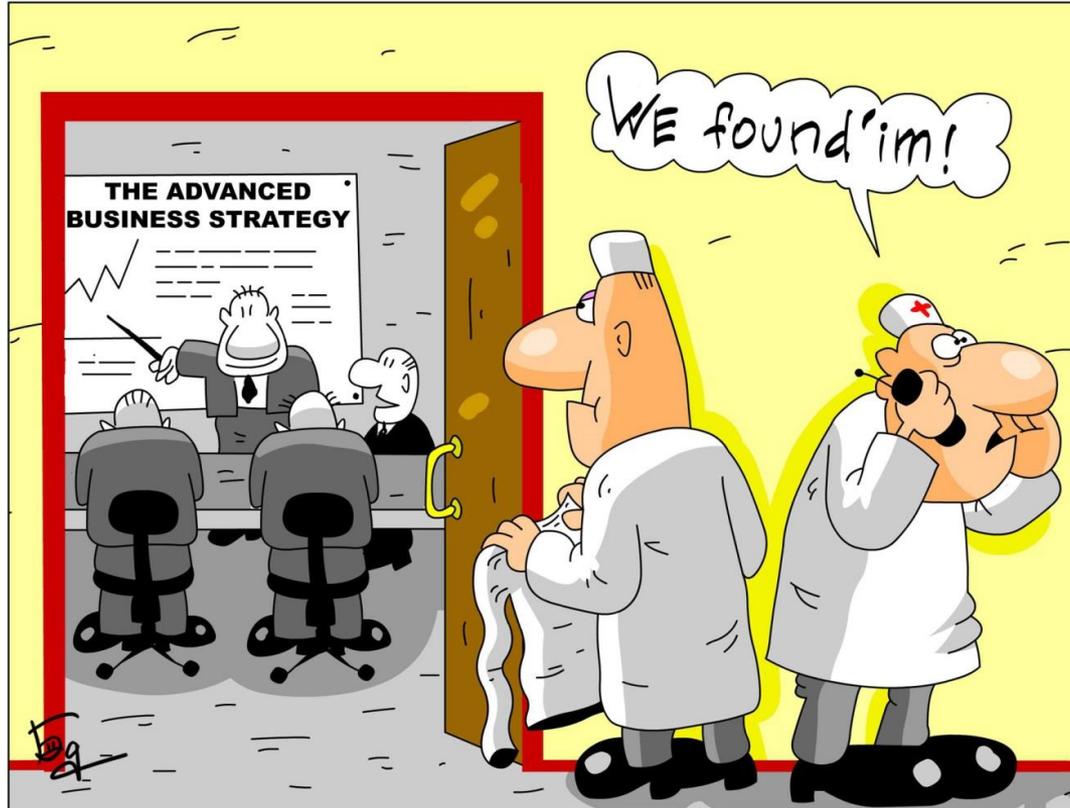
- Energy Act 2013 gave powers for Secretary of State to designate SPS. First draft published August 2014
- Intended to provide clarity between the Government and Ofgem and help the regulator take decisions in the context of the Govt's energy priorities
- To be reviewed every five years, or after a General Election, Ofgem considers a policy outcome to be unachievable, or a signification change in energy policy
- A consultation ran 14 August 2014 to 17 October 2014; brief summary of responses published 27 March 2015
- Not referred to since – including in Ofgem's 2017-18 Forward Work Proposals, which were required to take account of the SPS

Postscript

- “...I think that in all of this the industry as whole missed a real chance to initiate reform itself. Mired in the rigidities, politics and sectional interests of the Pool, the industry only saw the need for reform very late in the day and only after the regulator and the Government were determined to act. Those interested in virtual history may speculate what the reformed arrangements might have looked like had the industry been able to take the lead. As it is, we can all watch with keen interest over the next year how the new arrangements are working. I am confident both that they will work well and that they will need to evolve. I am sure that future Beesley lectures will return to this fascinating subject...”

Sir David Currie’s remarks during Beesley lecture 2000

Thank you for listening



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