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Industry Change Governance: Initial consultation on implementing the Competition and Markets Authority's recommendations

Dear Laura,

Thank you for the opportunity to respond to the above consultation.

In summary npower broadly agrees with the proposals within the consultation. However, at this early stage in the process the proposals are quite high level so we would be keen to understand further how these are to develop and also to help Ofgem in that development.

Npower does have concerns around industry change congestion due to the amount of large scale industry changes being progressed at the same time, so welcomes endeavours to alleviate those concerns. We have given considerable thought to industry code governance and see the following as the most appropriate structure:

- An Independent Code Adjudicator which would make decisions on material code change proposals; and
- An Industry Change Governance Company (ICGCo) which would be owned by licensees and accountable to Ofgem for its performance on an ex-post, or similar, basis. The ICGCo would encompass three complementary roles:
 - A Change Overview Board which would recommend change implementation dates
 - A Design Authority to project manage large-scale systems changes; and
 - A Single Code Administrator to facilitate meetings, manage and co-ordinate the change process and act as a critical friend to industry parties, particularly small suppliers and new entrants.

In npower's response to the CMA we suggested, and still believe, that an Independent Adjudicator would be in a better position to take a long term view of industry change, making decisions on proposals and, where approved, when to implement them. This then allows Ofgem to focus on the key objectives of promoting competition and consumer protection.

Even if the full npower proposal is not deemed acceptable to Ofgem, there are elements that merit further consideration. For instance it is still possible to implement the Change Overview Board and Design Authority functions within Ofgem's proposed Consultative Board without the Single Code Adjudicator element. Npower would be happy to discuss these options further with Ofgem.

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For the purpose of this consultation we have answered questions in line with the chapters, recommendations and questions it contains. However, in the appendices we have added a high level view of our alternative proposal which we would be willing to explain in more detail following submission of the consultation response.

I do hope that the information we have given provides satisfactory responses to your questions. If you require any further information, please do not hesitate to contact me.

Yours sincerely,

Andy Baugh

Regulatory Developments Manager



Consultation Response

Chapter Two: Scope of the new arrangements

Question 1: Do you agree that the codes and functions we have identified (ie. the codes within the scope of the CACoP and their associated central system delivery functions) should be within scope of the new regime?

Yes we agree the codes and associated central systems identified should be within scope.

Question 2: Are there any other codes or systems that should be within scope and if so please give your reasons?

We notice the Green Deal Arrangements Agreement is not listed but as the merger of GDAA into MRA is underway we have assumed the merger will be completed by the time the new regime is in place.

Question 3: Are there any other factors you think we should consider when making this decision?

Npower suggest adding a new factor looking at the expected future direction of travel of each code. For instance, following smart rollout, it is possible that the Smart Energy Code will encompass elements of other codes or even leave them redundant. This factor should be considered when prioritising the scope and migration timeframe of each individual code and agreement.

Chapter Three: Licencing and competition

Question 1: What are your views on our proposed approach of including the code manager and delivery body function in a single licence?

Npower agrees Delivery Bodies and Code Managers should be accountable for delivery of change. Hence the reason for our ICGCo proposal.

There have been recent examples of where Delivery Bodies have failed to deliver large change in required timescales and this has caused significant cost to the industry. To mitigate this risk in the future, we believe that the performance of Code Managers and Delivery Bodies would be best incentivised through a licence which is measured against robust targets and key performance indicators, and subject to tender.

Looking at today's governance structure we cannot see how a single licence covering both Code Managers and Delivery Bodies would work for all scenarios. For instance we can see that model working for Elexon as they manage the BSC and associated systems. However, we struggle to see how that would work for the SEC where Gemserv are the Code Manager as SECAS, and Capita are the Delivery Body as the DCC. Likewise with the UNC where Joint Office are the Code Manager but Xoserve are the Delivery Body. If a single licence for Code Manager and Delivery Body is to be implemented it feels as though these would have to be the same company. We would welcome the opportunity to discuss this further with Ofgem.

When developing new arrangements for Code Managers we need to be mindful of the value that current Code Administrators deliver and ensure that this is not adversely impacted. Code Administrators play a very important role in managing codes, not just changes (e.g. critical friend role, offering advice and education, helping new entrants etc)

Question 2: What are your views on strengthening the licence of NGET to include new code management requirements rather than holding a tender to identify an appropriate code manager?

Npower believes there are potentially significant conflicts of interest for National Grid. It is a privatised company, acting in many capacities (e.g. transmission owner, system operator, metering, onshore/offshore network build/own/maintain, interconnector owner etc). At the same time, it has administrative roles in relation to codes that govern the commercial terms of agreements of which they are the beneficiaries. For example National Grid Transmission is administrator to the Connection and Use of System Code (CUSC), the Balancing and Settlement Code (BSC) through Elexon and the Uniform Network Code (UNC) through the Joint Office. Therefore we see merit in a closer examination as to where such conflicts of interest might arise and the appropriate action for redress.

Rather than including code management requirements into the NGET licence, a more transparent approach would be for the code management of these codes to be tendered to an independent party to manage the code.

Question 3: What are your views on the merits and drawbacks of the four identified models for competitively licensing code management where applicable?

Npower has reviewed the four models and we do not have any particularly strong views or concerns on either of the options presented. Models 3 and 4 appear to be the most efficient models but we are unsure which would be most suitable. Model 3 would seem more transparent and less risk of possible bias which could be a potential perception with Model 4 if the tender process were to be run by Code Managers. However, Model 4 could work if the Consultative Board ran the tender process.

Question 4: What are your views regarding which model(s) may be appropriate for different codes, or types of codes?

For consistency and cross code management we feel the model should be generic across the codes.

Chapter Four: Strategic Direction

Question 1: Do you agree with the purpose of the strategic direction?

Yes npower agrees with the purpose of the strategic direction providing that direction is one of a series of measures as recommended by the CMA and not an isolated publication. A steer from Ofgem on the general direction of travel it expects the industry codes landscape to take, in the light of technology and policy developments, would be helpful.

The current and future level of industry change congestion is a major concern and the publication of a strategic direction, as well as forward work plans and the establishment of a Consultative Board should, together, help alleviate that issue.

Question 2: Do you have any views on how the strategic direction should be developed and implemented?

We would welcome further clarification on the decision process for adding/removing projects to and from the strategic direction, particularly urgent policy changes. For instance would strategic direction items be decided by Ofgem in consultation with DBEIS, or Ofgem in consultation with the industry? Npower feels strategic items should be determined by DBEIS & Ofgem then passed to the Consultative Board and industry to determine impact and realistic implementation dates.

A recent example of an urgent policy change is the Faster Switching requirement driven by DECC and Ofgem in 2014. This project saw a period of 12 months from initial concept to implementation and is a good example of how the industry can work collaboratively. This programme will need to determine how these fast track policy changes are managed in future in line with the strategic direction and Consultative Board.

Given the significant level of expected industry change and market development now and in the future a regular briefing, or update to the strategic direction, will be essential to provide a practical value. We would suggest a quarterly briefing or update.

Question 3: How much detail do you consider should be included in the strategic direction?

We consider the content should include the direction of energy policy as set by the Department for Business, Energy Industrial and Strategy (DBEIS) as well as expected European Union (where applicable) and market changes. Where possible it should also include an expected timeframe in which the codes should develop and the probability, in Ofgem's view, of the technology and policy developments actually occurring. The Consultative Board can then advise how feasible the expected timeframe is.

The content should not include prescriptive direction on how to develop the codes to achieve those ends. This should be left to the industry to determine; preferably through the Consultative Board.

Question 4: Which specific projects do you consider should be included in the initial strategic direction?

Npower agrees the items listed in the consultation from Ofgem's Forward Work Plan would be valuable projects to include in the initial strategic direction. However, we would expect future Forward Work Plans to be fed from the Strategic Direction.

We envisage the strategic direction setting the direction of travel in terms of policy, then each policy would have its own direction of travel containing several projects required to meet the policy needs.

If we take, for instance, the Affordability stream of the Trilemma. The policy intention may be to allow customers to manage their own demand to achieve lower energy costs. The projects to deliver the policy intent would be Mandatory Half Hourly Settlement, Flexibility, Smart Grids and Smart Rollout.

Chapter Five: Consultative Board

Question 1: What do you see as the core role and functions of the consultative board?

Npower seeks further clarification on the linkages and relationships between the strategic direction, Consultative Board and Code Panel change processes.

Our understanding from the consultation is that the current code change processes will continue (i.e. separate Code Panels will approve changes for their codes, revert to Ofgem for non self governance changes and then plan into their releases). Code Panels will inform the Consultative Board of planned releases so the Consultative Board can then produce the joint industry plan taking into account current change and the strategic direction.

We see three key roles of the Consultative Board as set out below.

Firstly, we see a major role being one where the Consultative Board receives the strategic direction and advises Ofgem of estimated implementation timescales for the activities.

Secondly, we agree with Ofgem's view that the Consultative Board should monitor and report progress of change, and direct where a cross code large scale change is falling behind plan. However we feel the Consultative Board, or our alternative proposal, could go a step further.

The npower view is that the Design Authority function as contained in our proposed ICGCo model should have the facility to project manage industry changes. They would have the option to do this in house or tender to an independent third party for certain programmes to enable the best team for the job in hand to be selected. Code Administrators should be allowed to tender for the role along with other third parties if they wish to do so. An alternative, which we would be keen to discuss further, could be for the Consultative Board to take on this design authority role.

Thirdly, we believe an independent adjudicator should have the powers to approve all industry changes, including changes currently not classed as self-governance. This proposal would take on that role currently performed by Ofgem and allow Ofgem to focus

further on competition and consumer protection. To ensure proper practice the independent adjudicator would be independently audited on an annual basis by an auditor appointed by Ofgem. Again, it may be possible for the Consultative Board, providing it is structured correctly, to take on this role and we would be keen to talk to Ofgem regarding the options.

Chapter Six: Moving to the new arrangements

Question 1: What are the main impacts of the proposed new arrangements on existing projects?

Npower do not see projects already in flight to be impacted by these new arrangements. We agree they should be managed outside of the new regime but taken into consideration when compiling and managing the strategic direction and joint industry plan.

Question 2: Would Ofgem's enhanced powers over strategically important modification proposals mean that our Significant Code Review (SCR) powers will be obsolete, and will the new powers form an effective substitute? Please explain your reasoning.

Significant Code Review is a useful process enabling the industry to work together in a collaborative way of working. If SCR is to cease we must ensure the collaborative way of working does not fail. That said, npower does not agree that Ofgem should have powers to both raise and approve code modifications. We think this could bring a conflict of interest and don't think it is ethical that a body could both raise and approve their own proposals. The independent ICGCo would alleviate that risk.

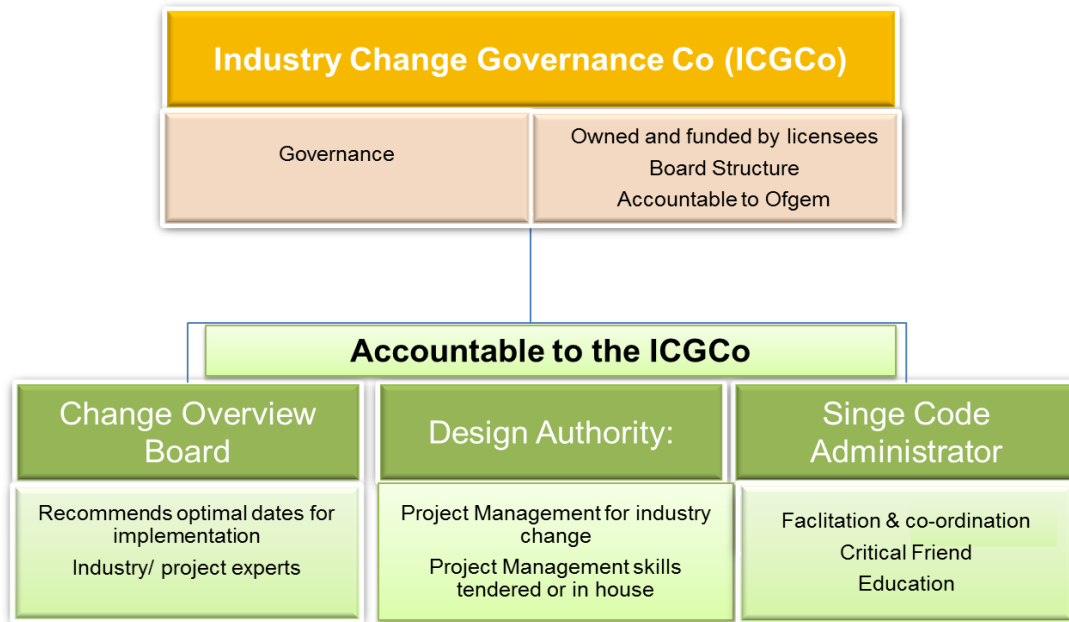
Question 3: What are your views on staggering the implementation of competitive applications for licences?

After consideration npower thinks this would be a sensible approach, taking into account the factors mentioned in chapter two of the consultation. By staggering the applications lessons can be learned from one and used for the next. We would suggest staggering be prioritised based on which codes are most impacted by the nearest large scale change.

To close, as stated previously, npower would be keen to meet with Ofgem to discuss the alternative option of the Independent Code Governance Company.

Appendices

Appendix 1 The Industry Change Governance Company



Appendix 2. RWE's proposed industry change process (high level)

