

Laura Nell  
Code Governance Remedies  
OFGEM  
9 Millbank  
London  
SW1P 3GE

3 February 2017

Dear Laura,

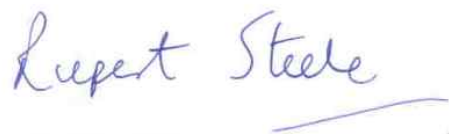
**Industry Code Governance: initial consultation on implementing the CMA's recommendations**

Thank you for the opportunity to respond to this consultation. Our answers to the consultation questions are in the annex to this letter. We would like to highlight the following points:

- **Alternative routes for establishing Code Managers** –The CMA's recommended remedy includes the establishment of a licensed Code Manager for each of the industry codes within the scope of these proposals. Such a new licensing regime requires legislation, and the timescales for passing the required legislation through Parliament are currently uncertain. An alternative or interim route may therefore be required to ensure timely implementation of this aspect of the remedy. One solution might be to modify the code administration licence conditions of the present code owners (e.g. the gas transporters in the case of the Uniform Network Code). It should be possible to modify existing licence obligations so as to require the creation of a code manager for each relevant code, and in such a way that the contract is capable of being put out to tender.
- **Stakeholder input into the Strategic Direction** – We believe Ofgem's proposals regarding the Strategic Direction generally reflect the CMA's intent that Ofgem should be able to set a steer for all codes indicating which reforms and associated code changes should be prioritised. One possible omission from the current proposals is an explicit route for reforms identified at the individual code level to be recognised in the steer, where the benefits of the reform are material and the reform is subsequently identified to have cross code impacts. One such example is the review of embedded benefits which is initially considering proposed CUSC modifications but is also recognised as a priority reform with potentially wider impacts. It is not clear from the proposed arrangements whether important reforms not initially identified by Ofgem could subsequently be included in the strategic steer, and any clarification around this would be welcome.

Please do not hesitate to contact me if you have any queries on any of the matters raised in this response.

Yours sincerely,

A handwritten signature in blue ink that reads "Rupert Steele". The signature is written in a cursive style and is positioned above a thin blue horizontal line.

**Rupert Steele**  
Director of Regulation

**INDUSTRY CODE GOVERNANCE: INITIAL CONSULTATION ON IMPLEMENTING THE  
CMA'S RECOMMENDATIONS – SCOTTISHPOWER RESPONSE**

**Chapter 2: Scope of the new arrangements**

**Question 1: Do you agree that the codes and functions we have identified (i.e. 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 believe all the codes and systems identified in the consultation document should be included within the scope of the new regime.

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

No, as far as we are aware, all the relevant codes and systems have been included.

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

We agree that Ofgem should keep under review the arrangements for the NETSO Codes, given the changes currently being considered to strengthen the independence of National Grid's SO business.

We believe the role of Code Panels could be clarified such that they are able to hold Code Managers to account on their delivery of the Strategic Direction – but also recognising the need for Code Managers to give proper and expeditious attention to implementing other parties' modifications and business as usual activities.

**Chapter 3: Licensing 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?**

We believe it may make sense to bring the code administrator and delivery body together within gas, so as to strengthen the code administrator and allow it to transition to more of an Elexon/MRA type provider model. (In our experience, Elexon/MRA is able to develop changes and support the industry to deliver modifications quicker and with less of a burden on industry parties).

In the absence of a licence, Code Manager requirements could be captured contractually via a service agreement, which could then be placed out to tender.

We think it is important that appropriate cost controls form part of any framework establishing code managers as separate entities. Further consideration should also be given to which parties would bear the liabilities of code managers, especially if they become licensed.

**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?**

Whilst there have been no issues in NGET's administration of the Codes to date, significant changes in the structure and governance of National Grid are planned in the short to medium term<sup>1</sup>. Therefore, even if these codes are out of scope for tendering of code manager functions initially, we believe this should be kept under review in the medium term in case these changes affect the way that National Grid performs its code functions.

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

We have no strong view on the four models suggested. We do however believe that, pending new legislation to license code administrators and delivery bodies, Ofgem should look to strengthen existing licence conditions for code owners, so as to introduce greater accountability and the option to tender services.

If Ofgem ultimately takes the lead in running the tender process, the Consultative Board and relevant Code Panel should still have some input to the process, as they will be working with the party selected to undertake the new role.

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

We have no strong preference at this time.

**Chapter 4: Strategic direction**

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

We agree with the intent behind creating a Strategic Direction, but consideration needs to be given as to how often the Strategic Direction is reviewed and updated, and how it will cater and adapt to economic and other changes.

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

Within the gas market the Change Overview Board works well to determine what changes will be coming forward. The forward workplan that has been agreed in accordance with the CACoP has been a positive development.

Ideally the Strategic Direction would link proposed changes to a published workplan.

The strategy should be flexible to accommodate modifications and issues raised from Code Panels via the Consultative Panel. It is conceivable that reforms will initially be identified within individual codes and then subsequently be found to have cross code impacts.

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<sup>1</sup> Eg the sale of a majority stake in National Grid's gas distribution business and the creation of a more independent System Operator business.

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

It is difficult to judge the appropriate level of detail at this stage, and there are conflicting considerations. The direction should contain sufficient detail to assist code administrators in knowing what is required of them, but it should not be so detailed that it restricts the ability to react to events or to new insights that were not perceived when it was written.

It may be easier to judge the appropriate level of detail once there is an initial draft text to consider.

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

We believe that the following projects should be considered in the initial strategic direction,

- Faster Switching;
- Central Registration;
- Mandatory half hourly settlement (and the introduction of daily meter readings (product 3) in gas)
- Review of embedded benefits;
- The Targeted Review of Network Charging.

**Chapter 5: Consultative board**

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

The core role and functions of the Consultative Board would be to ensure that priorities are determined and achieved and that the projects given priority are in the interest of consumers. In respect of functions, responsibilities should address programme management and assurance of all projects that fall under the remit of the board.

The scope needs to be clearly defined, in particular the interface and relationship with individual codes.

We see the Consultative Board being a new layer, with individual projects reporting on progress and delivery issues. It would be the role of the board to address any barriers to delivery of projects which fall under its remit.

The Consultative Board will only be able to remain a high level function if the individual codes carry out the implementation of strategic code modifications. Therefore we would expect the individual code administrators to issue reports to the board.

The Consultative Board should also be responsible for ensuring that the costs of developing and implementing strategic modifications are efficient and for conducting post-implementation reviews to assess lessons learned.

## **Chapter 6: Moving to new arrangements**

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

We believe the timescales for some existing projects may need to change when priorities and conflicts are considered. For example, priorities could change, and a newly formed Consultative Board may review ongoing programmes and re-prioritise those programmes which they assess can deliver the most consumer benefit.

### **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.**

It is difficult to be sure at this stage whether there will be a need to retain Ofgem's SCR powers. That is likely to depend on how the new arrangements work in practice in the context of issues that will arise in the future. It may be best to leave the SCR process in place for now and come back to this question in the light of experience.

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

We believe that staggering the implementation of competitive applications for licences would be beneficial in terms of the resources needed to support the process, and it would also allow testing and honing of the process to be undertaken over time. It would also smooth out the work of the body tasked with running the process, be that Ofgem or another organisation.

ScottishPower  
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