Laura Nell
Code Governance Remedies
Ofgem
9 Millbank, London
SW1P 3GE
02079017000

CodeGovRemedies@ofgem.gov.uk

01 February 2017

SmartestEnergy Response to Consultation on Industry Code Governance: Initial consultation on implementing the Competition and Markets Authority's recommendations

Dear Laura,

SmartestEnergy welcomes the opportunity to respond to Ofgem's Consultation on Industry Code Governance: Initial consultation on implementing the Competition and Markets Authority's recommendations.

SmartestEnergy is an aggregator of embedded generation in the wholesale market, an aggregator of demand and frequency services and a supplier in the electricity retail market serving large corporate and group organisations.

Please note that our response is not confidential.

Overview

We are concerned if the intention of these proposed changes is to give code administrators a responsibility to drive change, as we believe that proposals from industry would be given lowest priority. We are of the view that directional change should continue to come from government, but lower level change proposals should continue to come from stakeholders. Any responsibilities given to code administrators or Ofgem should represent an escalation of an issue, with industry given prior warnings that a modification may be raised by one of these parties if industry does not do so.

We are in favour of a new "Super Code Administrator". This is not a proposal for central planning, merely more central co-ordination. In the long run, the codes could be merged. In the short term, there would be much greater efficiency in the delivery of change across the industry. Without a fundamental re-structuring there will just be further proliferation of codes and code administrators, as is evident in proposals for a 'retail' code.
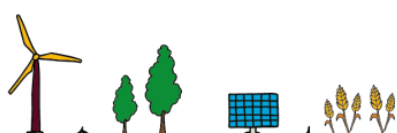
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Answers to Specific Questions

Scope of the New Arrangements

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?

> We do not consider that licensing code administrators is a necessary step to improve accountability or performance.

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

> We do not consider that licensing code administrators or the creation of a code manager role will achieve the stated outcomes. Therefore we would not wish to add any more codes to the scope of this initiative.

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

> In the absence of a super code administrator industry would be better served by an overarching body which could co-ordinate cross-code change, rather than opening up established practices to disruption and the unnecessary licensing of code bodies. For example; efficiency in a single body can come from accountability to shareholders rather than accountability through competition, as per the P324/325 proposals under the BSC.

> We are also of the view that the attempt to incorporate a consumer focus into this process is inappropriate. These arrangements are proposed in order to ensure that industry governance works effectively. The consumer focus should come in the form of modifications raised by code signatories/stakeholders, not in arbitrarily prioritising 'consumer-facing' modifications. If consumer input is needed, then institutions such as Citizens' Advice should be able to raise code modifications and have better representation on working groups. There may be room for a consumer focus section in modification reports to ensure the impact on consumers is noted.
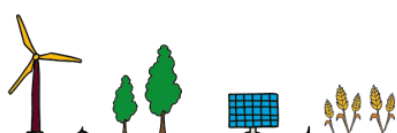
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Licensing and Competition

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

There may be issues surrounding the requirements placed upon delivery bodies under this proposal. This could lead to code managers only raising modifications that the delivery bodies are capable of delivering with current resource/or more easily achieved within their existing systems. This provides no incentive for delivery bodies to improve their service.

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?

We are not uncomfortable with this and would even go so far to say that it would make sense to bring other codes from competitive tender and within the aegis of NGET alongside and eventually merged with Elexon. If it is deemed that the codes which NGET administer are not appropriate for competitive tender, then it may not be appropriate that NGET should be subject to the same conditions as other code managers. Indeed if Ofgem already consider that there may not be a 'one-size-fits-all' approach to licensing, it should be flexible in understanding the needs of code administration from the point of view of NGET.

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

Notwithstanding the fact we disagree with the proposal to licence code administrators, Ofgem has the ability to make this process less onerous and so should use that power available to them: Ofgem could do this by running the tenders and issuing licences to successful parties as per models 3 and 4.

Permissive licences in models 1 and 2 would introduce an unnecessary burden to check all requirements have been met. In fact, it should be expected that any requirements deemed important enough to comprise a basic licence would be investigated during a normal tender process as outlined in the sole provider licence models 3 and 4.

To comment specifically on model 3: A sole provider licence allows for the
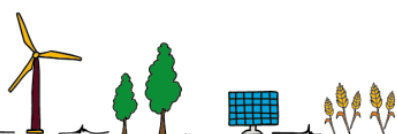
appropriate specialisation from a code administrator, whilst obvious efficiencies can be realised if Ofgem both run the tender and issue the licence. That said the code panels option presented in model 4 would have more specialised knowledge of the code, enabling it to appoint a code administrator/manager perhaps better able to deliver on the requirements.

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

We do not consider codes should be licensed.

Strategic Direction

1. Do you agree with the purpose of the strategic direction?

If the purpose of the strategic direction is to 'translate DECC's Strategy and Policy statement' into a roadmap for industry, then it needs to be focused on the practical impact of policy on the codes, not just a re-iteration of the BEIS document. We would envisage implementation through SCRs if proposals from industry are not forthcoming.

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

Rather than having the strategic direction imposed upon the consultative board, the board should be consulted on the proposals, before implementation of the final strategic direction. A two-way communication process will allow for a more worthwhile document with achievable aims, rather than target imposition by the regulator.

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

The detail specified in the consultation for the content of the strategic direction is sufficient.

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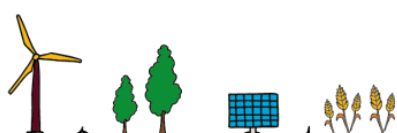
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direction?

In addition to the suggestions made in the consultation document, the initial strategic direction should include the expansion of the DCC's role in regards to data aggregation. Given that data collection will have been centralised in the Smart arrangements, it makes sense to realise efficiencies by allowing the DCC to aggregate data and send it directly into Settlements.

Consultative Board

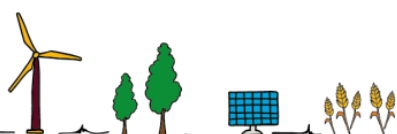### 1. What do you see as the core role and functions of the consultative board?

The consultative board should not be called a board as it would have no power to implement recommendations or changes. A consultative group or forum might be more appropriate. The idea of a communal space in which code administrators can come together in order to ensure change is implemented consistently across codes is to be welcomed.

Envisaging this as a group for representatives of code administrators, it would appear that licensing code administrators is contradictory to the goal above, as these bodies would not be incentivised to share information if they became competitive with each other. Bringing these bodies together under the status quo, perhaps alongside Ofgem representation, offers a genuinely useful place in which code administrators can interact with each other and the regulator in order to map out an implementation plan for cross-code change. However, as stated above we see the drivers for change coming from elsewhere.

Moving to New Arrangements

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

Changing code administrators/managers at any point has the potential to significantly slow down the pace of industry change. It would take an inordinately long time for any new entity to get up to speed and it would be to little advantage. Changing the code administrator of the SEC or Delivery Body (DCC) could have significant impacts on the smart-meter rollout for example. The BSC change process is already experiencing delays due to the amount of change. It would be inappropriate if anything currently underway were to be shelved as a result of a switch-over to new arrangements.

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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.

We do not agree with Ofgem's intention to remove its power of significant code review in favour of an executive call-in power. This will only lead to more situations of responsibility for diving change being given to an inappropriate body or situations like the current embedded benefits debacle, whereby competing modifications raised at differing times just prolong the uncertainty. By contrast, a Significant Code Review looks at issues holistically to produce the most appropriate outcomes for all parties. We appreciate that Ofgem may not favour SCRs on the grounds of time and cost to themselves but it is genuinely a better option than the current proposals.

On top of this, Ofgem already has the power to control the timetable for the process of developing and/or implementing code changes.

That said, it is not appropriate for Ofgem to be proposing change if they are the final arbiters of change. If change is not forthcoming from industry, as has been suggested, then the solution is that the rights to raise change should be extended to other stakeholders such as customer representatives and service providers. We can see merit in the Code Administrator(s) having the capability to raise their own changes, so long as these are assessed on an equal footing to those proposed by stakeholders. An SCR at least provides justification for strategically important modifications, whereas the ability to raise mods could lead to knee jerk decisions made under political or media pressure.

We also have reservations over the definition of 'exceptional circumstances', in which this power can be used. These should be clearly defined and set out in legally binding text.

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

Notwithstanding the fact that we are not in favour of tendering process for code administrators who should in fact be rationalised under a central body, if the proposals as laid out are to go ahead then we would say that it is hypothetically a good idea to run tenders during different years so as not to slow the progress of all industry change during a period of competitive tendering. In the first instance, it may be prudent for Ofgem to assign licences to the incumbent code administrators, as a way of scoping out the role. Competition could then be introduced as previous performance will provide a benchmark on which the incumbent can be assessed,
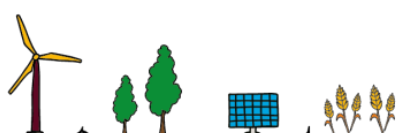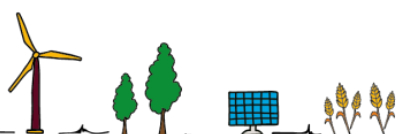
and a level playing field upon which all bidders can argue their case
for achieving the same aims.

Should you wish to discuss any aspect of this matter, please do not hesitate to contact me.

Yours sincerely,

Simon White
Regulatory Analyst
SmartestEnergy Limited.
T: 01473 234185
M: 07720088155

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