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Code Governance Remedies
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Dear Laura

Industry Code Governance: Initial Consultation on implementing CMA recommendations

SSE welcomes the proposed reforms in the Competition and Markets Authority's (CMA) recommendations on Industry Code Governance but we question whether those recommendations and Ofgem's initial proposals go far enough to resolve the issues with the industry governance arrangements.

Ultimately, if the Industry Codes are not working then we need radical reform, the CMA's recommendations are an opportunity to be radical and deliver a code governance regime that is fit for the future.

We cannot see how the licensing model proposed will deliver improvement to the implementation of strategic cross-code change. In our view, the issuing of licences to existing Code Administrators and Delivery Bodies will do little to resolve the issue of working in silos across the codes. Indeed, a competitive tendering approach, which we fully support, could entrench these behaviours with competitor Code Administrators being unwilling to share good practice due to understandable commercial reasons.

Strategic Delivery Body

The problem of implementing strategic change, which may affect multiple codes and multiple industry parties, cannot be fixed by shoring up the current broken arrangements. To be effective, the responsibility for delivering major change across codes and industry parties must sit with one organisation that is independent of those doing the "day job".

A single organisation with a responsibility for strategic change delivery would be tasked, under licence, to deliver Ofgem's strategic direction into the industry arrangements and be a vehicle for the Consultative Board to ensure effective cross-code change coordination. Such an organisation would monitor and track strategic programmes and provide or procure the programme management expertise to coordinate industry wide implementations.

This model would allow the "day job" to continue focused on the effective and efficient operation of the codes and the systems that support the energy market.

Market Operator

Consolidation of the Code Administrator role into a single organisation with a clear responsibility to ensure the necessary arrangements for the energy market are in place and operating effectively will deliver efficiencies for parties and should bring about consistency and simplification of the industry code arrangements.

A single Market Operator would be in a position to manage all of the codes as a single set of market rules, undertaking economic analyses of change, drafting consistent legal text and importantly incentivised to ensure alignment against the strategic direction. Furthermore, a single organisation would become a source of expertise on the market arrangements being able to produce end-to-end guidance and support for the differing perspectives of industry companies, large users and consumers.

Whilst consolidation of the codes themselves is outside the scope of Ofgem's work, we believe that a Market Operator, with appropriate objectives in their licence, would be best placed to deliver the simplification and consolidation the industry needs.

Delivery Partners

The current industry Delivery Bodies (Xoserve, Elexon, Smart DCC and Electralink) each has particular fields of expertise and there are opportunities for greater competition between these organisations and other service providers.

We are not convinced that an amalgamation of Delivery Bodies with Code Administrators will drive the necessary competition to deliver cost-effective industry systems. Indeed the separation of Code Administrators from Delivery Bodies can give valuable oversight and control over delivery systems.

Strategic Direction

We support a clear articulation of the strategic roadmap for the market and in particular the industry codes. We believe to be effective the strategic direction needs to be developed (and periodically reviewed) alongside industry, government and consumer groups to ensure the future industry codes arrangements reflect the reality of the market.

It is essential that there is a clear commitment to supporting strategic direction not just from industry but also from Ofgem.

Consultative Board

Whilst we welcome the establishment of a board to coordinate and facilitate the delivery of strategic change, we are unclear whether this is achievable if only operating in an advisory capacity. Whether in its initial coordinating role or in an expanded strategic role, the consultative board will need support to be effective. We believe a Strategic Delivery Body would be best placed to provide industry, through the consultative board, the necessary information to prioritise and facilitate strategic change.

The CMA's Code Governance recommendations provide a framework in which we can deliver Industry Codes that work.

SSE will continue to engage constructively with Ofgem, industry and code bodies to develop a code governance regime that is fit for the future. We have provided answers to the specific consultation questions in the Annex below.

If you have any questions on our response please contact me at adam.carden@sse.com or on 023 9227 9239.

Yours sincerely

Adam Carden
Head of Industry Codes, Regulation

Annex: Answers to consultation questions

Chapter 2: 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?

We broadly agree with the codes and functions that have been identified as within scope of the new regime but believe there is an opportunity to include SQSS, SMICoP and DTS within the proposals. We provide a rationale for this approach in answer to question 2 below.

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

As noted above, we believe there is an opportunity to include SQSS, SMICoP and DTS within the scope of the proposals.

We agree with Ofgem that SQSS is primarily a set of technical standards that are only of relevance to the System Operator and the Transmission Owners in planning and operating transmission systems. However, in light of Ofgem and BEIS's statement on the role of the System Operator, we believe that the inclusion of SQSS in the future code governance regime will ensure transparency of arrangements and a consistent approach with the other NETSO codes.

Although narrow in scope, SMICoP is critical to ensuring customers maintain confidence in the standards Suppliers are meeting during the roll-out of Smart Meters. This customer facing aspect of the code means that strong Code Administration is even more important.

The description of the DTS in the consultation document underplays its role in electricity and gas metering and electricity settlements as well as its role in switching. The DTS underpins much of the industry communications set out in the codes and whilst not as visible as the central settlements and smart metering services plays a critical role for industry. As such we believe there is a strong argument for including the DTS in the scope of the whole code governance regime.

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

No.

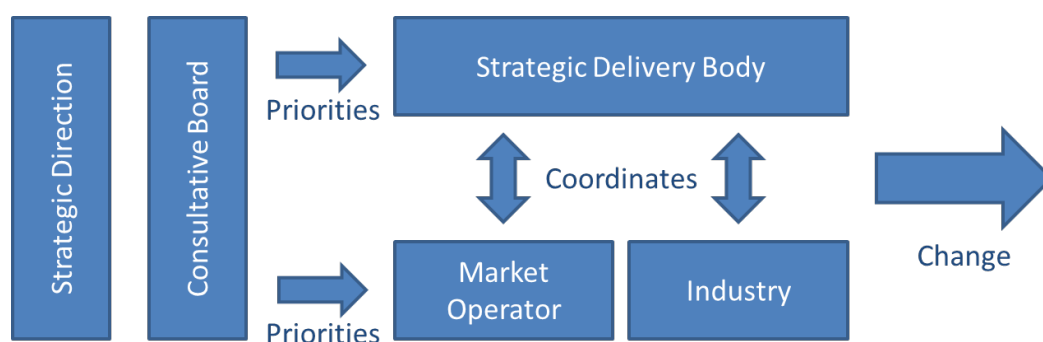Chapter 3: Licensing and competition

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

Whilst we understand the attractiveness of proposing a single licence model for each code, we believe that it is essential that all code bodies can be held to account. It is unclear whether a combined Code Administrator and Delivery Body would be able to appropriately manage its competing interests under the codes. Given this concern and the opportunities

we see to encourage competition between incumbent Delivery Bodies and other delivery partners outside the sector, we support a dual-licence model.

More fundamentally, we believe that an opportunity has been missed in the approach being taken to licensing. The CMA identified that industry code governance gave rise to an AEC through failure to keep pace with regulatory developments and policy change. A licensing approach which reinforces segmented code administration on a code by code basis preserves an environment where strategic code change will remain difficult to deliver.

We believe that licensing can solve this problem but instead of licensing existing code administrators we should license a strategic delivery body with the responsibility to coordinate the delivery of strategic change not just between codes but across all industry companies.

High-level Strategic Delivery Body and Market Operator model

Code Administration should be licensed but the scope should be wider than the code by code approach proposed and should seek to create a Market Operator, a single organisation with responsibility to ensure the necessary code arrangements for the energy market are in place and operating effectively.

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?

Notwithstanding our view that a single Market Operator would be the most effective approach to licensing, we believe that, following Ofgem and BEIS's statement on the role of the System Operator, there is a strong argument for NG System Operator continuing to own and administer the NETSO codes. It is important that NG System Operator is impartial in its administration of the NETSO codes (and SQSS) and having stronger code management requirements included in its licence will safeguard this.

The NETSO codes are the one area of the current code governance arrangements where a single Code Administrator looks after a set of related industry codes, so it is disappointing that NGET have not used this position to rationalise governance and deliver simplification. We believe that the code management requirements on NG System Operator must include an objective to simplify and harmonise the NETSO codes including SQSS.
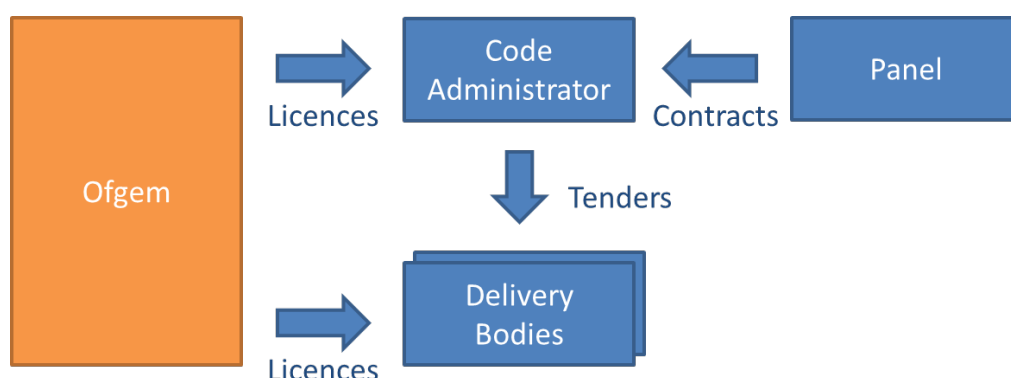
Question 3: What are your views on the merits and drawbacks of the four identified models for competitively licensing code management where applicable?

Whilst we welcome the work Ofgem has undertaken on developing the models for competitively tendering licensed code administration activities, this work is premature as it comes ahead of the definition of the roles and responsibilities of Code Administrators and Delivery Bodies; and a clear understanding of how they will interact with Ofgem, Industry and the existing code panels.

A great deal of focus has been put on the process of awarding licences but there is very little detail of the structure the licensing regime, how it will operate in practice, and how the regime would ensure the effective delivery of strategic change.

Code Administrators undertake an extensive range of activities and have demonstrated the ability to be flexible in the services they provide. We are concerned that a licence model that is too prescriptive will inhibit innovation. For example, in the recent successful implementation of the Theft Risk Assessment Service, the Code Administrator for SPAA & DCUSA was able to respond quickly to provide additional services for contract negotiation and management. The "sole provider" licence models proposed appear too rigid for such variations of service and the perceived advantages of setting out service requirements in a single document will quickly disappear when the Authority is involved in frequent amendments to detailed service lines in licence.

In terms of Delivery Bodies, we also prefer a "permissive" licence model and in order to encourage competition, we believe that licensed Code Administrators (or the Market Operator in our preferred approach) should be required to ensure all new code delivery services are tendered for among the Delivery Bodies.

A potential "permissive" licensing model

We are conscious of the recent reforms to the governance of both Xoserve and Elexon, which have aimed to ensure effective delivery of central services to industry through cooperative and not-for-profit models. We are concerned that the competitive tendering approach may precipitate a move away from this model and result in a poorer and less responsive service to industry. Indeed, the one Delivery Body that is currently subject to a

competitively tendered licence has incurred significant delays in and cost overruns in the delivery of central services for Smart Metering.

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

Our view is that a single Market Operator should be licensed to administer all of the codes and a Strategic Delivery Body should be licensed to coordinate strategic change. In such an approach, we believe that "Model 3 – Ofgem-tendered sole provider" would be most appropriate for both licences.

If Ofgem were to continue with the approach of licensing on a code by code basis then we believe that "Model 2 – Permissive industry-contracted" would be appropriate for both Code Administrators and Delivery Bodies (see answer to Chapter 3 Question 3).

Chapter 4: Strategic Direction

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

A strong strategic direction for the development of the industry codes to ensure the market is fit for the future will provide consumers, industry and Ofgem certainty on key areas of policy change.

The strategic direction must align with BEIS's strategy and policy aims as well as Ofgem's overall objectives to ensure it has meaning for Ofgem as well as industry. Without commitment from Ofgem to the Strategic Direction, industry support is likely to fade.

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

We welcomed Ofgem's additional thinking presented at the Stakeholder Event, held on 12 January, on approaches for the practical development of the Strategic Direction alongside the Consultative Board. We support an approach where Ofgem and the Consultative Board work closely together to ensure the Strategic Direction remains relevant.

The delivery of the Strategic Direction can be incentivised through licence for Code Administrators and through changes to code objectives for the Code Panels. However, we are less clear how industry can be required to drive the Strategic Direction forward and how any such requirement could be effectively measured.

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

The success of previous industry initiatives, such as the move to 21-day switching, have come from a clear statement of the objectives and required outcome such that industry can work together to develop and implement a solution. We would expect that for those items that are imminent (0-2 years); the Strategic Direction should contain this level of information, at the very minimum. A lower level of detail would be acceptable for policy aims that are in the medium term (3-5 years).

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

The key activities in Ofgem's forward work plan are a good starting point for the initial Strategic Direction but BEIS's longer term policy aims should also be reflected. In terms of specific projects we believe the following should be included:

- Smart Metering roll-out
- Switching Programme
- Electricity Settlement Reform (HH Settlement)
- Flexibility Strategy
- Future Retail Regulation
- EU Network Codes (potentially the Brexit implications)

Chapter 5: Consultative Board

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

We welcome the establishment of a board to coordinate and facilitate the delivery of strategic change and see its core functions are to:

- Prioritise industry change aligned to the Strategic Direction
- Monitor progress of priorities
- Work closely with Ofgem to ensure the Strategic Direction remains relevant
- Understand the risk to delivering priorities
- Challenge Code Administrators and Delivery Bodies on progress

It is unclear whether the Consultative Board can fulfil these duties if it is advisory only without appropriate powers. At the very least we would expect the Board to be able to require the cooperation of Code Administrators and Delivery Bodies, and direct Code Panels on priorities.

To be effective, the Consultative Board will require appropriate support to deliver its core functions. The consultation identifies a number of responsibilities for the Board including: industry planning, assurance, and risk management. All of these areas will require significant specialist resources to deliver and we believe that a Strategic Delivery Body (see covering letter and answer to Chapter 3 Question 1) would be best placed to provide this support.

Chapter 6: Moving to new arrangements

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

We believe that the proposed new arrangements are unlikely to have a material impact on most existing projects. However, the current industry code (MRA & SPAA) funding for the Switching Programme could be put at risk depending on the detail of the proposals.

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.

We agree that Ofgem's enhanced powers over strategically important modification proposals are an effective substitute for the SCR powers and would make those powers obsolete.

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

We believe that, due to the differing nature of the contractual arrangements around the current Code Administrators and Delivery Bodies, a staggered approach to implementing competitive applications for licences is essential.

The alternative of a big bang implementation could place code panels and other industry bodies at risk particularly where the services affected are currently provided under contract.