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

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Dear Laura,

Thank you for the opportunity to respond to Ofgem's initial consultation on implementing the recommendations of the Competition and Markets Authority following their energy market investigation. This response is made on behalf of Uniper UK Ltd.

Uniper is an experienced international energy company focused on power generation, energy trading, transportation, and storage, as well as a provider of specialist power engineering services. In the UK we own seven power stations comprising over 6GW of flexible installed capacity, as well as a fast churn gas storage site. As such Uniper is the fifth largest generator in GB and is making a major contribution to ensuring security of supply and providing a bridge to the energy market of the future.

The key points we wish to make are as follows:

- The scope of codes proposed as being covered of the new governance arrangements appears sensible, but we would suggest it is extended to include the System Security and Quality of Supply Standards.
- Licensing the code management and system delivery roles as a joint activity seems appropriate.
- Ofgem should run any tenders for licences on a sole provider basis. However, care should be taken to ensure that a tender does not simply result in a lowest cost solution, which may not be the most efficient or effective. For instance, we see benefits in not running tenders for the CUSC, BSC and Grid Code roles.
- However appointed, code managers should look to adopt best practice by learning from other codes where relevant. Additionally, care will need to be taken to ensure that access to appropriate expertise from service providers or network companies is maintained.



- The strategic direction will be difficult to put together in a dynamically changing market. Care will be needed to avoid picking winners and losers in terms of particular parties and/or technology types.
- The direction will need to be sufficiently flexible to adapt to changing circumstances, and appropriate levels of consultation with all relevant stakeholders will be important.
- The Consultative Board's role needs to be carefully and clearly defined, including how it interacts with the individual panels, code managers and Ofgem. Representation on the board will have to be sufficiently broad to deal with codes which affect wholesale and retail markets in gas and electricity, covering a wider range of commercial and technical issues.
- The specific mechanisms by which code modifications will be prioritised needs to be set out, including how these interact with normal rights of parties to raised modification under open governance and how disagreements over prioritisation are resolved.

Our specific answers to the consultation questions are set out below.

CHAPTER: Two: 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?

We agree that the codes within scope of the Code Administration Code of Practice should also be included the scope of these new arrangements, along with their associated central delivery functions.

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

We consider that, whilst highly technical in nature, the System Security and Quality of Supply Standards is sufficiently strategically important as to merit its inclusion in the new regime alongside the Groups 1 and 2 codes identified by Ofgem, particularly given its impact on wider commercial arrangements such as network charging. This would fit with the overriding objective of the new regime to achieve greater co-ordination across codes to identify and deliver strategic change.

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

Uniper agrees that Ofgem has identified the key factors that should be evaluated; we believe the scope of the code is the most critical issue.

CHAPTER: Three: 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 agree that including both the code management and system delivery functions in a single licence would be a practical approach to help tackle the Codes AEC identified by the CMA. However it is indeed important that the licence



requirements and incentives are designed to minimise the risks of any conflict of interest between the two roles.

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?

We agree with Ofgem that strengthening the terms of NGET's existing licence to include code management requirements would be a practical approach for the Grid Code and CUSC. We would also support consideration of a similar approach for Elexon, for the management of the Balancing and Settlement Code.

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

We believe that for the various reasons identified it would be most efficient for Ofgem to run the tenders. Additionally, 'sole provider' approach seems preferable to a two-stage 'permissive' process. Consequently, and as also seeming the closest solution to resolving the CMA's concerns, Uniper supports Ofgem's preference for Model 3.

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

Notwithstanding our comments on possible different approaches to tendering or otherwise for code managers, there is merit in maintaining the same licensing model across codes and we do not see strong arguments for differentiating between codes, or types of code.

However appointed, code managers should still look to draw upon best practice from other codes where relevant. Additionally, access to expertise from service providers and network operators will need to be maintained, even if the code manager's role is tendered to a third party. This may need appropriate licence or code governance changes.

CHAPTER: Four: Strategic direction

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

It is important that regulation keeps pace with technical and commercial developments while continuing to promote effective competition and Uniper supports the intention of setting out a strategic direction with this aim. However, the challenge of determining how code change should be directed in anticipation of commercial and wider regulatory developments should not be underestimated.

In order to shape such a direction, views must be obtained from many stakeholder groups and adequate consideration given to the relative costs, benefits and potential impacts on different parties before a detailed plan is formed. It is also important that pursuing changes to further a long-term strategic direction does not hold up 'business as usual' modifications that would nevertheless further achievement of code objectives.

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

In order to develop a coherent vision for strategic change it is important that consultation is undertaken to seek the views of and understand the potential impacts on market participants, who will be able to provide different perspectives on how the market may evolve in future and will also need to plan time and resources to prepare for forthcoming change.

We welcome Ofgem's affirmation that code managers will be required to work together with industry participants to consider how code modifications can be most effectively prioritised in order to achieve the outcomes set out in the strategic direction. However, further consideration must be given to how prioritisation would work in practice. Would there be a formal consultation with parties? Who would have the ultimate responsibility for prioritising changes; would this lie with code managers, panels, the consultative board, or Ofgem?

Additionally, further thought should be given to how this would interact with parties' current ability to raise modification proposals under open governance. How would disagreements over how modifications are prioritised be resolved? It would seem reasonable to allow a party to seek to appeal a prioritisation decision which it believes unfairly delays a modification proposal.

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

As a medium-term plan covering at least the three to five years suggested by the CMA, we expect the strategic direction to set out key aims, milestones, and how code changes might be targeted to achieve these, in the context of changes expected in the wider market. The strategic direction should also clarify where responsibilities lie for delivering the changes required. It should also include how, and by whom, success might be evaluated.

However a strategic direction should not require a high level of detail. In a rapidly evolving environment it would be unhelpful to be unduly prescriptive. Further detail could be added as appropriate in the joint industry plan subsequently developed to explain how change could be delivered. Once a proposal has been brought forward the usual code modification processes would then continue to develop the most appropriate solution at that point in time.

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

Alongside other key projects and activities from Ofgem's forward work plan, such as the reviews of the SO role and of embedded benefits, the wider GB network charging arrangements for both gas and electricity should also be in scope of the initial strategic direction. The direction could perhaps also consider wider developments in European requirements and the arrangements that may be required for the UK to participate in the Internal Energy Market in the medium-term.



CHAPTER: Five: Consultative board

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

We support the CMA's suggestion of a forum at which Ofgem and other stakeholders could consider a range of cross-code issues including matters linked to the development and delivery of the strategic direction, plus wider issues such as best practice considerations and system issues. It is important that the role of such a board is carefully defined so that it does not add unnecessary cost, complexity and bureaucracy to code governance, but complements the existing code Panels, with clearly defined accountability and relationships between Ofgem, the board, Panels, and other stakeholders.

We agree that it would be appropriate for such a board to fulfil the specific functions now proposed by Ofgem, including informing the strategic direction and developing a cross-code change plan in consultation with stakeholders. The consultative board should maintain oversight of the plan, and while maintenance including progress reports might be the responsibility of code managers, the board could also play an assurance role, for instance in identifying threats to successful plan delivery and how they might be addressed. For the board also to be instrumental in prioritising proposed changes to deliver the strategic plan, it must be clear how this prioritisation will interact with code Panels' progression of modifications, and how any appeal mechanism would work.

It is critical for its effectiveness that such a board comprises a wide range of expertise in order to manage changes to codes covering a wide range of technical and commercial issues, across gas and electricity wholesale and retail markets. Parties with experience operating in the competitive markets must be represented, with a fair representation of different party types. Transparency is also vital, from the setting of the board's terms of reference in consultation with industry to both the appointment process and board discussions.

CHAPTER: Six: Moving to new arrangements

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

As identified by Ofgem, we consider that the new arrangements should not have a negative effect on major ongoing projects such as the smart meter rollout, or the switching and half-hourly settlement SCRs. These would be able to continue under their present framework. Engagement and compliance with developing European Network Codes is also progressing through existing governance arrangements. However with some European requirements yet to be determined, both in terms of the legislative detail and the UK situation within the EU, preparation for different scenarios could form part of a strategic direction.



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?

We see these enhanced powers as complementary to rather than replacing the SCR powers. Under a Significant Code Review, Ofgem leads the process with a pre-determined structure and indicative timescales. These latest proposals would appear to allow for greater flexibility with less resourcing requirements for Ofgem while still allowing the Authority to take a holistic view and steer change through the strategic direction. However, a potential roll-back of the SCR powers might best be evaluated once the full complement of CMA remedies is in place, post 2019.

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

In order not to create a disproportionate resource burden on potential providers we would support a staggered approach to competitive applications. This would also allow for lessons to be learnt from previous tenders.

We hope that you find our response to be of help and we would be happy to discuss any aspect with you further.

Yours sincerely,

Esther Sutton
Uniper UK Limited