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WWU response to consultation on CMA code governance remedies

Dear Laura,

Wales & West Utilities (WWU) transports gas to 2.5M supply points in Wales and south west England.

Thank you for the opportunity to respond to the consultation, we found the workshop you organised on 12th January helpful in working through the implications of the proposals.

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 system delivery functions) should be within the scope of the new regime?

We agree that the codes identified for gas should be within the scope. As regards Xoserve we think that there is merit in seeing how the reforms to the Funding, Governance and Operation of Xoserve, which will come into force in April 2017, work in practice before implementing further changes. The FGO changes have involved significant work by industry over the last two years and if the CMA remedies are applied to Xoserve then significant parts of this work will need to be reviewed to see what changes are required. Some areas that were changed for the FGO implementation, such as the GT licence and GT funding, would definitely need further change.

We suggest that addressing code governance first would allow a period to assess whether further change, in addition to the FGO changes, to Xoserve governance as the provider of system delivery functions is required at a later date.

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

For gas we do not believe that there are any other codes or systems that should be in scope.

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

The faster switching project could have a significant impact on some codes; some may change in scope and some may even be incorporated in other codes or into new codes. We therefore suggest that this potential impact needs to be considered as there is little to be gained by making changes to code governance to codes that may cease to exist in their current form shortly after any changes are implemented.

Chapter 3: Licensing and competition

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

For gas the licences are UNC, IGTUNC, SPAA and SEC and the delivery body is Xoserve. In addition to the point raised in our answer to Chapter 1 question 2 where we argued that it was appropriate to allow the FGO changes to take effect before making further changes to Xoserve governance there are problems with the proposed approach for the gas industry. Although Xoserve mainly performs functions required by the UNC it also performs functions under the IGTUNC and SPAA and SEC. It is therefore difficult to see how Xoserve could be included in the same licence as one of the code managers (which would probably be the UNC) without affecting its ability to provide services under another code.

Question 2:

This relates to electricity and we have no comment.

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

It is important to consider the practical issues of getting parliamentary time for any legislation and we expect that the likelihood of securing the time in the near future for this primary legislation required to implement these competitive models is low. It would be sensible to consider the options should parliamentary time not be available.

We do not have any views on the preference between permissive licences, whereby parties effectively pass a test and are included in a group of parties that are capable of holding code management licences and sole provider licences which are awarded to a party winning a procurement event to provide code management service for a particular licence. We consider that Ofgem is the natural body to run the procurement event that results in the award of a licence. We note that Ofgem have run a number of procurement events for Offshore Transmission Operator licences.

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

We think that a more appropriate question is “Which model is likely to bring forward the largest number of organisations that can provide a quality service.” We think that this issue is more a procurement issue relating to the state of the market for code managers than a question about which model is best for certain codes. If there is a well established market then the sole provider model may be most efficient. If the market needs to be developed then the permissive licence model may provide a way to develop a pool of service providers.

Chapter 4: Strategic direction

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

Yes it will be useful to have a body that takes the various policy decisions and produces a logical programme that can be efficiently implemented.

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

As the strategic direction is owned by Ofgem its development should be led by Ofgem with contributions from the industry and other interested parties. Once set it should be fixed otherwise the benefit of having a clear strategic direction is lost.

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

The strategic direction should be a high level document identifying the key projects to be implemented with realistic timescales. It is then for the consultative board and the code managers to deliver the detailed programmes and projects.

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

From a gas point of view the projects that should be included are:

- Faster switching
- CMA remedies for code governance

Chapter 5: Consultative board

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

The name consultative board implies a group that will meet a few times a year to provide an independent sense check. The functions of the consultative board listed in the consultation suggest a much larger role.

If the consultative board's role is to coordinate and facilitate delivery of strategic changes across codes (and particularly across industry) which is a role that is required for the faster switching programme then it will require significant resource and hence the name consultative board is misleading. The role described in the consultation is more of a programme manager with some project assurance role together with risk management, risk mitigation and stakeholder engagement. This would clearly need resourcing and funding by some means or other. This could be funded either centrally by Ofgem through contributions from licencees or by contributions from individual codes by some mechanism to be devised.

Chapter 6: Moving to new arrangements

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

We have already commented on the benefit of seeing how the FGO arrangements to be introduced in April 2017 work before considering further changes to Xoserve governance. Including Xoserve in the scope of the strategic direction and the consultative body is sensible but changing governance arrangements immediately after implementing FGO does not seem sensible.

We see a benefit in having a strategic plan that looks ahead and identifies overlaps between projects as this should produce more efficient outcomes and remove the risk of making changes

that then shortly afterwards have to be changed again to implement another project. We have seen this in the interaction of FGO and Project Nexus and may well see it again with the faster switching project.

We also see a benefit of having the consultative body in the role envisaged in the consultation for the faster switching project which is a cross industry project impacting all gas codes and delivery bodies and a number of electricity codes and delivery bodies.

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 our new powers form an effective substitute.? Please explain your reasoning.

The new powers are a better approach than the SCR powers. The strategic direction would lead to the code managers managing change, with modifications being raised that followed due process. There would be much better separation of powers than with the SCR powers recently introduced in gas. These more or less remove all the checks and balances from the modification process were Ofgem to use in full the powers available to it.

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

Staggering the process will be required. Both the party running the procurement event and the parties responding will only be able to participate in a certain number at any one time so the process will need to be staggered over probably one to two years. Following the procurement event then each new code manager will need to have a period to mobilise their team before taking over the role.

We have commented on the time required before parliamentary time is available and the need to stagger the competitive application process. Together they mean that a number of years will be required to complete the competitive application process and have the appointed code managers in place for all codes. An alternative approach to code management may deliver benefits sooner.

Yours sincerely



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