

UKCS COMMERCIAL CODE OF PRACTICE
(CCoP)

SURVEY OF NEGOTIATIONS CONDUCTED BY UKCS
LICENSEES DURING 2009

REPORT OF FINDINGS

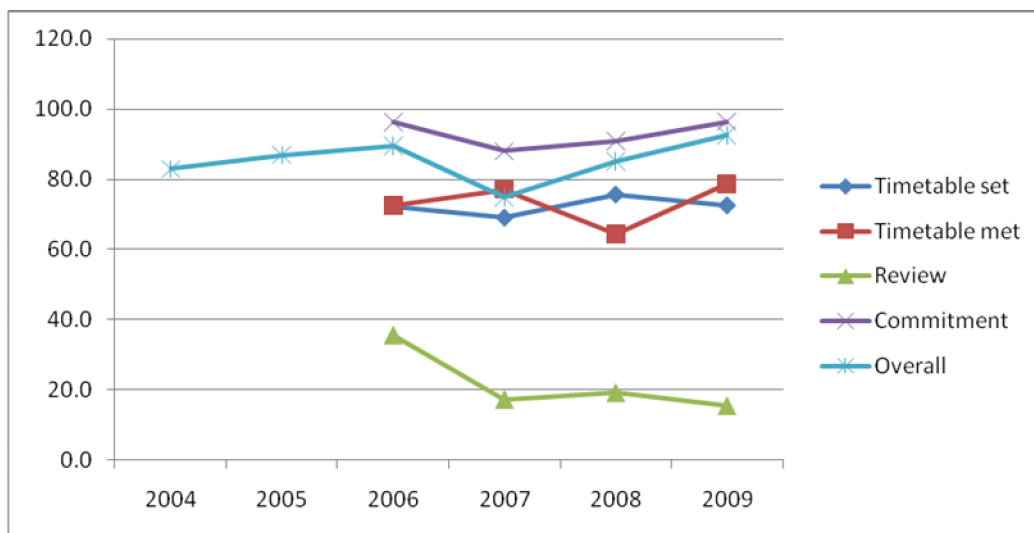
DECC
November 2010

Executive Summary:

This was the eighth survey of annual 'deals' undertaken by North Sea licensees following agreement of a Commercial Code of Practice (CCoP) in 2002. The survey invited feedback on all significant negotiations conducted by all UKCS licensees during 2009. The closing date was 31 March 2010, although several responses were received after this date (and were taken into account). The response rate was somewhat disappointing with 266 reports recorded by 29 licensees. This compares with 378 reports from 34 licensees for 2008 and 504 from 52 for 2007). 18 deals were 'matched' – i.e. instances where there were comments on the same negotiation (or groups of negotiations) from more than one party.

Key results and conclusions

- The overall trend from 2008 to 2009 on the key CCoP principles is one of improvement.
- Clear trends are that the 'Overall CCoP compliance', 'Senior management commitment', and 'Meeting a timetable' have improved.
- The trend for 'Setting a timetable' depends on whether nil responses are included in the analysis or are screened out.
- Post activity review continues to drift downwards and be carried out in the minority of negotiations
- The chart below shows trends over time when nil responses are screened out.



- There has been a reduction in the number of nil responses to certain questions, which helps reduce the uncertainty in assessing trends.
- There has been a reduction in the number of deals that could be matched, although there is an improvement in the degree of agreement between the parties to these deals.

The Commercial Code of Practice (CCoP)

The Commercial Code of Practice arose from discussions within the Progressing Partnership Working Group during 2001 to determine a positive 'behavioural framework' for asset transfers and trading on the UKCS. In summary the Code (Annex 1) provides short, clear guidance about the way that negotiations should be conducted, that will, if applied, give confidence on both sides that transactions will be carried out in an effective manner. That is, without intrusion of personal issues or short term posturing/brinkmanship, or even 'abuse' of negotiating power through delay or insufficient interaction, that could, ultimately, damage interest in doing deals on the UKCS to the detriment of all current and future players. Further background about the Code is at Annex 2.

This report is a summary of the CCoP survey responses for 2009.

Process

Survey forms – cover letter plus Excel spreadsheet format and guidelines (copied in Annex 4) - were e-mailed on 1 March 2010 to all licensees with a nominated CCoP champion. The closing date for the return of the survey forms was 31 March 2010 but DECC followed up non-respondents for some months afterwards to secure as wide a view as possible.

Comments were compiled in a confidential spreadsheet and this note uses that information to draw conclusions without enabling individual respondents to be identified. The survey follows closely the format adopted for the 2004 to 2008 surveys. This maintained the focus on the issues of concern, including setting and meeting timescales, learning lessons and having sufficient management commitment. For ease of completion the actual submissions were made via a pro-forma developed on an Excel spreadsheet following successful use for the 2006 survey. It was originally hoped that not only would time be saved in completing and analysing the information, but that more information about each aspect of the deal might be given. However, the extent of additional information provided has been variable.

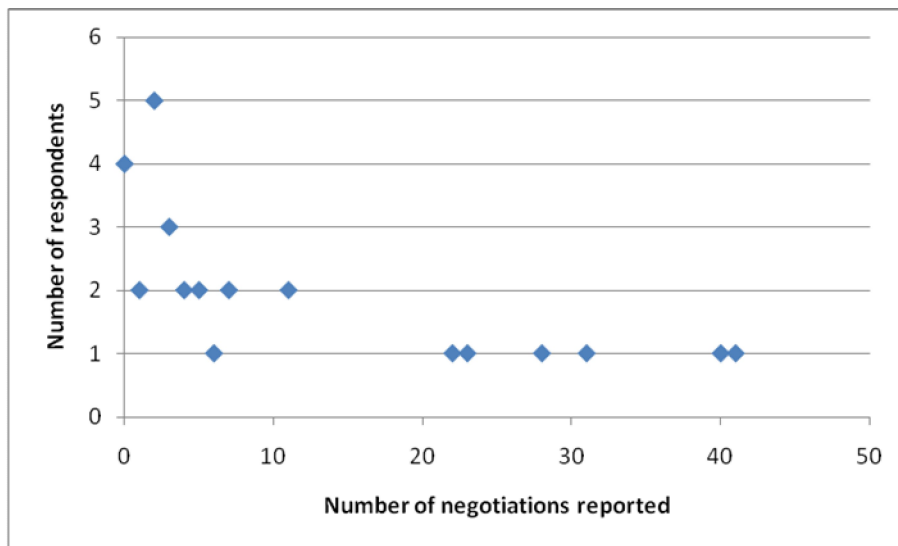
Extracting the most value from a survey of this kind requires that we not only have comprehensive data, but that we can examine the views expressed by different parties to the same deal. As in previous years, we have attempted to 'match' the responses as far as possible. This is not easy - in many instances one party might include individual agreements – for transportation or processing for example – under an overall agreement or 'Heads of Agreement' while the other party might denote them as separate deals. There was also, inevitably, a difference in 'threshold' – the level of significance above which a respondent has submitted information. For those companies with few deals this was not an issue: all deals could sensibly be reported with minimal effort. But for those companies with significant numbers of transactions, it is inevitable that they should take a pragmatic view and look at significant agreements where there are issues to report, whether such agreements were part of a package or not, rather than seeking to record every single legal transaction.

Comments on 'pending' deals – i.e. those that are near the end point but still in train or have not yet been executed – were also covered by the survey. However, not every respondent appeared to include these in their returns, which may indicate a judgement on their part about the value of including comments before the deals have been completed.

Responses

In total, 266 reports were recorded in the returns from the 29 licensees who responded. They ranged from nil returns (4 licensees) to details on 41 specific transactions. Figure 1 shows the distribution in more detail.

Figure 1: Number of negotiations per respondent (licensee)



In terms of initial analysis, this summary paper follows the pattern of recent surveys. It seeks to draw together some themes under the Yes/No responses and secondly, to draw out further themes from the comments expressed under each deal – where possible trying to compare the views of different parties on the same transaction. In terms of the type of agreement under negotiation, the broad breakdown is in Fig. 2. Not surprisingly, the category with the highest level of activity was transportation and processing.

Figure 2: Type of Agreements

Type of Agreement	Number of reports (2008 figures in brackets)	Percentage of all reports (2008 figures in brackets)
Sale and Purchase/Disposal	49 (60)	18 (16)
Transportation & Processing, Construction & Tie-in	140 (149)	53 (39)
Operating	31 (61)	12 (16)
Farm-in/out	8 (19)	3 (5)
Other*	38 (89)	14 (24)
<i>Total</i>	266 (378)	100%

(*This includes field unitisation, services agreements, product sales/purchase, commissioning, leasing, sharing (including rig sharing), confidentiality, liability, bidding and substitution agreements.)

Overall

For the fifth time, as affirmed as important by recent CCoP champions meetings, the survey focussed on the issues that emerged from previous surveys as being key to successful negotiations. These were:

- whether the parties had agreed a timetable and also whether they had adhered to it (or whether one had been set but had been revised in the light of changing circumstances);
- whether a post-activity review had been carried out (either internally or with the other party or parties) in order to learn from the experience;
- whether the negotiations had had the support and commitment of senior management;

and finally, an overall indication of whether the Code had been complied with. As seen in Annex 4, besides the 'Yes/No' boxes there was space for comments on the form on any aspect of the above for each deal and, more widely, on wider issues such as the survey or survey document, or the operation of the Code.

As the survey form required a Yes/No reply to the first 4 questions, it was to be assumed if all four were affirmative then it was implied that the Code had been complied with (and conversely, largely negative responses would

suggest non-compliance). However, about one in eight (12%) of the responses on overall compliance of the Code was either not marked or unclear. The responses were reviewed and amended in order to mitigate this lack of response, as described below.

For the 266 reports of transactions, the breakdown of responses was:

Figure 3: Full breakdown of responses

	Timetable set/ agreed?	Timetable adhered to?	Was a post-activity review carried out?	Commitment of senior management?	Code complied with?
Yes	182	143	29	245	217
No	69	68	157	9	17
No response/ not clear	13	12	5	2	10
'N/A', 'Not required', or 'Not needed'	2	43	75	10	22

Results and trends for the breakdown of responses

Overall compliance with the Commercial Code of Practice was considered to have been achieved in 82% of reports (217 out of 266). Blank and 'not applicable' responses can be removed in this case by reducing the total number of reports to 234 (i.e. those where a definite 'Yes' or 'No' result was given). This approach increases the overall CCoP compliance to 93%, which compares favourably with the 85% recorded for 2007. The following table shows the two sets of figures for all five CCoP indicators.

Figure 4: Percentage compliance with CCoP indicators

	Timetable set/agreed	Timetable adhered to	Post-activity review	Senior management commitment	Overall compliance with code
% Yes	68.4	78.6*	10.9	92.1	81.6
With blanks removed	72.5	78.6*	15.6	96.5	92.7

* Calculated as the percentage of deals where a timetable was set

The results for 2009 for the basic data (i.e. from the first row of Figure 4) and for previous years where available are displayed on the chart below.

Figure 5: Trends for CCoP indicators – including nil responses

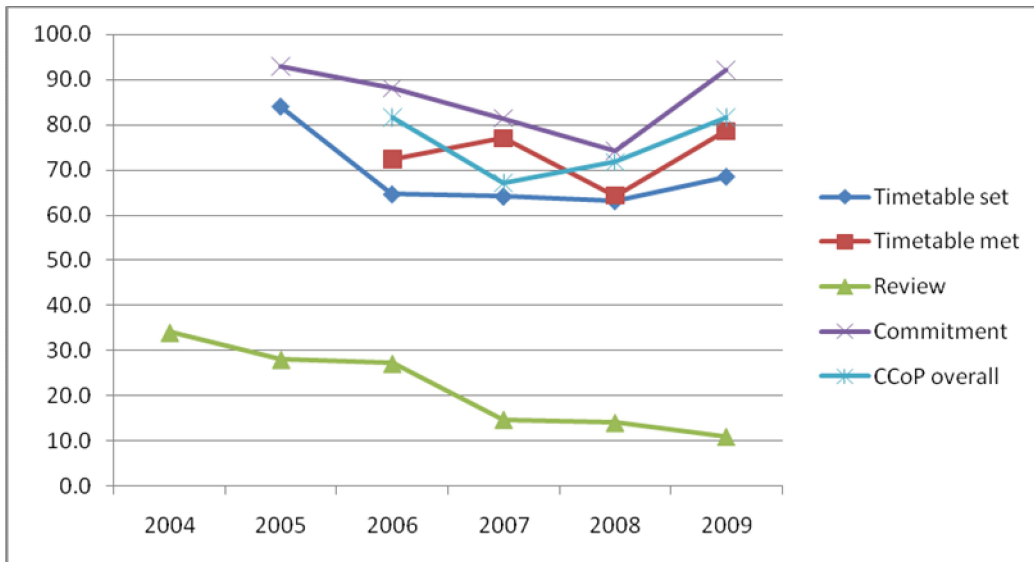
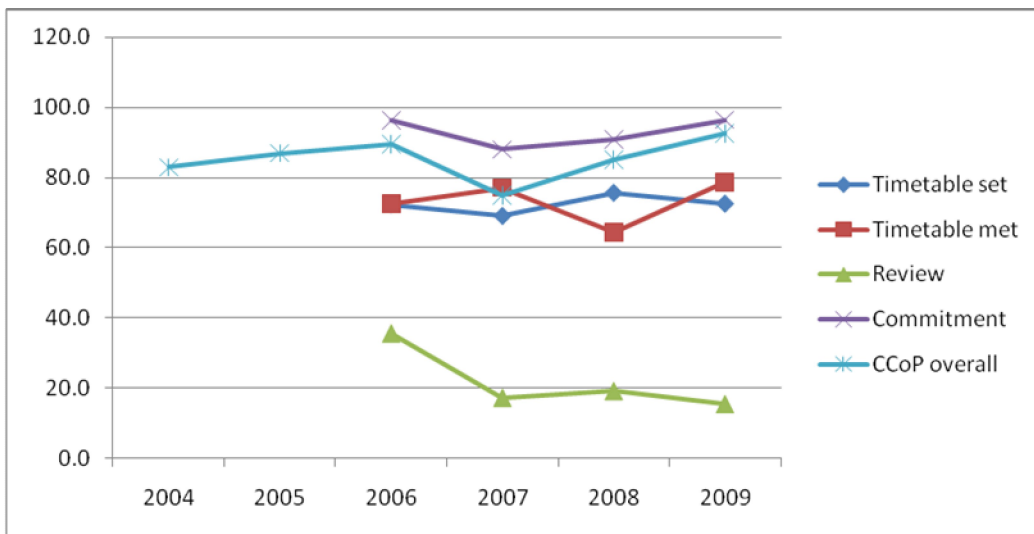


Figure 6 shows the corresponding data from the second row of Figure 4, i.e. when 'nil' and 'not applicable' responses are removed.

Figure 6: Trends for CCoP indicators – nil responses removed



The improvement from 2008 to 2009 in 'Overall CCoP compliance' occurs whether 'nil' and 'not applicable' responses are included or removed. Similarly, there is an improvement in 'Senior management commitment' and 'Meeting a timetable' for both cases. For 'Setting a timetable', the picture is not clear and the direction of trend depends upon whether nil responses are included or removed. Post activity review is still undertaken in only a minority of negotiations and the trend continues to be downwards.

'Matched' transactions

For this 2009 survey, it was possible to find only 18 deals where comments had been made by more than one party (57 for 2008, 45 for 2007).

As in previous years, matching deals is not a precise science. Indeed in many cases one respondent had indicated that the report referred to an overarching suite of agreements – often covering a major development – whilst another respondent on the same 'deal' was reporting their view on a specific transaction within that 'umbrella'. Despite the pro-forma encouraging fuller descriptions of deals that would allow easier matching, there was still some difficulty in ensuring that references related to the same transaction.

Annex 3 contains brief summaries compiled from the responses that were able to be matched. They show the extent of agreement with the five CCoP indicators by the respondents, and this is summarised in the table below:

Figure 7: Summary of matched deals

Extent of compliance with CCoP indicators	Number of matched deals
None	0
Limited – 1 or 2 indicators match	3
Good – 3 or 4 indicators match	12
Full	3

For the 2008 survey, the distribution of matched deals was fairly normal in nature with most deals exhibiting either Limited or Good agreement. The 2009 data shows an improvement, with the majority of deals showing Good agreement. However, with the much reduced number of matched deals for 2009, it is not entirely clear whether this is a significant trend.

Additional information

The 2008 survey template included a limited number of general questions for the first time, in addition to the table covering each transaction. An alternative approach was adopted for the 2009 survey, by requesting additional timescale information for each reported negotiation that involved transportation and processing. This was intended to gather more knowledge about infrastructure negotiations, in recognition of the perceived difficulties in this area. This

information has been extracted for Oil & Gas UK to inform their Annual ICoP (Infrastructure Code of Practice) Compliance survey, and is not separately reported here.

Some broad conclusions

The level of responses this year – in terms of reports on deals - is somewhat lower than last year, although the resulting trends are generally improved. There has been a reduction in the number of incomplete boxes, which is helpful as it helps to reduce the uncertainty in assessing trends. In terms of the size of deals, it is clear that these range from the distinctly routine to the complex, where typically major operators are involved with a number of parties on a range of simultaneous transactions. The balance of deals has shifted in the last year, with an increased percentage on transportation and processing agreements, and a continued decrease in Farm-in deals.

Matching reports made by different parties on the same deal continues to be difficult, and a much reduced number of matched deals were identified this year. The degree of agreement between the parties to the deals is somewhat improved, although there are still disagreements in some cases over whether timescales were set or met.

MISSION - To promote Co-operative Value Generation

BEST PRACTICE PROCESS

- Establish and Agree a Timetable to Completion
- Adopt Flexible Methods and Fit-for-Purpose Solutions
- Maximise the Use of Standard Form Agreements
- Comply with Codes of Conduct
- Ensure Personal Issues do not become a barrier to Progress
- Conduct Post-Activity Audit and Analysis

SENIOR MANAGEMENT COMMITMENT

- Front-end Involvement and Continuous Monitoring of Progress
- Ensure Appropriate Resources are Available
- Empower Staff Consistent with Value of the Project
- Ensure Appropriate Use of Tactics
- Adopt a Non-Blocking Approach

Annex 2. History of the Code

The Code was established by the industry in 2002. The UK heads of all UKCS licensee operations were invited to sign up initially in mid-2002 and nearly all did so. It was also jointly agreed to undertake a survey to determine just how significant the behavioural issues raised by the Code of Practice were for successful trading and to what extent the CCoP had been applied and was useful. The first survey, carried out in early 2003 to cover calendar year 2002, provided a valuable insight into both some areas of best practice and those where improvements needed to be made. An interim report was presented to PILOT on 19 March 2003 and it was decided subsequently to repeat the survey for transactions undertaken during that year. The then Energy Minister wrote to UKCS licensees in October of that year to invite them to reaffirm their commitment to the Code, alert them to the forthcoming survey, and invite a company nominee to become a CCoP 'champion'. A 'champion' would help embed and promote the Code within individual companies and act as the point of contact on all things related to the Code or specific transactions.

Following nominations, it has become the pattern to hold networking meetings of the champions each year: in 2007 two were held closely together in Aberdeen and London in August and September. The survey format remained similar for 2004 to 2006, but for 2006, returns were first made via a standard spreadsheet pro-forma and this has been retained to date. A letter was sent from the then Energy Minister in January 2009 to operators of fields and infrastructure to seek continued support for the industry codes of practice (amongst other things) and all respondees gave that support

Annex 3: List of 'matched' transactions

Deal number	No. of reports on specific deal ¹	Degree of agreement	Comments
M1	2	Limited	
M2	2	Full	
M3	2	Full	Not clear if complete – different views from parties
M4	3	Limited	
M5	2	Good	Parties did not agree whether timescale was set
M6	2	Limited	Parties did not agree whether timescale was set
M7	2	Full	
M8	2	Good	
M9	3	Good	
M10	2	Good	Parties did not agree that timescale was met
M11	2	Good	Parties did not agree that timescale was met
M12	5	Good	
M13	2	Good	
M14	2	Good	Pending
M15	2	Good	Not clear if complete – different views from parties
M16	2	Good	
M17	2	Good	Parties did not agree that timescale was met
M18	2	Good	

¹ This number should be interpreted with care. Some reportees have reported a specific transaction whereas others have included it under a wider 'umbrella' and reported on overall progress with that suite of Agreements. Some parties have not reported on transactions even though they have been identified by others as having been involved.

Annex 4: Survey Covering letter and Form (Excel Spreadsheet)

COMMERCIAL CODE OF PRACTICE: ANNUAL SURVEY OF TRANSACTIONS CONDUCTED DURING 2009

GUIDELINES FOR COMPLETION OF THE RETURN

General

1. The Excel spreadsheet template for survey returns from last year is being retained with three amendments:

- No 'General questions' at the start of the template,
- The addition of 'Key dates' columns, **for infrastructure negotiations only**, at the right hand side of the table where specific negotiations are to be listed, and
- Minor modifications to the titles and comments of the table headings

2. The Excel spreadsheet format was previously agreed as being a distinct improvement over earlier templates, and no substantial concerns have been raised about the general format. It also allows easier compilation of responses for analysis by DECC.

Scope

3. In terms of what transactions should be covered in your return, typically you should include those such as

- sale and purchase/disposal/exchange;
- transportation & processing agreements;
- operating agreements; farm-in/out;
- others such as field unitisation, services agreements, and substitution agreements.

4. Smaller, more straightforward and day-to-day transactions such as confidentiality agreements, simple pipeline crossing agreements, short side letters etc, need not be included although there may be cases where there have been 'learning opportunities' that it would be valuable to include.

Completing the return

5. Please enter your company name on the line at the top, then use a separate row of the worksheet for each transaction (rather than a separate worksheet for each deal) in the table below.

6. All relevant information is helpful. Although there may be reasons (apart from the demands on your time) why you do not wish to put a comment in the comment boxes, it is however particularly helpful to choose one of the options from the drop-down list as a reply in the Y/N question boxes. An empty box is clearly a lost opportunity to provide any indication about that aspect of a transaction and gives the overall figures less weight. The following are examples where additional information is especially useful:

- Regarding timetable - If the timetable was changed, then any information as to whether that change was necessary and mutually acceptable;
- Regarding post activity audit – 'audit' may a misleading choice of word. Essentially in this section the survey seeks to capture any evidence of a 'look back' at the deal to assess what went well/not so well and what lessons may be learned and built upon for the future. This need not be any major formal

exercise, possibly a simple e-mail exchange with a colleague. So any indication – such as whether you/the other parties felt an audit was necessary or not (in the latter case maybe a very simple deal that clearly did not); whether the audit was internal or involved the other parties, and what form the audit took (maybe a dedicated meeting, or a short discussion in the margins of a social event), or other;

- Regarding senior management commitment, this will inevitably represent a broad judgement by you, based on the action (and inaction) of both your own company's management and that of the other party/ies. The 'Comments' for this heading in the template paraphrase the CCoP senior management objectives, and these may be helpful in making the judgement.
- A 'Y' for compliance with the Code implies that all the main tenets of the CCoP were adhered to – timetables being agreed and kept to; commitment; was self evident, etc. You may feel that the spirit of the Code was met if one or even two of the other columns were marked 'N'. However, as the number of 'N' marks elsewhere increases, it should be harder to justify a 'Y' mark for overall Code compliance. It is again useful to have any insight into why the deal went particularly well or why it left a less than satisfactory feeling.

7. The date refers to the execution date, or should be marked 'Pending' if not yet completed, or 'Abandoned' (with the date) if not pursued after significant negotiations had taken place. In the latter case, if there was any element of surprise/concern from one or two parties that the deal was not progressed, then this could be usefully described in one of the comment boxes on the spreadsheet.

8. The full title of the Agreement is very helpful as it allows easier matching of the comments submitted by different parties. Where there is a suite of agreements, please include the name of the field(s) and/or the infrastructure in question.

9. Selecting 'Suite' or 'Single' from the drop-down list in the transaction column is also important. One of the main aspects of the survey is being able to identify a specific transaction so that views from all parties to that particular deal can be compared (in an unattributable way). In the past it has always been difficult to do this since often a single transaction – say a Transportation Agreement - is part of an overall suite of deals. In such a case one company may only be party to one transaction, providing comments on a relatively minor part of a major deal. Unless this is well understood then the comments from the other parties may refer to the broader deal and not necessarily be pertinent to that smaller deal but apply to the whole suite, giving a misleading comparison.

10. In the same vein, providing the full and precise names of participants to the deal – particularly where the party may be a subsidiary of a major organisation - can also be very helpful in matching comments.

11. Finally, we do appreciate your help in completing the survey, fully recognising the demand this can place on your time. We aim to prepare a summary report of the findings from the Survey during mid 2010, and would welcome feedback on how these findings can be disseminated better.

Commercial Code of Practice Annual Survey – for transactions conducted during 2009

Company name:

There are no General questions this year. However there is additional information that we would like you to complete on the table below, for infrastructure negotiations only.

This arose from discussions in the Oil & Gas UK ICoP Summit and the Changing Gear Steering Group where more information was sought about the time taken for these negotiations.

Summary of specific negotiations:

Execution date (DD/MM/YY)	Title of Agreement/Transaction	Participants	Suite or Single	Agreed Timetable	Timetable adhered to?	Comments	Post-activity Audit?	Comments	Senior Mgt Commitment	Comments	CCoP Compliance	Final Comments
				Y/N	Y/N		Y/N		Y/N		Y/N	

Additional information requested for Infrastructure negotiations:

Key dates - Infrastructure negotiations only			
Date of Letter of Request	Length of Technical Studies (in months)	Date of ARN Submission	Date of deal becoming unconditional

Annex 5 : Respondees

Apache
BG
BHP
BP
CalEnergy
Centrica
Chevron
DONG
Dyas
ENI
Enquest
Eon
Euroil
Exxon
GdF
Ithaca
Marathon
Marubeni
Murphy
Nexen
Nippon
Noble
RWE
Serica
Shell
Statoil
TAQA
Total
Tullow