

Will Fletcher
Project Manager
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

31 Homer Road
Solihull
B91 3LT

Telephone: 0121 288 2107
E mail: enquiries@gasgovernance.co.uk

**24 Hour gas escape
number 0800 111 999***

* Calls will be recorded
and may be monitored

30 July 2015

Dear Will,

Joint Office response to the CMA Energy Market Investigation – Potential Remedies

The Joint Office of Gas Transporters (JO) is the Code Administrator for the gas Uniform Network Code (UNC), with a remit to manage changes to the UNC. Effectively the JO's responsibilities are limited to facilitation of the UNC modification process within the Modification Rules defined in the Code and they end once the UNC has been modified.

The views expressed in this letter are limited to the remedies and effects directly related to these activities.

Remedy 18a - Recommendation to DECC to make code administration and/or implementation of code changes a licensable activity

a) Is this recommendation likely to result in a positive change in the initiation, development and/or implementation of code changes that pursue consumers' interests?

We do not believe this remedy would have a positive effect on the initiation or development of UNC changes since we do not believe that the Code Administrator is the source of extended development timescales. It is our opinion that the most effective changes occur when the industry is fully engaged in development of the solution, and the UNC Modification Rules have enshrined this principle by making a proposer responsible for championing their proposal with an industry workgroup supporting and challenging development activity. Ultimately this process can only run at a pace the industry can support; and in recent years we have observed that the scope and breadth of change appears to have put pressure on limited resources right across the industry. As a Code Administrator, we are only able to facilitate workgroup development when suitable expertise and experienced industry parties are available.

Turning to the question of whether this remedy might afford Ofgem with powers to address deficiencies in the change process, we note that we already publish quarterly reports of our Customer Satisfaction performance and against the metrics prescribed in the Code Administrators Code of Practice. These allow Ofgem, and all industry parties, to monitor the UNC modification process; to date we have no record of any concerns being raised.

b) Would this remedy be more effective if certain functions currently carried out by code panels and/or network owners (e.g. setting up working groups) were transferred to code administrators?

The JO already has responsibility for setting up, and facilitating, workgroups and other UNC-mandated groups and committees. It does this autonomously from the large gas transporters.

We believe that the JO and the UNC Panel work effectively together at present, with Panel's decisions being enacted no later than the day following a Panel meeting. Notwithstanding this, we have suggested to Ofgem in our response to their May 2015 Code Governance Review consultation that there is potential to accelerate the front-end of the change process if Code Administrators were, subject to application of an objective test, able to initiate development/assessment activities directly on receipt of a modification proposal instead of

referring them to Panel. This could be enabled simply, via a change to the Modification Rules.

We have considered whether expanding the remit of the JO to encompass development of solutions with/for proposers (as happens in some Codes) might improve the process. We do not consider this to be a reasonable option; it undermines the fundamental principle of proposer-owned change and might lead to a large number of poorly-developed proposals being raised (which would consequently consume more industry resource in assessment activity).

c) Would this remedy be more effective if Ofgem or DECC were to impose stricter requirements relating to the selection (e.g. competitive tender), financing and/or independence of code administrators (and/or delivery bodies)?

The UNC Joint Governance Arrangements (JGA) is provided for in the gas transporter licences, Standard Special Condition A12, which requires them to establish and operate common and coordinated arrangements, including the code administration activities performed by the JO. The corresponding JGA Agreement (JGAA) is in a form approved by Ofgem and is published. This is an efficient model; overheads are limited, resources are provided from within the transporter organisations and its' independence is enshrined within the JGAA. We believe that being separate from the delivery of change ensures that UNC modifications are processed and supported by the JO without distortion that delivery-related concerns might introduce.

Remedy 18c - Appointment of an independent code adjudicator to determine which code changes should be adopted in the case of dispute

a) Are there benefits in terms of independence, impartiality and/or industry know-how of an independent code adjudicator that are not available with Ofgem, given its other responsibilities, when undertaking the adjudicator role?

We believe there may be merit in the appointment of an independent adjudicator to be referred to in the event of dispute only. However, care should be taken to set the entry criteria for adjudication sufficiently high to ensure unwarranted or excessive numbers of referrals are avoided. It is our experience that disputed code changes are, by nature, contentious topic areas and inevitably time-critical. It would appear to be a positive step if an escalation process were to be available to determine disputed changes in a timely manner and without recourse to expensive legal process. It is our opinion that this should only be seen as escalation in the event of dispute; having an adjudicator make all code change decisions would be Ofgem by another name, since they would similarly need a set of Regulatory Objectives (or equivalent) to measure changes against.

If an adjudicator (as described) were to be charged with making all modification-related decisions, it is difficult to see how this would lead directly to improved outcomes for customers. We would suggest that re-setting the Regulatory Objectives to align more closely with consumer interests might be a more effective way of focusing on the desired outcomes, since this would require explicit assessment of the consumer impacts, enabling more informed decision-making.

b) Would there be unintended consequences, arising for instance from an increased lack of coordination between code modification governance, licence modifications and legislation?

We can see that the examples quoted have potential unintended consequences, but we believe that these can be managed with effective communication and cooperation between an adjudicator and Ofgem.

Otherwise, we would like to understand more about how divergence between policy objectives and code modification decisions would be avoided in such circumstances.

Thank you for the opportunity to comment on the potential remedies.

Yours sincerely,

Les Jenkins (*via email*)

Chief Executive, Joint Office of Gas Transporters