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Drax Power Limited
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5 August 2015

Dear Will,

Re: Provisional findings report and notice of possible remedies

Drax Power Limited (“Drax”) is the operating subsidiary of Drax Group plc and the owner and operator of Drax Power Station in North Yorkshire. The 4,000MW station consists of six separate units which together produce around 7-8% of UK generation. Until recently, these units all ran (mainly) on coal. However, two of these units have been converted to renewable biomass (in 2013, and 2014 respectively), and a third unit is expected to convert in 2016, at which point Drax will be a predominantly renewable generator, and have completed the largest decarbonisation project in the EU. Haven Power Limited (“Haven”) is an electricity retailer and a subsidiary of Drax. Haven supplies small and medium (SME) sized business customers and larger Industrial and Commercial (I&C) customers. This response represents the views of both Drax and Haven.

Thank you for the opportunity to respond to your published provisional findings and possible remedies. Where the CMA has concluded that investigated features do not give rise to an Adverse Effect on Competition (AEC), we agree with these conclusions for broadly the same reasons as advanced by the CMA. In particular, we agree with the suggestion that Ofgem use the opportunity of the move from PAR500 to PAR50 to do a careful empirical analysis of, and public consultation on the likely effects of a further move to PAR1 before any such change is made. Our agreement with the CMA’s findings extends to features such as unilateral market power in the generation market, vertical integration, the Capacity Market, generator self-dispatch etc. As such we do not dwell on these issues further in our response.

It is important that the CMA consider the cumulative impact of the numerous remedies it has proposed. In particular, the final package of measures must be assessed in terms of the overall costs of implementation to determine whether the package as a whole is deliverable and sensible. We believe an overarching impact assessment of the proposed final package of remedies is appropriate to determine the efficacy of the proposed changes.

The remainder of our response focuses on the features the CMA provisionally believes give rise to an AEC and the possible remedies advanced to rectify these AECs. The response splits these AECs into the following categories: upstream; retail market (domestic and microbusiness); policy making & regulation; and industry codes.

Upstream

CfD FiT allocation

We welcome and fully support the CMA conclusion that a move to a competitive allocation process for CfD FiTs is a positive step towards ensuring a more efficient allocation of low carbon support. As such we fully support Remedy 2b that the current allocation of budgets between three pots needs a thorough review.

In our opinion any comprehensive review of this allocation process will demonstrate the benefits of as early as possible a move to a fully competitive allocation. Given the benefits of competitive allocation (as demonstrated

by the clearing prices in Pots 1 and 2 in the first allocation round) and the delay to the second CfD FiT allocation round, we see no reason why full competition could not be introduced in the next CfD FiT allocation round, potentially in October 2016. We note that the move to competitive allocation was also a condition of the EU State Aid clearance for CfD FiTs, namely that HMG should merge Pots 1 and 3 by no later than 1 January 2017. A move to full competition in October 2016 would meet the State Aid requirement. We also note the Government's post-election decision not to provide any further support to new onshore wind projects which will in any event limit any competition in Pot 1.

We therefore believe the necessity of a Pot structure is no longer necessary or appropriate, and that Pots 1, 2 and 3 can, and indeed should, all be merged into a single auction for the next allocation round. This would ensure that the scarce funds available under the Levy Control Framework (LCF) deliver the greatest volume of low carbon power, whilst ensuring that the impact on customers' bills is minimised. It would also remove the need for individual projects (>250MW) to undergo a State Aid clearance process.

However, to ensure there is proper and effective competition between all the eligible technologies in such an auction, the auction must be established on a level playing field. So, for example, CFD contract lengths will need to be standardised across all competing technologies.

In addition, and again to ensure that scarce state support is deployed in a way which minimises the overall impact on consumer bills, LCF funds should be allocated on the basis of the "whole system costs" of different technologies (i.e. including the additional costs of transmission asset reinforcement, system balancing costs and the costs of having stand-by plant available to run if plant has an unplanned outage or the wind is not blowing). DECC has recently commissioned some work from Frontier Economics on this issue, and we believe the results of that analysis should in some way be incorporated into the assessment of how LCF funds are allocated through the next CFD auction. We have a number of thoughts and ideas on how a whole system cost approach could be established and we would be happy to discuss this approach in greater detail with the CMA.

We also agree that it is sub-optimal to allocate CfDs outside a competitive process on a bespoke basis. As such we agree fully with suggested remedy 2a that DECC should undertake and consult on a clear and thorough impact assessment before awarding any CfD outside the competitive CfD auction mechanism.

Lack of locational pricing of transmission losses

We agree with the CMA that in principle the lack of locational pricing of transmission losses constitutes an economic externality. However, we consider that the benefits of introducing locational pricing of transmission losses are not justified by the costs and disruption associated with the change.

The cost-benefit analysis (CBA) conclusions quoted in the provisional findings are approximately five years old. Even a cursory glance at the CBA's underlying GB market assumptions reveals these to be significantly out of kilter with the current and expected development of the GB electricity system, not least the fundamental generation background. There is a need to undertake a fresh, up-to-date and independent CBA of introducing locational pricing of transmission losses to underpin any justification for making a change to the market arrangements at this stage. Changes that will need to be taken account of in a new CBA include the change to the transmission changing method (Project Transmit), the development of interconnector projects, EMR, Smart Metering etc. A number of the possible remedies suggested rightly highlight the importance of regulatory/government bodies undertaking robust impact assessment to justify their policy interventions (for example on CfD FiT allocation). The CMA undertaking a rigorous impact assessment of transmission losses will be consistent with the possible remedies it has suggested, as noted above.

A new CBA is particularly important as the final impact on the end consumer of making such a change is highly uncertain owing to the uncertainty of how the change will impact the marginal cost of generation. Depending on how the marginal cost of generation is impacted, the wholesale power price may rise or fall thus potentially increasing or decreasing costs to the end consumer. What is certain is there will be a cost associated with modifying IT systems (centrally and amongst market participants) to implement locational transmission losses, which will be passed through to consumers.

Moreover, a strong argument has not been made about any economic benefit resulting from the introduction of locational losses on the demand side (as well as the generation side). This change would introduce further complexity into Suppliers' businesses at a time when they are already subject to extensive change. This complexity would feed through to customer prices, but this is highly unlikely to have any influence on where a customer chooses to live or locate their business.

Furthermore, before determining whether to introduce locational pricing of transmission losses, a number of further issues need to be considered thoroughly. These being:

Investor confidence

The recent changes announced to the Climate Change Levy (CCL) exemption arrangements, as well as the change in policy on onshore wind and solar all illustrate the damage that can be done to investor confidence at a time when the UK is embarking on a major investment programme to upgrade the electricity system. So care needs to be taken to protect existing investors from changes to the GB market arrangements to ensure already fragile investor confidence is not further eroded. This clearly applies to an issue like the potential introduction of locational transmission loss charges. For existing plant in GB this will very largely involve a simple one-off transfer in value from plant which happens to be sited in the north to plant which happens to be sited in the south for very little benefit in terms of improving overall economic efficiency. So – and always providing the updated CBA supports any change at all - there is a good argument to implement it immediately for plant not already in the planning system, but grandfather the losses charging arrangements for existing plant, or at the very least implement it over a long timescale.

EU developments

ACER is currently undertaking a study of transmission charging structures with a view to evaluating the merits of further European harmonisation. This study is not expected to be completed until the end of 2015. Therefore it appears premature to suggest introducing locational pricing of transmission losses at a time when it is unclear to what extent this study may seek to harmonise European transmission charging structures.

Greater uncertainty of incremental generator costs

Introducing locational pricing of transmission losses will increase generator uncertainty over their incremental costs. Arguably, the lack of locational pricing of transmission losses results in inefficient dispatch. However, by implementing locational pricing the resulting uncertainty of incremental costs will result in a new form of inefficient dispatch. In effect, one form of dispatch distortion will be swapped for another. It is not clear which dispatch distortion has a lesser impact on consumers.

There is currently strong industry concern over uncertain incremental costs (such as BSUoS) which is leading to increased risk premia, resulting in further increased costs to the end consumer. Industry work is being undertaken to alleviate these concerns and as such it would appear contradictory to introduce a new uncertain incremental cost to the market arrangements at a time where the industry is seeking to reduce the number of uncertain incremental costs.

Implementation complexity

We believe that the complexity and cost associated with implementation is likely to be greater than that initially envisaged by the CMA. For example, the administrative impact on CfD FiT contracts will need to be considered. Moreover, how will the transmission losses associated with System Operator re-dispatch be accounted for and factored into the price of providing the service (risk premia)?

Retail Market

Remedy 3 – Remove from domestic retail energy suppliers' licences the 'simpler choices' component of the RMR rules

Although we are not a domestic supplier, we support this proposed remedy. Although we have not been directly affected by this, restricting the number of tariffs that a supplier can offer has been bad for consumers.

It may have had the apparent appeal of making the decision for consumers simpler, but it has reduced choice and stifled innovation. Suppliers will not have been able to offer the range of tariffs that they would have liked and as a result the market will have become more vanilla – it will have become less easy for suppliers to differentiate themselves and as a result, consumers are less likely to engage.

Remedy 4a – Measures to address barriers to switching by domestic customers

Although we are not a domestic supplier, we do not believe that the introduction of penalties for failure to switch a customer is a sensible way forward. There can be a number of reasons why a switch doesn't happen in a defined timeframe and they are not all within the supplier's control. We would suggest that suppliers have sufficient incentive to deliver to maintain their reputations in the market and with consumers.

Remedy 6 – Ofgem to provide an independent price comparison service for domestic (and microbusiness) customers

We are supportive of a PCW across both sectors and believe that consumers would find reassurance in using a service that is provided independently. It would be helpful if this PCW majored on tariff supply arrangements, rather than fixed term deals which are extensively covered by current PCWs. It would not be practical for suppliers to publish details of all negotiated contract prices.

Ofgem already provides information to consumers on how to switch through the “go energy shopping” website¹ and “be an energy shopper” media campaign and this could easily be added to these. This would also provide a way of making consumers aware of the service. Requiring suppliers to make consumers aware of an Ofgem PCW is likely to be counterproductive and not achieve the desired level of awareness. Customers are already overloaded with information from suppliers.

A PCW operated by Ofgem should be seen as a way of providing information and it should not become transactional (i.e. it shouldn't facilitate switching). It could however take a proactive role by identifying consumers that have visited the site and that have not switched within a time period (e.g. three months – it could monitor this through MPAS) and providing a follow-up prompt.

Remedy 7a – Introduction of a new requirement in the licences of retail energy suppliers to provide price lists for microbusinesses on their own websites and to make this information available to PCWs

We are unconvinced that this remedy will achieve the CMA's aim of providing greater transparency of prices to this group of customers and instead may give rise to two unintended consequences – (i) an “information overload” making it too difficult for consumers' to easily compare prices and (ii) the introduction of a “price cap”.

If this remedy is put into place, suppliers should only be required to publish prices for products that they offer and not for all products available in the market place. Although this would limit the number of published prices, there will still be a significant number and we believe that simply publishing the prices will not necessarily make it easy for consumers to compare.

A “price cap” could arise as an indirect result of this remedy because suppliers are unlikely to publish their most competitive prices. Many microbusinesses are able to negotiate with suppliers, either directly or through a third party, to achieve a better deal than that of suppliers' opening offers. These will not be the prices that are published and we would expect prices shown here to be less competitive than those that a microbusiness could achieve. (It is worth remembering that microbusinesses currently have all the information they need to make an assessment of the best quote – supply number and annual spend.)

Finally, it should be noted that published prices may not be available to all business customers. For example, the published prices may not be available to those with a poor credit rating or payment history.

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Remedy 8 – Introduction of a new requirement into the licences of retail energy suppliers that prohibits the inclusion of terms that permit the autorollover of microbusiness customers on to new contracts with a narrow window for switching supplier and/or tariff

As a supplier, Haven offers fixed price contracts to microbusiness customers with the provision to autorollover. Our contracts **do not have and never have had** a narrow termination window – the customer may confirm their intent to terminate the contract from the day it is signed until 30 days before the contract end date (this exceeds the standards set in Standard Licence Condition 7A of the Electricity Supply Licence). We would be supportive of this remedy to allow autorollovers, provided that the termination window is not narrow.

¹ <http://www.goenergysshopping.co.uk/en-gb>

We believe that rollovers are a valuable choice for microbusinesses and that they can meet the needs of a large number, provided the supplier is clear about the terms at the point of sale. Further, removal of rollovers could result in a general increase in the price that consumers pay across the piece. Changes to cash-out prices and the knock-on impact of these onto near term wholesale prices will exacerbate this.

Remedy 9 – Measures to provide either domestic and/or microbusiness customers with different or additional information to reduce actual or perceived barriers to accessing and assessing information

For microbusinesses, a large amount of information is already provided at point of sale (or soon after) before renewal and on bills. We have no evidence to suggest that consumers want more information or that they even use the information that is provided. We have analysed the results of some of Ofgem's recent information provision changes and have been unable to find any firm evidence that they have had the desired effect.

Bills are already cluttered and reduced regulatory requirements to provide information on this document would allow suppliers to simplify it and make it easier for consumers to understand. Further this is not always the right communication route for contract-related information, since bills for microbusinesses often go directly to accountants or someone other than the contract arranger for payment.

Providing information via bills is costly and has a long lead time as suppliers need to make changes to systems (sometimes via third parties). }<.....}<

Remedy 10 – Measures to prompt customers on default tariffs to engage in the market

We have already provided the CMA with one suggested approach to improve engagement in this area of the market but note that you have decided not to pursue it. Outlined below is a further suggestion for proactive interaction with this group of consumers which is aimed at increasing their long-term engagement in the energy market.

- The Big 6 to identify the group of disengaged consumers that are on default tariffs using a common set of criteria (to be set by the CMA – e.g. never switched, supplied under tariff X for more than [2] years etc.)
- Each consumer is proactively contacted at least once a year **by telephone** to undertake a “fact find call”.
- The fact find call should seek to establish the consumer's needs and understand why they have not engaged in the market. There could be a number of outcomes from the call, e.g.:
 - Consumer doesn't want to do anything
 - Consumer's supply is moved to a cheaper tariff with the same supplier
 - Consumer has sufficient information to be confident in their ability to research the wider market to seek out a deal for themselves
- We suggest that the fact find call is undertaken on behalf of the incumbent by an independent agency experienced in this type of activity and domiciled in GB and using an approved (by CMA / Ofgem) script. The independence will help provide reassurance to consumers.
 - Details will need to be provided to the agency for this purpose only.
 - Consumers' contact preferences would be respected and the activity would comply with DPA requirements. It is not the intention to provide consumers with a bad impression of the industry.
 - The agency will need to be able to facilitate a tariff switch **with the same supplier** in “real time” for the consumer if they wish.
 - The Big 6 could engage an agency on an individual basis – or collectively.

The aim is to increase long-term engagement by proactive telephone communication, rather than passive messaging via email, bill or mailshot. We would be happy to discuss this in more detail.

Remedy 11 – A transitional 'safeguard regulated tariff' for disengaged domestic and microbusiness customers

Haven Power has concerns about the impact on competition of this proposed remedy. We believe it has the potential to lead to less engagement as customers may feel protected if they do nothing. We would prefer a more proactive approach to sticky customers – both in terms of protection for those who remain unwilling to engage and in the ways that this group are encouraged to participate.

Customers who have previously engaged because they have found themselves paying a higher tariff may not bother to do so if they are can simply do nothing and continue to enjoy reasonably favourable rates without

the effort required to engage. This remedy may also push other prices up to the level of the safeguard tariff, leading to higher prices in the market generally.

If a safeguard tariff were to be introduced our view is that it should be set on a cost-plus basis, recognising the features of such supplies e.g. short term / uncertain supplies. The level of “headroom” built into a safeguard cap is critical. If it is set too low it will have a damaging impact on competition, undermining incentives for customers to engage and there needs to be enough headroom to drive competition and switching, or this tariff will have a negative effect. Non-domestic consumers won’t move or engage for a small margin $\approx \dots \approx$.

In relation to implementation, should the CMA proceed with this remedy then we believe that the CMA, rather than Ofgem should set the methodology for any safeguard price cap and the conditions for its withdrawal. Any regulation should take into account a supplier’s costs and twice a year seems a sensible frequency to reassess the tariff and level of headroom, with the option to review following exceptional market movements e.g. wholesale power price moves by 50% of headroom.

In our view, any safeguard regulated tariff should be restricted to the Big 6 suppliers, because this remedy is aimed at “sticky customers” and they supply these. Non-Big 6 suppliers have won their customers from other suppliers and these customers are engaged in the market. This would substantially simplify the implementation.

Any safeguard tariff remedy should be an interim measure, in place only until competition is better established, then it should be removed. Criteria should be defined at the outset, e.g. a set number of sticky customers to switch, before the measure is withdrawn.

If introduced, the group of customers eligible to move onto the safeguard tariff needs to be carefully defined so that it provides protection to those that most need it. In our view, eligible consumers should be those that are on standard variable type arrangements that do not have a fixed end date.

Consumers on deemed contracts, i.e. those that have not had a contract with their supplier (e.g. change of tenancy or new supply) should not be eligible for the safeguard tariff. The characteristics of these customers are significantly different, especially in terms of payment. Deemed consumers are also different from those on out of contract arrangements. In the latter, the supplier “knows” the consumer and is able to assess their ability to pay etc. and more easily take account the costs of administering such contracts. In the case of a deemed arrangement, the consumer is unknown to the supplier but the arrangement is intended to be short-term and allow the consumer to move supplier once they are ready to do so. This group of consumers should not be considered by default as disengaged.

If the proposed remedy is implemented, we do not see the need for a transition period, as it should only apply to a subset of customers. However, we would expect at least 12 months’ notice to take into account IT changes and the challenging timetable of impending regulatory changes we are already working against.

Remedy 13—Requirement that domestic and SME electricity suppliers and relevant network firms agree a binding plan for the introduction of a cost-effective option to use half-hourly consumption data in the settlement of domestic electricity meters

We have participated in a number of Ofgem workshops covering settlement reform and will continue to engage. But, there are some issues that need we believe the CMA need to explore in more detail before pursuing this remedy:

- It is not compulsory for consumers to have smart meters installed – they can refuse. There will also be a significant number of cases where it is simply impractical to fit these meters. This leaves the potential for a “rump” of dumb meters to be left in place which will need the current settlement arrangements to support them. This is likely to increase the cost to serve significantly and will require two end-to-end settlement systems to be run in parallel.
- An approach to a simplified half-hourly (HH) settlement for this group of customers should be explored. This could utilise current settlement arrangements and would therefore be implementable at a reduced cost. One issue that needs proper consideration is the use of meter readings in billing. The current form of HH billing is based on HH settlement and does not include ‘meter readings’ in the traditional sense. If the same approach were used for domestic meters it would be very difficult for customers to check their bills and this could lead to further disengagement with the market.

- It is also possible that many of the time of day / other smart meter benefits could be delivered via the current settlement arrangements or via small changes to these. This would be a cost effective route to deliver benefit for consumers.
- Smart meter data will not necessarily be clean and complete. The smart meter rollout provides an ideal opportunity to cleanse industry data, but there is no guarantee that this will be undertaken uniformly and to a high standard. It should not be assumed that moving to HH settlement will be easy – or indeed cost effective. There will always be a significant number of meters with problems and HH settlement is by definition not very robust to this.
- The case for HH settlement of all consumers has not been made and we believe that it should be set out fully before progressing. This should take account of all factors, including socio-economic. The benefits of smart metering and HH settlement need to be available to everyone. For example, it is likely that vulnerable / fuel poor consumers may not be able to modify consumption patterns and take advantage as they cannot afford to purchase the appliances and control equipment needed. Aspects such as this need to be taken full account of before the decision to implement HH settlement for the domestic sector is made.
- On a wider point, we note that network companies are not directly involved in settlement, but the remedy proposes that they should be. It is important that all relevant parties are involved at the appropriate point, but the driver should be to realise benefits that will be accessible to all consumers.

Policy Making & Regulation

Remedy to improve the current regulatory framework for financial reporting

We very strongly believe that the remedies suggested by the CMA, assuming it decides to implement some or all of these, should only apply to the firms currently obliged by Ofgem to produce Consolidated Segmental Accounts. Ofgem does that for very good and understandable reasons, and to extend this requirement would not be appropriate. It is important that any remedy is proportionate in that it provides greater transparency where this is not already provided (by the incumbent suppliers) and does not add to the burden of those companies already delivering best practice in this regard (such as Haven).

The Annual Report and Accounts of Drax Group currently already includes separate financial performance data for Drax and Haven. The two companies also file separate statutory accounts in the normal way. The separate publication of this data is in accordance with internationally recognised accounting standards (discussed in more detail below) and well established, arms' length, transfer pricing rules. This allows competitors, both current and potential, as well as commentators, regulators and other stakeholders to assess the profitability of the different activities, electricity generation and electricity retail, that we are involved in.

Unlike those companies currently obliged to produce Consolidated Segmental Accounts, Haven does not have any legacy customers who are inactive in the retail market. Haven has, by definition, won all of its customers through a genuine competitive process and cannot therefore be said to have any degree of unilateral market power over any of its customers. Therefore we see little justification for any further mandatory financial reporting beyond the accounts we already publish. However, we see justification for mandatory financial reporting to be produced by those companies who have unilateral market power over inactive customers. By definition this can only apply to incumbent energy suppliers.

Moreover, the costs of complying with an obligation such as Consolidated Segmental Accounts must also be considered. There will be significant system development costs for example. Such costs do not seem justified considering the level of transparency we already provide, and the lack of justification for any such requirement. In addition, being obligated to provide new financial reporting may also result in some differences between our regulatory and PLC accounts. This would potentially lead to unnecessary confusion for the users of such information and an additional, disproportionate impact on resource for Drax Group in explaining and reconciling any such differences for no real benefit.

Remedy 16 — Revision of Ofgem's statutory objectives and duties in order to increase its ability to promote effective competition

We are very supportive of returning Ofgem's primary objective to one in which they are driven to promote competition.

The vast majority of measures that have been introduced in recent years in the “interests of the consumer” (e.g. domestic RMR) have not had the desired effect. An efficient and competitive market will naturally drive benefits for consumers without the need for “stick and carrot” approach to keeping participant behaviours in line.

Industry Codes

Drax agrees that there is room for improvement within the area of code governance, in particular the coordination, efficiency and administration of the codes. However, we do not believe that the current governance processes constitute an AEC. Little evidence has been presented by the CMA to justify this conclusion

Simply unifying the governance would not significantly change or ease the engagement of smaller parties. Haven is a relatively small supplier and has managed quite easily to engage with the various codes simply via dialogue with the relevant code administrators. Nevertheless, Drax supports incremental improvements currently being considered through Ofgem’s Code Governance Review (CGR). Ofgem, in partnership with the industry, already has the necessary powers and capacity to alleviate the concerns raised by the CMA, rendering the more fundamental proposals as unnecessary measures.

With regards to the different industry code remedies:

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

Remedy 18a could be considered by Ofgem as part of the CGR, however, this is most likely an unnecessarily obtrusive approach. There are other ways to improve the effectiveness of code administration, for example making improvements to the Code Administrator Code of Practice and reducing the time taken to (a) process proposals via industry code modification processes and (b) make determinations on such changes. Moreover, Ofgem is already considering harmonising modification processes across all industry codes to improve consistency and clarity.

Remedy 18b – Granting Ofgem more powers to project-manage and/or control timetable of the process of developing and/or implementing code changes

The introduction of remedy 18b would not result in a positive change in the development and/or implementation of code changes that pursue consumers’ best interests. In the majority of cases, the code administrators currently provide independent project management services that seek to deliver timely change in a way that includes a wide range of views from industry participants, consumer bodies and the regulator. It is uncertain what additional benefit would be realised by installing Ofgem as a project manager. It is currently within Ofgem’s gift to attend code modification workgroups and code panels to provide advice on project management, implementation timescales and what is/is not required in order to deliver a timely determination.

Ofgem already has extensive powers in relation to industry codes, including the SCR process. The SCR process allows Ofgem to control the analysis, development and timescales surrounding important industry change that is considered systemically important, urgent, contentious, etc. Better use of these powers will bring about more timely and efficient change where Ofgem does not believe the industry is sufficiently incentivised to progress such change.

The present concerns stem not from the code modification process, but through the current use of the SCR process and the lack of consultation with industry. Ofgem has the ability, if it so wishes, to draft a code modification to a high degree of detail and prescription as part of an SCR Direction. This would likely reduce the time taken to develop proposals in the resulting code modification workgroup stage. However, SCR Directions to date have tended to be fairly high level (for example Project Transmit/CMP213 and concept of network sharing), meaning National Grid has initiated industry code modifications with little detail included. This results in the bulk of the detail being left to the workgroup to develop. However, this is not necessarily a bad outcome – the industry has the necessary expertise to develop the detail.

Furthermore, there is a significant risk that Ofgem’s independence would be compromised if it were to have greater control of the industry code modification process. In particular, where Ofgem is known to have a strong preference for a particular outcome, there is likely to be less engagement from market participants as change is considered a fait accompli. A good example of this is CUSC modification CMP241 (which amends the demand TNUoS charging method), which was raised as a result of Ofgem’s decision to approve P272, but had little engagement due to approval of the modification being seen as a foregone conclusion.

However, there may be some benefit associated with Ofgem developing its own code of practice to embed improvements in how it facilitates industry code governance. This code of practice could include regular reporting of performance (for example, the original timetable for change and the objectives of the change compared to actual results) as well as a formal mechanism for feedback to be captured to help Ofgem adapt and improve its approach to code governance and change.

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

An independent code adjudicator would only be necessary if Ofgem were to be granted more powers as envisaged in Remedy 18b. We are uncertain as to what benefits a second decision body with greater independence would deliver, although we can see good arguments as to why this approach would deliver greater bureaucracy and unnecessary costs. Better use of Ofgem's current powers would result in the same outcome, but at a much lower cost than establishing a new independent body.

To summarise, Drax believes that with better communication between the code administrators and the regulator, and with the improved use of Ofgem's current powers, the concerns raised by the CMA would be addressed without further intervention. In particular, we support Ofgem's recent CGR proposals and some of the incremental changes suggested. Such changes include provisions to ensure code Panel members act impartially, similar to those provisions found under the BSC and CUSC. Ofgem's CGR work is already progressing code governance reform that can be progressed sensibly, efficiently and in the best interests of consumers.

Should you have any questions or wish to discuss this response, please feel free to contact me (email: cem.suleyman@drax.com; telephone: 01757 612 338).

Yours sincerely,

Submitted by email

Cem Suleyman
Regulation and Policy