

Corporate Response Form 'Ofgem Licence Modification Appeals' Consultation URN 10D/807 Open: 01/10/2010 Close: 29/10/2010	
Name:	[REDACTED]
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General remark

From BBL Company's perspective the current licence modification process has up to now functioned in an effective and balanced way. However, the proposed changes to the process exceed the requirements of the Third Package regarding the tasks, independence and duties of the regulatory authorities. Since the licence regime in GB reflects policy decisions which in other Member States would be dealt with in legislation, the national regulatory authority should not have the power to unilaterally impose or modify licence conditions subject only to a consultation and an appeal process, without the consent of the majority of the licensees.

Consultation Questions	
What should be the scope of the appeal mechanism?	
1	Does the fundamental nature of price controls require they be subject to different treatment from other licence modifications? Please explain what changes you consider are required, why you consider they are required and how they would be compatible with the Third Package.
Not relevant to BBL Company.	
What should be the structure of the appeal?	
2	Do you agree that a rehearing approach to appeals for modifications other than price controls strikes the right balance between appropriate economic scrutiny of the regulator's decisions and a timely appeals process that controls potential costs for the parties?

There could be circumstances where a full investigation is appropriate whilst still maintaining the required balance between scrutiny, timing and costs. Irrespective of the chosen appeals process, the appeal procedure should allow the appellant to provide further evidence for consideration by the appeal body in making its decision.

3	Do you agree there should be a full investigative hearing for price controls?
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Not relevant to BBL Company.

Grounds for appeal

4	Do you agree with our proposal for an appeal on the merits?
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BBL Company believes that an appeal should be allowed on the merits of the case and not solely on the basis of process or factual issues. The appeal body should be able to consider any economic, factual, legal and relevant matters. Further criteria should be added to the proposed criteria for an appeal on its merits:

- Ofgem's decision was unreasonable or inappropriate

5	Would our proposed grounds allow for consideration of legitimate legal, factual and economic issues, without undermining regulator independence? If not, please state why.
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BBL Company considers that the proposal should allow for the necessary consideration of the relevant facts whilst providing the regulatory authority with the independence required by the Third Package.

What who are the affected parties who should have right of appeal?

6	Do you see any case for extending the right of appeal in relation to an Ofgem decision to any licensees or other materially affected parties beyond directly affected licensees? Please explain which and why.
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No.

The appeal body

7 Do you agree the CC is the most appropriate appeal body? Why/ why not?

BBL Company supports the proposal for the CC to be designated the appeal body. It is an independent body with experience in energy related issues.

Outcome

8 The Government would welcome views on whether the appeal body should have the power to vary Ofgem's decisions on matters, other than price controls, or whether such cases would be better handled by remitting decisions back to Ofgem to re-take, with any necessary binding recommendations.

BBL Company would welcome the proposal for the appeal body to have the power to vary a broader array of Ofgem's decisions other than price controls. The licensee should also have the right to refer a matter to the CC where Ofgem has failed to reach a decision in the appropriate timescale.

Time Limits for the process

9 Do you think the Government's suggested timescales of 4 weeks to lodge an appeal, and a period of 4 months for the hearing of most appeals will ensure appropriate scrutiny and efficient decision making?

BBL Company considers a 6 week period to lodge an appeal would be more appropriate. The appeals relating to licence modifications are most likely to be related to technical and other complex issues, which are likely to require special explanatory submissions to the appeal body. It is considered a four week period would be too short to draft suitable submissions with the necessary technical/economic content together with a clear overview of the issues involved.

10 Do you see any circumstances in which an appeal may need to be subject to a faster timeline. If so can you provide examples?

Yes, if an investment decision is imminent.

Can Ofgem's decisions be suspended?

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| 11 | Do you agree the appeal body should be given the discretion to suspend Ofgem's decisions on application if they could lead to significant and potentially unnecessary expense and/or disclosure of confidential information? |
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Yes. BBL Company believes that suspension should be automatic in certain circumstances, e.g. where industry code changes require almost immediate expenditures, such as software or communication/IT-system measures, which would make an appeal an inappropriate instrument once the expenditure has been made.

How will the costs be recovered?

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| 12 | What will be the likely costs and benefits of these changes on your organisation? |
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Unable to quantify.

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| 13 | How do you recommend potential costs could be reduced? How could we maximise the potential benefits to the regulatory regime as a whole? |
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Unable to comment.

Impact Assessment Questions

These are partial Impact Assessments containing our initial qualitative assessment of the costs and benefits. We therefore would welcome any quantitative evidence to support the further development of these impact assessments. Any information provided will be treated with sensitivity and anonymity.

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| 14 | Are the assumptions made in the Impact Assessment correct and have we correctly identified the costs and benefits associated with this measure? The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in the Impact Assessment. |
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No comments.

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| 15 | What would be the likely costs and benefits of the 'minimum implementation option' of having two parallel separate regimes; one for those relating to regulatory tasks and Third Package duties, and one for Ofgem's domestic tasks? How would these compare to the costs and benefits of the proposed implementation option? |
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No comments.

Additional Comments