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Industry Code Governance

Initial consultation on implementing the Competition and Markets Authority's recommendations

Code Governance Remedies Team

The CMA found a Codes AEC which limits innovation and causes the energy markets to fail to keep pace with regulatory developments and other policy objectives.

The CMA made the following recommendations to address the Codes AEC:

Ofgem

- to publish a cross-cutting **strategic direction** for code development
- to establish and administer a **consultative board**
- in exceptional circumstances, to intervene to **take substantive and procedural control** of an ongoing strategically important modification proposal

BEIS

- to enact legislation to require a **licence for the provision of code administration** (and delivery) services and…ensure that such licence conditions are appropriately targeted to incentivise code administrators to take on the expanded role (code manager) envisaged under this remedies package and minimise the regulatory burden on those entities

The need for engagement

The CMA's remedies are at a high level

1. **Initial consultation:** this consultation is the first step in identifying the detail
2. **Scope:** it considers what the new regulatory framework should be and how we should transition to it
3. **Objective:** to achieve greater coordination across codes for identifying and delivering strategic change that benefits consumers and competition
4. **Legislation:** some of the changes proposed will require legislation, but we need to ensure that the legislation is fit for purpose
5. **Code consolidation:** this is not in scope, but may be a beneficial longer term outcome of new code governance arrangements

Contents of our consultation

We have split our consultation into five main sections

1. **Scope of the new arrangements:** which codes and functions should be covered by the new arrangements
2. **Competition and licensing:** we're considering how we might competitively award the new licences
3. **Strategic Direction:** how should it provide industry with guidance to ensure industry changes are aligned with our/BEIS' strategic objectives
4. **Consultative Board:** how will this standing forum bring stakeholders together to discuss/address cross cutting areas
5. **Moving to the new arrangements:** what will be impacted and how to minimise the effects of implementation

1. Scope of the new arrangements

Which codes will be covered by the new arrangements?

Are all of the "CACoP codes"* in scope?

- The CMA referred to the CACoP codes but doesn't state they're the full scope
- Our initial proposal is **all** the CACoP codes should be in scope

What happens to central system delivery functions?

- BSC, UNC, and SEC have central system delivery functions – we consider how these could be covered under the new arrangements
- We will consider how SEC will be impacted, given DCC is the delivery body and is already licensed

What else outside of CACoP might be in scope?

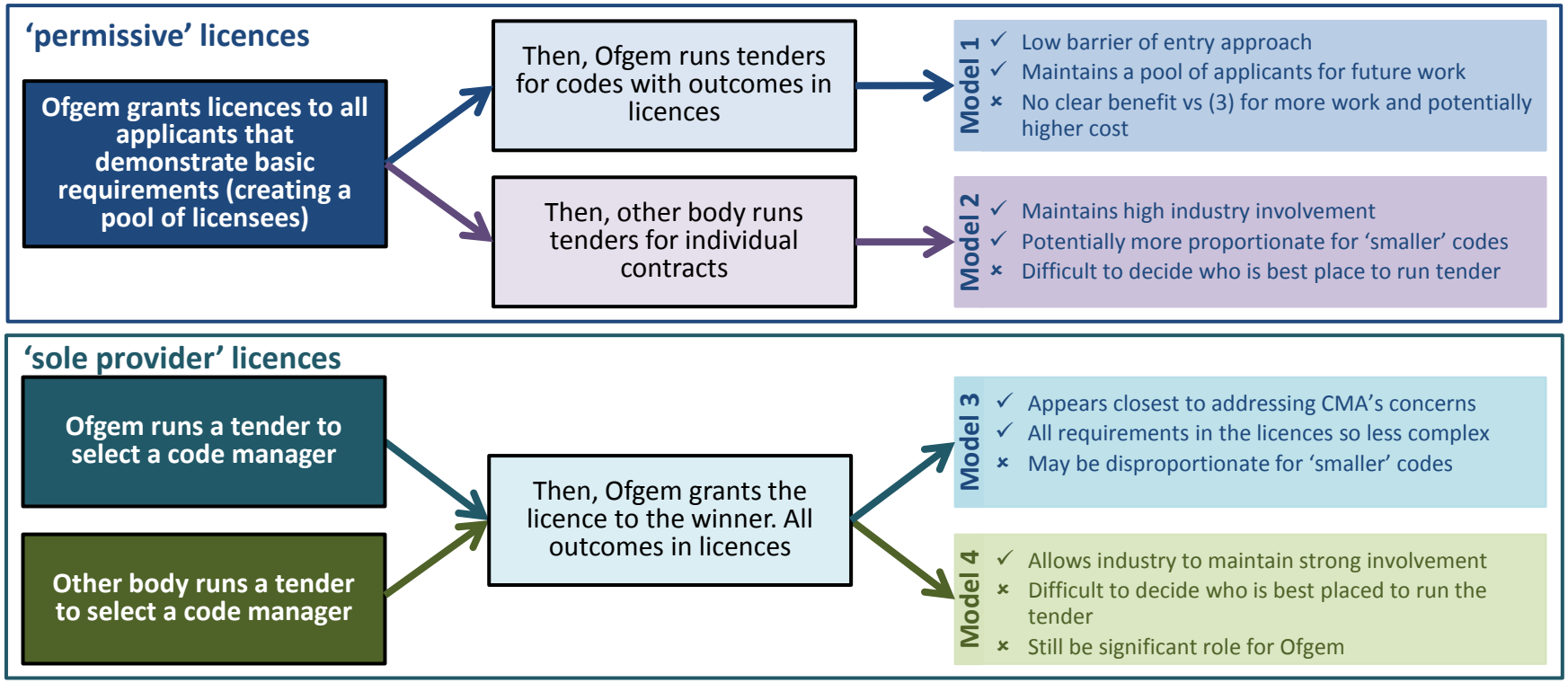
- We need to decide whether any of the other codes, agreements, standards (eg SQSS) or wider delivery functions (eg DTS) are in scope for the new arrangements – how do we ensure they follow the strategic direction? Would it be proportionate to extend the licensing regime to cover these?

*Codes covered by the Code Administration Code of Practice:

The CMA recommended BEIS make code administration licensable

We want to compete at least some of the codes (not necessarily all)	• Licensing incumbents may not realise the highest potential benefits • There are benefits of competitive pressures
Con Doc topic: how to design the competitive process	• Which licences will be competed at this stage? • But should Ofgem run competitions, or will another body? • How detailed will the licence be (and how much could go in contracts instead)?
Con Doc topic: transitional arrangements	• Could the application process be staggered to ease the resource requirement? • What other transitional arrangements could be considered? What could be implemented without legislation?
We will have to consider many more issues in this area, eg	• What will be the roles and responsibilities of the new entities? • How do we incentivise the code managers and delivery bodies?

We have identified four different 'models' for combining competition and licences, with varying levels of Ofgem and industry involvement



3. Strategic Direction

We will issue a 'strategic direction' which represents BEIS'/Ofgem's strategic objectives and will inform industry's code modifications

- **Main Goals**
  1) ↑ **alignment**: industry's + Ofgem's objectives for code mods (better use of resources)
  2) ↑ **joint industry planning** + prioritisation of code mods (deliver strategic change + ↓ regulatory uncertainty)

- **Proposed Content**
  1) **Vision** for a successful code governance process (high level **road map** for mods across all codes for five years)
  2) **Key outcomes** achievable through codes (i.e. prioritisation principles + Ofgem's/BEIS' strategic road map projects)
  3) **Roles, responsibilities and accountability** of stakeholders

4. Consultative Board

We will set up a standing forum (Consultative Board) to bring stakeholders together to discuss/address cross-cutting issues

- **Role of the Board**
  1) At outset, narrow. Focus on coordination/delivery of cross code change/strategic direction → less involvement from Ofgem. **Need**: Joint industry cross code change plan
  2) Add functions over time: assurance, horizon scanning
  3) Primary role: **Strategic** OR **Operational body** → ongoing review
- **Accountability**
  1) Board accountable for delivering joint industry plan/ SD;
  2) Reporting function: advise Ofgem of delays/ blockages in delivery
  3) No formal powers to drive change
- **Composition** Independent individual + necessary skills (tbd)

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5. Moving to the new arrangements

Need to ensure changes do not have unintended consequences
In the meantime the code governance regime must enable, as best it can, the consideration of the long-term development of codes within the broader regulatory framework

Existing projects	• Proposed reforms are unlikely to affect the governance of existing work programmes directly (e.g. switching, onshore transmission competition) • The consultative board is likely to be able to support and input into these projects • These types of projects are likely to be included in the Strategic Direction going forward
New projects	• Other work programmes may begin before these changes are fully implemented • We believe these programmes should not be delayed • Important to keep in mind any interactions • Need to ensure that the changes to code governance do not create any uncertainty surrounding such work programmes.
Significant Code Reviews	• Do not expect to remove the SCR process before the licensing arrangements are in place. • Our SCR powers are unlikely to be required once the full package of remedies is in place, but we will continue to use the SCR process (when required) in the interim.
Transitional Arrangements	• As we develop the new requirements, outputs and incentives for the new roles, consider possible benefits of implementing on a voluntary basis • In particular, we will consider whether such a regime would enable a smoother transition to a licensing regime.

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Activities and timings

WS 1 — Licensing

ACTIVITY

- Design of new regulatory regime for code management.
- Design and implementation of competitive licensing process

TIMING

- Highly dependent on BEIS legislation
- Current indications are that first licences will be awarded in late 2019

WS 2 — Strategic Direction

ACTIVITY

- Define what strategic direction for codes should contain
- Decide how it should be maintained
- Decide what stakeholders' responsibilities should be

TIMING

- Consult on draft in Sep 2017
- Set first strategic direction in Dec 2017
- Review point a year later

WS 3 — Consultative Board

ACTIVITY

- Define roles and responsibilities of the board
- Agree composition and terms of reference
- Set up and run meetings

TIMING

- Conclude on roles and responsibilities in Summer 2017
- First meetings to be held in early 2018

More detailed next steps

- Industry Workshop on 12 January – please register your interest at CodeGovRemedies@ofgem.gov.uk
- Consultation closes 1 February – please send your response to CodeGovRemedies@ofgem.gov.uk

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