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To the ESO

**Initial consultation on proposed models for Early Competition**

We welcome the opportunity to respond to the "Early Competition Plan – Consultation on proposed models".

Transmission Investment manages one of the largest offshore electricity transmission portfolios in terms of the capacity of offshore wind connected. By the end of 2020, our offshore wind transmission portfolio will comprise circa £2bn of assets under management. We are also a leading developer of electricity network assets, in particular developing an electricity interconnector between France and Britain in partnership with the French national grid company.

We recognise that our ability to meet the 2050 net zero target will depend on our ability to deploy high levels of renewables which would require significant reinforcement of the electricity network including asset replacement and customers connections.

Transmission Investment has for many years been a strong advocate of introducing competition into the delivery of electricity network assets as a way to bring long term investment into the electricity system at the best price for customers. We continue to support the development of the required arrangements for these competitive processes inter alia through industry groups, responding to consultations such as these and, when called upon, providing evidence to parliament.

As such we are very supportive of the work that ESO has done to date, and continues to progress, in seeking to achieve cost reductions through competitive models like the one proposed in the consultation. We also welcome the rethinking of the network planning process and the various industry parties' roles in this process, and the willingness of Ofgem and the government to make legislative changes where necessary to implement these models and improved processes.

In our response we set out below some of the key issues which we consider the development of the early competition plan has highlighted and which will require resolution if the early competition model is to be successful. We provide responses to the specific questions asked in the consultation in Annex 1 to this response.

We note the parallels of the proposed early competition model with some of the Pathfinders tenders which have shown that significant cost savings can be made on relatively low capital cost network investments (such as shunt reactors for voltage

control with total capital costs of less than £10m). The Pathfinders have also demonstrated that tenders can be run, at least for some system requirements, which are technology neutral.

*Identifying network needs*

One of the critical factors to drive the success of the Early Competition Plan is the robustness and transparency of the underlying identification of solutions to system requirements and the visibility of the pipeline to be competed.

We do not consider that the current annual process fully satisfies these requirements as:

- There is a strong conflict of interest in TOs identifying solutions to system requirements that may then be competed for delivery (see below for our views on TOs competing under any early competition model) – one example of this will be the continuing claim of TOs that solutions cannot be competed as there is insufficient time to do so;
- It is questionable whether TOs will have the ability to identify solutions to system requirements with increasing development of offshore renewable energy and associated network infrastructure (for which they are not responsible), greater integration with DNOs, and once system requirements start to be met by third party providers such as CATOs or Pathfinder project providers;
- More information is required to be provided to the market so that it can form a view on the system requirements and proposed solutions, the certainty that the system requirement will persist and the certainty that the solution to each system requirement will be competed (and competed fairly). One suggestion is for the annual cycle to produce a list of system requirements and solutions, with measures of certainty, to be competed in the following [3] years to create a regular pipeline of projects and which would allow a sufficient lead time to enable investment.

In our view these issues need to be addressed by a fully independent (in ownership terms) ESO being given the responsibility to plan the system to meet the requirements of the SQSS – i.e. the ESO would be solely responsible for identifying solutions to system requirements.

*Preliminary market engagement*

We support the intention to engage with the industry prior the determination of the indicative solution currently envisaged under the early model. However, the involvement of the industry in the identification of possible solutions may conflict with intellectual property related issues on one side and the principle of transparency on the other.

It yet remains unclear how the process would incentivise the market players in participating in the preliminary engagement if the procurement process is run competitively and the indicative solution does not discriminate towards alternative ones.

*Provision of information*

We support an open transparent approach to the provision of information which aims at transparently share any technical input of the TO and other stakeholders which is needed to inform the bids as well as the technical assessment.

Where the TOs may have information relevant to the process this should be transparently shared with all bidders to ensure competition is run on an equitable and fair basis. This should also extend to TOs, for example, making available any land (on a contingent basis) that it holds so that it may be available to the winning bidder to deliver the solution, if this is in the interests of consumers (who will have funded this land).

We also support the intent of the ESO to share Cost Benefit Analysis (CBA) tool currently provided to the TOs to support development of potential solutions, to all bidders.

*Role of the TOs*

We continue to have grave concerns over the role of the TOs in any early competition process.

What should be relatively uncontentious, for obvious conflict of interest reasons, is that the TO should not have any influence over whether a solution is competed, or any part in any tender process in which it is bidding.

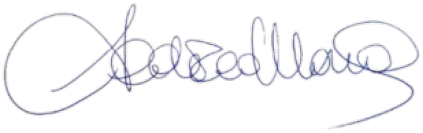
We would go further and argue that TOs should not be able to be a bid to deliver competitive networks as:

- The assets, experience and capabilities of the TOs have been entirely paid for by customers – these assets, experience and capabilities should be made available to the market in general to provide the best solution for customers, and not reserved to the incumbent;
- Some of the experience and capabilities notes above, paid for by customers, are difficult for the market in general to replicate, such as the volumes of equipment supply and installation contracts awarded due to a market participant not having a monopoly business to generate these volumes;
- There is a significant risk of cross-subsidisation between the regulated and competitive parts of a TO's business;
- Prior to competition in onshore networks the TOs have enjoyed a monopoly in delivering these networks to meet customers' needs. However, the main reason that competition is being introduced is that monopoly TOs have not met customers' needs cost effectively. Competition is the result of a failure of the TOs and as such the TOs should be considered as having forfeited their right to deliver network solutions that are competed; and
- Any competitive process in which the TOs are allowed to bid would not be seen by the market as a fair process and would likely result in much lower interest (if any at all) from the market.

We note that regulators in other sectors have specifically excluded incumbents from bidding (cf water DPC although we note there are differences in that example as the incumbent is also the procuring entity).

As noted above we respond to the specific questions in more detail in the following annex.

Yours sincerely,



**Federica Maranca**

Business Development Director

## Annex 1 - Answers to Consultation Questions

**1. Do you agree with the types of drivers of network needs that should be within the scope of the ECP? ***

Yes, all drivers of network needs should be included within the scope, including asset replacement which should not be any different from a new need and therefore expected to be within the scope of the ECP.

**2. Do you think a tender launched 'early' (i.e. after an indicative solution has been identified) but informed by market engagement that begins 'very early' is a suitable process? ***

Yes, in principle but not as it is proposed as it needs:

- an equitable, transparent and fair provision of information;
- to protect IP and align TO inputs to other market participants ones in the very early engagement as in the engagement post NOA;
- to consider reward/incentives for market participants' engagement costs;
- to ensure that the ESO is transferred all planning obligations;
- to make sure than the TOs rights and obligations under the regulatory regime do not undermine the delivery of assets to be competed, that the TO delivery due to time criticality is minimized and the TOs don't game the process to achieve this.

It remains unclear how the SO proposes to ensure the needs above are fulfilled within the ECP timeline.

Needs in the early model would be more certain than in the very early model but it remains unclear how the indicative solution and the outcomes of the analysis of the most cost-effective combination of solutions to address the needs across the network will be used to evaluate the bid in a fair and transparent way.

Early is better than very early, at least to start with. We are still of the view that late is better than early to begin with but recognise that is out with the scope of the ESO's project.

**3. Have we identified the appropriate criteria to determine whether to compete a project? ***

Yes, we agree with no hard cost threshold and that there needs to be a degree of market appetite

Market appetite is likely to be there if the process is managed properly (c.f. Mersey HV). Certainty should not be a separate criterion and will be reflected by the market appetite. There is a need to avoid waiting until certainty is high and then finding that there is not enough time to run a competition. The ESO should provide information to the market about the certainty and the market can decide whether it is of interest. Certainty of the needs should be measured against the lead time of the most likely solutions and let the market to value the risk.

The determination of the size based on costs would work if those include some evaluation of the risk profile (e.g. certainty of the need and development risks); the criterion of being "new" should cover the replacement of existing assets.

Criterion of compliance does not seem appropriate: risks related to lack of clarity on responsibility, over the Security and Quality of Supply Standard standards for instance, should be addressed by regulatory changes to clearly identify role and responsibility over the whole planning cycle which should as possible centralised.

Criteria set to select eligible projects as well as evaluate solutions should also be fully aligned with criteria Ofgem would use for any approval to proceed as required by applicable regulation and its further amendments.

**4. Do you agree with the approach where the ESO makes recommendations to Ofgem on the projects/needs which are suitable for competition? ***

Yes – although this is clearly an issue which provides more weight to the argument that the ESO should be entirely separate from any TO (i.e. in ownership as well as legal terms). There is a clear conflict of interest in asking the ESO to opine on whether an NGET project should be competed, or not.

**5. Do you agree that the incumbent TO's should participate in competitions through the same process as other bidders, and what mitigations may be needed to allow this?**

No – the competition to deliver network development assets is critically in conflict with the regulatory regime of transmission assets owners. The recourse to the competition is as alternative to the regulated delivery of the network assets therefore the participation of the incumbent TO should be in principle excluded. Also allowing the participation of the TOs in the competition would undermine the integrity of the competition itself and affect the outcomes due to the substantial conflicts and constraints that the participation of the TOs in the process would bring.

TO's should not be allowed to bid but if it is decided otherwise it should be possible only for affiliates to bid if stringent business separation arrangements are in place. Under these circumstances a TO affiliate would participate to the extent that the TO had no other role within the whole process other than being a bidder, had access to the same info as any other bidder and did not have access to customer funded capabilities of the regulated TO. To ensure a level playing field competition the affiliate of the incumbent TO should not compete for needs on its own network as a minimum.

The ESO notes that the TO with their expertise and experience, and their access to their existing assets, TOs could offer competitive solutions that provide value for consumers. All TO expertise, experience and assets are already paid for by consumers and therefore they should all be made available on an equal basis to all bidders. TOs should not have any competitive advantage throughout the whole process from the identification of the needs to the decommissioning of the asset.

**6. Which parties do you think would be best placed to fulfil each new role identified in the early competition model and why?**

- Procurement body – ESO or Ofgem
- Licence provider – Ofgem
- Approver – ESO or Ofgem (definitely Ofgem if it needs Ofgem's approval to proceed anyway).
- Counterparty (Licence) – Ofgem
- Counterparty (Contract) – ESO
- Payment Counterparty – ESO

In addition to the above, there is need to clarify roles and responsibilities in the context of the network planning process. We believe the ESO is better placed to cover a central role identification of the network needs (see covering letter) including the longer-term needs pipeline and the identification of the relevant technical requirements because of the nature of the task and the need to consider the system in its entirety. This would require (i) a supportive regulatory framework which adequately sets ESO relevant obligations, objectives and compensation to procure the required resources and expertise (ii) aligns timing and terms of Ofgem's review to those of the planning and procurement processes (to make sure among others that where Ofgem's approval is needed the competition costs at risk - including bidders' and consumers' costs, are limited); (ii) a total separation of the ESO from any TO both in terms of ownership and legal terms; and (iii) changes to the TOs licence obligations to consistently ensure that the TOs do not undertake any network planning role whether they bid or not due to conflicts of interest.

**7. Do you agree with a TRS type revenue model as the default model?* In what circumstances (if any) do you think a regulated model may be more appropriate?**

Yes – a TRS revenue model is likely to be the most appropriate in many circumstances and therefore should be the default model. To maximise value for the consumer, it would be best if the proportion of inflation indexation applied to the annual revenue can be bid (as already happens in the OFTO regime).

A regulated model could be more appropriate in case of very large projects, or where such projects have particularly long duration needs (>45 years), with risks which are difficult to pass on to consumers – perhaps offshore projects where timing of OWF connections is uncertain? Equally, a regulated model may be more appropriate where the construction period is longer than 6-7 years and the devex at risk during the preliminary works is above a certain level either as a fixed amount or a proportion of the total capital expenditure.

**8. Do you think that revenue during the preliminary works period would help encourage participation in early competition?* If so, what mechanism would be most appropriate?**

Yes – the ability to earn revenue during the preliminary works would likely encourage greater funder participation and may give rise to more innovative funding solutions.

All envisaged mechanisms could be appropriate depending on the project development risk profile. A combination of fixed and flexible payments with a milestone mechanism could be the most suitable to a wider range of solutions. This is particularly important for projects that have very long construction periods. As noted in the response to question 7, a regulated model that allows for revenue to be earned as the assets are built will help lower the whole life cost of capital, but this is only likely to be beneficial to consumers for projects with particularly long construction periods. This structure, as the ESO noted, has been adopted on the Thames Tideway Tunnel project.

**9. Do you agree with the current preferred option of setting the duration of the revenue period to the length of the network need? ***

Yes. We note though that if the ESO may be in a better place than market participants to assess network need and to that extent may be better placed to take some risk of network need (on behalf of customers) rather than to seek to pass this on to market participants who may price it highly due to a lack of visibility in need. For example, if the identified duration of the need is much shorter than the usual lifecycle of the most economical solution then there should be consideration of the residual value and the ability of the bidder to forecast it. It may be more optimal for the ESO to procure a longer-term contract if there is a chance that the need will persist longer.

**10. Do you agree that the maximum length of the revenue period should be capped?* If so, at what length?**

No, we do not agree with a default cap set at a firm level across the whole range of projects. We agree the length of the revenue period should reflect the need's duration and should therefore not be capped arbitrarily. This should not risk locking-in old technology as bidders can make their own assessment as to whether it is more efficient to build an asset for the entire contract term or assume replanting with more efficient technology part way through a contract term. Equally, capping the revenue period prematurely means bidders will need to make residual value assumptions which are unlikely to be as efficient as having a longer-term, contracted revenue stream.

It is unclear which other risks could be mitigated through a cap. However, where a maximum length for the revenue period is needed also for consistency with the RIIO,

45 years might be reasonable. Arranging efficient financing beyond this term is likely to be challenging and in any case is only served by either public or private bonds. Any contracted revenue beyond 45 years is unlikely to benefit the consumer as financing will need to have repaid by then. A regulated asset model would likely be better for assets that have an extremely long life.

As noted in the consultation document, it is unlikely banks will be able to lend beyond 20 years. Banks are however an important funding source for construction projects and are therefore likely to be used for this phase and possibly into early operations until an operational track record has been established. Investors would then seek refinancing this debt with a longer-term funding solution such as a public or private bond. In this instance, refinancing risk and potential costs will need to be factored into investors' interests and considerations. An uncapped, longer-term revenue period will most likely maximise this access to low cost of funding.

**11. Do you agree with the current preferred option of including a mechanism for extending the revenue period?* How should such a mechanism work?**

Yes – the greater transparency that the ESO can give on this at the outset will enable bidders to take a view as to what may happen at the end of the initial contract -term, which should in turn reduce costs for consumers. The revenue period should not be shortened without adequate compensation to avoid undermining market appetite. The ESO/Ofgem in defining network need and revenue duration shall develop a decision-making process that assists to strike the right balance between the premium for a shorter amortisation period of the funding costs and the risk of consumers remunerating stranded assets.

The default position would remain for the revenue period to match the duration of the need, for this duration to be properly assessed by the procurement body and Ofgem and for the bidders to take the risk at initial bid stage of residual value of solutions on a longer lifetime if there is not a pre-defined outcome at the end of the initial revenue period.

Where the network need remains beyond the original forecast, or where an alternative network need has arisen that the solution could address, in principle such a need should be in the ideally re-tendered especially if a refinancing or a refurbishment of the solution is needed to meet the new need duration, and the successful bidders should be allowed to compete as anyone else. Alternatively, a mechanism for extension could be triggered subject to a clear mechanism set at bid stage. In this case whether the asset is fully depreciated or not is irrelevant but there should be transparency on what terms any extension would happen.

A transfer to the incumbent shall be excluded since not consistent with the regime: if they are non-network assets then this is non-sensical, if they are network assets then this disadvantages network asset bidders versus non-network asset bidders.

**12. What is the most appropriate cost assessment mechanism for fixing underlying costs after preliminary works are completed?**

Cost containment or pain/gain look more sensible.

The economic and efficient review, in the OFTO sector, has been shown to be lengthy and contentious even when, as the ESO sets out in the consultation document, the offshore wind farm is largely insulated from the consequences.

**13. Will there be enough lender interest in a debt competition to drive competitive pricing? What other debt structuring options do you think would be appropriate?**

Yes, if the project is properly structured and there is an acceptable risk allocation which reflects the asset class (and a creditworthy counterparty). Features that will make an asset attractive to lenders and allow a project finance style funding

structure (which is likely to be the most efficient for a long term, infrastructure asset such as this) include:

- High-credit worthy counterparty, with regulation support as a backstop
- Long term revenue stream to allow long term amortisation of debt or confidence to make refinancing assumptions
- Tightly defined risks at the project vehicle; where possible, these should be able to be passed down to subcontractors who are best placed to manage the risks
- Compensation on early termination to ensure at least debt and equity financings will be covered
- Force majeure protections
- Sufficient appetite from the insurance market to provide the back-stop for risk sharing
- Back-stop for significant construction over-runs or 'low probability, high impact' risks
- Revenue floor which caps the senior lenders losses and minimises their loss given default – this will allow lenders and rating agencies to assign a higher credit rating, pricing in the benefit with lower cost of funding which provides better value for the consumer (a similar mechanism is used in the OFTO licence).

In terms of debt structuring options, the most likely and deliverable solutions would be either a private/public bond solution for the full revenue period (including construction) or with at least a large portion of bank financing for the construction period, which will be refinanced by a long term bond solution once into operations. Possible credit enhancing features such as UK government guarantee scheme could help with availability of more cost efficient debts, bringing further value to consumers.

**14. How should the indicative debt costs and level of gearing used in final bids be determined? How should the risk of the actual amounts be allocated?**

We refer to the cost commitment options D, E and F, namely "construction competition", "debt competition" and "financing competition", and the ESO preferred option, "post preliminary works cost assessment and debt competition". With respect to these options, the procuring authority and their financial advisor should provide an indicative lender term sheet for all bidders to use. As part of the procurement process, bidders should be provided a draft at the commencement of the process and allowed to feedback comments before a final, indicative term sheet is issued to all bidders to assume in their bids. Once the funding competition is ready, bidders should be incentivised to obtain commitments better than those of the standardised indicative term sheet. A gain sharing mechanism could be included to benefit the consumer whilst incentivising the investor to drive for best fund terms. In order to maximise investor interest from the outset, the procuring authority should allow an adjustment to any revenue in the event actual funding terms are worse than the indicative debt costs such that the downside is capped. Given an investor is incentivised to seek best terms, if it cannot even meet the indicative term sheet, it suggests there will have been a movement in the market outside of its control. If it had to assume this risk, it will likely build in significant contingency and buffers that will not benefit the consumer.

**15. Are there any other key risk that should be addressed at this stage?**

Changes in codes, regulations and licence regimes; risk of incorrect assessment of the needs; risk of bidding cost for solutions not approved and/or be competed under

a different competition; interaction with future projects; creditworthiness of the payment counterparty; risks related to land acquisition from TOs; risks related to losses levels; risks of discrepancy of the evaluation due to different regulatory arrangements and parties being covered by different codes; risk of limited appetite of the market for shorter revenue period or non-standard form of contracts with inadequate risk sharing.

**16. Do you consider the overall risk allocation between bidders and consumers appropriate? What are your views on risk allocation?**

It is not clear the extent to which the successful bidder is proposed to be taking any consent risk (the same true for all the other shared items) unless it is saying that bidder takes consent risk after consents obtained? I.e. what happens if consents are refused or if consent conditions require additional costs?

How does the bid bond work for the preliminary works phase? Doesn't this negate the value of paying for the preliminary works through the TRS?

The risks of a need being competed and not receiving due approval to be built or being competed under a different process at a later stage should not be borne by the bidders.

The minimum cost adjustment threshold should be less than 10% if inefficient reserves are to be avoided (although it depends to some extent how the 10% is calculated).

There should be further consideration for the corp. tax to be pass through – to be noted that it isn't in the OFTO world. Bidders' costs should be remunerated in full for cancelled tenders as otherwise it would be a disincentive for market participation. Equally, there should not be an incentive on Ofgem/SO to wait until the preferred bidder stage to cancel a tender in order to reduce the cost exposure to one bidder only.

**17. Do you have any views on the list of potential activities that could be undertaken to support bidders, the information that would be required and the potential value to consumers they could drive?**

Running project information and networking events and sharing detailed technical information with the market look sensible. We are not sure about the consortium building and innovation workshops.

TO liaison probably should be avoided even if they are excluded from bidding in order that they cannot favour one party over another.

The ESO providing a study model would be very useful in optimising resources and reducing costs to consumers, as building one from scratch is costly. If feasibility studies are not to be done by the ESO then bidders must be allowed access to the information to do these themselves.

How the ESO may assess whether a solution is in the interests of consumers should be shared with the market as early as possible provide clarity on whether any solution will be taken forward to tender. As part of the pre-tender information the criteria should be published under which it has been decided that it is consumers' interest to address the need. In this way indicative solution proposals can be scaled to match the economic assumptions.

The Pathfinding tenders have highlighted the importance of:

i) setting the competition rules well in advance of the tender (including but not limited to technical and financial requirements, and assessment criteria);

ii) adopting adequate measures to ensure the playing field is level with all parties;

iii) mitigating unnecessary commercial risks, for instance clarifying terms for land acquisition from TOs and the costs of losses;

iv) providing a clear commercial framework which can attract interest from the broadest pool of parties by providing a certain revenue stream from a creditworthy entity for a sufficiently long term and using standard form of contracts with reasonable risk sharing.

**18. What are your views on the challenge of flexing the procurement process to varying needs but maintaining standardisation?**

We agree that the approach needs to differ for differing project sizes and scopes – we would perhaps set out some underlying principles but tailor the tender process to different projects as appropriate.

We agree that standardisation and repeatability of the tender process will help enhance the market's confidence in the process, by helping bidders to become familiar with the process it will enable a more efficient use of resources (e.g. tendering cost reduction) and improve the delivery.

Whilst the needs could be various and the tender process shall be adaptable there is room for some flexibility in terms of contractual arrangements and stages of the process. Inevitably there shall be flexibility between the non-network and network solutions as well as in respect to projects with different expected scope/complexity/size and lead times.

For instance, to date Pathfinders to date have been simple requirements which have been expressed in terms of a set of technical parameters at a single electrical node. Multi-node reinforcements may be more complex difficult and need a more detailed technical specification and appropriate technical standards.

We agree that 'passporting' pre-qualification for a certain period of time could reduce bidding costs and increase the competitiveness of the process to the extent that is designed in a way that can be effectively used – to date it has not been used in the OFTO sector.

**19. Do you agree that the proposed list of primary information relating to network information is adequate to identify and cost potential solutions for both network and non-network solutions? ***

No - whether the information is adequate or not will depend on:

i) what the evaluation process is;

ii) whether bidders can have the data to be able to replicate the evaluation process; and

iii) the nature of reinforcement work (for instance for HVDC would need more technical information like harmonics, system frequency domain information, control system characteristics – all which aren't routinely shared).

Clearly data exchange obligations need to be clearly defined for all parties considering the different codes under which each would operate. Provision of information should be codified and the ESO should make study datasets available in a recognised format (e.g. Powerfactory). We appreciate there may be some commercially sensitive data beyond what is normally published in ETYS, but the data could be reduced down or anonymised whilst the model should be shared equitably with all parties.

See also answers to questions 17 and 18.

**20. What are your views on our current thinking for the elements that potential bidders should demonstrate at PQ?**

Seems about right as long as the criteria are set at the right level and that it provides opportunities for bidders to grow (i.e. they only need to have done say 50% of what they are seeking to do next). Otherwise it may simply perpetuates the incumbents (t the extent that they are allowed to bid) at the expense of value-for-money for the customers.

We agree it should be the consortia rather than the member of the consortia to go through the PQ. We share other stakeholders' concerns about the potential risks for smaller new entrants with robust capabilities to be excluded from the procurement.

The two stage PQ process however seems to add complexity and length without adding much value since it will still present the issue of setting the minimum threshold for the single party which may result in just prolonging the timing of procurement and relevant costs. In the specific instance of the ECP where the aim is to open to the market the future development of the network, the PQ should not rely on the precedent experience which crucially favour TOs undermining the whole purpose of the competition itself.

The involvement of the TO in any pre-submission review is completely inappropriate – TOs should have no planning or evaluating role.

The intent of the "sustainability" criterion remains unclear and in the absence of a consistent sustainability target across the whole network and a reference to well-established standards - consistently implemented across the sector- it would adversely impact the results of the PQ.

Regarding the further considerations to tailor requirements at PQ stage to the size of the project, it is worth pointing out that a critical element of success of complex projects is not only the financing but rather the project management capabilities and experience which would cover commercial, technical and financial aspects. The ability to manage complex interfaces is the critical element to be assessed.

**21. Do you think that the range of criteria we are considering at ITT (stage 1) is appropriate and will drive value for consumers? ***

No – they are overly complicated and prone to error, with proposals being excluded which may actually be good value for consumers. The assessment shall be quantitative and objective:

i) Set out the functional requirements;

ii) Request costs; and

iii) Choose the cheapest [five (5)] that meet the functional requirements.

The need to translate the qualitative assessment in a set of objective requirements and to define some thresholds to objectively assess the bids seems inappropriate.

The environmental and social impacts may generate contradicting directions against those of ay consenting authorities and it remains unclear the ultimate goal of their consideration.

A panel of experts would add subjectivity and limit transparency whilst adding the issue of selecting the experts, introducing further subjectivity and increasing the risk of dispute.

Whilst there might be specific elements that by their nature require expertise that the procurement body would need to procure, in principle the evaluation of the technical elements of the bid would be better performed by the competent party who has set the criteria.

**22. Do you agree with our approach for evaluating bids at ITT (stage 2)? ***

No – we disagree with the approach as we believe it is heavily skewed towards incumbent TOs (if they are allowed to bid). For the technical and project delivery

element of the submission there should be threshold criteria with winner selected on cost – as per OFTO regime. There would be little benefit for customers in having "best quality" delivery plans that far exceed "adequate" plans that are necessary to deliver a project. The focus, once delivery plans have been deemed to be adequate, should be purely on cost.

Detailed cost information would need further thinking especially in terms of definition of margins versus the cost if equity which would be affected by the outcomes of the preliminary works: the risk profile resulting from the preliminary works would in fact determine the cost of equity where the margins are fixed or the margins if the cost if equity is fixed. By fixing both elements effectively the bidders would be required to fix the return of equity ahead of the determination of the consenting related works which will therefore require a redefinition of the financing strategy as submitted at stage 2. [Therefore, further thinking is required to establish the level of adjustments allowed at debt competition stage and/or financial close, this to the purpose of optimising the finance structure of the project once the detailed design is completed and the capital spending finalised.]

Further clarity should be provided in respect to the "incentive arrangement on the proposal for implementation of the design (based on a template for incentives as set out by the procurement body)". It may also result challenging to submit "satisfactory EPC and O&M contracts agreed with the prime contractors" at the stage 2 if the bidders are intended to become commercially binding.

The proposed categorisation of the projects in "small", "medium to large", "mega-projects" in terms of capex seem reasonable and pragmatic although impact on the system, duration of the construction and other element may usefully concur to such a categorisation e.g. innovative element or highly complex technical solutions, nature and number of the interfaces may affect the pool of suppliers and the set of skills and competences bidders should provide.

Among the option presented for what is requested of bidders in their final bid, the options E and F with the FC post preliminary works and some adjustments such as giving the preferred bidder a call option on some equity (as % of the equity with no fixed gearing) seem to be the most reasonable with a strong preference for the option F (equity and debt competition) to optimise value for money purpose subject to the call option for the preferred bidder to match the equity price competitively set.

**23. Do you agree with the criteria/features we have proposed to be within the evaluation? ***

Broadly yes, subject to the above.

The approach in theory is reasonable though the cost assessment will be challenging and we would welcome further definition of how the procuring authority is going to both understand the true costs of bids and ensure that costs do not escalate between ITT and licence award.

We do not think a Best and Final Offer (BAFO) stage is required (it has only been used once in the OFTO regime in circa 24 tenders).

**24. What are your views on our current thinking for the PB stage?**

Should consider whether licences should be required for competitive transmission or whether legislation should be amended to allow for a contractual route.

We agree in general with the approach proposed. We would support further consideration on the opportunity to align the licence conditions among bidders (namely CATO and TO current licence regime).

In light also of the risk of defaulting of the preferred bidder post award and before financial close consideration should be given to the opportunity to select a reserved bidder(s) among the selected bidders to be ranked.

**25. What is your view on the need for a bid bond and what do you think would be an appropriate value and time period?**

Bid bonds would inevitably add costs to the final bid hence to consumers. Therefore, their use should be as limited as possible and tailored to the specific circumstances where other arrangements would be less cost effective. A bid bond is not wrong per se but the need for a bid bond shall be assessed against the risk of the preferred bidder of intentionally defaulting and the cost of replacing it. There is a £250k one in the OFTO process – but it needs to be limited to something of that order.

20% of the capital value of the construction works secured through one of the forms of security which are acceptable within the STC is wholly inappropriate and will limit the market significantly, be expensive for consumers – it will also provide an advantage to those able to provide PCGs.

It should be noted also that to date no OFTO has ever failed to close after being appointed Preferred Bidder.

Where the risk is that the preliminary works may reveal much higher risks and costs then those expected at the tender process stage for reasons outside the bidder control, such a risk could be addressed by the contractual arrangements (e.g. milestone payments during the preliminary works or through a proportionate set of reopeners and adjustment to the bid value) which would be more cost effective. The specific context of the CATO competition where the main trigger is efficiency of consumer costs to build electricity infrastructure does not seem to suggest the bid bond is the first resource to address the above risks. The reputational risk of defaulting ahead of construction would already be an effective deterrent for the bidders.

**26. Do you agree the tender revenue stream should not commence until successful commissioning and that no payments should be made to the successful bidder prior to this point, except potentially for preliminary works and/or where there is a particularly long solution delivery works programme?***

Yes, we agree in general with the tender revenue stream to commence upon commissioning of the works and the solution becoming operational. However, we do support the option for some revenue to be paid in advance of this in respect of:

i) the preliminary works; and

ii) where there is a particularly long construction period.

Among the options under consideration, the milestone payments or some profiled payments throughout the solution delivery period seem to be the most suitable structure to maintain the delivery incentive whilst ensuring an attractive fair risk/reward balance.

**27. Do you have any views on incentives or penalties in relation to preliminary works and solution delivery, including the impact of commissioning delays on the tender revenue stream / revenue period?**

It would be very difficult to apportion cause for delay. It would be better just that TRS starts upon successful commissioning of the solution – everyone will be incentivised to make this happen (and it would also generally represent a strong incentive for a successful bidder to undertake good quality stakeholder engagement throughout solution delivery to ensure timely commencement of operation).

We agree an incentive to deliver ahead of time would not be appropriate and we have a preference for a reprofiled TRS for delayed commencement due to factors outside the control of the successful bidder.

This to the purpose of ensuring that the equity/debt invested are adequately protected where those delays are due to factors outside the control of the successful bidders - especially clarity on the exposure of the equity to consent should be clarified. This will require an adequate definition of FM events and the consequent relief and entitlement.

We also agree with the ESO there is no need for a specific incentive or obligation related to incumbent TO engagement although we welcome a continuous monitoring of the existing regulatory environment to ensure it can sufficiently manage the risk related to the performance of one party adversely affecting the performance of another party, including the impacts on established TO practices and relationships with wider stakeholders.

**28. Do you agree that the existing industry arrangements in respect of commissioning will be appropriate for early competition with minor adaptations?* What adaptations do you think would be required?**

Yes, we agree that the process for commissioning both network and non-network solutions should be aligned with and underpinned by the provisions outlined within existing industry codes and we consider existing industry arrangements for commissioning to be broadly appropriate for early competition.

It is expected that the role and obligations of the TOs in relation to the testing and commissioning of the network assets would be adequately transferred to the CATO in respect to the successful solution. We support the use of established processes and practice and the alignment with the specific STCPs.

Therefore, it would be expected that the Commissioning Plan intended as a series of inspections, tests and on-load switching operations would be prepared by the CATO and approved and carried out jointly by the CATO and the ESO to verify that the relevant assets are suitable for operational service. Any test of sufficiency shall be agreed, reviewed and accepted and as needed witnessed by the ESO only.

The interface of a CATO system and another TO's system will be a common element of any CATO, and we would agree that the interface itself would be in most cases jointly commissioned with the affected TO. However, only in special circumstances with the agreement of the CATO should the host TO witness the CATO's commissioning.

**29. Do you agree with the proposed potential operational incentive regime for early competition?* Are there any topics omitted which you feel should be incentivised and why?***

Yes, in general, except that:

- No Asset health should be required as this would adequately be covered by the availability incentive;
- An innovation gain share is not appropriate – it wouldn't work, cost reduction would involve other assets and risk and would be impossible to manage/monitor;
- Environmental Management should be a consenting authority responsibility and not additional requirements imposed by the SO.

The form and terms of such incentive should depend on the nature of the need and be set out at the ITT stage. It is noted that where the availability would in most cases be more closely and directly related to the performance of the solution and could be better "profiled" throughout the operational cycle of the asset/system to reflect the impact on the system performance

Energy not supplied may depend also on parameters which are not under the CATO's control but could be considered in specific circumstances where there were no other factors influencing it – but is likely to equate to availability (or weighted availability) in these circumstances anyway.

**30. Do you agree that with minor adaptations the existing industry codes/processes they can incorporate both network solutions and non-network solutions arising from early competition?* Are there any fundamental gaps or issues you foresee in relation to early competition?**

Yes, broadly and leaving aside the planning role that we believe should transfer to the ESO and which we expect will require changes to licences and codes.

However careful considerations should be given to the fact that network and non-network solution provides would be covered by different codes and this should not provide an advantage to one set or the other.

It is likely that the provisions for data exchange will need expanding and the requirement for the TOs to make available its assets and capabilities should be codified – none of this should rely on goodwill. The TOs should have guaranteed SLAs for data, land enquiries etc.

We support the current preferred option for the arrangements for new investment through the revenue period which would need further thoughts and definition, especially in respect of investment that may affect more than one asset/CATO and the flexibility to be allowed in respect to the underlying financial arrangements.

The recovery of cost of the CATO through the existing TNUoS and BSUoS charging regimes as modified by the Ofgem's review seems reasonable.

**31. Do you agree that decommissioning costs should be considered as part of the tender evaluation and that there should be an obligation on the successful bidder to develop a proportionate decommissioning plan and place a form of decommissioning security at an appropriate time?***

No, we do not agree.

The decommissioning obligations – especially for network solutions - should align to those of the current transmission network owners and operators and generally envisaged by the current licence regime. Any change to the legislation to impose new requirements to the network owners/operators should be better supported by evidence-based considerations on existing networks as it would inevitably result in additional cost to consumers

There appears to be a misunderstanding as to what the current offshore regime requires – there is no decommissioning requirement under the Ofgem led-process. There is a requirement under law in respect of works below Mean Low Water (MLW) only.

There are no requirements onshore other than what individual landowners require, or occasionally consenting bodies (where there are specific reasons to have decommissioning requirements – for example coastal erosion).

There are no decommissioning requirements on existing TOs (other than under individual landowner agreements or specific consent conditions).

The ESO should allow landowners and consenting authorities to decide what decommissioning obligations are appropriate and not put additional costs on consumers in respect of these matters (including the costs associated with reserving for decommissioning).

It is highly likely that any reserving would be very inefficient as projects are quite likely to be life extended (e.g. they will have a life longer than the initially identified need). There is a difference between onshore and offshore in that:

i) Onshore assets are more likely to have extended lives or alternative uses: and

ii) There is an identifiable non-governmental landowner which authorities can place obligations on.

{End}