

National Grid ESO

Early Competition Team
Faraday House
Warwick Technology Park
Warwick, CV34 6DA

Chris Bennett

Director, UK Regulation
chris.bennett@nationalgrid.com
Tel: +44 (0)1926 653626

www.nationalgrid.com

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Phase 3 consultation – Early Competition Plan

On behalf of National Grid Electricity Transmission (NGET), we welcome the opportunity to respond to National Grid Electricity System Operator's (NGESO) Phase 3 consultation and be part of the stakeholder events that have been undertaken to support the work on the Early Competition Plan (ECP).

We continue to support the development of early competition in onshore transmission where it is demonstrated to be in the interest of end consumers. We note and welcome the ambitious timeline that has been proposed for implementation which we will endeavour to work with NGESO/OFGEM to make happen. We are however concerned some elements may hinder the implementation of a robust process:

- *Clear parameters:* The current proposal seeks to include additional drivers for investment such as Pathfinder, which we think will confuse the objective of delivering the ECP. We think it would be prudent to get the process working and refined for specific boundary and customer projects in the first instance. Once the process is successfully implemented and working, expand it to incorporate other drivers (such as Pathfinder) following review and consideration of their impacts on consumers.
- *Timeline for development:* There is still considerable work needing to be undertaken against the proposed timeline (i.e. code reviews and changes, changes to NOA etc.). Failing to give sufficient time and effort means an impact on consumers and potential bidders due to the implementation of a sub-optimal process. This will have a long-term impact upon the types of projects likely to be tendered for, bidder appetite, increased cost and risks to consumers and the uncoordinated development of the future transmission network thus detrimentally impacting upon our Net-Zero targets.

We remain committed to the development of the ECP and are available to provide additional details where necessary on our responses below, to ensure a quality process is implemented in the future for the benefit of consumers and the network. If you have any questions on this response, please contact Sultana Begum on sultana.begum@nationalgrid.com.

Yours sincerely,

Chris Bennett (Director, UK Regulation, National Grid)

Chapter 2: Roles and Responsibilities

1. Do you agree with the activities of the Approver we are proposing and why?

The Approver role (Ofgem), we agree with and the activities identified as falling into their responsibility. We do however, think there are additional activities that need to be added to the current list:

1. *Governance:* The creation of the PPWCA falls upon the Licence and Contract parties. The responsibility as posed in the consultation is that they will also approve this document and its associated guidance. We do not think it appropriate for these two parties to create and approve their own documents and should be undertaken by the Approver to ensure clear governance is in place.
2. *Decisions:* Following the PPWCA, there should be an approval/decision stage. There is the potential for the underlying TRS value to be changed from contract award. Enabling this means auditing of processes to ensure the PPWCA is undertaken according to guidance and the winner can challenge decisions (if appropriate) before the TRS is formalised into licence.
3. *Licence:* The Approver should issue guidance to help participants understand the types of solutions that would/wouldn't require a Transmission Licence. This has been discussed extensively on Pathfinder where participants will deliver transmission assets but no conclusion on whether a Transmission Licence is required or not. Participants need to understand whether the scope of their solution is likely to need a licence as managing assets under a contract and managing assets under a licence are very different and may require different bidding strategies to be employed. Clarification is requested, where the project is not licenced, that Ofgem recourse is to the ESO as the Contract counterparty.

2. What do you think the checks, that make up the other activities, should look like? Should they be a formalised process?

It is unclear what the Stage Gate process will look like and how formal it will be? If the proposal is akin to existing regulatory need case processes for example, then it could add significant time onto the process.

We propose any checks that might change the course of the tender process, is formalised. This allows bidders/winners to know and understand the process that are applicable but also provide opportunities to challenge decisions (if applicable). This ensures transparency and certainty that decisions will not be made adhoc which may impact them or the project.

3. Who do you think is the most appropriate party or parties to own the Procurement Body role?

We continue to believe the ESO is best placed to own the Procurement body role. It would be the least disruptive and costly, due to their experiences of procuring energy services in the market currently and their role as the system operator. We are however, mindful the ESO will need to upskill significantly to enable the production of detailed procurement tender specifications that market participants can tender against as the ESO has not run such events for large scale physical infrastructure build projects. There is also the matter of ensuring that the Procurement body is suitably incentivised to deliver good value for end consumers.

4. Taking into consideration the role of the Approver, do you think an Independent Assurance activity is needed?

We agree with the conclusion that it would be a duplication of activities between the Independent Assurance body and the Approver and therefore should continue to sit with the Approver. The Approver can outsource the assurance activity to a third party on their behalf, if they needed but ultimately should sit with them.

5. Do you agree with our position on the Contract Counterparty role and why? (for non-netw orks)

Yes, already established and least disruptive to the process. Note our comment in Q1 re where the ESO is the only licenced party and the contract counterparty it would appear to be taking on delivery and compliance risk.

6. Do you agree with our position on the Payment Counterparty role and why?

Recognising that further work needs to be carried out to determine the risks and remuneration of the party, in this instance we agree the ESO is best placed to own this role. A lot of the frameworks are already established which the ESO understands and therefore the least disruptive to the market and competition process.

7. Do you agree with our proposed approach to conflict mitigation?

We agree that involving the TOs will deliver greater value for end consumers and that any perceived conflict of interest can be satisfactorily addressed. Indeed, excluding the TOs would severely restrict competition.

Based upon the high-level information provided, Option 2 (ring-fence bidding teams) for conflict mitigation appears to be the least disruptive route. However, we are concerned there may be limitations if applied without further thinking and detail behind the proposal. For instance:

1. Time-bound ring-fenced approach may be appropriate to minimise disruptions (cost and resources), nevertheless, need to ensure there aren't onerous 'gardening leave' restrictions on who can be part of the bidding team.
2. Network Planning definition refinement is required. Within NGET a significant number of employees are in some way involved within network planning/design/development activities. We are also assuming the existing TO delivery teams can deliver the project once the bidding period concludes and able to continue core business roles.

8. Do you agree with the key differences between early competition and these case studies, and that the key differences would limit the lessons that can be learnt for the purposes of developing the model for early competition?

The case studies identified are bespoke projects which required unique approaches for their procurement. The ECP is a unique project which will need its own processes, frameworks, roles etc to enable its creation and future. There will be lessons that can be learnt from the case studies however, maybe difficult to draw parallels to the ECP process.

Chapter 3: Identifying Projects:

1. Do you agree that only competing projects that appear in at least 2 FES scenarios will provide sufficient confidence that the project will go ahead?

We note that FES is a scenario rather than a forecast. We think this assumption is too simplistic to provide any confidence on early load-related projects. We agree that generation background plays a critical role in the need of a project but there are significant other factors within this. For example, type of generation behind the system need, government policy on specific technology, consenting status of specific generators, how many years towards project delivery etc.

The current NOA process only makes a single year recommendation to progress a project based on forecast spend for the next year, while also considering the optimal delivery year across the range of scenarios. Depending on the boundary being considered, recommendations are sensitive to specific assumptions within a FES background about generation or demand changes in an area. As stated above, we believe it is too simplistic an assumption that FES scenarios give sufficient certainty. We believe that it would be more robust to consider both the strength of drivers across the scenarios as well as considering local issues/sensitive cases that may impact the need for the reinforcement. This is not unlike what Ofgem does for SWW / LOTI projects need case assessments. This will allow conclusions to be reached that are strong and consider the latest information available on the likelihood of network reinforcements being required.

In addition, there is a lag between the FES publication and NOA assessment, meaning NOA may not consider the latest available information if taken at face value e.g. the latest government policy as happened with NOA5 and Net Zero. Given the importance of getting the right projects/needs out to competition, it is vital that further work is undertaken beyond NOA to understand the complexities and strength of the driver on a case-by-case basis. In a similar way to how a needs case is assessed today, the Network Planning body can then make its recommendations to the Approver based on this analysis and determine that a need/project can move forward to be competed.

Consideration should also be given to either expanding/changing or supplementing the NOA process to ensure that it reflects all facets of the system drivers and project requirements – currently NOA does not consider detailed voltage, fault level, stability requirements which may need to be considered when specifying the scope of a solution for competition. Delivery risk also needs to be factored in as a key determinant.

2. Do you agree with our proposed approaches for different drivers of network investment? Are there ways single party connections could be identified as having sufficient certainty to compete?

Above all, we recommend setting clear parameters for early competition, so focus can be on ensuring the implementation of a robust process. The current proposal looks to incorporate lots of different drivers, this makes it difficult to come up with a

robust process and meet the overall objectives of EC. It would be prudent to get the process working and refined for specific boundary and customer projects in the first instance. Once the process is successfully working, expansion to other drivers of network investments should be reviewed and considered.

Should the above suggestion be followed, some points identified below may not be relevant:

1. *Voltage & Stability:* Merging competition under one banner is an efficient approach. However, there continue to be differences. For instance, the incumbent TO bid is a counterfactual in Pathfinder, while the proposal in ECP requires for a level playing field. Is it the assumption that Pathfinder will be adjusted to accommodate to ECP?
2. *Asset replacement:* One of the criteria for competition is 'separability'. This would be a contradiction to the suggestion to compete asset replacement projects, which by definition are not separable.
 - More importantly the whole premise of early competition is to tender for projects years ahead of the need. It is difficult to know what replacement projects can be competed years in advance of the need because the incumbent will undertake annual asset health reviews before a determination on which assets to replace or require immediate action is taken. The early trigger that is needed for EC will not be present and should therefore be removed as a driver.
 - In conclusion, the benefits derived by the incumbents negotiated frameworks would be difficult to replicate by competition. If allowed, it may prove to be more costly for consumers instead.
3. *Boundary capability and customer works:*
 - Are frequently referred to as being separate things. Almost every new major infrastructure project in NOA forms part of a customer connection enabling works, particularly given the scale of new connections required for Net Zero. There needs to be recognition that it will not be possible to easily delineate between these two as separate things.
 - Experience has shown that customer connections are uncertain and will change and evolve (scope and timeline) till it becomes more certain. There may be scope to compete the connection work early and importantly to consider whether there are factors such as technology, alignment with policy etc. that could be used to differentiate around project certainty. ESO however, must be conscious not to impact the market by effectively making decisions around which projects are perceived to be more certain. As such, all projects would need to be treated equally to ensure there are no challenges from customers where some may or may not be impacted by competition.
4. *Compliance:* We are unclear how compliance can be a separate driver for network investment and request more detail to provide a more informed response.
5. *Optimisation:*
 - Given the difficulty in separating drivers for investments, thought needs to be given on how drivers are assessed and competed to minimise the overall level of infrastructure build onshore. Optimisation across drivers before competition is important to ensure that it happens.
 - In conjunction with the above point and ITO bid, we welcome the ESOs thoughts on the following scenario. In the ITOs competitive bid, it would be able to expand on an existing solution it is developing for a different need (which may not be separable) for instance, the replacement of an asset at £X amount, the cost to put in a bigger asset would just be the uplift cost, rather than the full asset cost? Enabling this would be important to ensure network investment is optimised. We assume a CATO would be able to do this as well if they had existing assets.

3. Do you agree that continuing to develop the Interested Persons Option process is the best way to engage stakeholders in initial solution design

We are interested to see how this process could be evolved. We are however aware, there wasn't much interest in the IP process last year, so it is difficult to understand the benefits and impacts as we do not have any tangible experience of it working. It is therefore, important for the ESO to work with stakeholders to understand:

- Why there was no interest last year and what the barriers to entry were, so they can be resolved.
- What would the benefit be to participants in getting involved in this process? Why would they want to show their hand early?
- The roles and responsibilities around NOA submission require further clarity with the growth of the Interested Persons Option process:
 - We do have concerns around the ESO's statement that they would 're-shape' the NOA options submitted by the TOs. Should such an approach be adopted, it should be noted NGET cannot be held to any options that are not explicitly provided as part of its submission as re-shaping/splitting out options will change capabilities, costs and programmes.
 - NGET must study the boundary capability of its options – how will it consider options from other parties as part of its path building and understand how other projects could impact the boundary capabilities of what it proposes? Do ESO see this changing?

- Additionally, there may be system analysis constraints which need to be considered. There will be significant challenges on model exchange and intellectual properties. Boundary assessment for NOA is already resource heavy and time-consuming just for TO/ESO options. Additional proposals from interested person would multiply the amount of additional analysis that will be required and cause delay in delivery of NOA publications.

Chapter 4: Commercial Model

1. Do you agree with the partial indexation of the TRS and the adoption of CPIH as the index? Why?

In relation to CPIH, we understand the drivers behind a change from RPI and we agree with the approach. We supported this change as part of the RIIO 2 process.

In terms of full versus partial indexation, we recognise that a full indexation mechanism could cause some funding issues due to lower initial cashflows (as described in the paper) and could be an issue for those bidders with less capacity to manage this imbalance. We agree that, in theory, an inflation swap could help rebalance the cashflows, however, this is likely to come at a material cost (ultimately transferred to consumers), as the swap would need to be uncollateralised. In addition, a swap of this type would not be easy to price and structure in terms of amount and tenor and will add volatility to the bidder's P&L as the swap would have to be marked to market.

Partial indexation would address this issue and would likely keep allowed revenues and costs to be better aligned for a bidder. However, from a consumer point of view, this would mean future consumers pay less than current consumers in real terms for the use of the same asset, which presents potential issues in terms of inter-generational equity.

There remain practical questions from a bidder's perspective as to whether indexation removes risk or creates additional risk (e.g., how aligned is CPI inflation to bidders' expectation of their own cost profile and/or how likely is indexation % to remain an accurate natural hedge through time)? If bidders have to price inflation risk into their bids, then the process may not represent best value for customers. One alternative is to ask bidders to submit the indexation % they believe would cover their cost inflation as part of their bid. This would, however, present the additional challenge of comparing different indexation profiles from different bidders. A partial solution could be to include an adequate risk sharing mechanism to assign any deviation between indexation and CPI inflation between bidders and consumers.

2. Which of the options for extending the revenue period do you think are most appropriate? Why?

We think it too simplistic to look at end of life requirements based just on the NOA assessment, further impacts/considerations are needed towards broader network compliance as more generators will have connected with that asset in place and removal of it may require another asset to be built or a derogation be put in place. If the previous need no longer exists and the decision is made to remove the asset, then is it on the TO to re-establish network compliance? What happens if this delays customer connections? Will the TO be part of determining the requirement for the solution long-term?

All three proposed options are viable (providing there continue to be value to consumers). The consultation has a preference between options 2 and 3 (exiting provider extension, pre-agreed and renegotiated). It is not clear to us that it would be a fair negotiation with one buyer and one seller, and therefore options for extension might be better agreed at the outset. Alongside this we welcome further consideration as to the merits of keeping all three options available to operators to make a more informed decision nearer the time when the decision needs to be made.

3. Do you agree with the preferred option of a fixed payment to the successful bidder upon the delivery of key milestones during the preliminary works period? Why?

We agree with the proposal to make fixed payments once key milestones are met to ensure winning bidders which would have otherwise needed to wait till the TRS commenced for payments, can receive them earlier. This approach will help in preventing any gaming of the preliminary and construction allowances but also mitigate working capital challenges. It is likely to encourage a wider pool of participants and so improve competition.

4. Do you agree with our revised views and preferences in respect of the PPWCA, Performance Bond and IAEs? Why?

We have made some observations about the revised proposals below:

- Performance Bond:* We see the benefits in protecting consumers from non-delivery and more so for those that may not be financially secure and at risk of non-delivery. However, for those that are secure is the expectation that this would still need to be placed?
One of the suggestions is the 'OFTO Build of 20%, is an appropriate comparator.' 20% may have been appropriate for OFTOs due to the development and size of such project. However, EC projects are not comparable by value or risks (i.e. preliminary works requirements) and may need a higher % bond. This as a result, may price some bidders out if they are not able to service the bond, while others will price it into the contract thus increasing the price for consumers. Identifying the appropriate risks/costs consumers are willing to take needs to be considered carefully. Where there is greater technology risk this could have a bearing on the level of bond that might be appropriate.
- PWWCA:* The consultation states that certain underlying costs (which are permissible) may be adjusted at the PWWCA, however, it is unclear, what 'permissible' costs are? Further clarity is welcome to ensure bidders know what can and cannot be changed at this stage.
- IAE:* Further detail on the proposal is requested. Without a worked example or proposed solution, it is difficult to comment.
- Risk Table:* Is the intention of the Risk Allocation table to include commercial settlements with landowners for compensation under "land rights"? This is potentially a large risk and is a challenge to resolve at the preliminary stage before the disturbance has occurred. More detail is requested.
Greater clarity of late delivery penalties will be required for bidders, it is not clear Ofgem's current principles-based arrangements provides sufficient detail to facilitate efficient bidding.

5. Do you agree with our preferred option regarding margins and overheads? Why?

Overheads fixed at ITT may not be possible. Preliminary works are where the design (worst case scenario scope) is likely to change and where a lot of the risk is likely to be. Overheads should therefore not be fixed at ITT to allow some flexibility should there be a change during the preliminary works, later assessed and fixed at the PWWCA. An arrangement of fixed with reopener might be a reasonable compromise.

Profit margin, in the instance that a fixed profit margin (is negotiated with the supply chain as suggested), cannot be achieved, what are the consequences of this? Setting a fixed margin is akin to a rate of return regulation model, this will have an impact of the delivery vehicles incentive to reduce costs to end consumers and share in any outperformance.

Treatment of risk/contingencies will be bespoke to projects, change as the project progresses and appetite for risk will vary between bidders. How this can be facilitated will need to be considered further.

6. Are there any additional measures a Procurement Body could take to further drive value for consumers in securing debt finance?

If a Debt competition takes place, an adequate risk-sharing mechanism to properly assign any financing differences that may arise between the bidding stage and Financial Close should help to drive value for consumers.

In addition to actively participating in the Debt competition process (including negotiation of terms), the Procurement body may also deliver additional value by widening the pool of potential lenders, by extending invites to Development banks and Export Credit Agencies (ECAs). These lenders can offer attractive terms (both in terms of flexibility and pricing), however, will only participate if the project has been awarded. The Procurement body should consider the requirements from these lenders from the outset.

Other potential measures could be to discriminate projects by size and only recommend a Debt competition above certain thresholds, leaving funding for smaller projects at bidders' discretion (i.e. a more traditional bidding process). This should avoid unnecessary costs where simple and fast solutions are available.

Where a bidder can secure debt finance on preferable terms (e.g. balance sheet financing) to that resulting from a Debt competition, it may be appropriate to adopt the alternative finance, with an appropriate sharing of the benefit with consumers.

7. Do you agree with our current preferred option with regards to equity? Why?

We agree that equity investors play a fundamental role to allow bidders to access subsequent debt financing. Seeking to raise equity at a later stage, would not only delay the process, but would also add uncertainty to the inherently risky Debt competition. Equity commitment is key to attract debt support, as the debt providers will want to see some risk sharing from sponsors before committing any funds to the project. Naturally, the stronger the commitment from sponsors, the more comfortable debt providers will feel, which should result in better overall financing terms.

If the estimated equity amount changes from bidding stage to Financial Close due to unexpected variances, then it is reasonable for the Procurement body to restrict this variability through some form of mechanism, such as asking bidders for a maximum equity commitment and/or a commitment to maintain target gearing at Financial Close etc. Bidders could still bid on preliminary terms subject to these thresholds. This is particularly important to give assurances to the Procurement body that equity sponsors will remain committed to the project even if some preliminary assumptions (overall costs, IRR, risk profile) change towards Financial Close.

In relation to the sale of equity, we agree that any potential change of control should be avoided during the critical path of the project (i.e. until the project is delivered). Once the project is operational, equity sponsors should have flexibility to exit within certain conditions. For example, by ensuring any incoming buyer meets certain criteria (credentials, expertise, rating), by giving priority to buy to existing shareholders (pre-emption rights), to ensure adequate continuity in the management of the asset/s.

8. Do you agree with our views on indexation? Why? See response to Q1.

9. Do you agree with our updated views on licence/contract and industry codes? Why?

We agree the changes to codes could be significant, as were the changes to introduce OFTOs, and agree they are deliverable but further work needs to be undertaken.

Requirement to hold a licence is a matter for primary legislation.

Introduction of non-network solutions should not reduce the protections afforded to end consumers through licenced arrangements unless this has been objectively justified.

10. Do you agree with our views on need change or disappearance? Why?

We agree that it is appropriate that the need is continually re-assessed for confidence that the proposed solution still provides consumer benefit and the need continues to exist. It is also important to understand how the winning bidder can expand or change their solution to meet an increased need to ensure the network continues to be developed in a manner that minimises cost to consumers.

Under current SWW arrangements, following the Final Need Case approval, the project is no longer assessed in NOA as a robust assessment of need and the economic case for the project to proceed against a range of sensitivities is concluded. To provide some certainty to bidders and local stakeholders impacted by a project we believe it would be appropriate to remove a project from NOA assessment once construction has begun in line with the current approach for SWW projects. The NOA, and associated processes, can then be used to optimise any further network reinforcements.

When reviewing the current proposal from the consumer perspective, we do not expect winning bidders to make a margin on costs incurred if the project need is terminated. However, from a bidder perspective, if investments were made in good faith there might be an expectation to receive a margin on costs as the need disappearance was not resultant of their actions. Further consideration is needed so as not to deter others from bidding in the future.

11. Do you agree with our views and preference in respect of the 'provider of last resort' arrangements? Why?

We welcome the views and information on the 'Provider of last resort' which assumes that any party can take over where a winning bidder is not able to deliver the asset and the incumbent onshore TO is not the only option. We have some initial questions which we welcome clarity on, in the absence of an onshore specific proposal, following the review of the OFTO of last resort document:

- The OFTO policy makes the project available to incumbent OFTOs before it is expanded to onshore TOs, is it appropriate to assume this would be the case for onshore projects or anyone (with a TO licence) is able to bid for the project?
- The document assumes last resorts process is initiated only when the asset is built. ESO recognises the process will need to be bought forward for early competition. However, could it be the case that unsuccessful bidders who reached the last stage of the process, can be called upon to deliver the projects as per their bids (or revised bids) to reduce the lead time to delivery?

Chapter 5: End-2-End process

1. Do you agree with our preferred position on pre-tender activities? Please explain your answer.

The activities proposed appear reasonable. However, we have some additional points for considered:

- In providing information to those tendering early in the process it is important that options being tendered don't become limited by the information provided, otherwise this could stifle innovation and creativity to the detriment of consumer value.
- We agree the tender process cannot be standardised and a flexible approach is appropriate – given the potential scope of projects, there needs to be sufficient clarity for tenderers at an early stage what the approach is and why, to prevent challenge further down the line.
- More specifically, it could be interpreted from this chapter, the length of the upfront activities to the appointment of CATO, is very long (an additional 3-5 years potentially from initial need identification to Licence or contract is a significant length of time). Value could be eroded quite significantly so anything the ESO can do to reduce these timescales can only be to the value of consumers providing there are a pipeline of suitable projects.

2. Do you agree with our preferred position on impact studies?

Impact studies will be critical to ensuring the chosen solution drives consumer value, so scoping these effectively and sufficient time given to undertake them is important. While a proposed solution could provide boundary capability it may result in the overstressing of equipment in other areas of the network or network instability.

The burden of risk needs to be considered carefully as the network background continues to be fluid as customers look to connect in parallel with competitive tenders running, especially over the number of years this process is shown to take. Changes to the network background during the process could invalidate the impact studies and the party doing the studies cannot be liable for that risk. Scope of studies and background need to be agreed with the Procurement body to ensure there is a clear scope of works and set of assumptions that are understood (and whoever is asked to do them must be paid for the service they provide).

3. Is there anything in our approach to sharing network information that you believe is unworkable? If yes, please provide details?

As we have said previously, the generation dispatch and assumed dates of connections that sit within the ETYS models are commercially sensitive and must be treated as such. This therefore needs to be considered alongside requirements for pre-qualification and unbundling. At this stage in the process there will not be a strong incentive for bidders to ringfence that information if not governed by a Licence and/or associated obligations. We agree that an NDA could be used but the penalty for breach must be significant to ensure it is a sufficient deterrent.

While ETYS models are useful, they do not give due consideration to potential local issues. There may be benefit in using the ETYS model as a starting point but then, considering the geographical boundary of the solution, and consider if there is benefit in making any local optimisations/changes/sensitivities.

ETYS models need to go through an internal quality assurance process before release to ensure that bidders do not find issues. The release of models through the current NOA process can sometimes be iterative where errors are found that need to be corrected, making the process inefficient.

4. Do you agree that individual pre-submission reviews should not be offered to bidders during the tender process if the clarification question process is in place?

We can understand the request from potential bidders for reviews prior to submissions to ensure their bids are in line with expectation etc. We also understand that should this be allowed it would mean a considerable amount of time, effort and resources needing to be allocated to it outside of the normal tender process. It may also give some bidders an advantage over others. As a result, we agree with not providing a pre-submission review. The clarification question process should therefore ensure all parties receive the same information (providing no IP or bid specific information is divulged).

5. Do you agree with our preferred position on the Pre-Qualification assessment and process? Why?

We agree with the alignment of tender and licence processes, however at a minimum, it needs to ensure unbundling rules are followed (with a fuller review undertaken prior to licence/project award), so as not to progress through the process only to find that the winning bidder is not able to hold the licence.

6. Do you agree with our preferred position on Invitation to Tender stage 1 assessment and process? Why?

We agree with the following areas:

- *Capability*: The Procurement body will need to upskill and ensure they have network planning and project delivery expertise that enables them to sufficiently scrutinise the dates provided. The delivery date should not just be a date but should contain a high-level project programme that provides confidence in deliverability.
- *Environmental/socio-economic factors*: Should be considered although in some cases these may be difficult to quantify to enable meaningful comparison. While Net Zero ecological impact is mentioned it may be worth considering Net Gain as a parameter –though without detailed surveys and development it may be difficult to provide details of this.

The following areas we think further work is required:

- *Need*: Meeting the need will be a critical factor but the extent to which solutions meet the need and how it is measured requires further thought for more complex needs or where there are complex network interactions. The ability for bidders to confirm they meet the need based on the information provided should be looked at further e.g. for stability studies detailed generator models will be required. If this cannot be made available due to the sensitivity of that information, then the bidder may not be able to do studies to sufficiently confirm that they have met the need. We welcome more details on the proposed shadow study arrangements and the extent of these (and what happens in a dispute).
- *Technology readiness*: Is an important factor, but the project lead time may also be important to consider when assessing the readiness level. It might be worth considering a higher readiness level for short lead time projects than longer ones where there is more time to develop the technology in parallel with the consenting process.
- *Interested Parties*: The ESO may wish for parties to participate in the interested parties process, if there is no commercial incentive to do so then this may be limited as participants may feel it undermines their commercial position in the competition process.
- *Feasibility assessment*: The TO could undertake feasibility assessment on the impact of connections, however, the allocation of risk is important as the network background continues to evolve and there could be changes between assessment and preferred bidder appointment.
- *Consents*: Where consenting is required (and particularly a DCO) it is important to ensure there are no accusations of pre-determination, otherwise these projects will not be able to undertake meaningful consultation at this stage and nothing must happen at this point that undermines future consultation processes.
- *Costs*: We understand the concerns around submitting costs at this stage, however, given the whole purpose is to drive consumer benefit, we think a critical element of information is not available here. Having an initial view on costs would help confirm whether there is value to be gained in proceeding with the second stage and committing to further time and cost in project delivery.
- *Partial solutions*: Should not be allowed to be submitted and onus be on bidders to seek co-operation or partner with other organisations to ensure they can meet the need of the tender. It is difficult to see how any tender could be assessed in the manner outlined in the document if it was only a partial solution.

7. Do you agree with our preferred position on Invitation to Tender stage 2 assessment and process? Why?

We agree with the technical and commercial scoring mechanisms proposed. However, question the suggestion that bidders may be willing to submit a planning application and carry out surveys with no guarantee of bid costs being recoverable. We are not confident this would be easily accepted by the market. More specifically, is this a realistic approach to have? In addition, question whether the Procurement body would want multiple parties to carry out invasive surveys at sites with no accountability or oversight of stakeholder management? Further clarity is requested for this point.

8. Do you agree with our updated views in respect of late project delivery? Why?

We agree the TRS should start following successful commissioning and reprofiled over the remaining revenue period. However, should it be found that the delay was not due to the fault of the winning bidder, the full revenue period should be maintained when the TRS starts. In the same guise, the winning bidder should not be penalised for anything outside of their control or that could not be reasonably foreseen/catered for. We propose looking at the PWWCA stage to consider the risks that are or aren't included when agreeing the final costs to ensure there is agreement and comfort around the level of risk mitigation that should be in place.

For ease of consistency it would be appropriate to align to the T2 late delivery guidance (noting they will not be applicable for non-network solutions).

9. Do you agree with our updated views on the preliminary works / solution delivery incentive regime being proposed for early competition? Why?

There may be limited value for stakeholder reports on small projects however for larger projects where there are DCO requirement there may be value in the proposal. Current suggestion is a simple report with no incentives imposed however, it could be taken a step further to get a view of the CATO performance and build in an incentive through a stakeholder performance mechanism where a reward/penalty provision is applied depending on the performance.

10. Do you agree with our updated views on the operational incentive regime being proposed for early competition? Why?

Incentives should be developed on a case by case basis and it may be appropriate for network solutions to propose their own incentives as part of its licence drafting (in a similar way that TOs have some common incentives and some bespoke incentives). Availability incentive is important and is key to ensuring the asset delivers value – unavailability due to factors outside of the CATO control though should be removed.

11. Do you agree with our revised views and amended preference in respect of decommissioning securities? Why?

We still question the need for the security if provisions have been made for in the TRS but we welcome the work to scope the parameters of the securities and minimise additional capital which could otherwise increase costs to consumers.

Chapter 6: Implementation:

1. Do you think Table 1 is a comprehensive list of high-level implementation plan activities? If not, what has been omitted?

The table has an extensive list of activities, which we agree with. There are a few more for consideration:

- *Licence:* The CATO licence will need to be populated and consulted upon by Ofgem before it can be utilised (which can be a lengthy process)
 - For non-network solutions generic contract terms need to be established (unless the HoTs are expected to cover that).
- *IT systems:* Set-up to undertake procurement activities will be needed. More fundamentally, what systems will be used?
- *Sign-off:* Overall sign-off of ECP by Ofgem should be included as a milestone, especially as ESO state they will only initiate code review activities following this confirmation.
- *NOA:* Process will need a significant overhaul to accommodate both the scope and timings/frequency of process.

In several cases the assumption seems to be that existing organisations will expand, but it should be made clearer in the table that this may require whole new organisations to also be established.

2. Do you agree with our proposed timing and sequencing for implementation plan activities? If not, what would you change?

We welcome the ambitious timeframe presented, however, we are apprehensive whether the period from having CATO legislation to Licence award is feasible. Given that only 18 months has been allocated for the facilitation/code change/capability build activities, which relies on a lot of organisations having dedicated capacity to do so, and in some cases, capability already built in order to make this a reality.

In more specifics, we would expect code reviews to be initiated ahead of Ofgem's confirmation of ECP. There is considerable appetite for competition to be implemented as soon as possible. Without knowledge of the extent of code changes that would be needed seems premature to assume a timetable of 6-12 months for the review and implementation of the changes. We recommend undertaking a scoping activity ahead of Ofgem's confirmation and once legislation is enacted and/or Ofgem makes its decision, changes implemented without delay.

The changes to codes proposed, we assume only covers STC, Grid Codes and CUSC, however, NOA/FES changes, which could result in licence changes needed for ESO and/or TOs, may not allow for facilitative licence changes until after these processes have been reviewed. The process may not be as linear as presented.

3. Do you agree with the 'potentially advanceable' implementation plan activities? If not, what would you change?

We agree with undertaking analysis within these specific areas to aid a better understanding of what additional work may be needed to progress EC. However, workload and resource requirements and buy-in from organisations ahead of legislation

and funding is made available e.g. for TOs or ESO, may deter more active involvement till more certainty is given. To ensure continued support and involvement, this should be looked at further to aid progress.

4. Do you agree with our views on early competition prior to early competition legislation? Why?

We agree in awaiting legislation. However, we would assume legislation being passed for competition is enough of a signal that competition will go ahead for work to progress so the implementation can be initiated.

We do however note that Pathfinder is competition for non-network options so, assuming ESO can improve this process to make it more robust/fairer, then that may be the best way to do anything ahead of competition legislation being in place.