

Report Phase Consultation Responses

P351 'Align the BSC with changes to the SCR requirements'

This Report Phase Consultation was issued on 12 December 2016, with responses invited by 4 January 2017.



Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
EDF Energy	5	Supplier, Generator, Supplier Agent, ECVNA, MVRNA
Npower Group PLC	8	Supplier, Generator, Non Physical Trader, Supplier Agent
Uniper Uk Ltd	2	Generator, Interconnector User , Non Physical Trader
Drax Power Limited	1	Generator

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Version 1.0

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Question 1: Do you agree with the Panel's initial unanimous recommendation that P351 should be rejected?

Summary

Yes	No	Neutral/No Comment	Other
4			

Responses

Respondent	Response	Rationale
EDF Energy	Yes	<p>We agree with the Panel that P351 would better facilitate Applicable BSC Objective (a) but would not better facilitate Applicable BSC Objective (c) or (d).</p> <p>The SCR Guidance document provided by Ofgem does not provide sufficient clarity or assurance on how and when the three proposed SCR routes would be used, and in particular the process where Ofgem would lead on the end-to-end development of the solution (Option 3). We are also concerned that Option 3 goes beyond the CMA's recommendation. The CMA states that Ofgem should have the ability to intervene to take substantive and procedural control of an ongoing strategically important modification proposal <u>only in exceptional circumstances</u>. To go beyond the CMA's recommendation without a clearly defined and documented process undermines confidence in the governance of the energy market and could be damaging to competition and administrative efficiency, negatively affecting objectives (c) and (d).</p> <p>Without the appropriate checks and balances enshrined in the industry process, we believe P351 would, on balance, result in a dis-benefit. Therefore, we agree with the Panel's initial Majority recommendation that P351 should be rejected.</p>
Npower Group PLC	Yes	
Uniper UK Ltd	Yes	<p>We agree with the Panel and Workgroup reasoning that both P351 Proposed and Alternative modifications should be rejected. While implementing P351 might better meet Objective a), this cannot necessarily trump the negative impact that implementation would have on other Objectives. While it has been clarified that the Panel's voting rights should not be fettered and the usual appeal routes would be open to parties</p>

Respondent	Response	Rationale
		<p>regardless of the approach taken, the lack of clarity as to how an Ofgem-led process might work, with no definite commitment to engage parties and no clarity on cost recovery, unlike the current BSC modification process, means that the 'Route 3' approach would be a disbenefit rather than an improvement on the current baseline.</p> <p>The Alternative is better than the Proposed in at least setting out a reasonable definition of Exceptional Circumstances Criteria, in line with the CMA's remedies. The suggested wording seems reasonable. It is perhaps undesirable to risk fettering the Panel's discretion but it is important that modifications are not progressed down the Route 3 approach for Ofgem's convenience without clear substantiation as to why that approach is most appropriate.</p> <p>The SCR Guidance document that 'Authority-Led' modifications/proposals would be in accordance with refers to Ofgem expecting to consult on and expecting to work collaboratively with affected parties. But it does not commit to these steps. Indeed it explicitly states that 'there may be instances where the process may need to deviate from that set out in this guidance'. It also does not give enough detail regarding the opportunity for parties to raise Alternative Modification proposals. Furthermore this document being under Ofgem's control without any Code Panel input also means that parties must be aware that it could be changed by Ofgem at any time.</p> <p>Consequently P351 would be detrimental to efficiency and clear governance, introducing regulatory uncertainty and likely to undermine existing and potential future parties' confidence in the market arrangements. We believe that these disbenefits under BSC Objectives (c) and (d) outweigh the positive to (a).</p>
Drax Power Limited	Yes	<p>We believe that the P351 Original and Alternative should be rejected as they do not better facilitate the Applicable BSO Objectives (ABOs). We believe P351 better facilitates ABO (a), but this is outweighed by the detrimental impact to ABO (c) and (d).</p> <p>We agree that P351 goes beyond the CMA's recommendations and fails to provide a clearly defined process with regards to industry</p>

Respondent	Response	Rationale
		<p>engagement. The SCR Guidance Document lacks clarity on how and when each of the three proposed routes described in the P351 Report Phase Consultation would be used. Without these processes being codified, or there being any supplementary guidance from Ofgem alongside P351, there is a significant lack of transparency on the level of industry engagement to be expected and how/when this will take place. This lack of certainty is damaging for competition, as parties have no view on their ability to provide feedback on, and influence, proposed changes to industry codes, which are multilateral commercial agreements.</p> <p>The lack of effective checks and balances will erode confidence in the SCR process and while there is still an appeals process under P351, we note that it is a very expensive process.</p> <p>We agree with the Panel that the P351 Alternative is worse than the Original proposal. The Panel is made up of independent experts and therefore binding them to reject a modification, even where the change may meet the Applicable BSC Objectives, would be inappropriate.</p>

Question 2: Do you agree with the Panel that the redlined changes to the BSC deliver the intention of P351?

Summary

Yes	No	Neutral/No Comment	Other
4			

Responses

Respondent	Response	Rationale
EDF energy	Yes	
Npower Group PLC	Yes	
Uniper Uk Ltd	Yes	<p>Yes, but some minor queries/suggestions on v0.6 of the Proposed and Alternative mod text:</p> <ol style="list-style-type: none"> 1. In Section F should the 'only' be removed from 2.1.1(g) when P351 would add (h), allowing the Authority to raise SCR related mods? Where currently: <p>(g) the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency).; and</p> 2. Also in F 2.1.12B should it be Modification singular in: <p>and Modifications Proposals withdrawn following a Backstop Direction</p> 3. (In F 5.1.3(aa), being pedantic as it is the Proposal not paragraph 5.3.1A that would arise from the SCR, it might be clearer if this wording was rearranged?: <p>(aa) the Authority raises a SCR Modification Proposal pursuant to paragraph 5.3.1A arising from the relevant Significant Code Review; or)</p> 4. Panel should be capitalised in 5.1.3A(c): <p>(c) the Authority makes a decision consenting or otherwise to the modification of the BSC following the panel's submission of its report under paragraph 5.3A.</p> 5. Unclear why separate definitions of "Authority Led SCR Modification" and "Authority Led SCR

Respondent	Response	Rationale
		<p>Modification Proposal" are necessary; e.g. is this supposed to distinguish between the route 2 and 3 approaches? There seems no mention if/of the potential Ofgem end-to-end process distinguishing them, with the former just defined as a proposal, so as written the latter is a proposal for a proposal? Might these terms be amalgamated or the differences clarified? Also as the definition of a SCR Modification Proposal is being changed to remove the reference to being raised by the Transmission Company and suffices in paragraphs such as F 5.1.3(b) which only refer to Authority Led SCR Modification Proposals. Where:</p> <p>"Authority Led SCR Modification": means a proposal to modify the Code which directly arises from a Significant Code Review and where the process of the modification is led by the Authority in accordance with its SCR Guidance and submitted to Panel in accordance with Section F5.3A.1 ;</p> <p>"Authority Led SCR Modification Proposal": means a proposal for a Authority Led SCR Modification which has been submitted pursuant to and in accordance with Section F5.3A.1;</p> <p>"SCR Modification Proposal": means a Modification Proposal raised by the Transmission Company pursuant to a direction from the Authority arising from a Significant Code Review, or by the Authority in accordance with Section F5.3.1A;</p> <p>6. Significant Code Review Conclusions as used in F 5.1.3 and 5.1.4, 5.3.1(d), 5.3.1A(c) is a defined term, conclusions should perhaps be capitalised in F 5.1.3A 'within 28 days after the Authority has published its Significant Code Review conclusions);'? (Also presumably parties can assume that Significant Code Review Conclusions are what is meant by 5.3.A.8 where the defined term is not used, instead 'The Authority's published conclusions'.</p> <p>5.3.1A(c) is rather duplicated in 5.3.A.8 and we are not clear what value it adds other than complexity to have these separate rather than a combined paragraph. 5.3.1A(c) states 'voting rights of the Panel', is there a distinction between this and the wording as per 5.3.A.8 'voting rights of the members of the Panel'? The former paragraph also mentions the Authority's direction, this might be implicit but could be explicit in 5.3.A.8.</p>

Respondent	Response	Rationale
Drax Power Limited	Yes	

Question 3: Do you agree with the Panel's recommended Implementation Date?

Summary

Yes	No	Neutral/No Comment	Other
4			

Responses

Respondent	Response	Rationale
EDF Energy	Yes	
Npower Group PLC	Yes	
Uniper Uk Ltd	Yes	We agree with 01 April 2017.
Drax Power Limited	Yes	This seems sensible

Question 4: Do you agree with the Panel's initial view that P351 should not be treated as a Self-Governance Modification?

Summary

Yes	No	Neutral/No Comment	Other
4			

Responses

Respondent	Response	Rationale
EDF Energy	Yes	
Npower Group PLC	Yes	
Uniper Uk Ltd	Yes	
Drax Power Limited	Yes	P351 does not meet the Self-Governance criteria

Question 5: Do you have any further comments on P351?

Summary

Yes	No
1	3

Responses

Respondent	Response	Rationale
EDF Energy	No	
Npower Group PLC	No	
Uniper UK Ltd	No	
Drax Power Limited	Yes	The Ofgem document: Industry Code Governance: Initial consultation on implementing the Competition and Markets Authority's recommendations, states that The Authority's SCR powers are unlikely to be required once the CMA's full package of remedies is in place. This raises a question over why this modification is being pursued. If the process will soon to be defunct, then why will the current SCR process not suffice until the upcoming package of reform is implemented? This process is unnecessarily stretching industry resource.