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Dear Susan,

Re: Rules for the conduct and disposal of appeals in energy code modification cases

British Gas Trading (BGT) welcomes the opportunity of responding to the Competition Commission (CC) consultation on the rules for processing appeals raised against Ofgem decisions on code modifications. It is BGT's understanding that the process being proposed is based upon the standard process utilised by the CC when considering other referrals to it and as such it is a process that is understood and accepted by industry participants. BGT believe the process should aim to strike an appropriate balance between delivering a fast and authoritative review that minimises the uncertainty being faced by market participants whilst allowing the appellant to substantiate their view that the Ofgem decision is flawed. While BGT are broadly supportive of the CC process to consider appeals there are a number of areas where we seek further clarification and we have proposed amendments in a couple of areas to improve the usability of the appeals mechanism.

The proposed process requires that the appellant on raising an application for permission to appeal must do so within 15 working days of the Ofgem decision being published. Within that window there is a requirement to submit any written evidence the appellant may rely on to support its claim. The Commission then considers the evidence provided when deciding whether to grant permission to proceed. BGT recognise the importance of processing the appeal efficiently, however BGT has concerns that 15 working days may be insufficient to enable a party to submit all the requisite information in support of the appeal. The Energy Act 2004 requires the appeals process to be undertaken with speed and efficiency. However, BGT believe that if the appeals process is to be accessible and usable by all code signatories there needs to be some element of flexibility in respect of evidence submission. Rather than extending the window for raising an appeal, which may undermine the expeditious nature of the process, it may be more appropriate to allow the Commission to accept written evidence after the appellant has submitted their appeal.

The process also outlines a number of requirements that must be satisfied by the appellant on bringing an application for permission to appeal. One of these obligations is to copy "... such persons as appear to the applicant to be affected by the decision." If an appellant appeals an Ofgem decision in respect of a Balancing and Settlement Code (BSC) or the Network Code (NWC) modification proposal then the market mechanisms mean that all code signatories could be affected by the decision. In relation to the BSC there are approximately 170 code signatories, of which, a large majority could be materially impacted by an appeal due to the Residual Cashflow