

## **“Rules for the Conduct and Disposal of Appeals in Energy Code Modification Cases” – An NGT response**

### **Introduction**

1. We welcome the opportunity to respond to the Competition Commission Consultation “Rules for the Conduct and Disposal of Appeals in Energy Code Modification Cases,” and the associated publication “Guide to appeals in Energy Code Modification Cases.” In this response we firstly give an overview of our views in relation to the introduction of an Appeal mechanism against Authority Code Modification decisions, and raise a number of outstanding questions that we have. Secondly, we address some of the more detailed points the Competition Commission has raised in these Consultation documents.
2. We welcome the procedural guidance that has been provided in the “Guide to appeals in Energy Code Modification Cases, but still have a number of other areas where we would welcome clarity. In particular, we would like to understand definitively which Codes are to fall under the remit of the new Appeals mechanism, and to understand the relevant filters (eg Panel Recommendations/ Consultation responses) that are to be applied in determining whether or not an Appeal can be heard. Definitive guidance on the likely start date for the new mechanism would also be welcomed.

### **Part 1 - Overview of NGT’s perspective on the introduction of an Appeals Mechanism**

#### **Codes to be designated**

3. We place a strong emphasis on the need to ensure that any Appeals mechanism that is introduced strikes a proportionate balance between fuller accountability for Ofgem and preventing unnecessary regulated uncertainty, with all of its inherent associated costs. The CUSC, BSC and Network Code/ UNC are the primary Gas and Electricity multilateral, commercial codes. We are comfortable that these are the appropriate codes to designate (but welcome confirmation that this is how the DTI and Competition Commission intend to proceed) and agree with the Government view as stated in the earlier DTI Consultation that:

*“it would be disproportionate to extend appeals to other codes where code modification decisions are not as commercially significant and/ or the codes are of a different character because of the limited number of parties to them.”*

4. However, further thought could be given to the appropriate treatment of the Network Code, given that this is likely to be replaced by the UNC, (the Uniform Network Code) potentially relatively soon after the planned introduction of the Appeals mechanism in April 2005.