

Gas Retail Governance

Further Consultation

June 2003 37/03

Summary

The competitive retail market for gas is configured to require information to be passed between competing suppliers as well as the relevant Gas Transporter (GT). The exchange of data is defined in processes that all parties must adhere to if a customer is to change supplier satisfactorily. Changes to industry structures, in particular Transco's separation of its transportation and metering businesses together with some suppliers seeking alternative metering service providers, require changes to these processes.

Metering competition will mean, for example, that gas suppliers will no longer be able to assume that the meter in place is owned by the GT when they take over a site. Incoming suppliers will need to make arrangements with outgoing suppliers who have provided meters other than through the transporter. Although the Review of Gas Metering Arrangements (RGMA) project will produce standard industry-wide business processes and data flows to facilitate these developments, existing governance arrangements are unable to wholly support them.

Following the publication of Ofgem's consultation document¹ in July 2001 (the "July document"), suppliers expressed desire for new governance arrangements for gas retail market processes to be established in the form of a Supply Point Administration Agreement (SPAA), into which new and existing retail market processes could be transferred. In December 2001 Ofgem published its *Summary of responses and way forward* document² (the "December document") which recognised the need for appropriate governance arrangements, with scope strictly limited through a Standard Licence Condition that would mandate accession. Ofgem therefore proposed that gas suppliers should develop the SPAA.

The Gas Industry Governance Group (GIGG), established by the Gas Forum, undertook initial SPAA drafting, which is appended to this document. In preparation for the administration of the agreement and its executive functions, SPAA Ltd was registered in May 2002. The existing drafting of SPAA provides only for the framework of the agreement, or *how* it will govern. Further schedules to be added to the agreement will set out *what* it will govern. For instance, as discussed in this document, it is proposed that the RGMA baseline and domestic Code of Practice document will form schedules to SPAA. The inclusion of such schedules will be subject to the determination of gas

¹ 'Gas Supply Market: Change of supplier process and governance arrangements' July 2001.

² 'Gas Supply Market: Governance arrangements, summary of responses and way forward' December 2001.

suppliers themselves, with consultation being part of the SPAA's own change control procedures, rather than this, or any future Ofgem consultation.

It is proposed that Ofgem's role in the ongoing operation of the SPAA will be limited, being primarily in order to protect the key provisions of the SPAA, such as its constitution and purpose. These 'protected' provisions may not be amended without Ofgem's prior written consent. Such consent will also be required for changes that have the effect of imposing a mandatory requirement upon suppliers (or removing or amending such a requirement already in place). Changes to unprotected or non-mandatory provisions of SPAA will not require Ofgem approval. This is consistent with Ofgem's intention to move towards *lighter touch* regulation where appropriate. Additionally, it is proposed that appeals against decisions of the SPAA's governing bodies, either for or against change proposals, may be made to Ofgem for a final determination.

Many respondents to the July consultation stated their view that accession and compliance to SPAA should be mandated through a licence condition, similar to that for the Master Registration Agreement (MRA) in electricity. Ofgem also stated its support for the introduction of such a licence condition in the December document, and the subsequent work of GIGG, including the drafting of SPAA, has reflected this. This document forms initial consultation on the scope and content of such a licence condition. Whilst it is intended that the SPAA will have its own enforcement procedures, a breach of a mandatory requirement may constitute a breach of licence. This, combined with Ofgem's ongoing role in SPAA may also lead it to be considered sufficiently robust to provide a viable alternative to additional or continuing obligations within Network Codes or Standard Licence Conditions. Consideration is also given in this document to the SPAA in context of the Competition Act 1998.

The primary driver for the development of SPAA has been the need to put in place governance arrangements in order to underpin industry-wide metering competition, as facilitated by the RGMA. In the December document Ofgem stated its view that the initial development of SPAA should focus upon this aspect, with GT involvement and the possible migration of SPA processes from Network Code perhaps forming a second phase of development, post-implementation. However, both suppliers and GTs have since given considerable thought to the inclusion of GTs within the SPA Agreement and the deferment of RGMA implementation (currently anticipated to be November 2003) may present an opportunity for GTs to be fully involved from the outset of SPAA. This could be achieved either through an amendment to the initial drafting of SPAA, or by

industry parties proposing changes to that effect, to be progressed through the SPAA's own change control procedures.

As with the initial July consultation, it may be appropriate to consider the proposals for new governance arrangements in the context of wider developments. In order for SPAA to be effective, there must be a co-ordinated approach between it and existing governance tools such as Network Codes or the forthcoming Transco metering contract, which itself will govern areas previously captured within Transco's Network Code. The relationship between these change mechanisms is considered in this document.

Ofgem believes the introduction of the SPAA will constitute a real and significant opportunity for the gas industry, in particular gas suppliers, to directly respond to the needs of their customers. It is envisaged that placing suppliers at the heart of the gas retail governance will give them greater ability to identify, influence and deliver significant improvements to gas retail procedures, of which an effective transfer process is of paramount importance. However, if the SPAA proves insufficient to tackle both existing and future problems with the customer transfer process or itself in some way becomes a hindrance to effective supply competition, Ofgem will give further consideration to alternative measures, such as statutory standards of performance, licence modifications or, if appropriate, the exercise of its competition powers.

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1. Rationale

- 1.1. The principal objectives and general duties of the Gas and Electricity Markets Authority (“the Authority”) are set out in section 4AA of the Gas Act 1986 (“the Gas Act”) and section 3A of the Electricity Act 1989 (“the Electricity Act”) respectively. In summary, these provisions require the Authority in carrying out its functions in the respective Acts to protect the interests of consumers, wherever appropriate, by promoting effective competition.
- 1.2. Ofgem is committed to withdrawing from prescriptive regulation when competition is sufficiently effective. To this end, from April 2002 formal price controls were removed from gas and electricity supply. However, Ofgem is also committed to ensuring that de-regulated markets continue to work effectively and recognises the need for appropriate governance arrangements to achieve this. In undertaking this work, Ofgem is responding to concerns expressed by the gas industry regarding the application of governance arrangements to developments in the retail gas market.
- 1.3. The competitive retail market for gas is configured to require information to be passed between competing suppliers as well as the relevant Gas Transporter (GT). The exchange of data is defined in processes that all parties must adhere to if a customer is to change supplier satisfactorily. Changes to industry structures, in particular Transco’s separation of its transportation and metering businesses together with some suppliers seeking alternative metering service providers, require changes to these processes. However, the scope of the work is broader than the immediate concern of introducing effective supplier to supplier communication to facilitate competition in metering as it has the potential to provide robust governance arrangements for the retail gas market and its processes more generally.
- 1.4. Both the July and December Consultation papers set out the key drivers for change, namely,
 - i) the forthcoming metering reforms that require supplier to supplier communication,

- ii) ensuring that customer transfers are completed efficiently, and allowing suppliers an effective voice regarding changes to processes in the retail gas market.

Issues

1.5. The key issues around the current retail governance arrangements were highlighted in the July consultation document. In summary they were as follows:

- Metering competition will mean that gas suppliers will no longer be able to assume that the meter in place is owned by the GT when they take over a site. Incoming suppliers will need to make arrangements with outgoing suppliers who have provided meters other than through the transporter. Although the Review of Gas Metering Arrangements (RGMA) project will produce standard industry-wide business processes and data flows to facilitate these developments, existing governance arrangements are unable to wholly support them.
- The provision of retail services to suppliers, such as Supply Point Administration and other data management services are governed by the relevant transporter's Network Code. However, a Network Code is a contract between the transporters and shippers, and as such suppliers have no contractual influence over the quality or make up of those services. In particular, suppliers have no direct opportunity to raise modifications to the Code. Additionally, suppliers are reliant upon the agreement of transporters (and shippers) to invest in systems changes which may be of no direct benefit to them. This may stifle innovation and general improvements to the transfer procedures.
- There is a growing need for harmonisation of the processes, which deliver data management and registration services to suppliers on independent Gas Transporter (iGT) networks. Although the governance of these processes is currently through the relevant transporter's Network Code, there are no governance arrangements for harmonised processes.

Consequences of doing nothing

- 1.6. The largest gas supplier, BGT has already started the roll out of its competitively procured metering services, which are anticipated to eventually cover all of the regions of Great Britain. This will apply to both gas and electricity consumers and potentially across all networks. Other suppliers can be expected to follow suit. This impacts upon the existing change of supplier arrangements, as it can no longer be assumed that the transporter provides the meter. Incoming suppliers will need to make arrangements with the outgoing supplier (or their agent) for the meter to remain in place, either by way of transferring the asset or taking over the contract for its provision. At present there is no governance around these arrangements and the potential for disputes or other complications will be to the detriment of the transfer process.
- 1.7. Although the existing Supply Point Administration (SPA) arrangements have facilitated supply competition thus far, and may continue to do so for the foreseeable future, Ofgem believes there is considerable room for improvement. Appropriate stakeholder participation in SPA and the right incentives to invest may improve the customer experience whilst reducing transfer costs for suppliers.
- 1.8. The problems and associated costs around dealing with servicing and transferring consumers on independent gas networks can be expected to grow exponentially with the increased numbers of consumers on such networks. Ofgem is aware that some suppliers have considered introducing differentiated charges, if not seeking to avoid the acquisition of such consumers altogether, which would be to the detriment of competition and clearly not in the interests of consumers.

Objective

- 1.9. Ofgem's objective is to ensure that competition in metering does not detrimentally affect competition in supply or the wider interests of the consumer, and that customer transfers between suppliers are completed efficiently. At present there is little or no governance around the transfer of metering assets between suppliers, creating the potential for disputes or in the worst case scenario, the enforced replacement of meters every time the customer switches

supplier. In addition to disruption of the transfer process, this may exacerbate the risk of asset stranding and therefore the overall costs of metering. Ofgem intends to ensure that the incoming supplier has every opportunity to purchase or otherwise acquire the meter in situ and at a fair price.

- 1.10. Ofgem is also aware that whilst they are appropriately the point of contact for consumers and best placed to respond to their needs, suppliers are currently reliant upon the legacy systems of parties over whom they have no direct contractual influence. Furthermore, those parties may not share the same incentives to improve the customer experience. Ofgem's aim is to give suppliers a greater influence over the services for which the customer holds them accountable. Ofgem would therefore require that the provisions of the SPAA and the application of such provisions support the above objective.

Policy

- 1.11. The high level options for change in relation to gas retail governance were first put forward in the July document and included an option of 'no specific action'. This was widely rejected by respondents, many of whom cited the kinds of issues outlined above and the fact that specific, Ofgem-facilitated, action was required to address them. The remaining options were minimal change to existing governance arrangements or the establishment of new governance arrangements.
- 1.12. The principles of supply and metering competition are already supported by a substantial and robust regulatory framework, provided for under the Gas Act, Statutory Instruments and Licences under the Gas Act, as well as competition law more generally. Consideration was therefore given to the option of building upon this framework, with minimal change required. This would have limited the short-term development costs to participants and arguably have been completed sooner. However, respondents considered that this would be insufficient to address many of the problems identified with the existing governance arrangements. In particular, this would not have established robust governance of direct supplier to supplier communications, which are vital to the effective and efficient transfer of consumers between suppliers.

- 1.13. The third option also built upon the existing regulatory framework, but envisaged a more holistic approach to retail market processes and the governance of them. The majority of respondents supported the establishment of new horizontal arrangements, which would govern the relationship between parties who would not otherwise be subject to contract. Respondents noted that this is consistent with market developments, in particular the supplier-hub principle, and would provide greater flexibility going forward. This would also provide greater clarity on the regulator's role in such arrangements.
- 1.14. Ofgem does not believe there is currently an entirely non-regulatory option in respect of robust and efficient governance arrangements. For instance, whilst suppliers could be left to negotiate meter transfers on an entirely commercial basis, almost inevitably this would lead to disputes and disruption to the consumer. It is likely that Ofgem would have to intervene in order to determine the dispute and/or prevent further disruption to the transfer process.

Options

- 1.15. Having established that new governance arrangements were required, options on how to achieve compliance were given consideration. These included voluntary arrangements, commercial contracts and licence conditions.
- 1.16. Many of the issues identified with the current governance regime centred on the fact that existing provisions such as the Domestic Code of Practice and BISCUIT³ protocols are voluntary. A voluntary SPAA would not address these issues. As an alternative to voluntary arrangements, commercial contracts could be drawn up between parties, either bi-laterally or on a multi-lateral basis. An example of such an arrangement is the Radio Tele-switching Agreement. However, becoming a signatory to such an agreement would be voluntary unless mandated by licence, and therefore not ensure compliance. Furthermore, it is likely that disputes would continue to be brought to Ofgem, rather than resolved in court. Given the need for all suppliers' accession to and compliance with the SPAA, a licence condition was considered the best means of achieving this. This would also allow Ofgem to fulfil a clearly defined role.

³ Basic Inter-Supplier Communication Using Internet Technology

- 1.17. The December document also reflected the views of suppliers that SPAA development should be phased, in order to ensure an agreement was in place ahead of the imminent RGMA implementation. As discussed, this led to the initial view that the agreement would be between suppliers only, with the scope potentially being later extended to include GT signatories. Chapter 8 discusses whether this approach remains appropriate and sets out options for GT inclusion, including whether a licence obligation is also required in the GT licence.
- 1.18. The SPAA is intended to facilitate improvements to the efficiency and effectiveness of the gas retail markets, in particular the transfer of consumers. Such improvements will further retail competition, leading to lower gas prices to the benefit of all consumers, including the fuel-poor. Ofgem is not aware of any adverse environmental impact of implementing SPAA.
- 1.19. In the longer term it is likely that SPAA will lessen Ofgem direct involvement in many aspects of gas industry governance. For instance, every change to Network Code, no matter how insignificant or patently beneficial, currently requires Ofgem's approval. Whilst this level of regulatory involvement ensures a high degree of accountability, it is perhaps no longer necessary in many instances. Where competition is sufficiently developed, prescriptive regulation should be replaced by market disciplines. As Supply Point Administration provisions in particular are migrated from Network Code to SPAA, it is likely that many will be afforded the additional flexibility of voluntary or elective status, whilst those which are considered fundamental to the transfer process may remain mandatory and continue to require Ofgem's approval before changing. This is in line with Ofgem's commitment to withdraw from prescriptive regulation wherever appropriate.
- 1.20. Furthermore, it is conceivable that a proven, robust SPA Agreement would provide a viable alternative to more heavy-handed governance mechanisms, for future or even current obligations where these are consistent with the SPAA objectives. For instance, when proposing future licence modifications, it would be reasonable to expect Ofgem to consider whether alternative governance mechanisms can achieve the same objective.

- 1.21. This document constitutes further consultation. Ofgem is not at this stage recommending the acceptance or otherwise of the proposals contained in it. In particular, Ofgem is of the view that all suppliers must have had sufficient opportunity to comment upon the SPAA document itself, before being asked to accept a licence condition mandating it. Although the SPAA document was drafted by suppliers, under the auspices of the Gas Industry Governance Group (GIGG), not all licensees were able to attend this group and may not yet have seen the document contents.
- 1.22. Ofgem is also mindful that inefficient governance arrangements or systemised industry processes and other procedures have the potential to create barriers to entry, as well as increase costs to participants, whether inadvertent or otherwise. These inefficiencies or barriers may manifest themselves in the form of overly complicated (and therefore costly) procedures. This risk may be especially apparent where the market incumbents have played a leading role in the design of such arrangements. Whether or not such parties have a natural tendency to co-operate, to the detriment of potential new entrants, their design may reflect a particular perspective of what is appropriate, influenced not only on the way their businesses currently operate, but the desire to protect investments in legacy systems etc. Whilst incumbents should have the incentives to reduce the complexity, and therefore costs of systems and procedures, it is also the case that large companies with experience of a market would be able to better cope with complexity (and proportionate costs), thereby gaining an advantage over newer or smaller competitors.
- 1.23. Ofgem intends to publish a further consultation on the proposals in the summer, which will include a formal notice under Section 23. The licence modification proposals will at that stage reflect respondents' comments, as appropriate, and may be considered in the context of a robust and published SPAA document.

2. Introduction

Purpose of this document

- 2.1. This document follows on from the document that Ofgem published in December 2001 'Gas Supply Market: Governance Arrangements Summary of Responses and Way Forward' (the December document). That document discussed the progress by the industry towards establishing a separate agreement to govern supplier to supplier communication. The majority of suppliers themselves acknowledged that any agreement would require a mandate to ensure that all suppliers signed it. Ofgem has also expressed support for the agreement to be mandated by a licence condition.
- 2.2. Prior to instituting formal procedures under Section 23 of the Gas Act, Ofgem considers it good practice to highlight the changes that might be introduced as a result of amendment to the licences by undertaking preliminary consultation with the industry. Although a preliminary consultation process is not required under the Gas Act, this will ensure the formal procedures required by Section 23 will have benefited from the incorporation of industry's early views.
- 2.3. This document therefore serves as a method of obtaining detailed industry views on Ofgem's proposals on licence amendments, including any alternative proposals by the industry. Ofgem would take these views into account in determining the provisions of licence conditions and the appropriate industry parties to be covered by licence provisions.
- 2.4. This document also includes a brief summary of the responses to the December consultation paper.

Process So Far

- 2.5. In July 2001 the consultation paper 'Gas Supply Market: Change of supplier process and governance arrangements' (the July document) initially discussed the establishment of a suppliers' agreement. This consultation paper was presented in two parts. Part I discussed the Change of Supplier (CoS) process and possible amendments that would be required as a result of increased

competition in metering services. Part II discussed supply market processes and their governance arrangements, and discussed options for change.

- 2.6. Respondents to the July document were overwhelmingly in favour of the third of three options, the establishment of new governance arrangements that take a holistic approach to retail market processes. Respondents noted that this is consistent with market developments, in particular the supplier-hub principle, and would provide greater flexibility going forward. There was also a preference for much of the project management and drafting of the agreement to be undertaken by industry, with Ofgem facilitating rather than leading progress.
- 2.7. The Gas Forum established the Gas Industry Governance Group (GIGG) to progress this work and establish the agreement. The first meeting of the GIGG was held on 14 November 2001, when it was decided to set up a working group to concentrate on drafting the SPAA. The GIGG, which is an open forum, has met regularly to discuss the proposals from the workgroup. The minutes of the GIGG and the associated sub-groups can be found on the web-sites of Ofgem and the Gas Forum at (www.ofgem.gov.uk and www.gasforum.org) respectively.

Structure of this document

- 2.8. Chapter 3 discusses the summary of responses to Ofgem's December document. Chapters 4 and 5 consider the major provisions of the SPAA and Ofgem's views on their adherence to principles of governance. Chapter 6 considers the rationale for a Licence modification and refers to the related legal framework. Chapters 7 and 9 discuss areas which are likely to be governed by the SPAA once it is operational, and Chapter 8 reviews the potential for future development of SPAA through GT involvement. Finally, Chapter 10 sets out an indicative timetable for the completion of further work necessary for full implementation of the SPAA.

Views invited

- 2.9. If you wish to comment on this document or the Supply Point Administration Agreement which accompanies it, it would be helpful if responses could be submitted to Ofgem by 18 July 2003. Whilst it is open to respondents to mark all or part of their responses as confidential, Ofgem would prefer as far as

possible that responses are provided in a form that can be placed in Ofgem's library and published on our web-site. If only part of a response is to be treated as confidential, please provide this as clearly marked annex to the document response. Please write to, or email:

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- 2.10. If you have any questions about the issues raised in this document please contact either Bryony Sheldon (020 7901 7174, industrycodes@ofgem.gov.uk), Jonathan Dixon (020 7901 7354, industrycodes@ofgem.gov.uk) or Nigel Nash (020 7901 7065), nigel.nash@ofgem.gov.uk who will be happy to discuss them with you.

Seminar

- 2.11. In addition to considering written responses, Ofgem will be hosting an open seminar on 04 July 2003 which, subject to the level of interest, will be held at its Millbank offices. Further details will be confirmed nearer the date. If you would like to attend this seminar, please contact Bryony Sheldon, as above.

3. Summary of Responses to December 2001 Document

- 3.1. In December 2001, Ofgem published the document, 'Gas supply market: governance arrangements – Summary of responses and way forward'. There were eight responses to the paper, all of which were supportive of the establishment of a SPA Agreement. Responses specifically recognised the need for such an agreement to allow supplier-to-supplier communication to facilitate metering competition.
- 3.2. In that paper, which itself followed on from the July document⁴, Ofgem recognised the need for appropriate governance arrangements, given the increasing requirement for direct supplier-to-supplier communication. The paper suggested that the SPAA should be developed by suppliers, owned by its signatories and mandated by a licence condition requiring appropriate licensees to become parties to the agreement.
- 3.3. There was recognition of the co-operative way in which the work has been taken forward and that this has contributed to the significant progress made to date. One respondent expressed the view that the GIGG was the most appropriate forum for project managing the development of the SPAA.
- 3.4. It was generally acknowledged and welcomed that Ofgem has a role to play in setting up the agreement, specifically to arbitrate on areas of contention and to ensure that adequate consultation has taken place. With regard to Ofgem's ongoing role, some felt that there was a requirement for Ofgem to sign-off key changes to the SPAA. Others argued that it should be restricted to determining disputes; a respondent argued that this would be consistent with the removal of supply price controls and Ofgem's intention to progressively withdraw from supply regulation.
- 3.5. There was significant support for the agreement to replicate the supplier hub concept that exists in the electricity industry. Some respondents commented that it would be appropriate to use the MRA as a basis to develop the SPAA. Furthermore, many indicated a view that the two administrative bodies could

⁴ 'Gas Supply Market: Change of supplier process and governance arrangements' July 2001.

merge in future, achieving greater harmonisation of processes between the two industries.

- 3.6. There was general support that I&C suppliers should be included in the development of the first phase of the SPAA. This has now been achieved and interested I&C suppliers have participated in the GIGG work.
- 3.7. At the time there remained some uncertainty over who, other than suppliers, should be signatories to the code. For instance signatories could also include GTs, a “settlement body” or supplier agents/ service providers such as Meter Asset Managers (MAMs). This issue has also been discussed in the Constitution group and at GIGG, and is covered in more detail in Chapter 4.
- 3.8. Respondents noted that the issue of voting has proved to be a contentious issue with British Gas Trading having such a significant share of the retail gas market. Differing voting rules have been discussed within GIGG and its subgroup, which included caps on voting and replicating the voting thresholds established for the standard licensing regime. It was also recognised that there may be a need to have different voting structures for different aspects of the agreement, for example change control and constitutional matters. Finally, any voting arrangements will need to be flexible to account for changes in the number and type of signatories. The voting arrangements, as agreed by GIGG, are covered in Chapter 4.
- 3.9. The issue of funding was also recognised as a further contentious issue. One respondent suggested that Transco should finance the development and on-going costs of the SPAA and be recovered through general transportation charges as part of allowed revenue. Other responses recognised that it was for suppliers to finance the agreement on an MPRN basis and that any set-up costs should be provided on a voluntary basis and recovered within the first year of operation. Again, any funding arrangements will need to be flexible to account for changes in the number and type of signatories.
- 3.10. There was general support for a phased approach to the development of SPAA with recognition that the initial stage was to introduce an agreement that would support metering competition. A number of respondents raised concerns that if SPAA was not in place, what alternative arrangements would be made in order

to ensure that metering competition was not further delayed. One respondent suggested that the scope of RGMA could be extended in such an eventuality.

- 3.11. The industry is committed to the introduction of metering competition, concurrent with the separation of Transco's transportation and metering activities, which Ofgem anticipates to be implemented in November 2003. In the absence of a formal governance body, a change control process has been established under the industry group currently overseeing implementation of RGMA, 'IMSIF'⁵, which will ensure that the procedures agreed as part of the baseline data are, and remain, appropriate. It is likely that this role will be taken over by SPAA once it is implemented, as discussed in Chapter 9.
- 3.12. There was overall support for a licence condition to support the agreement and some respondents expressed concern that any delay in the consultation on the licence condition will lead to a delay in the introduction of metering competition. Similarly, one respondent raised the issue of contingency arrangements if the required support for the new licence condition is not obtained. Due to the endorsement given to the proposals by the industry thus far, it is anticipated that Suppliers will accept the licence condition.
- 3.13. The responses included a number of specific comments relating to the different aspects that would be included in SPAA. There was some support for including aspects of the Domestic Code of Practice (DCoP) and potentially the I&C Code of Practice (ICoP) in the SPAA although this was generally not thought to be as critical as the work on metering. There is support for moving the Supply Point Administration (SPA) activities out of the Gas Transporters' (GT) Network Codes although there remains a difference of opinion as to how difficult a task this would be. Such differences may be resolved once the consultation on these specific aspects begins later in the year.
- 3.14. There was some support for the harmonisation of the SPA processes operated by Independent Gas Transporters (IGTs), though it was not clear from responses whether this was considered to be within the initial scope of the SPAA. This was not thought to be part of the initial phase of SPAA development.

⁵ Industry Metering Separation Implementation Forum – for further details see: www.ofgem.gov.uk/metering/rgma_imp_forum.htm

3.15. Responses were in favour of the industry undertaking a cost-benefit analysis. One respondent recommended that this be undertaken at each phase of development of the agreement. Another respondent requested that an appropriate forum be established to discuss the issue further. The issue of cost-benefit analysis has been discussed by the GIGG group, but has been taken forward by individual companies rather than on an industry-wide basis. Ofgem has, in this and previous documentation, set out the benefits of reforming the current retail gas governance arrangements.

4. The Supply Point Administration Agreement – the major provisions

- 4.1. As indicated in Chapter 1 the SPAA was developed in recognition of the need for robust governance arrangements for the competitive gas retail market, as a result of changes to existing industry structures. The agreement details the governance processes through which obligations may be introduced and amended. These will be subsequently attached as schedules to the agreement.
- 4.2. As the SPAA is published in full as an accompaniment to this consultation document, this Chapter is not meant to be a comprehensive description of the agreement, but to highlight what Ofgem considers to be its key elements.

Parties

- 4.3. During SPAA development there has been general support for a phased approach, with the agreement initially being between suppliers. Whilst the agreement may have implications for further industry participants, this does not necessarily require that they should also become signatories. Relationships between suppliers and other parties are often already subject to governance, for instance through Network Codes or bi-lateral contracts. If appropriate, Suppliers may seek to ensure the provisions of SPAA are given effect by placing complementary, backed-off obligations upon their agents, within existing agreements or contracts. However, this does not preclude parties other than suppliers being parties if this becomes appropriate. Further information is outlined below:

Gas Transporters (GTs)

- 4.4. Following development of an initial agreement between suppliers to support RGMA implementation, it has been proposed that the scope of the SPAA may potentially be extended to include GTs as signatories. Chapter 8 provides further information on incentives for GT involvement in SPAA, discusses whether a phased approach remains appropriate, and sets out options for GT inclusion.

Shippers

- 4.5. It is not envisaged that shippers will be party to the SPAA. To the extent that shippers may be interested in retail provisions, like any other interested party they will be able to participate to the extent of commenting on proposals, as well as more proactively through existing mechanisms such as Network Code and other contracts.

Exempt Suppliers

- 4.6. Whilst the Gas Act 1986 requires persons engaged in the activity of supplying gas to any premises through pipes to be authorised by licence, it also provides for exemptions to this requirement in situations such as caravan parks, marinas or other instances where gas is supplied through a landlord, rather than directly by a licensed supplier. In such instances the end consumers premises, not being connected to a licensed Gas Transporters network, will not be subject to the Supply Point Administration processes and the consumer is unable to switch to an alternative supplier (though their landlord may). Therefore exempt suppliers will not be party to SPAA.

Agents

- 4.7. It is not currently envisaged that service providers, whether to SPAA Co or suppliers, will be party to SPAA. To the extent that their activities fall under the scope of SPAA, it is envisaged that the provisions of SPAA will be backed off in contracts between the supplier and agent. This would include all metering and meter reading service providers. However, there is nothing precluding interested parties submitting representations and comment on SPAA proposals, either directly or to the SPAA party with whom they are contracted.

Consumer Representatives

- 4.8. Current SPAA drafting facilitates a degree of customer representation, for instance notifying energywatch of, and enabling attendance to, Forum meetings. However, it is not currently envisaged that customer representative bodies will be parties to the agreement.

Key Provisions

- 4.9. Participation in SPAA will be achieved through the following bodies, established under the framework agreement:

SPAA Executive Committee (EC)

- 4.10. The SPAA EC will operate and manage the agreement (although it will not take decisions on changes to SPAA or its schedules). Suppliers will elect representatives from the constituencies of large domestic, small domestic and I&C supplier groups, who will be required to represent the interests of their constituents, making reasonable endeavours to consult them before voting.

SPAA Forum

- 4.11. The Forum will be responsible for dealing with appeals arising from the change control process. Decisions will be made by all SPAA parties voting on proposals. Where a party disagrees with a Forum decision, appeal to Ofgem for a final determination would be available.

Change control

- 4.12. Changes to the SPAA framework and schedules will be managed through the process contained in clause 9 of the agreement. Current SPAA drafting entitles any party, or group of parties, to propose a change, which will be documented and circulated to all SPAA parties by the Change Control Administrator.
- 4.13. The process allows a proposed change to be debated and commented on by all parties, and finally, all parties with an interest in the change will vote. Parties with a licence to supply customers in a particular constituency are automatically deemed to have an interest in a proposal for change to processes affecting that constituency. Parties without such a licence may declare an interest, which they will be required to justify. Changes will be implemented where voting thresholds are met and, where required, the Authority's consent is obtained.

Voting

- 4.14. The principle behind development of the SPAA voting arrangements was that no single party should have an undue level of influence in either accepting or rejecting a change proposal. Voting is based on the numbers of Meter Point Reference Numbers (MPRN) supplied by each supplier (or in the case of multiple-licensees, by their corporate group), capped at 20%. The balance of MPRN are re-allocated to remaining parties (or group of parties) according to their market share, with capping and re-allocation continuing until no further groups are affected by the ceiling.
- 4.15. Standard change proposals (i.e. operational changes to non-mandatory sections or schedules) will require support of 65% of voting MPRNs. Proposals relating to mandatory sections or schedules (appeals, changes or amendments to mandatory sections, change of schedules status to or from mandatory, and the introduction of new mandatory schedules), would require the support of 65% of voting MPRNs plus 65% of voting parties to be accepted. Parties not exercising their vote will be taken out of the count before the threshold is assessed.

Appeals

- 4.16. Appeals may be made under the SPAA on decisions reached through the operation of the change control process (clause 9) and against EC and Forum resolutions.
- 4.17. Under change control provisions, any party legitimately interested or impacted by a change proposal decision may appeal that decision to the Forum. Parties may also appeal if they consider that a party voted that did not have legitimate interest or would not be impacted by the change proposal. The drafting also provides for circumstances under which parties to the agreement may appeal EC resolutions to the Forum for determination. Forum resolutions may also be appealed to the Authority, for its final and binding decision.

Compliance

- 4.18. Any SPAA party may report any suspected default to the EC, who will notify the alleged defaulting party. Where a party is in breach of the agreement the EC

may also send notice of the breach, requiring its remedy and stating the potential consequences of failure to do so.

- 4.19. Measures intended to encourage compliance include the ability of the EC to withdraw a party's entitlement to receipt of benefit of mandatory schedules relevant to that category of party, and restriction of the party's ability to exercise voting rights.
- 4.20. SPAA drafting requires each party to appoint a contract manager to be responsible for ensuring compliance with obligations and timely resolution of problems. Parties are required to refer disputes to their contract managers, who must have the authority to negotiate and to resolve disputes. However, where contract managers are unable to resolve a dispute within the set timescales, parties may then refer to arbitration.

Derogations

- 4.21. SPAA clause 14 currently enables the EC to grant derogations against mandatory obligations to any party, on application. Details of applications for derogations will be given to all parties and the Authority, who may make representations or objections prior to the EC reaching its decision. Where granted, a party will not be in breach of the agreement for failing to comply with obligations that are the subject of the derogation, for the term of that derogation.

Schedules

- 4.22. Upon SPAA execution, the only pre-existing mandated processes will relate to provisions necessary for the operation of SPAA (i.e. articles of association). The introduction of further schedules placing obligations on parties will be subject to operation of the change control procedures, subsequent to commencement.
- 4.23. Although the SPAA will be binding upon all parties, its schedules will either have voluntary (where compliance is not required or measured), elective (where compliance is required but may be opted out of) or mandatory status. All schedules will relate to methods and timing of inter-supplier communication and will only be classified as mandatory if it is demonstrated that they are essential to allow the efficient and effective interoperation of parties to the agreement.

4.24. Presently proposed schedules are:

- RGMA with SPAA governing specific change of supplier process data-flows that are not subject to either Network Code governance or can not be left to contractual agreement between suppliers and their service providers (more information is contained at Chapter 9);
- Appropriate elements of the DCoP (Domestic Suppliers Code of Practice), (more information is contained at Chapter 7);
- Biscuit (Basic Inter-Supplier Communications using Internet Technology) catalogue of data flows and data items.

4.25. It is envisaged that these schedules may be added to (or indeed removed), as the need for changes in governance are identified.

5. The SPAA – Ofgem’s views

Principles of governance

5.1. In Ofgem’s view, there are principles of good governance that should be adhered to by any governing body, code or agreement, namely;

- *Effectiveness* – the agreement would be of little value if it did not achieve what it was set up to do. Whilst there is merit simply in providing a forum for discussion of issues, to be fully effective the SPAA may require some degree of enforcement mechanism to ensure that its conditions and decisions of the SPAA Executive and Forum are complied with;
- *Efficiency* – the functions carried out as part of the agreement should be carried out in an efficient manner, ensuring that change proposals or breaches of conditions are dealt with quickly and that management and administration costs are kept to a minimum. Decision making in particular must balance the need for timely resolution and thorough consideration of issues;
- *Transparency* – the operation of the agreement and decisions taken should be transparent to both signatories and external parties. This means that appropriate information should be made available to all interested parties. Similarly, where the SPAA is responsible for the governance of procedures dealing with the exchange of data, those procedures and data items should be documented and made available;
- *Participation* – the key issue of participation is not merely access to the agreement through accession, but the ability to actively and effectively participate in its operation. There should be no exclusion of relevant information or viewpoints. Consequently, appropriate contributions should be allowed from all interested parties on key decisions;
- *Accountability* – once implemented suppliers will be accountable to the SPAA forum/executive for their performance against the obligations SPAA places upon them. Equally, the SPAA executive/forum and their officers must be mindful of the potential impact of their decisions and be accountable to the parties of the agreement, and;

- *Consistency* – the SPA Agreement and the processes it governs will not operate in isolation. It is important to recognise the boundaries of its remit and the relationship with other governance tools such as Network Code, agent contracts and indeed the licences themselves.
- 5.2. Ofgem is currently of the view that the proposed SPAA largely, but not wholly, complies with the principles set out above. The various aspects of the SPAA that in Ofgem's view achieve these principles, plus suggested improvements and potential issues on which comments are sought, are set out below.

Effectiveness

- 5.3. It is apparent that the proposed SPAA and its apparatus, such as the SPAA forum, may provide a useful and appropriate means of raising awareness of and debating gas retail issues. However it is not clear whether this is a role that another body, such as the Gas Forum, could equally fulfil given full supplier participation.
- 5.4. One advantage SPAA will have over such bodies or entirely voluntary codes is that it will be mandatory for suppliers to sign up to it, by virtue of the proposed licence condition discussed in Chapter 6. This will ensure a consistency of approach by all suppliers where this is necessary or beneficial, such as handling the transfer of consumers, and provide the necessary confidence for parties to invest in the systems to support SPAA procedures. However, even unanimous agreements will be of little value if they are not adhered to.
- 5.5. As it is intended that accession and compliance with the SPAA will be a condition of the suppliers' licence, a breach of the SPAA could be taken to be a breach of licence. However, Ofgem would generally expect only to take enforcement action in cases of material or persistent breach. In order for the agreement to be fully effective, it is therefore appropriate for the SPAA to have its own means of enforcing compliance with its provisions and decisions of the SPAA Forum or Executive.
- 5.6. In addition, work has also been ongoing within a sub-group of the GIGG, the *SPAA Metering Schedules Group*, to determine for instance, the appropriate service levels that could be expected for the transmission of information

between suppliers and/or their agents. An interim report from this group is available on the Ofgem website⁶.

- 5.7. If suppliers can agree to such service levels, which will be in addition to and complement those already set out in the SPA provisions of the relevant Network Codes, it may be appropriate to place incentives upon suppliers to comply with those service levels. One suggestion is that such obligations should be tied to a liabilities package. For instance, in a customer transfer, if the outgoing supplier fails to pass on the meter details to the incoming supplier within the allotted time, that could trigger a compensatory payment.
- 5.8. Whilst such measures may add to the overall effectiveness of the agreement, at this stage they are suggestions only. Any service level agreement or liabilities regime would need to be fully debated between suppliers and if appropriate, inserted into the SPAA through the appropriate change control mechanism, i.e. those of the SPAA itself. Beyond the proposed licence condition discussed in Chapter 6, the SPAA will not be a vehicle to expand the current scope of regulation. This is discussed further below, under *Ofgem's role*.

Efficiency

- 5.9. Any form of governance places a financial and administrative burden upon participants, often directly related to its level of stringency. Whilst it is envisaged that many of the schedules to SPAA will be voluntary, those placing mandatory requirements upon participants, and involvement in the agreement itself, may create a significant resource requirement. It will therefore be desirable that not only the operation of the agreement is efficient (for instance, meetings are held only as necessary and give value to those attending) but that the burden the provisions place upon signatories is proportional to the benefits they deliver.
- 5.10. Ofgem believes that mandatory provisions within SPAA should reasonably be kept to a minimum, with this status only being conferred when it can be shown that voluntary or elective status is not sufficient to achieve the objective of that provision. Equally, SPAA should be sufficiently flexible to allow the status of a

⁶ www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/2824_SPAAMetering%20Schedules_Final%20Draft.pdf

provision to be downgraded where mandatory status is no longer appropriate or it is found to place an undue burden upon parties.

- 5.11. The overall burden of SPAA can also be lessened by ensuring that its functions are carried out in an efficient manner, for instance by ensuring that change proposals or breaches of conditions are dealt with expediently. Decision making in particular must balance the need for timely resolution and thorough consideration of issues.
- 5.12. Current drafting (clause 9.8) provides a minimum of 10 working days consultation prior to voting on change proposals. This is in line with the 10 days provided under MRA, but contrasts with Transco's Network Code, which provides 15 working days consultation on non-urgent modification proposals. In view of the potential complexity of change proposals, for example those involving systems development, views are invited on whether the proposed consultation period of 10 days is appropriate.
- 5.13. An exception to the minimum of 10 working days consultation may be provided where the SPAA EC decides that a change is of an urgent nature. In such circumstances, the SPAA EC may decide to reduce the timescales set out in clause 9. Whilst there will occasionally be situations which require immediate attention, the benefits of an expeditious change may be at the cost of full consultation and thorough consideration of the issues, and should therefore not be used inappropriately. Ofgem currently refers to published criteria⁷ for guidance on whether to accept urgent status for a Network Code modification. It may be appropriate for suppliers to consider developing such guidance for the SPAA EC, whilst retaining the necessary degree of discretion.
- 5.14. Ofgem would also suggest that the heading of this section be changed from *emergency* as this implies that the discretion afforded is to be used only in situations such as where safety or security of supply are threatened. Such situations are not in the scope of SPAA and are appropriately covered elsewhere, such as the relevant transporters' licences and Network Codes. It is likely that any urgent changes required to SPAA will be driven by commercial considerations.

⁷ www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/2752_Urgency%20Criteria.pdf

Transparency

- 5.15. The SPAA framework agreement details the processes by which all future obligations under SPAA will be introduced and amended. These obligations will be contained in schedules, which will be attached to the framework agreement, thereby keeping all relevant governance in the one place.
- 5.16. The GIGG has identified two potential methods for the introduction of schedules into SPAA. Firstly, that upon entry via change proposal all new schedules would have voluntary status, which could then be amended to elective or mandatory status via a further change proposal. Alternatively, that a change proposal for the entry of a new schedule would also propose the intended status at which the schedule would enter.
- 5.17. In order to ensure transparency, subject to recognition of relevant legal rights, the framework agreement and schedules should be made available on the SPAA website and copies made available on request, subject to payment of reasonable reproduction costs. In addition, consistent with ensuring visibility of the SPAA, Ofgem considers that it would also be appropriate that change proposals be placed on the SPAA website where they may be viewed, and indeed commented on by non-signatories, in particular potential new entrants. In line with the principles of transparency and participation it would also be appropriate for non-confidential responses to the circulated to parties and published on the website.
- 5.18. Although the SPAA will detail the obligations to which parties are subject, the SPAA Executive Committee will be able to grant derogations from obligations in any mandatory schedule. However, the Executive Committee must first provide notice of applications for derogations to all parties and to the Authority, who may make representations or objections, which (subject to confidentiality) will be placed on the SPAA website. As with all SPAA Executive Committee resolutions, the granting of a derogation is subject to appeal by any party to the agreement, firstly to the SPAA Forum and potentially onward to the Authority.
- 5.19. Consistent with its obligations under Section 38A of the Gas Act and its aspiration for transparency in industry agreements, where an Authority determination is required (see below for further details on Ofgem's role within SPAA), it will provide decision letters. It can be expected that such letters will

be consistent in form, with those currently provided in regard to Network Code modification proposals.

Participation

- 5.20. It is proposed that SPAA accession will be mandated by a new standard condition to the gas suppliers licence, ensuring full participation (see Appendix 1 for proposed drafting). Each licensee will need to accede; hence a company holding several supply licences will need to sign more than once in the same way as the MRA and GT Network Codes operate. SPAA drafting provides that no additional party may be unreasonably prevented from acceding to the agreement, and any party refused accession may refer the matter to the Authority for its determination, which will be final.

Customer representation

- 5.21. As noted in Chapter 4, current SPAA drafting facilitates a degree of customer representation. In comparison, both CUSC and BSC provide energywatch, and in some cases other bodies representative of interested third parties designated by the Authority, full access to documentation and meetings, and the ability to raise and consider modification proposals.
- 5.22. In September 2002 the Authority implemented modifications to Amended Standard Conditions 4E and 9 of the Transco's Gas Transporters Licence⁸. The first of these changes has the effect of requiring Transco to comply with any obligation to disclose information relating either to the operation of the pipeline system or to any market relating to the system. The second change requires Transco to recognise third party participants (TPPs) who are not Code signatories, in particular by permitting them to raise Modification Proposals to all or part of the Code. Such provisions prevent the repetition of situations whereby representative bodies have had to obtain a licence (in this case a shipper licence) simply in order to represent their members views in particular circles. Amendments to Transco's modification rules in facilitation of this requirement have been consulted upon and are currently undergoing further development. Ofgem is of the view that this principle of consumer representation within

⁸ Transco Price Control and NTS SO incentives 2002 – 2007 Licence modification: September 2002 61/02

industry codes and agreements should be continued within the SPAA, especially as its core objective is to ensure the efficient transfer of consumers.

- 5.23. It would be inappropriate for existing levels of consumer representation to be diminished as a result of SPAA. In particular, the proposed further development of the SPAA includes migration of Supply Point Administration (SPA) provisions from Network Codes, thus giving suppliers a greater degree of influence over the way they operate. It would appear perverse if this were at the expense of the consumer representation that may otherwise have been afforded had the provisions remained in the Network Codes.
- 5.24. Consumer interests will be protected by Ofgem's role in SPAA, which, in making its decisions, will have to consider whether the change better facilitates the relevant objectives of the SPAA, as well as having regard to our wider statutory duties and obligations. However, given Ofgem's role in decision making (and preclusion from raising change proposals), it is appropriate that another party represents the views of consumers. The Utilities Act 2000 created the Gas and Electricity Consumer Council's ('energywatch'), which to an extent adopted the consumer representation role previously undertaken by Ofgem. Given energywatch's duties under the Utilities Act 2000, it seems appropriate that it has a role within SPAA, as indeed it currently does within certain other industry agreements. The exercise of such duties through participation has the ability to extend consumer protection beyond that which may otherwise be delivered through exercise of the Authorities' functions. The views of consumers and the parties who represent them will also be important in assessing the overall benefits of the agreement, as discussed in Chapter 6.
- 5.25. In line with the principles of transparency and participation, it would appear appropriate that the customer representative should, as an absolute minimum, be afforded access to relevant documentation, including modification proposals and minutes of meetings. Whilst nothing can preclude any person from commenting on proposals, it may also be appropriate for the views of the consumer representative in particular to be given equal consideration to those of the actual SPAA parties.
- 5.26. As currently drafted, parties to the SPAA alone may make change proposals, and only those with an interest may vote. For instance, I&C-only suppliers will not

be able to vote upon a change solely affecting domestic suppliers, such as a provision currently within the domestic Code of Practice. As it is not currently anticipated that consumer representatives would become parties to the SPAA, their role would therefore be limited to commenting on current provisions and the proposals of others, rather than proposing change themselves.

- 5.27. Although Ofgem envisage that suitable changes would be proposed by SPAA parties in response to issues raised by the consumer representative, there is a case for the consumer representative being able to propose change directly, especially as the main driver for SPAA is the effective transfer of consumers. This would also be in line with the current position in BSC, CUSC and shortly Transco's Network Code. Ofgem would of course expect any change proposed by the consumer representative to satisfy the same requirements as that of a SPAA party, namely to further the relevant objectives of the SPAA and be subject to its voting mechanism and other change control procedures.
- 5.28. As voting is currently based on the number of Meter Point Reference Numbers supplied by each party (parties being limited to suppliers in the current draft) it is unclear how voting by consumer representatives could work, or indeed whether this is necessary or appropriate. Just as licence changes under the relevant statutory instrument⁹ will be subject to the consent of a qualified majority of those to whom it applies, so too should the SPAA change procedures, as currently drafted.
- 5.29. The SPAA stipulates four possible grounds for an appeal, which are described further in paragraph 5.38. Ofgem understand that the right of appeal within SPAA was created to safeguard the interests SPAA parties, against unfair or contradictory obligations being placed upon them. To that end, three of the grounds for appeal relate directly to resolutions potentially placing a party in breach of the SPAA or another legal instrument. This would not be applicable to the consumer representative who would not be a party to the agreement and therefore not bound by its provisions.
- 5.30. The remaining ground for an appeal is on the basis that a resolution of the SPAA Forum will or is likely to prejudice unfairly the interests of that supplier. Whilst

⁹ The Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003.

it would be relatively straightforward to amend the drafting of this provision to extend the grounds of appeal to instances where a resolution unfairly prejudices the interests of consumers, Ofgem does not currently believe this to be necessary. Firstly, Ofgem would expect a proposal which is patently against the interests of consumers to fail a vote in the first instance; it would certainly be grounds for rejection by Ofgem. Secondly, proposals which are in the interests of consumers, but fail to attract the required vote, may appropriately be pursued elsewhere, as discussed below under *Regulatory Scope*.

5.31. Given the above, it is Ofgem's view that in addition to having access to documentation and being able to attend the SPAA Forum, the consumer representative should be able to raise change proposals. However, Ofgem is not proposing that the consumer representative be able to vote upon or appeal resolutions of the SPAA Forum or elsewhere. Views are invited on this.

Ofgem's role

5.32. Ofgem will carry out a two-fold determination role within SPAA: firstly, of proposed changes to 'protected' and mandatory provisions, and secondly, of appeals under the appeals process.

5.33. Consistent with principle of moving towards *lighter touch* regulation, SPAA has been drafted in such a way as to restrict Ofgem's role to control of key provisions. These 'protected' provisions, which may not be amended without Ofgem's prior written consent, are contained in clause 9 of the agreement.

5.34. In considering whether provisions should be accorded 'protected' status, Ofgem assessed whether they could have the ability to affect the market, customers or new entrants or whether they relate to current licence conditions or legislation. As a result, in addition to those currently listed, Ofgem considers that the following provisions require 'protected' status:

- Clause 4.2 – Additional Parties
- Clause 5.1 to 5.5 inclusive – Mandatory, Elective and Voluntary Schedules
- Clause 9 in its entirety – Change Control
- Clause 14 in its entirety – Derogations

- 5.35. Additionally, as accession to and compliance with SPAA will be a licence obligation, its mandatory provisions will in effect form an extension of the licence itself; Ofgem's consent will therefore be required for changes to provisions and schedules that have mandatory status, or the granting or removal of such status.
- 5.36. In determining proposed modifications to industry agreements such as Network Codes, BSC and in future SPAA, Ofgem must have regard to its wide ranging statutory duties, and therefore have the ability to apply full and due consideration to the detail and merits of each proposal. On this basis, and in consideration of the associated risk of default arrangements, Ofgem's role in determination of modification proposals in existing industry codes is not time-bound. This will continue to be the case under SPAA.
- 5.37. Secondly, Ofgem has a determination role of appeals by parties either against the passing of, or the failure to pass a resolution by the SPAA Forum (which includes appeals under the change control provisions). In the case of a proposed change to 'protected' or mandatory provision, this could potentially require Ofgem to fulfil the dual roles of appellate body and (separately) giving consent to the change. This could cause complications if different factors must be taken into consideration for each type of decision, or if the determination of an appeal could in any way fetter the discretion of the Authority over the acceptance of a change proposal.
- 5.38. The proposed drafting of the SPAA stipulates that an appeal against a resolution of the *SPAA Forum* can be made on the grounds that it:
- i) will or is likely to prejudice unfairly the interests of that Supplier,
 - ii) will cause that Supplier to be in breach of this Agreement,
 - iii) will cause that Supplier to be in breach of its gas Supply Licence, or
 - iv) [will cause that Supplier to be in breach of] the Gas Act 1986.

As the latter three grounds for appeal would, ordinarily, also be grounds for Ofgem (or indeed the *SPAA Forum*) to reject a change proposal, it should be sufficient for a Supplier to highlight these concerns in their representation rather than having to resort to an appeal. It is therefore likely that Ofgem's dual role

could only be problematic in instances where a Supplier believes their individual interests are unfairly prejudiced. In the case of an appeal on these grounds, in addition to a consideration of whether the supplier's interests are being unfairly prejudiced, Ofgem may, as with other decisions, have regard to its full range of statutory duties. This should ensure consistency in decision making, regardless of whether it comes to Ofgem as an appeal or a change proposal. Given the above, it may be sufficient for Ofgem to consider whether a particular change unfairly prejudices the interests of a Supplier at the same time as deciding upon the change itself, rather than following separate procedures. Views are invited on this.

Regulatory scope

- 5.39. Ofgem's role under SPAA could effectively introduce a degree of regulatory control into areas that are currently subject to entirely voluntary conduct between suppliers such as the Domestic Code of Practice. However, this is at suppliers' volition, in recognition of the need to ensure conformity with documented methods of inter-supplier communication, in particular those relating to change of supplier procedures. This is also necessary in terms of future-proofing should SPA provisions be migrated from GT Network Codes (where Ofgem currently has power of determination in regard to all modification proposals) into the SPAA.
- 5.40. Ofgem believe it is entirely appropriate that once designated, it will be unable to propose changes to the SPAA, especially given its role in approving changes to mandatory or protected provisions, and as an appellate body. In particular, Ofgem does not wish, and indeed would be unable, to use its role in the SPAA as a means of introducing further regulation.
- 5.41. The principle objective of Ofgem is to protect the interests of consumers, wherever appropriate by promoting effective competition. Ofgem is therefore committed to withdrawing from prescriptive regulation wherever appropriate. However, where competition is not wholly effective, there are a number of ways in which regulation protects the interests of gas (and electricity) consumers. For instance, in addition to the conditions of their licence and any codes of practice mandated by that licence, licensees may be required to comply with other

statutory obligations. Standards of performance may constitute such an obligation.

- 5.42. The Utilities Act 2000 empowered the Authority to impose financial penalties on licensees who fail to achieve prescribed guaranteed or overall standards of performance. Guaranteed standards set the service levels that must be met in each individual case. If a company fails to provide the level of service required, it must make a payment to the affected customer. Overall standards cover areas of service where it is not appropriate to give individual guarantees, but where consumers in general have a right to expect companies to deliver predetermined, minimum levels of service.
- 5.43. New guaranteed standard of performance, or the amendment of existing guaranteed standards, under sections 33A and 33AA of the Gas Act, must be contained in secondary legislation. Such secondary legislation must be approved by the Secretary of State. In contrast, new or amended overall standards of performance under sections 33B and 33BA of the Gas Act may be made by the Authority, through a statutory determination.
- 5.44. Whilst standards in supply have been largely discontinued, Ofgem maintained in its final proposals of January 2001¹⁰ that this would not be an irrevocable step, and that suitable standards could be quite quickly imposed in response to any perceived problem. Therefore, to the extent that Ofgem may wish to instigate improvements to the customer transfer process, or any other aspect of the gas retail market within the proposed scope of SPAA, it will give consideration to measures such as statutory standards of performance, or other appropriate means of regulation.

Consistency

- 5.45. The SPA Agreement and the processes it governs will not operate in isolation. One of the drivers for its creation has been to plug perceived gaps or inadequacies in existing governance, in particular the transfer of metering assets upon a customer transfer and co-operation between suppliers more generally to transfer data efficiently. Whilst it is anticipated that SPAA may evolve to

¹⁰ Guaranteed and overall standards of performance: Final Proposals – January 2001 07/01

incorporate the retail provisions currently in Network Codes, it is important to recognise the current boundaries of its remit and the relationship SPAA must have with other governance tools such as Network Code, agent contracts or indeed the licences themselves in order to achieve the desired governance regime. As well as plugging perceived gaps in the existing governance regime it will be equally important that obligations are not duplicated, thereby creating a potential double jeopardy for parties or conflicts of jurisdiction.

- 5.46. If the SPA provisions of Network Code are to be migrated into SPAA, it may be desirable for this to be carried out as far as possible as a single process, rather than through wholly separate change control procedures with duplicated effort and potentially differing outcomes. Migration would in effect require a provision to be removed from Code and added to SPAA. If this is to be achieved without introducing gaps in governance, albeit temporarily, the two changes would need to run concurrently. Therefore an obvious example where the two regimes could interact is for a change proposal covering both events and single responses to fulfil the consultation requirements of both documents. Further thought will need to be given on how such co-ordination of change could be most appropriately achieved.
- 5.47. As a document that is to be designated by Ofgem as being that referred to, and required by, licence, the SPAA must be consistent with Ofgem's duties, in particular to protect the interests of consumers and promote effective competition. Equally, any change to the Network Code must fulfil the relevant objectives of the Code, as stated in Standard Condition 9 of the GT licence.
- 5.48. Whilst the various governance tools must be consistent and complementary in *what* they govern, Ofgem believes that there would also be benefit in greater consistency over the way they govern. The desire to align industry procedures should extend to the governance of such procedures, identifying, retaining and adopting more widely the best elements of each. To the extent that respondents agree with the principles for good governance set out above, Ofgem would expect them to be reflected more widely, both in existing and future arrangements. This consultation and the further work on SPAA may therefore provide an appropriate opportunity review existing governance arrangements, their compatibility or otherwise with each other and with these principles.

Accountability

- 5.49. Once the SPAA is implemented, suppliers will be accountable to the SPAA forum/executive for their performance against the obligations SPAA places upon them. As it is proposed that accession to the SPAA be a Standard Condition of the gas suppliers' licence, it would be inappropriate for a breach of the agreement to result in exclusion from it. However, as the licence condition will also require compliance with the SPAA, failure to comply with its mandatory elements could amount to a breach of licence, which would enable Ofgem to take enforcement action. Elective schedules are also binding insofar as a breach may result in a supplier's removal from the register of those who are compliant, and presumably a forfeit of any benefits this conveys. By definition, non-compliance with a voluntary schedule will not be considered to be a breach of the provisions of SPAA.
- 5.50. It is equally important that robust controls be put in place over the SPAA executive/forum and their officers. In particular, they must be mindful of the potential impact of their decisions and be accountable to the parties of the agreement for those decisions. Members of the SPAA executive will be appointed following the results of a vote. However, as the members are not being remunerated for this function, loss of office may not in itself ensure accountability. More importantly will be the ability of parties to appeal any resolution of the EC to the Forum, and potentially onward to Ofgem, as discussed in Chapter 4.

Derogation

- 5.51. As discussed further in Chapter 6, it is proposed that accession to and compliance with SPAA will be a requirement of the Gas Suppliers' licence. Therefore, a breach of the provisions of SPAA could result in enforcement action by Ofgem. However, clause 14 of the SPAA provides that where a derogation is granted by the SPAA EC, a party will not be in breach of the agreement for failing to comply with obligations that are the subject of the derogation, for the term of that derogation.
- 5.52. As noted in Chapter 4, all parties (and the Authority) may make representations or objections on any application for derogation and as with any other resolution

of the SPAA EC, the decision to grant a derogation may be appealed to the SPAA Forum, and if necessary thence to the Authority. In addition to current drafting, which provides that representations or objections by parties will be placed on the website, it would be appropriate that representations or objections by the Authority be treated accordingly at an early stage.

Voting

- 5.53. As discussed in Chapter 4, the principle behind development of the SPAA voting arrangements was that no single party should have an undue level of influence in either accepting or rejecting a change proposal. However, it is equally important to ensure that the level of votes required is not set so high as to stifle change altogether. The GIGG has determined that a threshold of 65% of voting MPRNs will satisfy this balance.
- 5.54. However, Ofgem notes that voting is by reference to the percentage of votes cast, rather than the total votes capable of being cast, i.e. parties not exercising their vote will be taken out of the count before the threshold is assessed. Given that change proposals will affect all parties, in particular those relating to mandatory provisions, this may be inappropriate. In effect, it could allow changes to proceed which relatively few suppliers have voted for. This must be balanced against the risk that the apathy or non-participation of some suppliers could prevent more pro-active suppliers from progressing change proposals and thereby incrementally improving SPAA or the procedures it governs.
- 5.55. As it is proposed that accession to and compliance with SPAA will be a requirement of the Gas Suppliers Licence, Ofgem will be keen to encourage full participation on the part of all licensed suppliers. With appropriate transparency and in particular, the use of proxy votes, parties should be able to fully participate in decisions even where they are unable to send a representative to attend meetings in person.
- 5.56. **Ofgem would welcome comments on the issues raised in this Chapter, in particular:**
- **The principles of good governance set out above, and the extent to which the proposed SPAA conforms with them;**

- **Whether a 10 day consultation period is appropriate;**
- **Should criteria be developed for the granting of urgent status to a change proposal;**
- **The preferred method for the introduction of schedules into SPAA;**
- **The appropriate degree of consumer representatives' participation in the SPAA;**
- **Whether issues of unfair prejudice should be determined as part of the change decision rather than holding a separate appeals procedure;**
- **Whether the provisions referred to in Paragraph 5.34 should be afforded 'protected' status;**
- **Whether voting should be by reference to the percentage of votes capable of being cast;**
- **The extent of Ofgem's role, if any, in the granting of derogations.**

6. The SPAA licence condition

- 6.1. During the development of SPAA there was overall agreement that the gas suppliers' licence should contain an obligation to sign and comply with the SPAA. Suppliers considered that this was necessary to ensure that all suppliers would be bound by the requirements of the SPAA, which in turn would enable the effective operation of the gas supply market, in particular those aspects which require a degree of interaction between suppliers or their agents. It would also increase the viability of, and confidence of investing in, automated systems for dealing with agreed industry processes.
- 6.2. As discussed earlier in this document, the framework SPAA has been based, to a certain extent, upon the electricity MRA. Therefore, it is perhaps appropriate that the proposed licence condition to mandate SPAA reflects aspects of the relevant licence conditions mandating the MRA, the main provisions of which are contained in the Standard Conditions of the Electricity Distribution licence. Both Distributors and Suppliers are obligated by separate provisions of their respective licences to comply. Subject to the outcome of discussion on GT accession (see Chapter 8), it is possible that this arrangement could be replicated for the SPAA, with a new complementary condition within the GT licence.
- 6.3. In line with the views expressed by I&C supplier representatives at GICG, it is currently intended that the licence condition would apply to both domestic and I&C suppliers, within section B (General Obligations) of the licence. However, there may currently be more incentives on domestic suppliers to accept a licence condition, given that they are subject to the metering licence obligations (in particular Standard Licence Condition 34) that have formed the initial focus of the agreement, through provision of governance arrangements to support RGMA. Mandating the use of certain metering processes through a SPAA licence condition could have the effect of extending regulation into an area of I&C supply which is currently unregulated. This concern could be addressed if, for example, metering related provisions that would ordinarily be mandated by SPAA for domestic suppliers are voluntary for I&C suppliers.
- 6.4. Should I&C suppliers not wish to accept a licence condition at this time, the SPAA could potentially be applied to domestic suppliers only, within section C (Domestic Supply Obligations) of the licence. This would not preclude I&C

suppliers acceding to SPAA on a voluntary basis, albeit without the benefit of increased certainty of compliance by other I&C constituents as conferred by licence condition.

- 6.5. Competition law implications of the proposed licence condition will also have to be considered, as set out below.

The Competition Act 1998

- 6.6. In addition to, though distinct from its regulatory functions under relevant sector legislation, the Authority has concurrent powers with the Office of Fair Trading (OFT) on the application and enforcement of the Competition Act 1998¹¹ in the energy sector. Therefore, separate to any regulatory involvement in SPAA, under its Competition Act powers the Authority may (amongst other things):

- act in response to a complaint or as a result of an own initiative investigation;
- give guidance on the application of the Competition Act, or;
- grant an exemption to the Chapter I prohibition (subject, where appropriate, to conditions).

- 6.7. As a horizontal agreement between suppliers, the SPAA could be assessed under the Chapter I prohibition of the Competition Act, which prohibits agreements that have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom. Section 2(2) of the Competition Act provides a list of agreements to which, in particular, the prohibition is to apply, though this is for illustrative purposes and is not intended to be exhaustive. It includes agreements, which directly or indirectly fix prices, share markets or are discriminatory. Whilst the object of the SPAA is certainly not the prevention, restriction, or distortion of competition within the UK, it is equally important that this does not become its effect by virtue of the manner of its operation, or any change to the effect or meaning of provisions over time.

¹¹ General advice and information about application and enforcement of the Competition Act 1998 is contained in a series of guidelines published by the OFT, which are available on line at www.of.gov.uk

6.8. Schedules 1 – 4 of the Competition Act 1998 specifically exclude from the Chapter 1 prohibition certain categories of agreement. In particular, Schedule 3 paragraph 5(1) states that:

The Chapter I prohibition does not apply to an agreement to the extent to which it is made in order to comply with a legal requirement’.

Paragraph 5(3) goes on to state that for the purposes of that paragraph:

"legal requirement" means a requirement... imposed by or under any enactment in force in the United Kingdom’.

An agreement mandated by a Standard Condition of the Gas Suppliers Licence, being granted under Section 7A of the Gas Act 1986 would, in Ofgem’s view fulfil the definition of legal requirement and as such be excluded from the Chapter I prohibition¹². However, this exclusion applies only where the regulated undertaking is required to act in a specified way; it does not apply to discretionary behaviour of that undertaking. Before making compliance with the SPAA a requirement of the Suppliers’ licence and therefore excluding the agreement and the behaviour it mandates from the Chapter I prohibition, Ofgem must be satisfied that it will not have anti-competitive effects.

6.9. Where an agreement is not the subject of exclusion and falls within the scope of the Chapter I prohibition, it may be exempted if it satisfies the criteria in Section 9 of the Competition Act. This option may be given further consideration if the licence condition proposed in this Chapter is not accepted by suppliers, though this would not mandate compliance with SPAA. Ofgem may therefore look to the guidance provided by the exemption criteria, in addition to other areas of consideration, when determining whether the SPAA could be considered to have anti-competitive effects. The criteria are laid down in Section 9 of the Competition Act and, in broad terms, provide that to qualify for exemption an agreement must:

‘(a) contribute to

(i) improving production or distribution, or

- (ii) promoting technical or economic progress,

while allowing consumers a fair share of the resulting benefit; but

- (b) not

- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or

- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.'

6.10. Although they refer to improving production or distribution of goods, the exemption provisions also apply to agreements that contribute to improvements in the provision of services. In particular, it is envisaged that the SPAA will improve the transfer of information between suppliers in the event of a consumer transfer. At present, problems encountered with such transfers lead to customer dissatisfaction with the service they are being offered, which is often attributed to the incoming supplier. It is also envisaged that SPAA will further facilitate metering competition, which Ofgem anticipates will encourage metering innovations.

6.11. In considering a case for exemption, the views of direct customers and/or end consumers are likely to be important in establishing whether consumers are being allowed a fair share of the benefit. If an improvement such as a cost reduction is seen to be benefiting only the parties to the agreement (or their shareholders) this condition is unlikely to be satisfied. As gas supply is an effectively competitive market, Ofgem would envisage that cost savings are ultimately passed through to consumers. However, consumer benefits are not restricted to potentially lower charges. As the overall aim of SPAA is to improve the efficiency and effectiveness of the transfer process, consumers will benefit from being able to more easily switch to their chosen supplier, thus enjoying the benefits of competition. It will also improve the consumer experience more

¹² Modernisation of EC competition law means that Ofgem, as a national competition authority, will have the power to directly apply Article 81 of the EC treaty. There is no exclusion to this.

generally. In order that consumer benefits may be properly established, Ofgem believes that the views of consumer groups such as energywatch should be sought on each change proposal.

- 6.12. To qualify for exemption, agreements may not include restrictions beyond those necessary for the attainment of the benefits, and should contain the least restrictive means of achieving its aims. The development of SPAA has, to date, been consistent with these principles by only mandating provisions where they are considered necessary. The ongoing development of SPAA will also be subjected to scrutiny in this regard, with the requirement that the Authority must approve changes to new or existing mandatory provisions.
- 6.13. An application for individual exemption would be unlikely to succeed if the parties were unable to show that there will continue to be effective competition in the relevant market(s) for the services with which the agreement is concerned¹³. In particular, Ofgem believes that it will be necessary to show that the SPAA does not impose a barrier to entry to either the gas supply market or related metering services market. Again, this implies that mandatory requirements must be objective, concise, transparent and justifiable.
- 6.14. Whilst Ofgem does not presently believe that the SPAA will have anti-competitive effects, and may also be able to ensure that it will fulfil the above criteria at the time of its inception, changes to the document may, over time, alter its object or effect. This may also have the effect of extending the legal requirement and therefore the scope of any exclusion. Ofgem therefore believes it is necessary, not only to sanction the form and content of the initial document through designation, but to approve any change to a mandatory requirement. Additionally, these changes should be based upon firm objective criteria.
- 6.15. As mentioned, the scope of any exclusion will not preclude application of the Competition Act prohibitions¹⁴ to agreements or behaviour outside of that specifically required by licence. In recognition of this, it is for parties to the agreement to ensure compliance with their legal obligations within and without

¹³ OFT Guidelines 401: The Chapter I Prohibition

¹⁴ Chapter I of the Competition Act 1998 prohibits agreements which prevent, restrict or distort competition and may affect trade within the United Kingdom. Chapter II prohibits conduct which amounts to abusive behaviour by a dominant undertaking.

their licence, including those under the Competition Act 1998, both at the inception of the SPAA and on an ongoing basis.

Establishing the Supply Point Administration

Agreement

- 6.16. The drafting of the proposed licence condition recognises that the establishment of the SPAA and its ongoing maintenance cannot be achieved by an individual licensee, and as such has been drafted as a collective responsibility. However, each licensee will have an individual and ongoing obligation to comply with it.
- 6.17. As the licence condition will require compliance with the SPAA, failure to comply with its mandatory elements could amount to a breach of licence, allowing enforcement action to be taken if appropriate. It is likely that this course of action could be invoked either as an escalation route when a party to the agreement has failed to comply with the SPAA's own enforcement procedures, or as a result of Ofgem initiating its own investigation into a licensee's conduct.
- 6.18. However, upon introduction of a licence condition the SPAA will be a framework agreement only, with mandatory obligations only where necessary for the establishment and operation of the SPAA itself. The introduction of further obligations, in relation to the processes the SPAA was created to govern, will be subject to the change control procedures of SPAA itself and, in particular, the voting of participants. In addition, proposals that impose a mandatory requirement upon parties will require approval by the Authority as this will in effect extend the scope of the licence condition.

Structure and Accession

- 6.19. The creation of the SPAA must not create barriers to new entrants or a diminution of effective competition. In relation to gas suppliers this concern may be obviated by accession to the SPAA being a licence requirement and given appropriate address within the agreement from the outset. However, the scope of participation in the SPAA may extend to incorporating GTs or other, non-licensed, agents of suppliers or GTs. The drafting of paragraphs 3 and 4 of

the proposed condition would in Ofgem's view, ensure that the SPAA is not closed to new entrants.

Relevant objectives

- 6.20. The use of relevant objectives is well established in industry agreements such as the Network Code and Balancing and Settlement Code, as an objective means by which proposals will be assessed. Relevant objectives generally encompass not only the express purpose of a particular agreement, but also the discharge of a licensee's wider obligations. By requiring proposals to be assessed against such criteria, parties have comfort that the scope of their obligations will not be extended into new and unintended areas, whilst ensuring that improvements will be undertaken as and where identified.

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- 6.21. Ofgem previously agreed with GIGG that the scope of the SPAA should be limited to dealing with requirements for industry processes and data items to be exchanged between suppliers and their agents for the efficient operation of the gas supply and related markets. Ofgem considers that to do otherwise may have the effect of extending the scope of regulation through the proposed Standard Licence Condition and the extent of any exclusion from the Chapter 1 prohibition. Ofgem therefore proposes that the scope be strictly limited through the condition itself, the drafting of which is attached at Appendix 1.

Modifications

- 6.22. As a legal document, the provisions of which bind its parties, change to the SPAA will itself need formal governance and the assurance of due process. At the same time, the change control procedure needs to be sufficiently flexible to react to changes in the gas market and the needs of parties more generally.
- 6.23. Whilst the proposed licence condition requires that a modification process be in place, the details of its operation are left largely for parties to determine. The exceptions to this are areas, such as voting rights, which Ofgem views to be of such fundamental importance to the open and fair operation of the agreement that they should be protected. These protected provisions, as detailed in

Chapter 4, may not be amended without Ofgem's prior written consent. Such consent will also be required for changes that have the effect of imposing a mandatory requirement upon suppliers (or removing or amending such a requirement already in place). Changes to unprotected or non-mandatory provisions of SPAA will be conducted entirely through the mechanism of the SPAA change control procedures, not requiring Ofgem approval. The licence also provides that the Authority may determine appeals against decisions either for or against modification proposals.

- 6.24. Additionally, Ofgem proposes to include a provision requiring changes to be implemented in a timely manner. Such a provision may preclude parties to the agreement from delaying or even forestalling a change, which has been agreed under change control procedures. In particular, it may have the effect of making parties responsible for the timely and efficient investment in any systems development required to ensure ongoing compliance with common processes governed by SPAA and the interoperability they offer. The investment decisions or reticence of a given party should not be allowed to hinder the incremental improvement of industry standard processes, or innovation more generally.

Availability

- 6.25. As discussed in Chapter 5, Ofgem believes it is vital that the operation of SPAA is open and transparent. To this end, it is appropriate that persons who are not currently parties to the agreement should be able to obtain copies of the document, and indeed any other relevant documentation. Ofgem understands that the GIGG currently envisage that the SPAA documentation will be made available on the website of the SPAA Company (subject to the recognition of intellectual property rights). The underpinning of the requirement within a licence condition will ensure that this facility will continue to be provided in the future. Within the drafting of the proposed condition there will be recognition that this obligation may impose costs, and allows for their reasonable recovery, as appropriate. This is in line with existing obligations relating to the Network Code, for instance.

Implementation

- 6.26. Following consideration of responses to this consultation and completion of any drafting amendments to ensure that both the SPAA and the proposed licence condition are fit for purpose, Ofgem will issue formal consultation under Section 23 of the Gas Act 1986 on introduction of the new licence condition. It is Ofgem's intention to issue such consultation under the Collective Licence Modification (CLM) rules, which are expected to be available for use shortly.
- 6.27. As this work is being carried out at suppliers' behest, and given the need for multilateral adherence to mandated processes within the SPAA, if the licence condition is not accepted through either the CLM rules or the consent process, Ofgem would not seek to impose a licence condition upon individual suppliers. Although Ofgem previously agreed with GIGG that SPAA would not operate until mandated by licence condition, should suppliers reject such a condition, fallback arrangements will need to be considered.
- 6.28. Absent the proposed licence condition being in place, SPAA would not be excluded from the Chapter I prohibition, as outlined above, though this would not preclude notification under section 12 of the Competition Act and application for an individual exemption, if necessary. Additionally, any fallback arrangements would need to provide alternative enforcement procedures for failure to comply with the SPAA provisions, as licence enforcement action would not be available. It is also unclear what role Ofgem could have in such arrangements, or SPAA itself, without the *vires* afforded by the licence condition.
- 6.29. **Ofgem would welcome comments on the proposed licence condition, in particular:**
- **whether such a licence condition should be placed upon both domestic and I&C suppliers;**
 - **the proposed drafting of the condition, as outlined in Appendix 1, and;**
 - **whether the SPAA has, or is likely to have, any anti-competitive effects, especially in relation to small suppliers or new entrants.**

7. The Domestic Code of Practice

- 7.1. Domestic gas suppliers operate a voluntary code that sets out procedures for dealing with a number of operation processes that take place between suppliers. The Domestic Code of Practice (DCoP) was established under the aegis of the Gas Forum, and has been in operation since 1996 following the opening of the domestic gas supply market to competition. The DCoP was developed in response to the need for suppliers to exchange data and agree actions, particularly in response to issues arising where a customer changes supplier and issues arise that were not contemplated or adequately covered by Transco's Network Code, the principal industry agreement supporting gas supply competition.
- 7.2. The DCoP has evolved to the extent that it now sets out procedures in detail, dealing with issues that are key for suppliers to be able to manage customer transfers effectively. These include arrangements for suppliers to agree meter readings and for resolving an erroneous transfer. Additionally, the DCoP has established protocols for exchanging data by email, generally referred to as the BISCUIT¹⁵ project. Although the DCoP covers a wide variety of topics of interest to suppliers (it touches on such matters as theft of gas, crossed meters and multiple contracts), it is the operational processes where it has had the greatest impact.
- 7.3. Suppliers have adapted their systems to manage data flows defined in the BISCUIT documentation against business rules described in the DCoP. However, the governance of these arrangements is based on each supplier's voluntary participation in the DCoP and a high level of good will between suppliers for developing and accepting changes.
- 7.4. Suppliers have indicated that for the key processes currently governed by DCoP, they would wish to see formal governance arrangements, including defined change control and voting arrangements and the ability to establish specific procedures as mandatory requirements backed by licence obligations. This reflects developments in electricity where, under the MRA, suppliers have migrated the governance of procedures dealing with the agreement of meter

readings on change of supplier and the resolution of erroneous transfers from voluntary arrangements (MRA Working Practices), to mandatory arrangements (MRA Agreed Practices). Ofgem recognises that domestic suppliers wish to have the option to apply similar levels of governance control to the analogous processes in gas.

7.5. Suppliers have indicated that more robust governance arrangements, in terms of change control and compliance to support interoperability between suppliers, would give greater confidence to parties to invest in the development of their internal systems for data management and transmission and increase the level of automation of processes. They argue that this will lead to more efficient management of the change of supplier processes and better service to customers. Ofgem supports this view. We note that in the preparation of the industry agreed processes to support the Erroneous Transfer Customer Charter (ETCC), the formal governance procedures in electricity were able to respond and deliver a MRA Agreed Procedure quicker than the voluntary arrangements under the DCoP. This performance reflected the benefits to the industry of formal, established and tested governance arrangements.

7.6. GIGG has signalled that suppliers would seek to introduce Schedules to the SPAA that replace the key processes currently set out in the DCoP. Areas of the DCoP being considered include:

- Opening/closing meter reads;
- Assignment of Unpaid Final Accounts;
- Change of Supplier – right to object;
- Erroneous Transfers;
- Crossed meters;
- Pre-payment Customers (misdirected payments);
- Theft of gas

¹⁵ BISCUIT – Basic Inter-Supplier Communication Using Internet Technology

- Metering Liberalisation

Outside of those provisions required to operate the framework of the agreement, the introduction of the SPAA will not in itself create new obligations for parties. Schedules to the SPAA will only be introduced where they have been successfully passed through the rigour of the SPAA change control process. This is particularly significant where it is contemplated that the status of the schedule would be mandatory or elective under the SPAA compliance arrangements and therefore a higher level of obligation than that found in the voluntary arrangements of the DCoP.

7.7. There is also an Industrial and Commercial Code of Practice, again voluntary, which covers essentially the same areas as the Domestic Code. Although it is not currently envisaged that the I&C Code will be part of SPAA, there is nothing precluding its inclusion. There will therefore be an opportunity for suppliers to consider the operation and ongoing value of the I&C Code, and if appropriate put forward a change proposal for its inclusion, to be progressed through the SPAA change control procedures.

7.8. **Ofgem would welcome comments on the inclusion within SPAA of provisions previously included within Codes of Practice, in particular:**

- **whether the inclusion of schedules such as that outlined in this Chapter would entirely replace the existing Domestic Code of Practice;**
- **whether the I&C Code of Practice should be developed as a SPAA schedule.**

8. GT involvement in SPAA

- 8.1. The processes that support the customer change of supplier process are governed via the relevant transporters' Network Code. This sets out the definitions for data, data flows, timings for processes and the modification arrangements. The July consultation document discussed the suitability of SPA processes residing in and being governed by the Network Codes. It highlighted two key implications of this arrangement.
- 8.2. Firstly, as the Network Code is an agreement between the transporter and shippers, suppliers do not have a direct opportunity to raise modifications but must rely on shippers to represent them. Therefore suppliers have no direct contractual influence over the retail services that are provided to them and which they are paying for, albeit indirectly.
- 8.3. Secondly, in providing both transportation services and retail market processes, Transco's role in particular is often not clear and it is subject to conflicting incentives in providing services to non-contracting parties. This may also be true to a lesser extent of shippers.
- 8.4. The provision of SPA services is subject to a charge bundled with transportation, which in the case of Transco is subject to regulatory price control. Whilst an allowance is made within the price control for the incremental development of SPA functions, Transco in its transportation role has little incentive to invest in such improvements or actively maintain accurate data which is of no interest to it. The current arrangements may therefore have the effect of allowing Code parties to resist change, for which they may incur costs but not benefit themselves.
- 8.5. The migration of SPA provisions from Network Code opens up the possibility of the GT's SPA service being subject to a transparent unbundled charge. In such a situation, suppliers as the customer of a SPA service provider would be able to directly influence the standard of service offered to it. For instance, if the supplier requested an additional data item to be held, the service provider would likely comply, albeit the charge to the supplier may increase. This would encourage suppliers to only propose changes that were of real benefit and cost effective.

- 8.6. An unbundled charge may also provide an opportunity for suppliers (or their shippers) to avoid that element of the GTs charge and chose an alternative provider. For instance, it is conceivable that third party data managers could undertake that function on behalf of suppliers and/or transporters.

Independent Gas Transporters

- 8.7. Transco's Network Code covers over 20 million supply points, and therefore sets the standard to which shippers and suppliers must build and maintain their systems. However, the 12 independent GTs currently have around 300,000 supply points between them, and this number is growing. Each has its own SPA system, which although based to a large extent on Transco's, means there is inconsistency of approach across all the Codes. For example, shippers dealing with independent GTs are often required to send and receive data using faxes rather than electronic files. Furthermore, the data required of the shipper and the time-scales by which it must be provided may also differ.
- 8.8. Ofgem understands that the differences in SPA processes between networks, have often required the supplier to develop and run bespoke, low technology CoS procedures for handling the consumers on a given network. Ofgem also understands that this contributes to the costs of providing a service to consumers on independent GT networks being many times greater than those on Transco's network.
- 8.9. Ofgem also notes that many independent Gas Transporters have relatively few shippers signed up to their Network Code. Whilst suppliers are not precluded from using the shipping services of another company, the majority of companies supplying gas to a premise also undertake the shipping activity. This may indicate that consumers on independent networks have a restricted choice of available supplier, which Ofgem would consider an unacceptable diminution in competition. Moreover, refusal to supply a domestic consumer on request (regardless of the network to which their premise is connected) may contravene the Standard Conditions of the Gas Suppliers licence. Ofgem has received complaints from consumers who have been unable to transfer to their chosen supplier, which seems to confirm this situation currently occurs.

8.10. One of the key drivers for inclusion of GT signatories within SPAA and eventual migration of SPA provisions is that it would enable supplier involvement in the retail processes that effect them directly, which is not currently available under Network Code arrangements. As well as contributing to overall improvements to existing SPA processes, it is hoped that this may also facilitate harmonisation across GT Network Codes. This should, to a degree, allow suppliers to employ common processes and systems, which will improve the overall efficiency and reduce costs of the transfer process. In particular, it may be possible for independent GTs to reach agreement on, and reduce the risk of investment in, a standard electronic interface (based upon the principles of RGMA), to replace the current fax based communications.

GT Accession

8.11. Significant debate has, and continues to occur, on the appropriate timing of inclusion and the role of Gas Transporters within the SPAA. As outlined above, principles agreed in January 2002 were that the agreement would initially be between suppliers, with GTs becoming signatories at a later date, prior to migration of SPA provisions from Network Codes.

8.12. However, some suppliers have stated the need for GT's (in particular Transco's) immediate accession; on the grounds they have a fundamental role in metering competition. Regardless of the separation of Transco's metering and transportation functions (which may be replicated by other GT's), GTs will continue to shape the metering market insofar as meeting their requirements. For instance, it is for reasons of keeping the system in balance that some large sites are required under the Network Code(s) to be read daily. This classification dictates the type of equipment, (i.e. daily read equipment) that must be installed at such sites, and the type and frequency of data to be submitted.

8.13. There is a concern that, with the RGMA baseline being owned and maintained by SPAA, there is a possibility that suppliers will implement a change to the baseline, which is not subsequently reflected in Network Code. This may create discrepancies in the arrangements and potentially place shipper/suppliers in breach of either Network Code or SPAA. One of the means of preventing this may be to have GTs involved at an early stage in any change proposal.

- 8.14. Following discussion of these issues both at the GIGG and meetings of the Association of Independent Gas Transporters, a sub-group was formed in order to assess the benefits of transporters involvement in SPAA in more detail. This group, the *SPAA GT Forum* has now presented its final report, which recommends, in particular, the inclusion of GTs within the SPAA. The group generally explored the same areas as previously been looked at by suppliers, such as constitution, voting rights, change control and funding, but against a different context, such as the need to ensure that change proposals are consistent with the GT's relevant objectives. The group's final report is available on the Ofgem website¹⁶.
- 8.15. One of the key considerations highlighted by the report is that of funding change. The GT's agreed that they would prefer the funding of future changes to be on a *gain share* basis, whereby the category of party which gains the most benefit provides most of the funding, i.e. a change which is solely to the benefit of suppliers would be funded solely by suppliers.
- 8.16. This recommendation needs to be considered in the context of the relevant objectives alluded to above. It is already the case that shippers are able to put forward change proposals, and to the extent that they are approved by the Authority as fulfilling the relevant objectives, the GT may be required to implement such change. It is also currently the case that suppliers (through their shippers) pay for such systems changes, though indirectly as part of a bundled transportation change. In the case of Transco, an allowance is made in its price control for incremental improvements to its systems, which includes those required for SPA related activities.
- 8.17. The introduction of SPAA should not be to the detriment of improvements that would ordinarily have been carried out under the governance of the Network Code(s). Perhaps a rule of thumb over the funding of a future change could therefore be provided by an assessment of whether it would ordinarily have been approved as a Network Code modification.
- 8.18. Whereas in the past, consideration of the Network Code relevant objectives and the GT's influence more generally may have restricted the improvements

¹⁶ www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/3112_SPAATrReportfinal.pdf

suppliers could successfully propose, direct supplier funding of change may allow for developments beyond those would ordinarily have been approved. In essence, as the customer of the SPA service, if suppliers want something and are prepared to pay for it, they should get it. This is likely to be the case if SPA is migrated from Network Code, which would not only give suppliers direct influence over the type of service offered, but may also prompt the separation of SPA charges from those of transportation.

Ofgem's view

- 8.19. Ofgem supports the view of suppliers that SPAA should be mandated by a standard licence condition. Chapter 6 details proposals for an addition to the Standard Conditions of the gas suppliers' licence. If transporters are also to be signatories of SPAA it may be appropriate for an equivalent, or at least complementary condition to be inserted into the Standard Conditions of the GT licence.
- 8.20. Although Ofgem welcomes the principle of GT accession, it is not yet clear how these arrangements would work in practice. At this stage, it appears there are two pragmatic means of enabling GT accession to SPAA. Firstly, the SPAA could be re-drafted to incorporate GTs prior to its implementation. Secondly, the SPAA could go live as a supplier only agreement, with GTs and any other parties as appropriate being introduced by means of a change proposal, progressed through the SPAA change control procedures.
- 8.21. In view of the timing issues outlined in this document, Ofgem continues to support the use of a phased approach, with the focus on SPAA delivery to support metering competition. Ofgem would however, encourage GTs to play a full role in the GT forum and in providing their own views on change proposals.
- 8.22. **Ofgem would welcome comments on GTs involvement in SPAA, in particular:**
- **Whether GTs should become party to SPAA;**
 - **Subject to above, the appropriate timing of GT accession to SPAA;**
 - **Whether becoming party to and compliance with SPAA should be a condition of the GT licence;**

- **How the funding of change should be apportioned.**

9. Governance of Metering

9.1. The need for formal governance to underpin the competitive metering market has been one of the key drivers for the development of the SPAA. The purpose of this Chapter is to consider four specific issues in relation to the governance of the nascent competitive metering market and the potential implications for the SPAA, namely:

- Statutory Framework – the need or otherwise, for changes to the existing framework to support a competitive gas metering market.
- Governance of the RGMA baseline documentation¹⁷ – the most appropriate means by which this documentation can be maintained in the period following RGMA go-live.
- Transfer of meters between suppliers – the appropriateness, or otherwise, of the direct communications between suppliers over the transfer of the metering asset being governed by SPAA or some other means of governance.
- Transco’s metering contract(s) - the most effective means by which the suite of contracts between Transco and gas suppliers, which will replace the associated provisions presently reflected in Transco’s Network Code should be maintained in the period following RGMA go-live, including the potential role of Ofgem.

Statutory Framework

9.2. In Ofgem’s view, the existing regulatory framework, provided for under the Gas Act, various Statutory Instruments and Licences issued under the Gas Act as well as competition law in general terms, is sufficiently robust to support emerging metering competition. For instance, the rights of suppliers, and indeed consumers, to make their own metering arrangements are already provided for within the existing framework. However, Ofgem believes that in the run up to RGMA implementation, it may be appropriate to consider whether a number of the existing licence obligations placed on transporters, shippers and suppliers

should be refined, to more accurately reflect the roles of such licensees in the nascent competitive market for gas metering services.

- 9.3. For instance, although gas suppliers are obligated under the terms of their licences to provide metering services to domestic consumers upon request, they have traditionally discharged these obligations by requesting the host GT, via their shipper, to continue providing the meter in place, or provide and install one where not. The existing licence conditions therefore reflect the situation whereby Gas Transporters provided meters to shippers as part of a bundled transportation service. This imposes an additional burden upon the shipping activity, and leaves the supplier with little say in the type or standard of service received.
- 9.4. The gas and electricity industries have increasingly been moving to the supplier-hub principle for services such as metering, allowing suppliers' choice as to whom they obtain the services from, and recognising that the supplier is the party ultimately held responsible for the standard of service received by the consumer. This principle has driven market developments such as the separation of Transco's metering and transportation businesses, the removal of metering provisions from Transco's Network Code and gas suppliers' appointing third party meter operators. These new inter-relationships are documented in the RGMA Baseline document discussed later in this Chapter.
- 9.5. Ofgem intends to consider the need, or otherwise, to refine existing licence obligations in a separate consultation paper to be published shortly. In particular, it is likely that any proposed changes will give recognition within the licence of a direct relationship between GT and supplier for the provision of domestic metering services. This will have inevitable implications for the current drafting of the Standard Conditions of the Gas Shipper Licence, as well as those of the Gas Transportation and Gas Supply Licences. The outcome of these deliberations may determine the level of participation, or otherwise, industry players have in the SPAA, either at its inception or in future.
- 9.6. In addition, in response to concerns over the future governance of Transco's metering contract, discussed later in this Chapter, Transco has suggested the

¹⁷ RGMA Processes and Data

introduction of a “*reasonableness*” provision within the special conditions of its licence. This could, for instance, allow suppliers to refer issues of dispute arising from the metering contracts to Ofgem on the basis that they believed Transco to be acting unreasonably by, for example, failing to adopt changes required by the RGMA Baseline (as governed by SPAA). Similarly, Transco could refer issues of dispute to Ofgem in the context that the position taken by suppliers was unreasonable and could inhibit its ability to act reasonably within the context of its licence obligations.

RGMA Baseline document

- 9.7. In order for competition in gas metering services to develop, two important factors had to be addressed. First, price barriers needed to be addressed, by ensuring that Transco’s services were charged for separately and in a cost reflective manner. This was achieved by the separation of the transportation and metering services elements of the Transco price control and subsequent introduction of disaggregated metering charges. Second, the non-price barriers which prevented shippers, suppliers and consumers being able to switch from Transco to alternative metering service providers needed to be removed. The object of the RGMA project was to tackle these non-price barriers.
- 9.8. In particular, the RGMA sought to facilitate competition by developing standard industry processes and interoperable data transaction formats, thus enabling market participants to communicate effectively in the changed metering market. These processes and data flows are contained in documentation titled “*RGMA Processes and Data*” (“*The RGMA Baseline*”).
- 9.9. In order to maintain this level of interoperability, market participants will be required to comply with the standard processes. Failure to do so could have a detrimental effect on the quality of metering data that would not only impact upon the execution of meter works, but the customer transfer process, which relies heavily upon such data. To the extent that existing governance, such as licence conditions or commercial contracts do not ensure compliance, an alternative means of governance is required. It is on that basis that the SPAA has been developed, complementing rather than replacing the existing tools of governance.

- 9.10. In addition to issues of compliance, ongoing ownership of the baseline must be addressed in order to ensure that it is appropriately maintained and developed, thus ensuring ongoing consistency and interoperability. Ofgem also believes it is important not to replicate the non-price barriers to entry, such as asymmetric access to information, which in part, prompted the development of the RGMA project in the first place. An accurate and comprehensible RGMA Baseline must be maintained and made freely available for the benefit of potential new entrants to the gas industry, as well as its incumbents.
- 9.11. It is in this context that consideration has been given to the most appropriate means by which the RGMA Baseline and the processes it documents can be governed following RGMA implementation.
- 9.12. In June 2002, the Gas Industry Governance Group (GIGG) agreed to set up a work group to develop governance requirements for inclusion within the SPAA once the RGMA Baseline had been implemented. This work group has now concluded its initial work and presented its recommendations to the GIGG. A copy of this report is available on the Gas Governance section of the Ofgem website (www.ofgem.gov.uk).
- 9.13. The group is of the opinion that the RGMA Baseline should be adopted as an appendix to the SPAA with the supporting governance requirements within SPAA cross-referred to it. To be implemented, the recommendations of the group will need to be accepted by parties to the SPAA through its change control mechanism.
- 9.14. Consistent with the supplier-hub principle of the RGMA Baseline, compliance obligations within the SPAA will fall upon suppliers in the first instance. To the extent that they apply to activities carried out by agents, Ofgem would expect suppliers to appropriately discharge those obligations in their commercial contracts. Suppliers can also be expected to take into account the views of their agents when considering potential changes to the RGMA Baseline. Failure to do so may result in potential exposure to enforcement procedures where they are unable to fully discharge an obligation, for instance if their MAM is unable/unwilling to provide the necessary service. This issue is considered in the context of the Transco metering contract later in this Chapter.

Asset Transfer

9.15. In respect of a customer transfer, Standard Condition 34 of the gas supplier's licence is geared around an installed meter staying in place, with responsibility being transferred from outgoing to incoming supplier wherever practicable, or a new meter provided. The licence describes four ways in which this can be achieved:

- First, where the GT owns the meter in place, the supplier can arrange for this to be left in place. This is what currently happens in virtually every case. By not choosing an alternative to the GT, the supplier is deemed (via their shipper) to have made such an arrangement.
- Second, if the outgoing supplier has provided the meter in place directly, i.e., not through the transporter, the incoming supplier can come to a commercial arrangement with the outgoing supplier to acquire the meter by purchase or lease.
- Third, where there is no meter in place, or the one in place is not appropriate (for example, a credit meter is fitted where a prepayment meter is required) or if the supplier cannot come to a commercial agreement with the existing meter provider, then the supplier may arrange for the installation of a meter.
- Fourth, the supplier can make some other arrangement for the provision of a meter in agreement with the customer. This allows suppliers some flexibility in making non-standard metering arrangements. For example, it allows suppliers to offer to provide a meter to a customer as part of an energy management or remote meter reading system.

9.16. Metering competition will mean that gas suppliers will no longer be able to assume that the meter in place is owned by the GT when they take over a site. Increasingly, they will need to make arrangements with outgoing suppliers who have provided meters other than through the transporter. Whilst it is intended that the RGMA standard industry-wide business processes and data flows will facilitate the transfer of metering data, there is currently no governance around the transfer of the asset itself, other than the principles set out in licence.

- 9.17. In order that competition in metering does not detrimentally affect competition in supply or the wider interests of the consumer, the transfer of assets between suppliers must be completed efficiently. Without governance, the transfer of metering assets between suppliers creates the potential for disputes and disruption to the customer transfer or in the worst-case scenario the enforced replacement of meters every time the customer switches supplier. Ofgem intends to ensure that the incoming supplier has every opportunity to purchase or otherwise acquire the meter in situ and at a reasonable price.
- 9.18. The price of meters must be driven by market forces rather than prescribed by the regulator or any other method of setting prices, though Ofgem will continue to monitor the situation for any evidence of excessive pricing. Equally, any attempt to fix prices may infringe upon Chapter I of the Competition Act 1998. However, there may be some merit in the industry developing common practices over the manner in which agreements are sought, and the timing of such arrangements.
- 9.19. In the majority of cases it will, in practice, be prohibitively expensive to negotiate the transfer of individual meters, especially within the time-scale allotted by the transfer process. It is more likely that metering service providers will have standing agreements with suppliers that are in effect a contract to be switched on in the event of a supplier acquiring a consumer with that service provider's meter.
- 9.20. By virtue of Standard Condition 47 of the Gas Suppliers Licence, the outgoing supplier is prohibited from removing the meter upon a customer transfer if the incoming supplier undertakes to take over the meter on terms that reflect its value. It is likely that under the terms of the competitive contracts, suppliers will remain liable for meters until such time as they are either made available to the service providers (removed) or the contract is taken over by another supplier. Ofgem also envisages that competitive meter operators will seek to keep their assets in place, regardless of the switching behaviour of the consumer. There are therefore significant incentives for the incoming and outgoing supplier (or their agents) to reach agreement on the meter transfer.
- 9.21. The effective transfer of the asset, or arrangements for the continued use of that asset, will depend to a large extent on agreement being reached on the valuation

placed upon the asset and its use. Although it may be relatively simply to determine a price for common models, perhaps based on replacement value and/or age and condition of the meter, this does not take into account other costs, such as the installation of that asset. Furthermore, Ofgem envisages that competition in metering services will stimulate innovation, perhaps resulting in advanced functionality metering, offering a range of value added services. The value an incoming supplier places upon such functionality will depend largely upon its ability to utilise it. If suppliers are unable to use the meter as anything other than a basic meter, they may wish to pay only the going rate for a meter of that type, else require its removal for a cheaper model. However, Ofgem understands there is presently no commonly accepted means of determining the value of a meter.

- 9.22. Although the requirements of Standard Condition 47 are common to both gas and electricity, in the case of electricity they are complemented and further facilitated by the provisions of Standard Condition 7 – Duty to offer Terms for Meter Provision, which is not used in the gas licences. This condition requires the outgoing supplier to offer to enter into an agreement for the provision of any relevant metering equipment owned by it, whether by way of sale, hire or loan. The terms of such an offer will include the date the asset will be made available (or transferred) to the applicant, the charges to be paid to the licensee and other details as appropriate. This could, for instance, include instructions on the operation or maintenance of the meter. In effect, the outgoing supplier or its agent will name its price for purchase or use of its asset.
- 9.23. In contrast, the gas regime would be reliant upon the incoming supplier making a reasonable offer, which is likely to be based on asymmetrical knowledge of the age and condition of the meter, even if the make and model are known. It may therefore be appropriate for the equivalent requirements of Standard Condition 7 to be applied to the gas industry. Although this does not entirely remove the potential for disputes over meter valuation, it at least provides a robust and transparent starting point.
- 9.24. If appropriate, the timing of the asset transfer or an obligation to publish terms could be governed through incorporation into SPAA, or alternatively through the introduction of Standard Condition 7 into the Gas Supply licence.

Transco metering contract

- 9.25. Under Standard Condition 8 of the Gas Transporters Licence, Transco is currently obligated to provide metering services at the premises of a domestic consumer, on request of a relevant shipper. Transco also provides Industrial & Commercial metering services, though it is not obligated by licence to do so. The terms and conditions of these services are currently provided through Transco's Network Code.
- 9.26. Historically, this situation was appropriate as metering services were provided as a matter of course by the transporter, and charged for as part of a bundled transportation charge. However, this is no longer the situation. In particular, Transco has unbundled its metering charges from transportation and is in the process of separating the metering provisions of Network Code into a separate metering contract. Therefore Transco's metering services will no longer be subject to the governance or change control procedures of the Network Code.
- 9.27. As from 1 April 2002 the form of price control on Transco's metering services changed from an RPI-X control to a tariff cap on four of its services. Ofgem has stated that the caps will remain in place until competition is sufficiently developed. In addition, the provision of other services is regulated through a new non-discrimination licence condition¹⁸. Therefore, although still restricted to an extent, Transco now has a greater degree of discretion in the services it offers.
- 9.28. Transco and Suppliers have, through the Metering Contract Group (MCG), undertaken a significant amount of development on a separate metering contract that will facilitate the discharge of Transco's metering obligations. Whilst this contract aims to ensure that regulated metering services continue to be offered with minimal disruption resulting from separation, there are some significant departures from the current regime, such as the contract being between Transco and suppliers, rather than shippers. As discussed, Ofgem will shortly consult on appropriate licence amendments to facilitate this direct relationship.

¹⁸ See [Transco Price Control and NTS SO Incentives 2002-07 Licence modifications](#) – September 2002

- 9.29. Aside from the residual regulation mentioned above, if no further action were taken the governance of Transco's metering contract could be entirely through the provisions of the contract and contract law. In a competitive market this is generally all that is required to ensure that parties agree to reasonable requests and conform to the terms of the contract. However, while Transco retains a *de facto* monopoly in the provision of metering services the ability of suppliers to negotiate reasonable terms may be limited.
- 9.30. Although problems arising as a result of Transco's dominance could be addressed through application of Ofgem's Competition Act powers, it appears that this may be a rather heavy-handed approach. Further, this course of action would only be possible if Transco were abusing its dominant position. Many of the differences experienced in the course of a negotiation are brought about by opposing, yet equally valid, points of view. A more proactive, though light-handed, approach to governance of the metering contract may therefore be appropriate.
- 9.31. Transco is obligated to publish its Network Code and the rules by which it can be modified under Standard Condition 9 of the GT licence. At present, any signatory can propose a modification to the Network Code. No party has a power of veto, though a modification will only be implemented if it furthers the relevant objectives of the Network Code, and is approved by the Authority on that basis. This will apply equally to the removal of metering services from the Network Code.
- 9.32. Ofgem's role in approving modifications to Network Code provides a robust level of protection for both signatories and consumers. It is important that this protection is not diminished as metering is withdrawn from Network Code. Whilst Ofgem is committed to withdrawing from prescriptive regulation wherever appropriate, it does not currently believe that the metering market is sufficiently competitive to withdraw from regulation entirely. In particular, until such time as Ofgem determines the market is effectively competitive, residual metering price controls will remain in place. However, in removing metering from the Network Code, Ofgem would no longer have a clearly defined role in the governance of the contract.

- 9.33. It has been suggested in the MCG that Ofgem should determine disputes over proposed changes to the contract. In considering the mechanism by which issues can be referred to Ofgem it will be important to consider the use of existing, or potentially refined, statutory provisions. By virtue of Section 27A of the Gas Act 1986, the Authority is able to make determinations of certain disputes under sections 9(1)(b) or (2), 10 or 11, or any provisions of paragraphs 2, 3, 15 or 16 of Schedule 2B of the Act. However, none of these relate to the provision of metering services such as under the contract. It is therefore probable that the role of appellate body would need to be established, similar to that under SPAA, which is explained in more detail in Chapter 4.
- 9.34. As discussed, it is envisaged that the Supply Point Administration Agreement will provide the governance and change control for the industry processes developed under the RGMA project. In effect these processes place obligations upon suppliers in terms of what information passes between them (and their agents), much of which will relate to the meter. At this time it is not envisaged that agents will be signatories to SPAA, therefore the suppliers will remain responsible for SPAA obligations and agents will be governed, if appropriate, by backed off provisions within their contracts with suppliers. Any amendment to the RGMA baseline, post-implementation, will be pursued through the SPAA change control process and subsequently need to be reflected in agent contracts.
- 9.35. As the Transco Metering Contract has been under discussion for around 18 months, it should contain all of the current requirements of RGMA. However, as metering is a nascent market, it is likely that the provisions of RGMA/SPAA and any underpinning contracts will need to keep in line with the ongoing needs of suppliers, reflecting the lessons learned and incremental improvements more generally. As an agent, it is not envisaged that Transco's Metering business will be a party to SPAA, regardless of whether Transco GT is. However, unless the governance of SPAA and the contract are interoperable, proposed changes to the RGMA baseline may have to go through one change control procedure and get industry agreement, only to have to go through it again to change a contract that those same parties are signatories to. Equally, the inability or reluctance of one agent to alter its service offering should not preclude the industry as a whole from progressing incremental improvements through changes to the RGMA baseline.

- 9.36. Whilst it can reasonably be expected that suppliers' representatives will at an early stage consult both with colleagues in the business and their agents before commenting and voting upon any RGMA/SPAA change, the approach may subsequently differ according to whether or not the change will have mandatory status. This will also determine what role, if any, Ofgem will play.
- 9.37. One approach may be for changes to non-mandatory provisions of the RGMA baseline to go through SPAA procedures, with suppliers accepting or rejecting that change as usual. The proposal would not include amended contractual text, indeed this would be inappropriate as the content of each agent's contract will be different. However, Transco would know that a change has been approved by suppliers and could either set about drafting appropriate text in facilitation of the change or, in circumstances where the proposal gives rise to concern, could raise the issue at the relevant contract meeting. This could occur where, for example, gas suppliers agree to a change to the baseline through the SPAA, but Transco as the regulated service provider (and therefore restricted in its degree of flexibility) believes it is unable to refine its service offering in line with the change. To the extent that the RGMA change is voluntary or elective, suppliers would not be in breach of SPAA if they fail to secure changes to the Transco contract. Furthermore, the outcome of the Transco contract discussion would not impact upon the changes agreed to SPAA and the service offering of other metering providers. However, if suppliers wish to pursue the change and it proves difficult to resolve this issue at the contract group, it is possible that one or more parties could refer the matter to Ofgem for determination, with Ofgem using the suggested 'reasonableness' provision within the special conditions of Transco's GT licence as a basis for its decision, as discussed in paragraph 9.6.
- 9.38. Changes to RGMA/SPAA provisions that will, or currently, have mandatory status will require the approval of Ofgem. As stated in Chapter 5, Ofgem will have regard to its wider statutory duties in addition to the relevant objectives of the SPAA when deciding upon a change proposal. In Ofgem's view this could appropriately include a consideration of whether Transco as the regulated metering service provider should implement the change proposed under SPAA. This would ordinarily have been the case had metering remained part of the Network Code.

9.39. Given the above, discussions within the Transco contract group could appropriately centre upon the development of the contract, rather than the merits or otherwise of a proposed change to the RGMA baseline. Proposals by any party that do not impact upon RGMA baseline, or are of an entirely commercial nature, would continue to be for the individual parties to determine, with no involvement from SPAA or indeed Ofgem. Furthermore, it would still be open for individual companies to seek, or Transco to offer terms and services outside of those currently envisaged by the MCG. For example, differentiated service levels are already in place in the Incentive Based Contract (IBC) which covers the provision of Transco's residual meter reading services.

9.40. **Ofgem would welcome views on this Chapter, in particular:**

- **Whether the transfer of the meter asset between suppliers or their agents should be subject to collective governance under the SPAA;**
- **Whether SPAA should have any role in or influence over the Transco metering contract, and if so, to what extent.**

10. Further Work

10.1. Ofgem currently anticipates that the processes developed under the auspices of the Review of Gas Metering Arrangements (RGMA) programme will go live in late November 2003. In order for these standard industry-wide business processes and data flows to be subject to effective governance arrangements by, or leading up to, go-live, Ofgem proposes the following indicative timetable:

- Responses to this consultation document received by 18 July 03;
- Having considered responses and incorporated as appropriate, Ofgem publishes SPAA document and Section 23 notice (to introduce the new licence condition) by 15 August 03;
- Responses to Section 23 notice due 12 September 03;
- Having considered responses, make the licence modifications to take effect immediate effect by 11 October 03.

10.2. According to this, and the current RGMA timetable, Suppliers would potentially have around 6 weeks between SPAA licence condition coming into effect and the go live of RGMA processes. According to the change control procedures of the SPAA itself, this should provide adequate time for the insertion of the necessary schedules into the SPAA, especially as nothing precludes work being carried out in this regard prior to the licence condition coming into effect. However, this timetable is indicative only and subject to deliverables both within and outside the control of Ofgem and the wider industry, for instance, the coming into effect of the Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003.

10.3. In addition to the issues raised in this document, Ofgem would invite comments on the drafting of the SPAA itself. Ofgem will collate these comments, along with its own, to be discussed with representatives of the Gas Industry Governance Group and incorporated into the SPAA document, as appropriate.

10.4. **Ofgem would welcome views on the indicative timetable outlines above**

Appendix 1 – Proposed Licence Condition

[Establishing the Supply Point Administration Agreement]

1. The licensee shall, in conjunction and co-operation with all other suppliers, prepare and maintain a form of agreement to be known as the Supply Point Administration Agreement, as may be designated by the Authority for the purposes of this condition generally, being a document
 - (a) designed so that the supply point administration arrangements facilitate achievement of the objectives set out in paragraph [5]; and
 - (b) including the modification procedures required by paragraph [7] and the matters required by paragraphs [4] and [6].
2. The licensee shall be a party to and shall comply with the relevant provisions of the Supply Point Administration Agreement.

[Structure and Accession]

3. The Supply Point Administration Agreement shall be an agreement made between:
 - (a) on the one part, the licensee and all other licensed gas suppliers; and
 - (b) on the other part:
 - [(i) all licensed Gas Transporters in their capacity as providers of supply point administration services; and]
 - (ii) such other persons as are necessary parties, as determined by parties to the agreement.
4. SPAA shall contain provisions:
 - a) for admitting as an additional party to the Supply Point Administration Agreement any person who accepts the terms and fulfils the conditions (each as specified in the SPAA) on which accession to the SPAA [Framework Agreement] is offered;

- b) for the licensee to refer to Ofgem for determination, whether of its own motion or as provided in the SPAA any dispute, which shall arise as to whether a person seeking to be admitted as a party to the SPAA has fulfilled any accession conditions; and if Ofgem determines that the person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the Supply Point Administration Agreement.

[Relevant objectives]

- 5. Objectives of the Supply Point Administration Agreement are:
 - a) the efficient discharge of the licensees obligations under this licence;
 - b) the development, maintenance and operation of an efficient, co-ordinated and economical change of supplier process;
 - c) the furtherance of effective competition between gas suppliers and between relevant [metering] agents.

[Contents]

- 6. The SPAA [shall/may] comprise:
 - a) provisions to facilitate, and procedures and practices to be followed by gas suppliers in relation to changes of gas supplier in respect of any premises;
 - b) a schedule of business processes to be followed by parties to the agreement in the transfer of data between parties, or their agents [in pursuance of an activity documented or required by the Supply Point Administration Agreement];
 - c) a catalogue of definitions, data flows and forms of such data as may require to be transferred between parties to the Supply Point Administration Agreement or their agents in pursuance of such process as mentioned in paragraph 5(b);

- d) such other matters as are or may be appropriate/necessary for the development, maintenance and operation of an efficient, coordinated and economical change of supplier process.

[Modifications]

- 7. The Supply Point Administration Agreement shall comprise:
 - a) arrangements enabling modification of the Supply Point Administration Agreement:
 - (i) so as to better facilitate the achievement of the relevant objectives as set out in paragraph [5], and
 - (j) following consultation with the parties, or representatives of the parties, to that agreement [and energywatch/bodies designated by the Authority].
 - b) provisions (which shall be approved in advance by Ofgem) by virtue of which specified parts of the Supply Point Administration Agreement shall not be capable of modification without the prior approval of the Authority; and
 - c) provisions enabling parties to the Supply Point Administration Agreement [and energywatch/bodies designated by the Authority] to appeal against any proposed modification of the Supply Point Administration Agreement to the Authority for determination.
- 8. The licensee shall take all reasonable measures to secure and implement (consistently with the procedures applicable under or in relation to the core industry documents to which it is party (or in relation to which it holds rights in respect of amendment)), and shall not take any steps to prevent or unduly delay, such changes which are appropriate in order to give full and timely effect to any modification which has been made to the Supply Point Administration Agreement.

[Availability]

- 9. The licensee shall provide for a copy of the Supply Point Administration Agreement to be provided to any person requesting the same upon payment of

an amount not exceeding the reasonable costs of making and providing such copy.