

# Meeting minutes

## ENSG

<b>Date:</b> 03/02/21	<b>Location:</b> Microsoft Teams
<b>Start:</b> 10:00	<b>End:</b> 13:00

## Participants

Panel Chair	Dame Fiona Woolf	
	John Greasley (Interconnector)	James Dickson (OFTO)
	Ed Rees (Consumer Representative)	Douglas Allan (Onshore Developer)
	Marko Grizelj (Technology Supply Chain)	Cathy McClay (Existing Service Provider)
	Thomas Johns (Ofgem)	Darryl Murphy (Asset Investor)
	Hedd Roberts (TO)	Lynne Bryceland (DNO)
	William Black (Planning Representative)	Richard Clay (Seabed Manager)
	Simon Rooke (Asset Contractor)	
Early Competition Project Team Attendees	Hannah Kirk-Wilson	Rachel Payne
	Sally Thatcher	Mike Oxenham
	Richard Paterson	
Offshore Coordination Project Team Attendees	Rhiannon Marsh	
Apologies	Tania Davey (Local Environmental Groups)	Neil Copeland (Ofgem)
	James Norman (Ofgem)	Andy Paine (Offshore Developer)

## Discussion and details

### 1. Previous minutes and actions

Fiona welcomed the group and confirmed the meeting will be focussing on Early Competition.

Rhiannon gave an update on the Offshore Coordination project and said that this month they are publishing a paper on early opportunities to consider coordination of in-flight projects. The team will share more information on their Phase 2 in the Spring, covering where and how they will engage with stakeholders. The Offshore Coordination team are still in the process of refining the Phase 2 scope with transmission network partners and are not currently in a position to bring more details to ENSG or to let

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them know if they will be needed. Rhiannon said it would be good to receive direct contact from ENSG members if they have any comments. Stakeholder engagement will be announced later.

There were no additional comments on the minutes from the previous meeting.

Actions 26, 31, 32, 33 were closed.

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## 2. Early Competition: Role of the TO

Sally Thatcher presented the approach the team have taken on stakeholder engagement, how the ESO have come to their position as well as how the decisions were made and what evidence was used. There had been 12 responses, which was an improvement on the Phase 2 consultation. Sally said they are considering three main questions:

- Should TOs be able to compete and participate in Early Competition?
- If they can, what form does that take?
- If they are participating, how are conflicts of interest managed?

Sally wanted to highlight that they are still only part way through the journey and there will be further discussions with Ofgem as the final decision makers. Phase 2 of the project explored conflicts of interest, considering the first two questions. For the ESO's stakeholder approach, they discussed in workshops the process and where the conflicts start to arise. It was also discussed in bilateral conversations and they discussed with the TOs how they believe they should participate. The ESO position in the Phase 2 consultation was that the TOs should not be excluded and they should participate as a bidder.

Phase 3 then looked at how conflicts could be mitigated. There were further bilateral conversations and joint discussion with the TOs. The Phase 3 consultation set out the proposed mitigation actions. Discussions with TOs showed two of the TOs believed the counterfactual method had more merit so the ESO held two workshops with them about what that might look like.

Sally discussed the stakeholder feedback received from Phases 2 and 3 on slides 8 and 9.

Fiona said she has been quoted on slide 9 but she had not talked in terms of a central network planning body but, rather, an independent planning body.

### **ACTION – Sally to correct Fiona's quote on slide 9 to say independent planning body.**

Sally said that they were looking at how the pathfinder projects were managed to inform what the counterfactual process might look like. Lynne said the pathfinder projects for the Merseyside and stability pathfinders were developed by ESO and not the result of planning or dialogue with the TOs in advance. This caused a mismatch in the scope of the pathfinder projects and where the TOs think network issues are. This then caused issues with connections and volumes. So, Lynne recommended the ESO needs to keep in mind that the pathfinders were run separately from TOs and ESO now agrees that it wasn't the best approach. So, it is useful to look at the counterfactual approach by considering how the pathfinder project may work, but it is not the best example.

Cathy said that she does think the TOs should participate. If the TOs compete, it may mean connection dates are pushed back and the ESO need to consider how they overcome this as there is a problem. However, excluding the TOs is not good for consumers.

Sally set out the reasons why the ESO thinks TOs should participate and the issues there might be on slide 10 and 11, with the rationale for the ESO's position on TO participation.

Darryl said he understands the logic and sympathises with outside bidders going against the incumbent TOs. He felt that there was a risk that bidders would be put off if incumbent TOs were free to compete and whether we could end up in a position where there is little competition as it will be a long expensive

journey. If the outcome of the first bid is that one of the incumbent TOs wins, then there is a difficult dilemma after that. It will be challenging to argue there really is a level playing field. It would always look like the incumbent TOs have the advantage. Cathy replied that in the reactive tender, the incumbent was beaten.

James D said there has been a lot of effort from the ESO to solicit feedback in their consultation and he is conscious of the difficulty to get responses. James said the ESO did what they could to get feedback from the industry but wanted the ESO to focus on the presentation of the results, the decisions that have been taken by the ESO and finally, whether the consultation response is considered comprehensive enough to shape recommendations. James has concerns that the ESO are framing the responses to support their position. Most incumbent TOs disagree with TO participation as a bidder, yet it is set out as if there is overwhelming support for TO participation in that form. James said it is important to consider how responses are presented and to deal with any accusation made to the ESO that they are trying to justify a position they would like to take. It is also unclear if the ESO process to make decisions is entirely based on feedback or if there is a pre-existing direction from Ofgem. It needs to be clear that if it is based on feedback, whether it is appropriate to go with a simple majority and that all stakeholders have the same say. James said it would be useful to articulate the method through which the ESO has arrived at their conclusions.

Sally said it is not as simple as just taking the majority as it is not a fair reflection. The ESO take into account stakeholder feedback and international experience as well as other GB processes. During Phase 2, the ESO asked stakeholders if TOs should participate and if so how. Three stakeholders said “yes”, TOs should participate, two said “yes” with a counterfactual and one said “no”. So, the majority is in agreement that TOs should participate.

Fiona said she is concerned if responses that say TOs should participate with a counterfactual are being amalgamated with other issues; it needs to be looked at separately. James agreed and said that in a previous meeting he asked if the counterfactual approach had been dropped and was told it was, so it is confusing this option is being used to sway the argument when it is not the outcome that is being proposed. Sally said that responses suggesting the counterfactual approach are suggesting they believe the TOs should be able to propose a solution. She feels it is difficult to interpret that response as TOs should not be able to provide a counterfactual solution and participate.

Darryl asked if the winning bid does not provide a suitable or better solution against the counterfactual then would the solution to stop and go to the TO anyway? Sally said “yes”, at some point there will need to be a comparison with the TO counterfactual.

Lynne said her preference is that the TO should be able to participate as the counterfactual which market bids would then be assessed against. Lynne said the Scottish TOs have argued that there should be a counterfactual to ensure the benefits, that the RIIO framework was designed to deliver, are there and if the competition does not work there is then a further option to fall back on. Views supporting the counterfactual approach have been recognised in the consultations but wasn't not considered further in any detail as a potential option as the ESO decided it wasn't their preferred method. There have been challenging circumstances with running engagement with COVID-19 and engagement has been great, but there was never the opportunity to explore this option as part of the formal consultation process, which is something the Scottish TOs would have favoured. It was clarified that Lynne was speaking from her company position rather than representing the DNOs.

Simon said it also depends whether the projects are onshore or offshore as they will be approached in different ways. If the process is just for onshore projects, then the best way to succeed would be to team up with TOs otherwise the cost is too high. A bid without the benefit of a TO in the bidding team would appear unlikely to be successful as very few contractors are involved in onshore projects. Sally said Early Competition is focusing on onshore projects.

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Cathy said the consultation is not based on voting and the ESO will not get an agreement from all stakeholders. The consultation does not set out what is right for consumers and we need to consider benefits to consumers in the long term rather than company interest. Cathy questioned whether Early Competition from independent providers was ever likely to provide a better result if no TOs were present. The result might be more expensive or increase constraints in an effort to complete quickly.

Ed said there needs to be a counterfactual to see if there is more benefit for consumers. From a consumer perspective, if Early Competition means more options could be considered or more parties work together with incumbent TOs, then it will provide benefits to consumers. Darryl agreed and recommended a very focussed market engagement process where there is active engagement to seek market evidence on which the introduction of a new form of competition could be based.

Sally summarised the options if it is assumed TOs would participate with a counterfactual or as a bidder and the ESO's rationale and positions on slides 12 and 13.

Cathy asked why the conflict of interest is higher with a counterfactual approach. Sally said she wouldn't say that it is higher for a counterfactual approach, but that the conflicts of interest would still exist under this approach.

Fiona asked if the ESO felt they had explored this issue enough with the industry. Sally said one of challenges is that it is difficult to get to the bottom of what was being proposed with the counterfactual approach and it is still not completely clear.

Lynne said the counterfactual approach is the current RIIO framework; the ESO needs to discuss the detail as a formal issue if they want to change the counterfactual approach. Sally said the challenge is to tie it in with the Early Competition process and that they need a transparent process where the TOs are held to account. Lynne said this shows that the issue has not been explored enough as a potential option and although she is a representative of the DNOs, feels the TOs should be allowed to discuss this further as well as the rest of industry. There is a need to compare the two fairly. The biggest concern is with the significant delays that could be introduced in the revised counterfactual scenario.

James agreed that it is not clear what the counterfactual approach is, and it seems that a conclusion is being reached without due consideration. This goes back to James' previous point that feedback is being presented as a single view to justify the ESO position. Sally responded that this is something that was raised by the TOs part way through the process and there were only two parties that supported the approach. The ESO feels that this option was looked at in more detail and they needed to keep the discussions moving along because they wanted to focus on conflict mitigation. The ESO view continues to be that this approach would be very challenging, but Ofgem will make the final decision.

Richard Paterson said the TOs see the competition as being the counterfactual; the TOs want to continue as if their processes haven't changed. The ESO has worked with the TOs to get an understanding of what they are proposing, but that process would create a lot of challenges. Lynne explained that the concept is to assess the options against the counterfactual. Early Competition would need a cost-benefit analysis to compare the market response with the RIIO solution. Sally said she understood the sentiment but the practicality of comparing all the bid options with the counterfactual would be difficult and the ESO has not worked out a way to make it work.

Cathy asked if the TOs can participate by bidding and one of them wins, would the assets end up in the regulated asset base. Sally said the TOs would be bidding for TRS like any other participants and it would be treated the same way for a fair comparison of costs. Cathy responded that this would mean a mixed model that would be very difficult, and in that case, she believes the incumbent TOs should not be participating. They would need a completely ringfenced business like NGV to compete.

Sally summarised the options for conflict management if the TOs are participating and the rationale for the ESO's position on slides 14 and 15.

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James said that some issues are more significant than others. He asked how the planning resource would be split between the ESO and TO and whether it would be one or the other carrying out the planning. Richard P mentioned the potential loss of planning expertise from the TOs. Lynne explained that TOs understand well the communities and the landscape. Darryl talked of perception over reality and James agreed that sign off from the top could be difficult if it was explained that a potential bidder had taken part in setting up the basis for the competition. Sally said the ESO would do the initial planning and the TOs would do the more detailed network planning. Fiona said the TOs need to keep planning teams in place for asset health, asset replacements and handling new connections. The duplication of resource comes through the need for the TOs to retain some planning functions. There may be a small amount of duplication. The issue is how the decisions are made (in or after the NOA process).

Fiona summarised the discussion and said that presentation is key, and the evidence and rationale used by the ESO needs to be set out clearly. The ESO also needs to ensure responses on the issues are set out separately and not used to argue for other options. The mechanics of a counterfactual approach needs to be explored further and the perception that there is not a level playing field that could deter bidders needs to be considered. The ESO also needs to consider if it is possible to run a market engagement survey or exercise to get more views.

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### 3. Early Competition – Commercial Model

On slide 29, Mike Oxenham gave an overview of the points the ESO are considering and asked ENSG for their views on the completeness of the list of the discussion points.

Darryl said they were four good points to raise and were the right ones. Darryl asked if a point he had raised in a previous meeting about the role of equity and whether it is required upfront is on the list. Mike said it is and there have been some recommendations that equity could be brought in later than originally suggested.

Simon said he also agrees with the points and agreed with what Darryl raised on equity. Simon said he does not like idea of a performance bond and tapering the amount as it would be also be required by funders. He asked if there will be a reward and penalty for debt competition outperformance. A penalty would be unfair as it could easily be triggered by market performance. Mike said they are only considering an upside as potential bidders are not comfortable in taking the risk of a downside. It is still very early days in thinking about what an incentive could look like and the ESO are going to flag to Ofgem that it needs more thought.

Darryl said a good option for the debt funding competition would be to incentivise the sponsors to be engaged throughout the process as in his experience, it feels like sponsors are being dragged through it. It would mean giving away some of the essential savings, but it might be worth it in the long run. The benefits would be hard to quantify but it seems like a logical argument.

Lynne said system stability is important and there are many elements to the frameworks and procedure standards that currently need to be followed by TOs, so the ESO should look at the existing RIIO framework as a starting point. Mike said it was a valid point but there are differences in the model which would mean it cannot be applied as is, but in some cases, it might be appropriate and in others they may need to adapt it.

Cathy said it would be good for the ESO to highlight where they have changed their position in response to feedback. Mike said on the commercial model, in many cases, it is probably where they have refined and further developed their position, but there are some instances where the ESO has changed their mind and they can ensure these are flagged to Ofgem. Mike also wanted to highlight that their original views on the commercial model presented in Phase 2 were developed taking the diverse stakeholder views from their engagement, including webinars, into account too.

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#### 4. AOB

Fiona said the Early Competition Team are working towards the end of April to deliver the Early Competition Plan to Ofgem and BEIS and they need a report from ENSG on their role in reviewing the stakeholder engagement. The comments in the paper will not refer to individuals but may say what sector the comments came from.

Fiona said the report writing is in progress and will discuss the views of ENSG, including the fact that the ESO has been as active as possible in stakeholder engagement, even if the number of responses to the Early Competition consultation was disappointing. The group has not really suggested anything that the ESO should have done that they haven't and there were a few compliments on the way about the amount of engagement the ESO have been doing.

Lynne said the quality of stakeholder engagement has been very high, particularly given the COVID situation, and it might have helped with these sessions having been online to make it easier to attend and reduce travel. Ed agreed with Lynne's comments.

James asked what the next steps were with the involvement of Ofgem and if there were any updates on the primary legislation timetables. Hannah said there were no updates for the timetable but Ofgem and BEIS are keen to progress this. Thomas, representing Ofgem, said the next steps will be to check their understanding of all the aspects and then take forward their own views on additional work that needs to be done, with support from the ESO towards a consultation in the summer.

Fiona requested that members fill in the optional sli.do polls, if they would like to do so, to answer some of the questions posed by the team. She agreed with the earlier consensus that the ENSG's role was not about voting but providing a forum for oversight of stakeholder engagement, as well as input and discussion.

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