

| CROSS SECTOR | |
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| REFERENCE NUMBER: | CATEGORY: Addition |
| LICENCE CONDITION NUMBER: <i>(if relevant):</i> | SpC 3.2 SpC 3.3 |
| TITLE: | Reopener Guidance – Appendix 1 Cyber Resilience IT and OT Re-opener Application Guidance |
| RELEVANT LICENCE CONSULTATION QUESTIONS <i>(if any):</i> | Q4 – Do you agree with our principles for Associated Documents? Q5 – Do you have any views on our proposed list of Associated Documents and the timetable for consulting and implementing them? Q21 – What are your views on the principles we have created for drafting re-opener licence conditions? |
| RELEVANT ISSUES LOG: | Cross Sector Sept Issues Logs_Cyber_BusinessIT_issues_log_updated.xls provided on 02/10/20 |
| POLICY ISSUES | |
| <ul style="list-style-type: none"> Overarching Reopener Framework views (recap) General Observations (Page 4 of Appendix 1) | <ul style="list-style-type: none"> Our overarching key points of feedback in relation to the re-opener framework aspects of Ofgem’s informal licence drafting consultation apply equally to Cyber Reopeners and are summarised here for convenience: <ul style="list-style-type: none"> True obligations (which should be on the face of the licence) should be distinguished from guidance (which should be in the Associated Document & failure to meet is not an enforcement issue) – see our response to consultation Q4 (principles for Associated Documents) The end to end reopener process from application to Ofgem decision should be set out on the face of the licence The licence should contain specific binding timeframes for each Ofgem reopener decision Ofgem decisions changing outputs, delivery dates and allowances should be by statutory licence modification process, not by Direction (this preserves the right of appeal for Network Companies) Network companies should set out the validity period, deadlines or assumptions in relation to key dates by which Ofgem’s re-opener decision is required to enable adherence to the submitted proposals Ofgem should commit to give full transparency of the data sources, consultant reports, evidence and assumptions it relies upon in support of its re-opener decisions Paragraph 1 on page four refers to information that “<i>must or should be included</i>” in an application. This is unclear. Either information must be provided (a requirement unless caveated) or it may be provided (optional). It is not clear what distinction is being made here between what must or should be provided as both imply a requirement or obligation. Whilst recognising the caveats acknowledged in the second paragraph of page 4, the document needs to provide clarity on (1) what must be provided (2) what may be provided where it is available to the licensee, and (3) what (if anything) is optional. Please can Ofgem clarify this in the drafting. |

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| <ul style="list-style-type: none"> • 1.4 (Options Selection) • 1.5 & 1.6 (Preferred Option Details per project) | <ul style="list-style-type: none"> • We wish to highlight that the list of reopener application content is comprehensive, aspirational and idealistic. It is to be expected that it will not always be possible for the level and depth of project plans & details expressed to be in place ahead of establishing a regulatory funding stream. Therefore, we strongly support the need to acknowledge this through the inclusion of the caveats expressed in paragraph 2 on page 4 that <i>“There may be some projects/solutions where network companies will not be able to provide the necessary level of details listed within this section”</i>. These limitations are equally relevant for both Cyber IT and Cyber OT applications, therefore the acknowledgements in paragraph 2 should not be confined to OT applications. The guidance should go further and confirm that, in light of this acknowledgement, the inability of a licensee to provide the necessary level of details listed in the Appendix will not prejudice the assessment of the application where the licensee provides an explanation for the missing information. • We note that for Cyber the timescales are such that we have already commenced preparation of the reopener applications, notwithstanding that this written guidance is yet to be concluded. • We query if it should be mentioned in this section that the options assessment exercise should include assessment of “do nothing” including the consequences, or consumer benefits associated with the considered options. • We expect that key assumptions underpinning the evaluation of options should be stated (and that as part of its assessment of re-opener applications Ofgem should explain its own assumptions underpinning its assessment to the extent that these may differ from those of the network company). • Further to our general observations about excessive/unrealistic level of detail, we wish to specifically highlight that we do not consider it essential, proportionate or reasonable to provide <i>“site breakdown per project...”</i> as contemplated in 1.5 third bullet point. Similarly, we would not always expect to be able to provide at the time of reopener application <i>“an overview of the technological architecture and assets of each site”</i> as contemplated in 1.6 third bullet point. [REDACTED] [REDACTED] [REDACTED] We request that the strength of expectation upon licensees for re-opener applications is adjusted accordingly. This could, for instance, be achieved by amended drafting at 1.5 bullet 3 and 1.6 bullet 3 such as <i>“where such information is available to the licensee at the time of the IT or OT application, site breakdown per project.... / an overview of the technological architecture”</i>. Please note we are not opposed to providing transparency of such site details at an appropriate time and through an appropriate forum e.g. during the delivery phase through our regular engagement with the competent authority. |
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| <ul style="list-style-type: none"> • 1.7 (Technical feasibility and consumer benefit) • 1.8 (Project delivery and monitoring) • 1.9 (Agile Delivery Methods) • 1.13 & 1.14 (Breakdown of costs for preferred option) • 1.15 & 1.16 (Justification and Efficiency of Costs) | <ul style="list-style-type: none"> • Further to our general observations about excessive/unrealistic level of detail, we wish to specifically highlight that we do not consider it practical to necessarily provide project specific pre- and post-delivery risk impacts as contemplated in 1.7 second bullet point. This is because there is not always a one to one relationship between projects and risks – more often a combination of projects and other programme initiatives act together to bring about a targeted reduction in cyber risks. Once again, we request that the strength of expectation upon licensees is adjusted accordingly. • Once again, we consider the level of detail contemplated to be excessive and unrealistic. Noting that the decision point for award of regulatory funding comes prior to the project sanction stage of our scheme delivery process, the level of detail that is proportionate and reasonable to provide should be considered accordingly. E.g. we would not expect to have details of “<i>number of resources required</i>” by project as contemplated in 1.8 third bullet. We suggest it should be sufficient to provide a high-level plan with key milestones, most likely linked to our scheme delivery process, e.g. milestones for project sanction (at the start) and commissioning (at the end). • We support that network companies should have latitude to adopt different project management techniques as they see fit including the use of agile delivery methods. However, we do not think it is appropriate for this type of guidance document (which ought to be agnostic to project management toolset) to devote an entire section to guidance on the use of agile delivery methods. • 1.13 fifth bullet, 1.14 first and second bullets. While we understand the potential relevance and desire for project cost by site and information about how deployment of new cyber controls may impact running costs, we do not think it is proportionate or reasonable to require such a mandatory breakdown at <i>site</i> level. It should be recalled that there may be over 500 affected operational sites across ET and GT. Site granularity is not available in current regulatory reporting data sets which use different cost capture classifications e.g. Staff Costs, Closely Associated Indirects, Non-Routine Maintenance, etc. In some circumstances it may be more informative to use these breakdowns to aid understanding of impact on running costs. • We propose the wording in this section should be broadened to refer to “<i>sourcing approach</i>” rather than narrowly refer to “<i>procurement and tendering</i>” processes. This is because there will be circumstances where the most advantageous sourcing approach may be to deliver scope with in-house resources, in which case this will not involve recourse to procurement and tendering steps. |
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| | <ul style="list-style-type: none"> 1.16 first bullet point states: <i>“Best effort view of baseline costs supplemented with uncertainty costs based upon delivery risk.”</i> We think the intention of this bullet is not very clear; e.g. is it expected the uncertainty cost will form part of the requested allowance? We suggest it may be clearer to reword this bullet to the effect <i>“Requested allowances should be supported by an explanation of the network company’s approach to cost estimation. This may include a qualitative or quantitative explanation of a baseline cost element (e.g. probabilistic P50 value) and an allowance element for project risk and contingency. The latter may be supported by a risk register.”</i> |
| DRAFTING ISSUES | |
| <ul style="list-style-type: none"> Cover page Page 4, paragraph 1 Page 4, paragraph 2 Opening lines of 1.3, 1.4, 1.5, 1.7, 1.8, 1.13 1.5 | <ul style="list-style-type: none"> This paragraph should refer to a guidance document not a governance document. This paragraph should also expressly reference applications for cyber IT and OT re-openers and not just re-openers more broadly. Please see our policy comments above in relation to Paragraph 1 on page four referring to information that <i>“must or should be included”</i> in an application. The document needs to provide clarity on (1) what must be provided (2) what may be provided where it is available to the licensee (3) what (if anything) is optional. Please can Ofgem clarify this in the drafting. In final line refer to <i>“IT and OT applications”</i> as such terms have been defined earlier in the paragraph. Please see our policy comments above in relation to paragraph 2 on page four. This paragraph should apply equally to both IT and OT applications. Therefore, line 1, delete <i>“As regards OT applications,”</i> and line 4, delete <i>“in relation to OT”</i>. These lines should follow the same structure as 1.2 and state <i>“IT and OT applications must include, but need not be limited to...”</i> Please see our comments above on 1.5 bullet 3 in the policy section. Certain site breakdown per project information will not be available at the time of making the application. Relevant bullet points where this is relevant should therefore be caveated as suggested above. In relation to bullet 3 this would read <i>“where such information is available to the licensee at the time of the IT or OT application, site breakdown per project....”</i> |

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| <ul style="list-style-type: none"> • 1.6 | <ul style="list-style-type: none"> • 1.6: similar point to 1.5 above. Please see our comments above on 1.6 bullet 3 in the policy section. Suggest amending to read <i>“where such information is available to the licensee at the time of the IT or OT application, an overview of the technological architecture”</i> |
| <ul style="list-style-type: none"> • 1.6 | <ul style="list-style-type: none"> • 1.6 states <i>“should include”</i> (not <i>“set out”</i>). See comment above. How does this differ from <i>“must”</i>? Drafting should either state <i>“must”</i> or <i>“may”</i> to distinguish between a requirement and an option. |
| <ul style="list-style-type: none"> • 1.8 | <ul style="list-style-type: none"> • 1.8 first and second bullets; replace <i>“Detailed”</i> with <i>“High-level”</i> project plans, for reasons explained in policy comments above. |
| <ul style="list-style-type: none"> • 1.9 | <ul style="list-style-type: none"> • Please see our policy comments above in relation to the proposed inclusion of 1.9. Notwithstanding these comments, if retained 1.9 should adopt the same drafting approach as the first line in 1.2 and clarity should be provided as to whether this information <i>“must”</i> be provided or whether it <i>“should”</i> be provided. Suggest <i>“IT and OT applications that make use of agile delivery methods [may] [must] set out...”</i> |
| <ul style="list-style-type: none"> • 1.10 | <ul style="list-style-type: none"> • 1.10, line 1 delete <i>“of”</i> after <i>“justify”</i>. |
| <ul style="list-style-type: none"> • 1.13 | <ul style="list-style-type: none"> • 1.13 fifth bullet asks for a breakdown of costs for each site. See our policy comments above. We suggest this requirement should be qualified to the effect: <i>“where such information is relevant and available to the licensee at the time of the IT or OT application...”</i> |
| <ul style="list-style-type: none"> • 1.14 | <ul style="list-style-type: none"> • 1.14. states <i>“should set out”</i>. See comment above. How does this differ from <i>“must”</i>? Drafting should either state <i>“must”</i> or <i>“may”</i> to distinguish between a requirement and an option. See also our policy comments above; site breakdown will not necessarily be available and/or may not be the most helpful way to consider impact on running costs. We suggest this requirement should be amended or qualified to the effect: <i>“where such information is relevant and available to the licensee at the time of the IT or OT application...”</i> |
| <ul style="list-style-type: none"> • 1.15 | <ul style="list-style-type: none"> • 1.15 should refer to <i>“The licensee”</i> • 1.15 states <i>“should provide”</i>. See comment above. How does this differ from <i>“must”</i>? Drafting should either state <i>“must”</i> or <i>“may”</i> to distinguish between a requirement and an option. |
| <ul style="list-style-type: none"> • 1.16 | <ul style="list-style-type: none"> • 1.16: line 1 should refer to <i>“an IT and OT application”</i> rather than a <i>“re-opener application”</i> • Second bullet. Please see our comments in the policy section above. We suggest it may be clearer to reword this bullet to the effect <i>“Requested allowances should be supported by an explanation of the network company’s approach to cost estimation. This may include a qualitative or quantitative explanation of a baseline cost element”</i> |

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| | <i>(e.g. probabilistic P50 value) and an allowance element for project risk and contingency. The latter may be supported by a risk register”.</i> |
| FINANCE ISSUES | |
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| SUPPORTING INFORMATION | |
| OFGEM ENGAGEMENT: | |