

# 0550 - Project Nexus: Incentivising Central Project Delivery

Considerations for Workgroup  
discussion – 4<sup>th</sup> September 2015





# Considerations

- Scope of Modification
- Independent Assessment
- Quantification of damages
- Relevant objectives
- Precedent



# Scope of Modification

- Transporter obligation to pay liquidated damages to Users (Shippers) where Transporter agency fails to deliver Project Nexus by 1<sup>st</sup> October 2016 (Project Nexus Implementation Date (PNID)).
  - Modification refers to 'Core delivery' but also mentions UNC 0432 and 0434. No reference to 0440.
  - Need to clarify.



# Independent Assessment

- Selection and appointment of assessor.
  - Responsibility for appointment?
  - Competitive tender?
  - Value and length of contract and funding.
- Determination/evaluation of Transporter liability for 'liquidated damages'.
  - Need to agree clear criteria for identifying source of non delivery (Transporter/User/iGT).
  - Code referenced document?
  - Challenge and appeal mechanism?
- Timing of tender and appointment.
  - When (need to avoid retrospectivity)?
  - What happens if PNID changes through e.g. Shipper raised Modification or Ofgem determination (outside of Transporter's control) – is 'backstop date changed'?



# Quantification of damages

- User eligibility for damages.
  - Which Shipper?
    - Those “who have met both the initial and the revised implementation dates” unclear?
      - Needs to be an assessor?
- How is this determined (Mod refers to PwC report)?
  - E.g. Shipper deemed to be ready by assessor at later date proven to be otherwise?
- Appeal mechanism for Shippers deemed to be ineligible?



## Quantification of damages (continued)

- Identification and calculation of loss?
  - Need methodology - onus must be on each and every Shipper to individually demonstrate damages and loss?
  - This appears to rule out sharing of liability on portfolio size (MPRN count) or throughput/other.
  - How is initial claim validated/accepted by Transporter?
  - Frequency of payments?
  - How is Transporter liability apportioned between each GDN and NTS?
- Auditability.
  - Requirement for appropriate and independent scrutiny and validation of claim history?



## Relevant objectives

- c) Efficient discharge of the licensee's obligations.
  - Unclear which obligation?
- d) Securing of effective competition:
  - Can be reasonably argued.
- f) Promotion of efficiency in the implementation and administration of the Code.
  - Assume refers to consequential delay in implementation of Nexus Modifications.

Modification states “By increasing the probability of timely delivery this modification may also decrease the volume of inaccurate data entered into Settlement”. Clarification of statement necessary.



# Precedent

- Sets aside fundamental UNC principle contained within TPD V8.1. 'Limitation of Liability'.
  - Proposed text states (c) in the event of non delivery of Project Nexus caused by any act, omission, default or failure of the Transporter's Agent Liquidated damages payments will be permissible at [ £x per day.]
  - Will need to be revisited as obligations unclear.
- Liquidated damages unenforceable if used as a penalty.
- Sets precedent for further 'carve outs' from well established UNC principle.