

# ELEXON

## CAPACITY MARKET RULES CHANGE PROPOSAL REPORT: CP376 'CLARIFYING RESTRICTIONS ON THE ROLE OF AGENT'

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This Change Proposal seeks to clarify the policy intent behind Rule 3.3.5, that an Agent cannot also be a member of a Group (the direct or indirect Holding Company and any Subsidiary of that Holding Company) that includes a member acting as an Agent representing other Applicants.

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Public

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## About this Document

In this document, capitalised terms used are defined in the Capacity Market Rules unless expressed otherwise.

This document is aimed at those with at least a moderate level of understanding of the Capacity Market Rules.

Not sure where to start? We suggest reading the following sections:

- Have 5 mins? Read the executive summary
- Have 15 mins? Read the issue, solution and impact and costs sections
- Have 30 mins? Read all sections
- Have longer? Read all sections, the annexes and attachments

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## Executive Summary

A summary of CP376, including the Proposal Form, can be found on the [CMAG Website](#).

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### Issue

The policy intent for Rule 3.3.5 is that each single CMU or multiple CMUs who all belong to the same Group (a holding company and its subsidiaries) is represented either by the Applicant themselves or by a nominated Agent who acts as Applicant, Bidder and/or Capacity Provider for only that CMU or the CMUs of that Group.

This rule is in place to ensure that those with the ability to bid in the CM auctions are acting independently so that the market remains competitive.

It is currently possible and within the rules for one Group to act as an Agent for multiple CMUs from different Groups by forming subsidiaries, such as a special purpose vehicle (SPV). However, this clearly contradicts the policy intent behind Rule 3.3.5

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### Solution

The Proposer seeks to amend Rule 3.3.5 to clarify that an Agent cannot also be a member of a Group (the direct or indirect Holding Company and any Subsidiary of that Holding Company) that includes a member acting as an Agent representing other Applicants.

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### Impacts and Costs

Impacts and Costs	
Organisation	Comment
CMSB	Low impact, no known enduring costs.
EMR DB	Low impact and low cost associated with checking Agent Nomination Forms.
Industry	Low impact.

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### Recommendation

The CMAG recommends to Ofgem:

- a) That the Proposed CP376 solution better facilitates Ofgem's Principal Objective;
- b) That the Proposed CP376 solution better facilitates the CM Rules Change Objectives:
  - (b)Facilitating the efficient operation and administration of the Capacity Market
- c) The draft legal text for the CP376 solution.
- d) That the CP376 solution should be **implemented**

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## Issue

Per the definition in the Rules, the Applicant is the person that has submitted or is entitled to submit an application with respect to a CMU. There must be only one Applicant with respect to any CMU, and the status required to be an Applicant is set out for each category of CMU in Rule 3.2.

Pursuant to Rule 3.3.5, an Applicant may nominate an Agent to perform its obligations with respect to a CMU by submitting an Agent Nomination Form. This permits the Agent to act as Bidder on behalf of that CMU, which is a role that is otherwise only permitted by the Applicant, in the instance where they have not nominated an Agent.

The policy intent for Rule 3.3.5 is that each single CMU or multiple CMUs who all belong to the same Group (a holding company and its subsidiaries) is represented either by the Applicant themselves or by a nominated Agent who acts as Applicant, Bidder and/or Capacity Provider for only that CMU or the CMUs of that Group.

This Rule is in place to ensure that those with the ability to bid in the CM auctions are acting independently so that the market remains competitive.

It is currently possible and within the CM Rules for one Group to act as an Agent for multiple CMUs from different Groups by forming subsidiaries, such as a special purpose vehicle (SPV). However, this clearly contradicts the policy intent behind Rule 3.3.5.

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## Solution

This proposal seeks to extend the definition of Agent in the CM Rules to cover all entities belonging to the same Group (a holding company and its subsidiaries). This is intended to better realise the policy intent behind Rule 3.3.5(c), which limits Agents to representing either a single CMU or multiple CMUs who all belong to a single Group. Ofgem also would also like to address a housekeeping error in Rule 3.3.5(e).

CP376 seeks to amend Rule 3.3.5 to clarify that an Agent cannot also be a member of a Group (the direct or indirect Holding Company and any Subsidiary of that Holding Company) that includes a member acting as an Agent representing other Applicants.

Rule 3.3.5 as written is not effectively limiting Agents to representing a single CMU or multiple CMUs belonging to a single Group, which is the clear policy intent behind the rule. Ofgem highlights that their concern is that, by forming subsidiaries which each act as an Agent on behalf of a CMU, one Group could control the bidding behaviour of multiple CMUs from different Groups in the CM or could bid with the advance knowledge of how CMUs from different Groups would be bidding. There is a risk associated with Agents obtaining more market power through this approach which could be used to secure an artificially higher clearing price in the CM Auctions.

Ofgem's principal objective is to protect the interests of existing and future consumers, they therefore believe it is necessary to intervene to prohibit behaviours that could result in an artificially higher clearing price in the CM Auctions, which are costs ultimately payable by consumers.

This proposal would facilitate the efficient operation and administration of the CM by supporting competition in the CM and preventing the misuse of market power which may lead to inefficient auction outcomes, as set out in the CM objectives under Regulation 78 of The Electricity Capacity Regulations 2014. It would also help to track the number of truly individual entities who are bidding in the CM Auctions.

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### Legal Text for CP376

#### 3.3.5 Submitting an Application at Prequalification

3.3.5 An Applicant may nominate an Agent to submit an Application for a CMU on its behalf and to otherwise perform its obligations under the Regulations or the Rules (whether in its capacity as Applicant, Bidder or Capacity Provider) provided that:

- (a) an Agent Nomination Form with respect to such Agent is included in the Application;
- (b) only one Agent is appointed by an Applicant with respect to a CMU at any one time;
- (c) such Agent (or any member within the Agent's Group) is not also the Agent for any other Applicant (unless the other Applicant is a member of the same Applicant's Group);
- (d) if the Applicant wishes to revoke the appointment of an Agent or to appoint a different Agent, the Applicant must submit a new Agent Nomination Form to the Delivery Body; and
- (e) the Agent shall have not have the authority to sign any Prequalification Certificate, Price-Maker Certificate, Certificate of Conduct or any other directors' or officers' certificate or other formal representation required to be submitted by the Applicant pursuant to the Regulations or the Rules.

### 5.13 Prohibition on other unreasonable business methods

5.13.1(e)(iv) to any Agent nominated by or on behalf of the Applicant to conduct its Application and Bidding provided that such Agent (or any Member within the Agent's Group) is not also the Agent of any other Applicant (unless such other Applicant is a member of the Applicants group)

#### Exhibit C: Form of Certificate of Conduct

(e)(iv) to its Agent provided that such Agent (or any Member within the Agent's Group) is not also the Agent of another Applicant (unless the other Applicant is a member of the Applicants Group)

#### Exhibit E: Agent Nomination Form

2.5 Agent's Company Number

2.6 Agent's Group - Ultimate Parent Company Name:

2.7 Agent's Group - Ultimate Parent Company Number:

## CMAG Development/Discussions

CMAG discussed CP376 at:

- [Meeting 15](#) (13 December 2024);
- [Meeting 16](#) (16 January 2024); and
- [Meeting 17](#) (22 February 2024).

Below is a summary of all key discussions.

### Policy Intent

Ofgem noted this change has been raised to align Rule 3.3.5 with the policy intent as there are instances where this is not being applied in practice. Ofgem noted they are proposing to amend Rule 3.3.5 to extend the definition of Agent to include any subsidiary within the Agents group. Ofgem further noted the possible impacts of not implementing this change would be that one Agent group could control the bidding behaviour of multiple Capacity Provider Groups' CMUs and impact Auction outcomes.

A Member noted that the CMU notifies their Agent on what they wish to submit as a bid, so CP376 does not address this information being shared. Ofgem noted there is no issue with multiple CMUs belonging to a single group in the CM as this is clear and transparent. The issue this proposal highlighted is where multiple Agents belong to the same group and have access to a significant amount of bidding information that is not transparent in the CM.

**Commented [S(1):** This change to the Exhibit C would lead to the Exhibit no longer falling under 3.3.6A (the rule that allows re-use of certain exhibits that have not changed, often called Evergreen Exhibits) and any change would mean Capacity Providers who have already submitted an Exhibit C would have to re-submit a revised Exhibit C, including new Directors signatures.

The existing Agent definition in the rules references Rule 3.3.5 which as above is being amended to include Agent's Groups and so just the term Agent when capitalised will include all of the requirements within 3.3.5.

We feel whilst this change to the exhibit adds certainty to the rule drafting this certainty is outweighed by the additional cost for the updated Exhibit C, both on Applicants and the Delivery Body. We would recommend either making no change to the Exhibit C and retaining the other changes in this report or if this is seen as unclear updating the Agents definition rather than the Exhibit C. We do not believe updating the definition is necessary but would be an option if others feel the current definition is unclear.

This change was discussed after our initial Impact Assessment, if the Exhibit C is amended this will lead to higher implementation costs in the first year and a system change that has not been scoped (as the Exhibit C is in the Exhibit Generator tool). Our main concern is the additional administrative burden on Applicants.

A Member noted this change seeks to address a concern that an Agent can put in place a Special Purpose Vehicle (SPV) that would effectively breach Competition Law, but this should be addressed through the Competition Markets Authority. Ofgem noted they have established the current boundaries that exist e.g. completion law, but this change seeks to make sure the CM Rules are in line with the policy intent.

### Role of Agent in wider CM Rules

A Member noted there is a 'professional advisor' role within the Rules that allows someone to act essentially as an Agent but without conducting any bidding on behalf of a Capacity Provider. The Member further noted that you do not need to be nominated as an Agent to receive access to the bidding platform, so a holistic review is needed to understand what roles have access to what information and platforms would be useful in the future. CMAG agreed this was out of scope of CP376, but would be reviewed in the future.

It was queried how the solution would impact joint ventures, where a CMU is owned by two companies, therefore each company may have oversight of bidding strategy of another company. Ofgem noted they are considering a broader issue of how much information is shared between parties and how transparent this is, looking at data flows and bidding behaviours prior to Auction, which will feed in to future reviews with DESNZ.

A Member highlighted that most Agents acting in the CM are also a Capacity Provider as they require knowledge of the CM and Portal in order to effectively be an Agent. It was highlighted that some Agents do not get involved in the bidding for a Capacity Provider, but instead provide administrative assistance for other areas.

## Impacts & Costs

### CP376 Impacts and Benefits

Impact Summary			
Organisation	Item(s)	High/Medium/Low	Comment
Capacity Providers	Nominated Agents	Low	Through review of the CMR, CP376 will impact a low number of Capacity Providers who have nominated Agents.
EMR DB	Assurance	Low	Based on current low number of Agents, CP376 will require EMR DB to update the Agent Nomination approval process carried out as part of the Prequalification assessment, as well as further checks when subsequent Agent Nomination forms are submitted.

### Rules

- i. Rule 3.3.5 Submitting an Application for Prequalification

### Regulation and Other Code Impacts

The CMAG determined there are no impacts on the Regulations or other industry codes.

## Views against CM Rules Change Objectives and Ofgem's Principal Objective

Does CP376 better facilitate the CM Rules Change Objectives and Ofgem's Principal Objective		
Objective	Proposer's View	CMAG Views
Ofgem's Principal Objective	Positive	Positive
Promoting investment in capacity to ensure security of electricity supply	Neutral	Neutral
Facilitating the efficient operation and administration of the capacity market;	Positive – aligns the CM Rules with policy intent and provides clarification on interpreting Rule 3.3.5 to ensure consistency amongst CM Participants.	Positive – CMAG agree with the Proposer.
Ensuring the compatibility of capacity market rules with other subordinate legislation under Part 2 of the Act.	Neutral	Neutral

## Delivery Partners Comments

CMSB confirmed CP376 will be a **low** impact change.

EMR DB provided the following information in their Impact Assessment of CP376:

Question	Response
Please provide your view on the technical feasibility of the solution, and any constraints that need to be considered.	<p>The EMR DB can confirm this change is technically feasible to deliver. We have based this Impact Assessment on current low numbers of Agents and use of a manual process, but if volumes were to increase significantly, we would need to investigate making some system changes to support higher volumes.</p> <p>This change would result in an update to our Agent Nomination approval process carried out as part of the Prequalification assessment as well as further checks when subsequent Agent Nomination forms are submitted.</p>
Are there any alternative options that you believe need to be considered to mitigate risk or excessive cost?	No. The DB is already proposing to implement a manual solution that will minimize the level of change required to achieve the change objective.
What are your expected timescales for implementation of CP376	The Delivery Body estimates that any change would take approximately two months to develop, implement and test following final rule wording.
What are the implementation and ongoing costs?	<b>Low</b> – The main implementation cost will be developing changes to our internal Agent Nomination approval process to identify potential Agent's Groups. The main assurance will still come from true and accurate declarations in Exhibit E.

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## Recommendations

At its meeting on 22 February 2024, the CMAG made the following recommendations to Ofgem:

- a) That the Proposed CP376 solution better facilitates Ofgem's Principal Objective;
- b) That the Proposed CP376 solution better facilitates the CM Rules Change Objectives:
  - (b)Facilitating the efficient operation and administration of the Capacity Market
- c) The draft legal text for the CP376 solution.
- d) That the CP376 solution should be **implemented**

**Appendix 1 – Summary of Questions on Issue and Government Policy for CP376**

<b>Questions Considered by the CMAG</b>	
<b>Question</b>	<b>Conclusion</b>
<b>Does this CP address a valid issue? Is the CM the right place to address this issue?</b>	CMAG noted this is a valid issue and Rule 3.3.5 could be interpreted differently by Capacity Providers so providing clarity is a useful change.
<b>Is the solution counter to policy intent?</b>	No, the solution seeks to clarify policy intent.
<b>Does this affect any functions granted to the Secretary of State?</b>	CMAG did not identify any impacts on functions granted to the Secretary of State.
<b>Does this CP have an impact on the Subsidy Control Framework?</b>	CMAG did not identify any impacts on the Subsidy Control Framework.
<b>Does this CP align with the current policy intent and Regulations?</b>	CMAG agreed this CP makes clear the current policy intent of Rule 3.3.5 and does not have any known impact on the Regulations.

**Appendix 2 – Summary of Standard Change Proposal Questions for CP376**

<b>Questions Considered by the CMAG</b>	
<b>Question</b>	<b>Conclusion</b>
<b>Are there any related changes to the CM Rules in the pipeline?</b>	CMAG did not identify any related changes.
<b>Does the CP impact on the Regulations? Are there any impacts on any other central industry frameworks or obligations?</b>	CMAG did not identify any impacts on the Regulations or other central industry frameworks.
<b>Does CMAG agree with the proposed solution? Are there any suitable alternative solutions to address the defect?</b>	CMAG agreed with the legal text, and did not wish to propose any alternative solutions.
What are the expected impacts and implementation/enduring costs for CM Participants?	<p>A Member noted that requiring an individual Agent for each Capacity Provider may increase costs within the CM by requiring additional resource for Capacity Providers to procure and therefore the end consumer. The Proposer noted that it is only activity related to the Agent's ability to bid for the Applicant, and this is not considered to be a high cost for a Capacity Provider to procure. Furthermore, there is only one Agent that would be impacted if this CP was approved, so the impact and associated cost would be low across all CM Participants.</p> <p>A Member queried if there is a process for Agents to demonstrate suitability for their role. The Proposer noted the Agent can be any named individual. The form could be clearer if it was asking for a named individual or a company name.</p>

	A Member noted the cost of procuring a new Agent is likely low and will outweigh the benefits of reducing the possibility of gaming bids in the Auctions.
<b>What are the expected impacts and implementation/enduring costs for Delivery Partners?</b>	CMSE and EMR DB confirmed CP376 is expected to be low impact, with low costs.
<b>Does the draft legal text deliver the intention of the solution?</b>	A majority of CMAG Members agreed the draft legal text delivers the intention of the solution. One Member voted neutral, noting they do not believe the solution addresses all concerns raised within the issue effectively. The CMAG Secretariat noted the issues highlighted by CMAG, that are out of scope of CP376, will be addressed as potential future CMAG Surgery items.
<b>Does the CMAG recommend to Ofgem that the change be made?</b>	Yes.