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**Call for input: Transmission Constraint Licence Condition**  
1 February, 2024

Thank you for the opportunity to respond on this issue. This response is made on behalf of Uniper. We are supportive the aims of the Transmission Constraint Licence Condition (TCLC), namely preventing generators from exploiting any market power that they possess when situated behind a transmission constraint. However, we remain concerned about the use of licence conditions to effectively implement new competition law provisions, rather than using or seeking changes to existing competition law. The TCLC and the Inflexible Offers Licence Condition (IOLC) have both been created in this manner, but at least aim to address very specific behaviour, thereby limiting their impact on the market.

It is a good time to review the appropriateness of the Transmission Constraint Licence Condition (TCLC) in light of the changes to the market that are expected as we transition to a net zero electricity system, both in terms of the types of capacity operating on the system and the types of market participant operating that capacity. It may be that it will be more likely that opportunities to exploit constraints will be presented to a greater set of market participants, not just licensed generators and in a wider range of circumstances. However, it is not clear to us that expanding the scope of the TCLC is the answer to this risk and we feel a different approach may be more appropriate.

The previous review of the TCLC took place in 2016/17, culminating in the partial removal of the existing condition on the grounds that it effectively duplicated provisions of EU REMIT legislation. This was because the behaviour that this part of the condition was seeking to address, the creation or exacerbation of constraints, was already captured within the definition of Market Manipulation under REMIT.

In our March 2017 response to the consultation on this review, we expressed our support for the objectives that the TCLC was designed to achieve. However, we pointed out that REMIT also already seemed to deliver the remaining objective of the TCLC, preventing generators from achieving an excessive benefit from export constraints as it could also be considered Market Manipulation. This is because the definition of Market Manipulation under REMIT also includes the following text:

*“(ii) securing the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or*



*order to trade conforms to accepted market practices on the wholesale energy market concerned; or"*

This would seem to apply to a situation whereby a party sought to exploit a constraint in the manner contemplated by the TCLC. Ofgem is also able to rely on domestic competition law to prevent parties from abusing dominant market positions.

Therefore, we believe that there is a good argument to remove the remainder of the TCLC from the generation licence, as it already duplicates the role of existing competition law, just in a very specific context – i.e. the bidding behaviour in the Balancing Mechanism of generation licensees operating generation which intends to run whilst behind an active export constraint.

Additionally, by simply relying on existing competition law, Ofgem would presumably be able to achieve the vast majority of the objectives outlined in the Call for Input, namely the application to:

1. Balancing services used by the ESO to manage constraints other than the BM
2. Offers
3. Bids to import or offers to export
4. Providers of balancing services other than licensed electricity generators

Given how narrowly the TCLC is defined and applied, using existing competition powers would allow Ofgem to take action in a broader manner, as this does not have the same limitations.

For instance, we fully agree that similar provisions that exist under the TCLC should apply to parties who do not hold generation licences, as suggested in section 5 of the Call for Input document. However, it is not clear how such a provision could be applied to those parties in the same manner, as the TCLC by definition only applies to generation licensees. Ofgem has no legal mechanism to impose such conditions on non licensees. Therefore, the only route to enforce the prohibition on market abuse on non licensees is through the application of competition law, so why not do so for all parties?

An increasing proportion of the wholesale market is likely to be met by non licensed resources in the future, due to their smaller size, plus the use of non licensee providers such as aggregators. It seems less justifiable to only rely on using competition law provisions for these participants, whilst also retaining the TCLC for generation licensees, who may have a similar or even a lower potential impact on constraint costs in future. Therefore, removing the licence condition would create a non discriminatory market abuse framework, which would be based on the actions of the participants concerned and not on their licence status or the market channels that they choose to use.

If you wish to discuss any of the above response, please contact me in the first instance.

Yours faithfully

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