

COMPETITION ACT 1998

No grounds for action decision of the Gas and Electricity Markets Authority following an investigation of an alleged infringement of the Chapter II prohibition by United Utilities Electricity PLC and United Utilities Networks

17 December 2004

Following an investigation under the Competition Act 1998 ('the Act'), the Gas and Electricity Markets Authority has concluded that there are insufficient grounds to find that United Utilities Electricity PLC had infringed Chapter II of the Act. The Authority found United Utilities Electricity PLC was dominant within the meaning of the Chapter II prohibition in the market for the provision of point of connection information at the time of the alleged abuse. The Authority has however concluded that there are insufficient grounds to find that United Utilities Electricity PLC had abused its dominant position by providing point of connection information to its affiliated business United Utilities Networks more promptly than to companies competing with United Utilities Networks in the downstream market for the provision of connections.

1 Introduction

- 1.1 The Gas and Electricity Markets Authority ('the Authority') has conducted an investigation into an alleged infringement of the prohibition set out in section 18 of the Act ('the Chapter II prohibition'). This investigation followed a complaint from Mowlem Energy Limited ('Mowlem') about the conduct of United Utilities Electricity PLC ('UUE') and United Utilities Networks ('UUN').

2 The complaint

- 2.1 On 12 February 2002, the Authority received a complaint from Mowlem concerning UUE's conduct in respect of new electricity connections to UUE's distribution network. Mowlem is an independent connections provider which competes with UUN in the market for the provision of electricity connections within UUE's Distribution Service Area (DSA). Mowlem complained that it was unable to access point of connection (POC) information within a reasonable timescale and that as a result it was unable to provide potential customers with a competitive quotation. Mowlem further claimed that, in some cases, potential customers had accepted a quotation from UUN before POC information had been obtained by Mowlem.
- 2.2 Mowlem's complaint detailed 12 sites located within UUE's distribution area, for which it had requested POC information between November 2001 and February 2002. Mowlem claimed that POC requests relating to these sites had been severely delayed. Mowlem alleged that this behaviour was anti-competitive.

- 2.3 Following this complaint the Authority focused its investigation on the period April 2001 to December 2002. The reasons for this are outlined later in this document. This period is referred to as the 'relevant period' within this document.

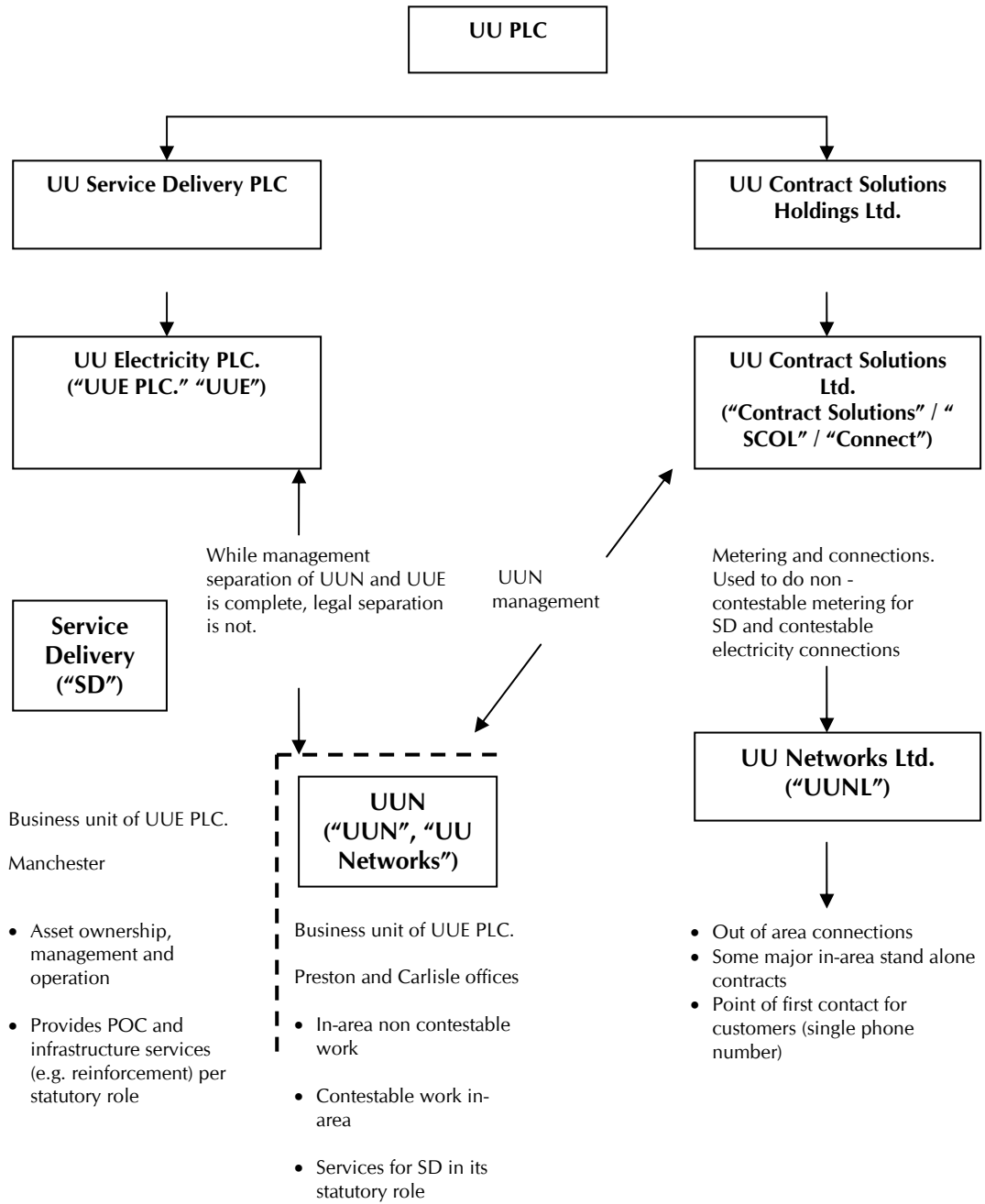
3 The undertaking

- 3.1 UUE¹ is part of the United Utilities Group ('UU Group'). UU Group was formed in 1996 from the merger of North West Water PLC and NORWEB PLC. UUE is a wholly owned subsidiary separated from UU parent company by an intermediate subsidiary, UU Service Delivery PLC.
- 3.2 UUE holds and operates an electricity distribution licence within the North West of England. UUE, and its subsidiaries, distribute electricity on behalf of electricity suppliers and generators and offer a range of additional services in the electricity sector. As a holder of an electricity distribution licence, UUE's distribution activities (and those of its subsidiaries engaged in distribution activities) are regulated and certain services provided by UUE are subject to price controls. The provision of connection services (and related information), which form the subject of the complaint, are not subject to any formal price control.
- 3.3 At the time the complaint was made, UUN was a business unit of UUE. UUN provides connection services, some of which are open to competition (contestable) and others which are not open to competition (non-contestable). In UUE's distribution area UUN competes directly with other connections providers such as Mowlem in providing connection services as well as undertaking statutory connections work for and on behalf of UUE.
- 3.4 In October 2000 UUE was restructured to create separate business units under the common United Utilities brand. At this time UUN was managed by UU Contract Solutions², although it remained a business unit of UUE. The legal separation of UUN and UUE occurred in April 2003.
- 3.5 In April 2003, at the time of the legal separation, and subsequent to the alleged conduct, certain assets and liabilities were transferred from UUE to United Utilities Networks Limited (UUNL) which previously undertook connections outside the UUE DSA. Staff from UUN who were employed by UUE were transferred to UUNL. UUNL staff who undertook competitive connections were restricted from accessing systems used to determine POC information, and were required to submit requests for POC information to UUE as other connection providers must do.
- 3.6 A diagram of UU Group Company structure at the time of the alleged abuse can be seen below. The diagram illustrates the legal and management structure at the time of the alleged abuse.

¹ Company number 02366949, registered address of UUE, Dawson House, Great Sankey, Warrington, Cheshire, WA5 3LW. As a business unit of UUE at the time of the conduct UUN did not have a separate registered office.

² UU Contract Solutions Limited is a wholly owned subsidiary of UU Contract Solutions Holdings Limited which is a wholly owned subsidiary of UU Group.– Response to April 2003 section 26 Notice – an explanation of company re-branding.

Organisation Chart at the time of the alleged abuse.



- 3.7 Taking into consideration the information presented in the organisational chart as well as the information highlighted above the Authority considers that during the relevant period both UUE and UUN were part of the same undertaking for the purpose of this investigation.

4 Arrangements for the provision of connections

Regulatory framework

- 4.1 Section 4 of the Electricity Act 1989 ('the Electricity Act') prohibits the distribution of electricity by a person unless they are authorised to do so by a licence or are exempt from the requirement to have a licence. UUE is licensed to distribute electricity on behalf of suppliers and generators throughout Great Britain and has specific obligations within its Distribution Service Area ('DSA'). Holders of such licences are referred to as Distribution Network Operators ('DNOs').
- 4.2 The Electricity Act imposes certain duties on DNOs relating to the provision of connections to their distribution systems. Subject to certain exceptions (such as where breaches in safety may occur), a DNO has a duty to offer terms for the provision of a connection between its distribution system and any premises, or between its distribution system and another distribution system. The obligation relates to the provision of a complete connection between the licensee's network and the customer's premises: it does not refer to the provision of part of a connection or to the inputs necessary to design a new connection.
- 4.3 There is no regulatory provision prescribing the timing of the provision of information which is used to design a connection.
- 4.4 The regulatory framework conferred on UUE a de facto monopoly in the provision of electricity distribution services in its DSA, the North West of England (see Annex A for map of DSA). UUE has a number of special licence conditions, which impose obligations as a result of its position as an incumbent monopoly network operator. These include a price control condition which applies to the distribution use of system activities and constrains the average revenue which UUE is entitled to recover per unit of electricity distributed³.
- 4.5 Condition 4 of UUE's distribution licence requires the production of a statement setting out the basis of UUE's charges for connections to its distribution system. Other than for technical reasons, the condition forbids UUE from discriminating between persons or classes of persons when providing connections or charging for connections⁴.

Description of a connection

- 4.6 A connection is a physical extension of the distribution system which is required to connect a premise to an electricity distribution system. A distribution system is defined in s.4(4) of the Electricity Act as "... a system which consists (wholly

³ When setting the price control, over the relevant period, the estimated costs of running, operating and investing for the whole network are taken into consideration and are factored into the revenue allowances. Charges for connection services are capital receipts and are excluded, therefore, they are not subject to price control. However, connection charges are based on cost plus a reasonable rate of return.

⁴ Electricity Distribution Licence: Standard Condition 4A (1).

or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system.”

Types of Connections

4.7 Connections can be grouped into four broad categories:

- *Industrial and commercial:* this includes connections to retail parks and industrial premises such as manufacturing plants. Customers for this type of connection will tend to be large commercial property developers and manufacturing companies;
- *Housing:* this includes connections to single domestic premises, as well as to housing developments (which represent the greatest proportion of all new connections). Customers tend to be housing developers;
- *Services:* includes un-metered supplies such as to street furniture. Customers tend to be local authorities or the Highways Agency; and
- *Generation connection:* this is where an electricity generator (such as a wind farm or a fossil-fuelled power unit) is connected onto the distribution system. This is a very different type of connection to the others described above as it involves a customer who is exporting electricity onto the distribution system, rather than importing electricity from it.

4.8 For the purposes of this document the term connection encompasses a number of steps or services that need to be undertaken in order for the physical connection to occur. As noted in paragraph 3.3 some of these steps or services are contestable and open to competition, others have been determined as non-contestable by the DNO and can only be undertaken by the DNO.

4.9 The table below identifies the steps or services required for a connection. These steps have been categorised as contestable or non-contestable and reflect the Authority’s view during the relevant period of what services should be contestable and non-contestable and not necessarily the views of DNOs.

Connections Services	
Contestable	Non-contestable
Design of network extensions	Processing connection application and assessing impact on DNO system
Acquisition of consents and agreements for substations, wayleaves and cable easements	Determining single points of connection (POC) to DNO system
Procurement and provision of materials	Design, specification and carrying out of any work to reinforce DNO’s system
Preparation of the site, including the circuit routes between the premises and the point of connection to DNO system	Connection of the extension at the POC onto the existing DNO network
Construction of the extension	Removal or movement of DNO’s existing equipment
Recording of work and location of cable routes and equipment, and provision of this information to DNO	Approval of design of contestable works

Reinstatement of the site, including the circuit routes	Approval of any necessary land acquisition, easement and wayleave terms
Providing for the installation of metering equipment	Operation, maintenance and repair of extension assets
Live on-site connections	Inspection, monitoring and testing of contestable work
	Acquisition of consent for overhead lines in accordance with s37 of the Electricity Act 1989

Obtaining a connection

- 4.10 An end customer requiring a connection to the distribution system has two options: it can ask the DNO to carry out the connection; or it can ask a competing company, approved by the DNO or Lloyds Register⁵ to provide connection services within the DSA, to carry out the connection.
- 4.11 In practice, a customer seeking a connection to the distribution system, for example for a new housing development, will usually seek a quote for the cost of the connection (which includes both contestable and non-contestable services) from the DNO and at least one other company providing connections services.

Competition for connections

- 4.12 Within UUE's DSA, a number of companies are approved to carry out contestable connections services. These include Mowlem, Core (part of Scottish Power plc), British Gas Connections, and Connect⁶.
- 4.13 Between June 2001 and May 2002, 92.9% of 12,523 new connections in UUE's DSA were provided by UUN and 7.1% by competing companies. Due to the nature of how connections are carried out and reported it is unclear what proportion of the connections undertaken by UUN were done for and on behalf of UUE (statutory connections)⁷ and what proportion were undertaken as a competitive connection by UUN.

Point of connection (POC) information

- 4.14 POC is defined as the point at which an extension for a new load or generation connection can be connected to the existing electricity distribution network. POC information is any information that describes the POC in terms of its technical and physical characteristics, parameters and geographic location. Mowlem's complaint relates to POC information.
- 4.15 Determining POC information involves:

⁵ Lloyds Register is the body that undertakes assessment of contractors wishing to be approved for national accreditation for contestable works associated with the installation of electrical connections on greenfield housing estates.

⁶ This relates to other connection providers working within UUE's DSA. This information was obtained during section 27 visits of May/June 2002.

⁷ Under Section 16 of the Electricity Act, UUE is the provider of last resort in relation to electricity connections.

- assessing the location, type and size of the new load to be connected to the network; and
- assessing the available capacity on the existing distribution system to identify the most appropriate point of connection. This entails:
 - identifying the location and voltage level of the existing network;
 - analysing the network, including calculating the thermal and voltage drop;
 - for larger loads, assessing fault levels, effects on the quality of supply to other connected customers and implications for the overall design of the network (calculations for Low Voltage (LV) connections are less detailed as design standards provide for less detailed fault level assessment).

4.16 There may be more than one available POC and it is for the connections service provider to choose the best option. This decision will be influenced by the cost of the work required for each option, including the type of new assets used, the length of cable and the technical performance of the existing network between different POCs (e.g. voltage drop will differ at various points depending on the number of customers connected to the network at those points).

4.17 Thus POC information is an important input to the calculation of the cost of providing a connection. This cost forms the basis upon which a connection provider will provide a quote to a potential customer. Connection providers can, in theory, provide quotes to developers without POC information, or with estimates obtained from other sources, however, they are unlikely to do so. This is because POC information will identify if there are reinforcement works associated with a particular POC and other important design inputs which need to be considered, for example whether the connection is to a High Voltage (HV) or Low Voltage (LV) system. Connection providers need to know where the POC is and its voltage. If it is a HV POC for a domestic development then a substation may need to be built into the design and the cost added to the electricity connection charge.

4.18 If the POC on which the quote is based is different from that ultimately designated by the DNO, the connections provider is likely to have his design rejected by the DNO and may be unable to provide a connection within the amount quoted. POC information is only valid for 28 days, reflecting the constantly changing structure of the distribution network.

4.19 Based on the above the Authority considers that the provision of POC information is a fundamental input to the process of calculating and providing a quotation for electricity connection services.

Sources of POC information

4.20 A DNO will hold an extensive record of information about its distribution system and this record is updated as the distribution system changes and information about the usage of the network is collected⁸. The network data held by DNOs will provide detailed information about the installed capacity on the existing distribution system, as well as information about existing and projected use of that capacity. It will also have information about existing assets which are

⁸ The DNO is required to keep this information in order to comply with its obligations under the Electricity Act, its distribution licence and health and safety regulations.

still *in situ* but not in use (e.g. underground cables will not necessarily be removed if they are disconnected).

- 4.21 DNOs monitor changes to their distribution system and update the information held about the network on a range of modelling systems. When establishing POC and assessing the need for reinforcement works, the DNOs need to use a network model that accurately reflects the existing distribution system.
- 4.22 DNOs use a number of different software modelling systems to establish POC information accurately and determine whether any reinforcement work is needed. The precise combination of systems which will be used will depend on the nature of the connection to be made e.g. LV connections may require slightly different calculations (and therefore a different combination of systems) from HV connections.
- 4.23 Whilst some of these modelling systems may be available for purchase by an independent connections provider, a system obtained in this way would not contain detailed, up to date, information about a DNO's system. So, while it may be possible to purchase a system which has the same functionality, it could not be used to determine the POC information which is required.

5 Chapter II

- 5.1 Chapter II of the Act prohibits any conduct that constitutes an abuse of a dominant position in a market within the United Kingdom⁹.

Any conduct in a market by one or more undertakings which amounts to the abuse of a dominant position, and which may affect trade in the United Kingdom, is prohibited by section 18(1) of the Act (the Chapter II prohibition) and may be subject to financial penalties.

“Conduct may, in particular, constitute such an abuse if it consists in –
(a) *directly or indirectly imposing unfair purchase or selling process or other unfair trading conditions;*
(b) *limiting production, markets or technical development to the prejudice of consumers;*
(c) *applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
(d) *making the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.”*¹⁰

- 5.2 As set out in the Office of Fair Trading's guidelines (March 1999) on the Chapter II prohibition¹¹, the assessment of abuse of dominance is a two stage process:
 - the undertaking must hold a dominant position in the relevant market; and
 - the undertaking's behaviour must be “abusive”.

⁹ ‘United Kingdom’ means United Kingdom or any part of it (Section 18(3) of the Act).

¹⁰ Section 18 of the Competition Act 1998.

¹¹ Ofgem is aware that the OFT issued further draft guidelines in April 2004 but do not consider that the analysis is substantially affected by the draft guideline.

Whilst there is no exhaustive list of abusive behaviour, the OFT and European Commission guidelines and case law provide guidance as to the types of behaviour which may be deemed abusive.

Market definition

- 5.3 For the purpose of Chapter II, dominance must be assessed within the relevant market. Market definition is therefore an integral part of any assessment of abuse of dominance. The purpose of market definition is to identify the competitive constraints faced by an undertaking by assessing whether the undertaking enjoys economic power in relation to the goods or services it supplies.
- 5.4 There are two dimensions to the definition of a relevant market that the Authority has considered in this case. These are the relevant products to be included in the same market, and the geographic extent of the market¹².
- 5.5 Market boundaries are determined by identifying constraints on the price-setting behaviour of firms. There are two main competitive constraints to consider:
- how far it is possible for customers to substitute other products or services for those in question (demand- side substitution);
 - and how far suppliers could switch, or increase production to supply the relevant products or services (supply-side substitution) following a price increase.
- 5.6 The concept of the ‘hypothetical monopolist test’¹³ is a useful tool to identify close demand side and supply side substitutes. A product or set of products is considered to constitute a separate market if a hypothetical monopoly supplier could impose a small but significant, non-transitory increase in price (SSNIP) above the competitive level without losing sales to such a degree as to make this unprofitable. If such a price rise would be unprofitable, because consumers would switch to other products or because suppliers of other products would begin to compete with the monopolist, then the market definition should be expanded to include the substitute products.
- 5.7 The European Court of Justice (ECJ) outlined in its decision in the case *United Brands v Commission* issues which should be taken into consideration when analysing the market;

“ The opportunities for competition under Article 86 [now Article 82] of the Treaty must be considered having regard to the particular features of the product in question and with reference to a clearly defined geographic area in which it is marketed and where the conditions of

¹² The approach to market definition followed in this inquiry reflects that used by UK Competition Authorities and is in line with those used by European and US Competition Authorities. See *Office of Fair Trading Market Definition Guideline, OFT 403*, March 1999, that can be found at: www.offt.gov.uk/Business/Legal+Powers/ca98+publications.htm#guide

¹³ The hypothetical monopolist test assesses the effect of price increases on demand, by identifying the reactions of customers and producers to the changes in prices by say 5-10%. Alternatively, the test could be built around assessing the effect of quality decreases, given constant price, on the profitability of the monopolist. In the current case, this would be equivalent to analysing the effect of quality decreases, such as the increase in the time taken to provide POC information, on the demand for this product. . For simplicity and consistency with economic practice, we refer in the text to the effect of changes in prices. This should be interpreted more broadly as changes in a relevant product characteristic that the monopolist can influence.

competition are sufficiently homogenous for the effect of the economic power of the undertaking concerned to be able to be evaluated."¹⁴

Market definition for the purpose of this inquiry

5.8 The services affected by this investigation are:

- the provision of POC information relevant to the provision of connection services in UUE's DSA; and
- the provision of electricity connections to end-customers in UUE's DSA.

5.9 The starting point in the product market definition analysis is to assess the extent to which the provision of POC information to connections providers constitutes a separate market.

Product market - the provision of POC information relevant to the provision of connections in UUE's DSA (upstream market)

5.10 POC information is the only relevant input for the purpose of this inquiry as this is the only connection service purchased by connection providers at the time of preparing a quote to potential customers. Connections providers estimate other non-contestable costs and purchase these services only if they are successful in winning the tender.

5.11 The cost of POC information within UUE's DSA was approximately £210 per LV request and £145 per HV request¹⁵ during the relevant period.

Demand side substitution

5.12 The hypothetical monopolist in the provision of POC information could be constrained in its ability to raise prices if connections providers could substitute their demand for these connection services or find alternatives to POC information provided by the hypothetical monopolist.

5.13 While there is no formal requirement to have POC information in preparing a quotation, in practice this is required by third parties in order to provide competitive quotes for connections as highlighted at paragraphs 4.17-4.20. The demand for these services is a derived demand of the demand for connections, which in turn is itself a derived demand of electricity. Third parties trying to compete in the market for connections will in practice need to obtain POC information or some alternative in order to be able to quote competitively to carry out connections. These potential alternatives are described below.

Alternatives to POC information

5.14 As an alternative to obtaining POC information from the hypothetical monopolist, a connections provider wishing to quote to provide connections in a particular area could consider estimating POC information (self-supply).

5.15 Self-supply of POC information, in UUE's DSA is an imperfect substitute because connections providers do not have access to all the relevant network information required for the estimation of POC information. Some information is commonly

¹⁴ Case 27/76 *United Brands v Commission* [1978] ECR 207 [1978] paragraph 11.

¹⁵ Norweb's Statement of the Basis of Charges for Connection to Norweb PLC's Electricity Distribution System May 2000 page 17 – This charging statement was in place at the time of the alleged abuse.

available from UUE including information about network capacity and location of underground cables. However, the ability of alternative operators to use this information to calculate POC information is limited by the complexity of the system, the frequency with which its electrical characteristics are likely to change and uncertainty over the electrical loading of existing users.

- 5.16 Therefore there is a significant commercial risk associated with other connections providers in UUE's DSA submitting quotes based on their own estimates of POC. One connections provider advised the Authority in response to a section 26 information request that they had *"attempted to estimate POC from network drawings but this is high risk as we possess no network information such as volt drop, loop impedance, fault level and cable size(s) back to substation busbars. This makes estimate more of a guess [sic]"*¹⁶.

Alternatives to connecting to DNO system.

- 5.17 The demand for POC information itself arises from the demand for an electricity connection to a DNO's network by end-customers. It is also important to consider whether there are any realistic alternatives to connecting to the DNO network for end-customers. In particular, whether the available opportunities to bypass the DNO network are likely to serve to limit significantly the dependence of connection providers, and ultimately end-customers, on POC information. The alternatives considered include:

- substitution to alternative sources of energy;
- substitution to on-site generation; and
- connection directly to a transmission system.

- 5.18 Firstly, regarding alternative sources of energy, it may be feasible to substitute an electricity connection for a connection to an alternative power source, e.g. substitute electricity connection for a gas connection. However, this would involve significant changes on the part of users in terms of their pattern of fuel use and end-use applications. In effect, for connections to other fuels to lie in the same market would require electricity and other fuels to be readily substitutable across a range of end-user applications, which they are not.

- 5.19 Secondly, on-site generation of electrical power (using alternative fuels such as gas and oil) could in principle enable an end-user to by-pass the need for an electricity connection. However, on-site generation has associated costs and is unlikely, in the vast majority of cases, to be considered a meaningful alternative to connecting to a DNO's network.

- 5.20 Finally, instead of connecting to the distribution system, end-users might consider connecting to a transmission system. This would enable the DNO network to be by-passed. However, the voltages at which electricity is transmitted¹⁷ are not suitable for many types of electrical use, including housing, light commercial and light industrial. In addition, the costs of transforming voltages to lower levels, usable by the majority of customers, are likely to be prohibitive.

¹⁶ Response to the Authority's section 26 Notice dated 24 June 2003

¹⁷ Electricity is transmitted in the transmission system at 400kV and 275kV in England and Wales, and 400kV, 275kV and 132kV in Scotland.

Supply side substitution

- 5.21 In addition to demand side substitution constraints, market boundaries may be extended where suppliers of similar or closely related products are in a position to switch readily into the supply of the product under consideration.
- 5.22 The DNO is uniquely placed to provide the POC information relevant to providing electricity connections in its DSA. The DNO's de facto monopoly status is conferred on it by its distribution licence (see paragraph 4.4) and its knowledge of the network as discussed above. For these same reasons, the Authority does not consider that there are any similar or related products or services that would qualify for inclusion in the relevant product market on the basis of supply-side substitution considerations. As discussed below in the context of geographic market definition, the Authority considers that DNOs already active in the provision of POC information relevant to connections in their own DSA are not in a position to switch readily into the supply of POC information relevant to connections outside their DSA.
- 5.23 An alternative possibility for supply-side substitution would involve DNOs operating in other DSAs developing an alternative distribution system that could compete with the distribution system of the incumbent DNO. The alternative distribution system could be either an exempt or licensed distribution system. However, given the high costs and time associated with developing a new distribution system, this option cannot be considered as a feasible alternative to the supply of POC information.

Conclusions on the product market definition for POC information

- 5.24 Given the lack of demand and supply side constraints, the Authority concludes that for the purpose of this investigation that the provision of POC information relevant for the provision of connections constitutes a separate market.

Geographic market - the provision of POC information relevant to the provision of connections in UUE's DSA

Demand side substitution

- 5.25 Within UUE's DSA POC information can only be obtained from UUE. POC information from other DSAs is not relevant to an electricity connection in UUE's DSA. Furthermore, POC information obtained in relation to one connection has practically no value to connection providers beyond preparing and submitting quotes for that specific connection¹⁸. This is because POC information is designed for the location of the development or site and is specific to the type of load being connected. POC information relevant to a specific connection is only available from the host DNO, in this case UUE.
- 5.26 From a demand-side perspective, POC information for one site (e.g. housing development) is not substitutable for POC information for another site. The geographic scope of the relevant product market could therefore be said to be limited to the provision of POC information relevant to the site or connection that is the subject of the POC information request within UUE's DSA.

¹⁸ Responses to June 2003 section 26 Notice

- 5.27 However the conditions of competition are almost identical throughout the DSA; the price of POC information, the process to obtain it and the provider are all homogeneous across the whole DSA.

Supply side substitution

- 5.28 The key factor limiting the ability of third parties to estimate POC accurately is access to the relevant network information. Whilst other DNOs are clearly in a position to provide POC information relevant to connections in their own DSA, this capability is not transferable to other geographic areas. Without the necessary network information, other DNOs cannot readily enter into the supply of POC information relevant to connections outside their own DSA. DNOs in other DSAs also have different requirements and costs when providing POC information to other connection providers. In the light of this, supply-side substitution considerations do not justify extending the relevant geographic market beyond UUE's DSA to include the provision of POC information in other geographic areas. Therefore, analysis of supply-side substitution suggests that the geographic area of the relevant market is UUE's DSA and not the site or connection that is the subject of the POC information request.

Conclusions on the geographic market definition for POC information

- 5.29 Given the lack of supply and demand constraints to UUE in its service area the Authority has concluded that the geographic dimension of the market for the provision of POC information is confined to, and does not extend beyond, UUE's DSA. For the purpose of this investigation, the DSA will be treated as a single geographic market. However, it should be understood that, given the highly location-specific nature of POC information, the DSA defines the boundaries of the relevant geographic market.

Product market definition - Market for the provision of connection services (downstream market)

- 5.30 The Authority has also considered the scope of the relevant market in which providers of electricity connection services compete. It is in this area of activity where the effects of UUE's conduct in the provision of POC information may be expected to arise. The Authority does not believe that it is necessary to precisely define the boundaries of this downstream market, either in the product or geographic dimension, as it is in relation to the provision of POC information that dominance and its abuse is alleged. Nevertheless, the Authority has reached a preliminary conclusion as to the scope of the downstream market in which UUN competes and the position enjoyed by UUN in that market.

Demand side substitution

- 5.31 The Authority considers, over the relevant period, that the scope for by-passing a DNO's network for the purpose of an electricity connection service is very limited. As previously described in 4.9 a connection service is made up of contestable and non-contestable services. Connection service providers quote to customers for provision of connection services which includes both contestable and non-contestable elements. As such while the Authority has considered substitutes for the contestable aspects of the service, where competition for services occurs, it notes that they are intrinsically linked to non-contestable services.

- 5.32 The Authority's view is that there would be little demand side substitution for electricity connection contestable services. The hypothetical monopolist in this case would be constrained if developers or other parties seeking connection services could find a substitute for contestable connection services or find alternatives to contestable connection services.
- 5.33 The contestable services identified by the Authority in the table in paragraph 4.9 include services such as design of network extensions and construction of the extension. As discussed in 5.17 to 5.20, there are no substitutes for a customer wishing to obtain the construction of an extension unless the customer is willing to seek alternative sources of energy or on-site generation. Neither of these options is likely to be feasible alternative for the majority of customers.
- 5.34 In relation to this investigation the Authority, therefore, considers that substitution for contestable connection services is unlikely and a small but significant increase in price by the monopolist is unlikely to affect demand for contestable connection services.

Supply side substitution

- 5.35 Supply side substitution could constrain the behaviour of a hypothetical monopolist of electricity connection services if suppliers currently active in the supply of similar or related products and services could readily switch into the provision of electricity connection services.
- 5.36 The Authority is of the view that there is some capability for electricity connection providers in other DSAs to enter the market. Entry into the market for the provision of electricity connection services is not a trivial exercise. Issues such as qualification standards suggest that it would not be appropriate to widen the market beyond the provision of electricity connections to include other products and services for supply-side substitution reasons. Registration to undertake contestable connection services takes approximately 3-6 months depending on the level to which the connections provider wishes to be approved and whether the connections provider has had previous experience. In addition, acquiring the skills and capital necessary to provide electricity rather than other utility connections would be a lengthy and costly process. There are also technical variations between each DNO area.

Conclusions on product market definition

- 5.37 As a result of the limited scope for demand and supply-side substitution, the Authority considers that a hypothetical monopolist of electricity connection services could impose a small but significant increase in prices. As non-contestable and contestable services are linked and viewed by the customer as a single product the Authority's view is that the provision of electricity connections constitutes a separate product market for the purpose of this investigation.

Geographic market definition - Market for the provision of connection services

- 5.38 The ability of a hypothetical monopolist of electricity connections to raise prices could be limited by the ability of end-customers to switch to providers of connections in other areas (demand-side substitution). Alternatively, it could be constrained by the ability of connection providers in other regions readily to offer connections to the end-customers in the region covered by the hypothetical monopolist (supply-side substitution).

Demand side substitution

- 5.39 Demand side substitution could in principle take place, for sites in bordering DNOs' service areas, if end-customers have the option of choosing to connect to another DNO's network. The Authority understands that in practice such situations rarely arise and, as such, can be dismissed as an effective competitive constraint on the pricing of electricity connections within a DSA.
- 5.40 Alternatively, competitive constraints could be imposed by the ability of end-customers to re-locate their sites to respond to changes in the price of an electricity connection in the area they operate. In general this constraint will be weak. The majority of developers responding to the section 26 Notice said they had never encountered circumstances in which they were able to choose between a connection to UUE's distribution system and that of another DNO¹⁹. Those that had been able to choose said this was very rare. The cost of an electricity connection is a minor cost compared with the other costs incurred in a development. The factors that influence the location of a particular premises include the customer's intended use for the premises, local amenities, social, and environmental factors, links to other infrastructure services and planning permissions.
- 5.41 As with the upstream market, one geographic site is unlikely to be substitutable with any other on the basis of a 5-10% increase in the cost of a connection. However, since competitive conditions are very similar throughout a DSA, such as technical standards, that may be a more relevant geographic framework for analysing the connections provision market.

Supply side substitution

- 5.42 A connection can be provided by a company that is qualified and registered to carry out the work in that DSA. The requirements vary between DSAs. The Authority is of the view that it is possible for supply side substitution to occur where companies providing similar services could obtain the necessary qualifications.

Conclusions on the geographic market definition

- 5.43 While the Authority does not need to define this market precisely, the Authority is of the view that it is possible for supply side substitution to occur which could lead to a national market. However, given the homogeneity of competitive conditions on the demand side it considers, for the purpose of this investigation that the relevant geographic market is more likely to be the DNO's DSA.

Conclusions on market definition

- 5.44 The Authority considers that there are two relevant markets for the purpose of this investigation:
- the market for the provision of POC information in UUE's DSA (upstream market) – the market in which the Authority believes that UUE is dominant; and
 - the affected (downstream) market for the provision of electricity connection services in UUE's DSA – the market affected by UUE's alleged anti-competitive conduct in the upstream market.

¹⁹ Responses to 24 June 2003 and 21 July 2003 section 26 Notices

6 Assessment of dominance

Assessment of dominance in the market for the provision of POC information

- 6.1 The market for the provision of POC information for the purpose of providing connections in UUE's service area has been identified as a separate market. In practice, UUE is the only realistic provider of POC information as it will be ultimately responsible for undertaking the connection at the POC and has exclusive access to the details of its network.
- 6.2 UUE had a 100% market share in the provision of POC information in its DSA, derived from the fact that the connection of the extension at the available POC (i.e. at the time the connection is carried out) and the provision of POC information were defined by UUE as non-contestable services²⁰. UUE's licence conditions, together with the information requirements necessary for the provision of POC information implies on UUE with a monopoly position in the provision of these services. It is unlikely that this position of dominance will be eroded as it is not economically feasible to duplicate the distribution system operated by UUE.
- 6.3 Therefore, it is concluded that UUE was dominant in the provision of POC information in its DSA at the time of the alleged abuse.

Assessment of dominance in the electricity connections market

- 6.4 The Authority notes that an undertaking dominant in one market is capable of abusing that dominance even where the effects of that abuse are felt in closely related markets where the undertaking does not itself enjoy a dominant position. This is a well-established principle stated by the European Courts in *Irish Sugar* and other cases. As stated by the Court *"for an undertaking with a dominant position to reserve for itself, without objective need, an auxiliary or derivative activity on a neighbouring but distinct market on which it does not occupy a dominant position, at the risk of eliminating all competition on that market, falls within Article 86 of the Treaty of Rome"* ²¹ (now Article 82, equivalent to Chapter II).
- 6.5 The Authority considers that UUN is likely also to be dominant in the provision of electricity connections within UUE's distribution area. When considering the number of connections undertaken during the relevant period, at paragraph 6.6 below, the Authority is aware that the process of obtaining and reporting connections, via the connections Connection Industry Review²², during the relevant time period, did not distinguish between statutory connections and competitive connections. Therefore it is unclear what proportion of the connections undertaken by UUN were done on behalf of UUE and what proportion were undertaken as a competitive connection by UUN.
- 6.6 From several sources of information²³ concerning connections undertaken during the period June 2001 – May 2003, within UUE's DSA, it has been

²⁰ Statement of the Basis of Charges for Connection to Norweb PLC's electricity Distribution System May 2000 – page 14

²¹ Case T-228/97, *Irish Sugar v European Commission* (1999) ECR (1999) Page II-2969, paragraph 167.

²² The Connection Industry Review was previously known as the Competitive Industry Review.

²³ Information used from connections providers responses to the Authority's 21 June section 26 Notice together with information provided by UUE in response to the annual Connections Industry Review. Please note that these two data sources cover different time periods.

estimated that (of 30,500 connections) UUE/UUN has a combined market share of over 90%. Market shares are often used as a *prima facie* indicator of the degree of a firm's market power. The European Court has stated that dominance can be presumed in the absence of evidence to the contrary if an undertaking has a market share persistently above 50%.²⁴ Given UUN's market shares in the provision of connections within its DSA, there is a strong presumption that it is dominant in this market.

- 6.7 However, the presumption of dominance needs to be checked against market factors that may suggest lack of dominance despite the high market shares.
- 6.8 First, the evolution of market shares: a rapid and persistent drop in the incumbent's market shares may act against the presumption of dominance. Connections Industry Reviews²⁵ show that the number of competitive connections has slowly increased from 0% in 2000 to around 4% of all connections over the period of June 2002 to May 2003.
- 6.9 Responses to a section 26 Notice issued by the Authority from other connections providers and connection customers such as developers, indicate that the main competitors of UUN in the provision of connections are Mowlem Energy, Connect, Scottish Power (Core) and British Gas Connections. UUE identified Scottish Power, Mowlem, Connect and Gas Transportation Company (GTC) as the main competitors to UUN in this sector.²⁶
- 6.10 Barriers to entry, in this case to the market for connections, are considered to be one of the main factors in establishing the existence of a dominant position. In the electricity connections market, new entrants or other utility connection providers could potentially offer electricity connections. However, as discussed at paragraph 5.36 acquiring the skills and capital necessary to provide electricity connections rather than other utility connections is a lengthy process with registration taking up to 6 months to achieve.
- 6.11 It is necessary to consider whether customers (for example developers) might exercise a countervailing influence over the prices and service standards of UUE. For example, it is possible for customers to ask UUE to provide POC information directly which could then be passed on to connections providers. However, there is no evidence that customers requested POC information directly from UUE over the relevant period. It is therefore concluded that the ability of customers to constrain the behaviour of UUE is limited.
- 6.12 Having analysed possible factors against the presumption of dominance of UUN, the Authority's view is that UUN/UUE is likely to be dominant in the provision of electricity connections in UUE's DSA.

7. Assessment of the alleged abuse

- 7.1 Mowlem's complaint related specifically to 12 sites within UUE's DSA. However, the broader context of the complaint was the existence of a different system for the provision of POC information that operated in favour of UUN.

²⁴ Case C62/86, AKZO Chemie BV v Commission (1993) 5 CMR 215, ECR (1991) Page I-03359, paragraph 60.

²⁵ Connections Industry Review 27/06/2003

²⁶ Information obtained during section 27 in May/June 2002 visit United Utilities Contract Solutions Network Services

During the period of the alleged abuse, UUN staff were able to access the information necessary to calculate POC information through direct access to UUE's systems. Other than for high voltage connections, UUN staff did not need to contact UUE at all in relation to these POC information calculations. This direct access was not available to other connections providers.

- 7.2 The substance of Mowlem's complaint was that it faced delays in obtaining POC information from UUE such that it was prevented from quoting for connections in a timely manner and, in at least six instances, was not able to quote before the tender had been awarded to UUN, which faced no such delays. The consequence of this delay was that it could not quote competitively and therefore could not win sites.
- 7.3 As set out in paragraph 6.5, in *Irish Sugar*²⁷ the Court said that a company which is dominant in one market, is capable of abusing that position with an effect in a closely related market in which it is not dominant. This principle was confirmed by the Court in *Tetra Pak II*²⁸, in which it held that Tetra Pak's activities in the markets for non-aseptic machines and cartons, constituted an abuse of its dominant position in the distinct, but closely related, market for aseptic machines and cartons intended for the packaging of liquid foods.
- 7.4 The concept of abuse is an objective one, thus the conduct of an undertaking in a dominant position may be found to be abusive even in the absence of intent.²⁹ This said, conduct will not be found to be abusive if it can be objectively justified by, for example, reference to technical or commercial requirements.³⁰
- 7.5 As explained in paragraph 4.4-4.19, POC information is required to provide electricity connections. The Authority has concluded that UUE was dominant in the market for the provision of POC information and likely to be dominant in the market for the provision of electricity connections in its DSA. The question to be considered by the Authority was whether UUE was abusing its dominant position in the provision of POC information to gain an advantage in the market for electricity connections.
- 7.6 The Authority was concerned, in particular, that if UUN was able to obtain POC information faster than other connections providers and therefore quote for contestable connections work before other connections providers (and there was a significant delay in those providers obtaining POC information), the effect of this is that UUE/UUN might be securing for itself an unfair advantage in the downstream electricity connections market by reason of its dominance in the upstream market for POC information. In assessing whether this concern was well founded, the Authority wished to ascertain whether there was any evidence that, in fact, UUE/UUN was benefiting from more rapid provision of POC information in securing connections business. The Authority's view is that the alleged anticompetitive behaviour in the complaint does not have any effect on trade between Member States. Any effect on trade would have been in a specific geographic region of Great Britain, the UUE distribution area.

²⁷ Case T-228/97, *Irish Sugar v European Commission* (1999) ECR (1999) Page II-2969, paragraph 167.

²⁸ C-333/94, *Tetra Pak International SA v European Commission* (1996) ECR (1996) Page I-05951, paragraphs 21 -33.

²⁹ Case C310/93, *BPB Industries Plc v Commission*, [1995] ECR (1995) Page I-00865, paragraph 70.

³⁰ Case C311/84, *Centre Belge d'Etudes de Marché Télé-Marketing (CBEM) v Compagnie Luxembourgeoise de Télédiffusion SA (CLT) and Information Publicité Benelux SA (IPB)*, [1985] ECR (1985) Page 03261, paragraph 26.

- 7.7 When considering these issues it is necessary for the Authority to have in mind the standard of proof which must be met in order for an infringement of the Competition Act prohibitions to be found. In assessing the evidence of abuse the Authority has borne closely in mind the statements of the Competition Appeals Tribunal (CAT) as to the appropriate standard of proof in the Napp and Replica Kit judgements. As noted by the CAT *“The evidence must however be sufficient to convince the Tribunal in the circumstances of the particular case, and to overcome the presumption of innocence to which the undertaking concerned is entitled.”*³¹

Evidence used in the assessment of abuse

- 7.8 The Authority gathered evidence of the manner in which POC information was obtained by UUN (as the division of UUE competing in the connections market) and other connections providers. It also gathered information from UUE on how long it took to obtain POC information for UUN and for other connections providers. In addition it obtained information about the apparent impact of the POC information (and the time at which it was obtained) in winning electricity connections business.

Site data

- 7.9 Given that the original complaint only related to 12 specific sites the Authority decided that it would be prudent to conduct analysis on a wider sample of sites during the relevant period to understand whether the 12 cases were isolated examples. The site data is presented below. For the purpose of the analysis undertaken by the Authority the data was split into various sub-groups depending on how much information was available for each set of sites.

Sample A – 491 sites where POC was requested (02-01 to 12-02)

- 7.10 Information was requested from UUE³² in relation to the number of POC information requests made by connections providers and received by UUE during the relevant period. UUE provided data for the period February 2001 to December 2002 which was slightly longer than the relevant period considered by the Authority. In relation to this information the Authority requested:
- the date a request for POC information was received and from whom;
 - the date UUE issued POC information to the requesting party; and
 - the name of the company which subsequently won the site.
- 7.11 This data amounted to 545 sites for which UUE had been asked by a connections provider to provide POC information. Information about the time elapsed between the request for and the delivery of POC information was available for 491 of these 545 sites. The 491 sites are referred to as Sample A.

Sample B: 259 sites (quotes for connections from UUE/UUN between 04-01 and 12-02)

- 7.12 Sample B refers to 259 sites where a new electricity connection was requested by an end-customer, between April 01 and December 02³³. The sample

³¹ Case 1021/1/1/03 and 1022/1/1/03 JJB Sports PLC v Office of Fair Trading [2004] CAT 17.

³² Section 26 Notice December 2002

³³ Section 26 Notice, December 2002.

included all sites where UUE or any member of the UU Group, such as UUN, had received a request for a new electricity connection. This sample does not include requests for POC information. The information included:

- the date a request for a quotation was received;
- the date a quotation was provided;
- the date and method by which POC information was obtained;
- whether the quotation was accepted; and
- if the quotation was accepted, the date of acceptance.

7.13 UUE advised the Authority that it did not record the date on which it had been invited to quote, and instead provided the date the job had been entered into its database.

Sample B1 – 180 sites (where connections services were ordered)

7.14 The Authority cross referenced the information from Sample A and Sample B to determine which sites resulted in a contract for a connection service over the relevant period. Only 180 of the sites where quotes were provided by either UUN or another connections provider resulted in a contract being placed with a connections provider, in the remainder of cases no order was placed. The 180 sites are referred to as 'Sample B1'.

Sample B2 – 130 sites (connections ordered + UUN quote within 50 days)

7.15 Of those 180 sites in Sample B1, in 130 cases UUN took less than 50 days in which to submit its quote to its customer, the remaining 50 took longer than 50 days³⁴. The 130 site sample is referred to as 'Sample B2'.

Sample B3 – 114 sites

7.16 Of these 130 sites referred to above, in 114 cases POC information was provided to connections providers within 50 days. The 114 sites are referred to as 'Sample B3'³⁵.

Sample C – 94 sites full file analysis

7.17 In addition the Authority also requested³⁶ copies of the full file held by UUE in relation to a number of sites in Sample B. Site files were requested after the Authority discovered inaccuracies with the wider set of data. Inaccuracies were found when comparing information obtained during the section 27 visit with the data provided from the UUE database. A random sample of 100 sites across the

³⁴ The Authority have removed those sites where it considers UUN took an excessively long time to provide a quotation as this indicated that there may have been externally driven delays for those sites or other exceptional circumstances. For similar reasons the Authority also undertook some analysis where it removed those sites where UUE took over 50 days to provide POC information.

³⁵ For similar reasons to those outlined in the above footnote the Authority removed the sites that took over 50 days from this sample analysis. The Authority is aware the initial complaint did contain sites where the delay was in excess of 50 days. However, the Authority wished to conduct this sample analysis, as far as possible, on a comparative basis.

³⁶ Section 26 Notice April 2003, June 2003 and July 2003

relevant period were requested, however UUE could only provide files for 94 of the sites. These 94 sites are referred to as Sample C. The Authority notes that not all 94 files contained complete information in relation to the connection on the site.

Third party information requests

7.18 Information was also requested from a number of third parties. These included all house builders that were either registered with the North West branch of the House Builders Federation, or were nationwide builders, as well as new entrants approved to carry out work within UUE's DSA. These Notices requested information concerning:

- process and timescales for developments
- processes and timescales for issuing quotations to developers
- impact of quotation delays on development
- impact of late provision of POC information for connection providers, and
- estimated market shares.

Was POC information delayed?

7.19 The time taken for UUE to provide POC information to Mowlem for the 12 sites included in the complaint ranged from 17 days to 58 days.

7.20 Voluntary standards agreed by DNOs in relation to the timing of the provision of POC information provide that the information should be given to third parties within 10 working days for simple projects and 20 working days for more complex ones³⁷. In all but one of the 12 instances referred to by Mowlem, the time taken to provide the information was significantly longer than the voluntary standard agreed by the DNOs, and in eight instances, the time taken exceeded 50 days.

7.21 Furthermore the Authority's information obtained from end customers, such as developers, indicated that they consider the timing of quotations for connections to be important, with 52% saying that they required a quotation within 4 weeks of requesting one. In eleven of the twelve examples provided by Mowlem the timescale identified by developers as acceptable was clearly exceeded.

7.22 In relation to the analysis of a wider sample of cases than the specific complaints data from Sample A, which is the widest set of site data, was analysed to establish information on delays in providing POC information to connections providers.

7.23 This analysis showed that, within the relevant period, during the period between November 2001 and March 2002, UUE took more than 20 working days to provide POC information to other connection providers in around 77% of cases.

³⁷ On 17 December 2002 Ofgem wrote to all DNO's requesting an update on the DNO's progress for implementing competition in connections. UUE responded on the 20 January 2003 and stated "The standards United Utilities aims to achieve in the provision of point of connection information are 10 working days for simple projects and 20 working days for more complex projects. We currently monitor our performance against these standards as well as the appropriate GS/OS (Guarantee Standards and Overall Standards)."

Over this same period, more than 63% of POC information requests took 30 days or more to process. The delays peaked in December 2001 when 80% of these third party POC information requests took 30 working days or more to process.

- 7.24 UUE said that the delays were in part due to the high levels of demand for POC information that it had received³⁸. However, a comparison of the number of POC information requests received each month (Sample A, during the period February 2001 to December 2002) with the time taken to provide POC information (during the same period) did not tend to support this suggestion. By way of an example in December 2001 over 70% of POC information requests were delayed by over 30 days while the total requests for that particular month were below average. In contrast, in July 2001 where POC information requests were above average UUE provided 10% of those requests by more than 30 days. Furthermore, after the commencement of this investigation in May 2002 the time taken to provide POC information reduced while the number of POC information requests remained at a level similar to previous months.
- 7.25 In the majority of cases, the timescales experienced by Mowlem for obtaining POC information from UUE were in excess of the voluntary standards for the provision of POC information. The time taken in the majority of cases exceeded the four week “window” which a majority of developers considered to be the acceptable timescale for providing a quote.

Comparative delay in provision of POC information (between UUN and other connections providers)

- 7.26 The Authority experienced greater difficulties in establishing *relative* delay (i.e. the time taken by UUE to provide POC information to Mowlem compared with the time taken for UUN to obtain it) because there was no record of the date on which UUN accessed the system to obtain POC information or obtained the POC information from UUE. However, UUE did estimate the dates on which UUN obtained POC information in relation to the 12 sites.
- 7.27 Of the 12 sites which were the subject of Mowlem’s complaint, UUN competed with other connection providers in 9 cases. In all 9 cases UUN obtained POC information significantly more quickly. Of those 9 sites, UUN obtained POC information on average in 1.7 days while other connection providers obtained POC information, on average in 46 days.
- 7.28 Given that there were no records of the dates on which UUN obtained POC information the Authority had to carry out its wider analysis using a surrogate measure. Given that by the time UUN came to submit a quote, in the majority of cases it must have had POC³⁹, the time at which UUN submitted a quote represents an absolute maximum of the time it took to obtain POC information and can, therefore, usefully be compared with the time taken for other connection providers to obtain POC information. The absolute delay from Sample A, that is the time taken for UUE to provide other connections providers

³⁸ A briefing note for Managing Directors regarding Mowlem Energy and Competition in Connections – obtained during section 27 visit in May 2002.

³⁹ UUN during the period of investigation did, in general, calculate its own POC information. On some occasions UUN may have informally requested POC information from UUE if they believed UUE had already undertaken the calculations for third parties. These informal requests only occurred in rare occasions and therefore no consistent records are kept response to April section 26 Notice – UUE’s explanation of how UUN obtained POC information was obtained for some sites –

with POC information, has been cross referenced with the sites in Sample B and Sample C and used to present the comparison. This approach is more favourable to UUN than if the Authority had been able to compare the actual time taken to obtain POC information since, in practice, a gap between obtaining POC and quoting is likely to have existed for UUN.

- 7.29 From Sample C, in 39% of the cases, the maximum time which it could have taken UUN to obtain POC information was less than the time it took for connections providers to obtain POC information.
- 7.30 The Authority carried out a similar analysis using Sample B. In this case the comparison was between the date when UUN quoted (by which point they have POC information) and the date when other connection providers were sent POC information by UUE. The results are summarised in table 1 below. As noted above the analysis favours UUN because UUN would have obtained POC information, in the majority of cases, before it issued a quotation. However, other connection providers would have had to wait until they received the POC information and then compile their quotation.

Sample (see paragraph 7.11)	% of sites where UUN quoted before other connection providers obtained POC information from UUE.
B – 259 sites	45%
B1 - 180 sites	46%
B2 - 130 sites	63%
B3 - 114 sites	57%

Table 1

Different systems used to obtain POC information

- 7.31 UUE provided the Authority with a copy of the process it required connection providers to follow when new electricity connections were undertaken by other connection providers and also the process to be followed by UUN. This document highlights that UUE (Service Delivery) determined POC information for other connection providers whereas UUN determined POC information itself. However, during the investigation it was clear that on some ad hoc occasions UUN did obtain POC information from UUE. This is highlighted in paragraph [7.33] below.
- 7.32 UUE provided the Authority with information which showed those members of the UU Group who had access to the systems used to determine POC information. This information confirmed that 41 UUN staff had either full or partial access to the systems used to determine POC information and 31 UUE staff had either full or partial access to those systems.
- 7.33 The Authority identified that of the 12 sites which were the subject of the original complaint, UUN had obtained POC information for 10 sites. Of these 10 sites UUE confirmed that UUN calculated POC information itself in 7 cases. For the other 3 cases UUN telephoned UUE to obtain POC information. UUE

stated that they would forward POC information onto UUN on “an ad hoc basis”⁴⁰ if they had prepared the information in response to a connections provider.

- 7.34 On the basis of this evidence the Authority considers that there were clearly different systems for the provision of POC information as between UUN and other connection providers. Other connection providers did not have the same ready access to POC information that UUN had by way of direct access to relevant systems so that it could prepare POC information itself. Furthermore, they could not make “ad hoc” requests of UUE but had to follow a formal request process.
- 7.35 The Authority did not consider, however, that having different systems for the obtaining of POC information within UUE and for obtaining POC information as a third party in and of itself was grounds for a finding of abuse of dominance.

Consequences of POC being delayed

- 7.36 An analysis of the time taken to obtain POC information, when compared with the number of contracts won by connections providers gives some insight into the effects of POC information being delayed. The data shows a very mixed picture of the effect of delay on contracts for connection services.
- 7.37 A preliminary analysis of Sample C shows that when POC information was provided within 20 days, connections providers won contracts for sites in 37% of sites. However, when POC information was delayed by more than 30 days, the chance of other connection providers winning sites fell to 18%.
- 7.38 Analysis of Sample B2 (130 sites) showed that connections providers won 41% of sites when POC information was provided within 20 days but only 29% when POC information was delayed over 20 days.
- 7.39 These results might suggest that when POC information was provided within 20 days other connection providers had a better chance of winning the site than when POC information was provided more slowly.
- 7.40 However further, more detailed, analysis of Sample C (94 sites) shows a different picture. In Sample C UUN submitted quotes in 88 instances and that of those 88 sites UUN was able to submit a quote before other connection providers had obtained POC information on 39 occasions. Of those 39 sites UUN subsequently won the site in 25 cases, a success rate of 64%. For the 49 sites where connection providers obtained POC information before UUN had quoted ie, in cases where other connections providers had the opportunity to quote using POC shortly thereafter, UUN won 41 cases, a success rate of 84%. On this analysis where UUN quoted before other connection providers obtained POC information it had a lower success rate than in the cases when it quoted after POC information had been obtained by other connections providers. This result runs counter to what might have been expected given the importance apparently attached to the timing of the provision of POC and, thus the ability to quote for connections business.
- 7.41 A similar pattern emerges from the equivalent analysis of Sample B2 (130 sites). In this sample UUN quoted before connection providers obtained POC information in 62 cases. Of these 62 cases UUN won in 33 cases, a success rate of 53%. For the 68 sites where other connection providers obtained POC

⁴⁰ Response to April 2003 section 26 Notice.

information before UUN had quoted, UUN won 51 cases, a success rate of 75%.

- 7.42 On the basis of the above while there is some indication that delay in the provision of POC information hinders an ICP's ability to compete, the evidence over the period in question presents a mixed picture. While it is clear that there have been significant delays in the provision of POC to ICPs above the voluntary standard agreed by DNOs and the timescale identified by developers the evidence is not conclusive as to the effect of this delay on the market for connection services.

Further information

- 7.43 The Authority considered making further information requests following this analysis and decided that further information requests were unlikely to be useful. Site data from UUE was unreliable. The initial data provided by UUE did not reflect actual dates on which events occurred. On finding this data inaccurate the Authority had requested actual site files from UUE. The site files themselves were often incomplete and the majority did not give any indication of when POC information was requested or generated. This would subsequently limit the Authority's ability to cross reference this information even if the corresponding information was available from other connection providers and/or developers. As such the Authority considered that a request for a wider set of site files would only have minor benefit and was not proportionate to the amount of time and effort required to gather and analyse the information.

8 Conclusions

- 8.1 The Authority has concluded that UUE is dominant in the market for the provision of POC information. The Authority has also concluded that UUE had in place different arrangements for the provision of POC information to other connection providers compared to those which it operated for its own connections business (UUN).
- 8.2 Although the data available to the Authority is incomplete, the Authority is satisfied that there have been significant delays in the provision of POC to connection providers. These delays were above the voluntary standard agreed by DNOs and the timescale identified as important by developers. Furthermore, those delays do not appear to have been faced by UUE's affiliate connections provider UUN. The Authority notes, from the information available to it, that since the commencement of this investigation in May 2002 UUE has significantly improved its performance in relation to the provision of POC information between the period May 2002-December 2002.
- 8.3 The Authority does not consider that it has sufficient evidence as to the effect of this delay on the market for connection services which would discharge the relevant standard of proof that the conduct of UUE would amount to an abuse. Nor has the Authority found any evidence of intent to engage in abuse of market power. The Authority acknowledges that UUE has legally separated UUN from the distribution business and has informed the Authority that it has changed the way in which it provides POC information to UUN.
- 8.4 The Authority therefore concludes that there are insufficient grounds to find that United Utilities Electricity PLC (UUE) has abused its dominant position by providing point of connection information to its affiliated company United

Utilities Networks (UUN) more promptly than to companies competing with UUN in the market for electricity connection services. The Authority has decided that it has no grounds for action in accordance with Rule 7(2) of the OFT Rules.

- 8.5 Although the Authority has not found that UUE has engaged in anti competitive conduct, the Authority does not accept that delays of this nature are reasonable or acceptable. The Authority also does not consider UUE's record keeping reasonable or acceptable. The Authority remains concerned about the potential detriment which may be caused by such differentiated timing in the provision of POC information to connections providers which are not part of the DNO and is considering whether further regulatory action is required in relation to this and in relation to UUE's record keeping.

Annex A : Map of UUE Distribution Service Area.

137

SCHEDULE 1

Description of authorised area

The authorised area shall comprise that area which is outlined on the attached map and shall additionally include those premises listed in List A (the "Additional Premises") but shall not include those premises listed in List B (the "Excluded Premises").

A: ADDITIONAL PREMISES

<u>Address</u>	<u>Grid Ref.</u>
Congleton Youth Centre Jacksons Road Eaton Bank Congleton CW12 1NT	SJ 8658 6420
Dane Valley High School Jacksons Road Eaton Bank Congleton CW12 1NT	SJ 8655 6425
Eaton Bank Farm Jacksons Road Eaton Bank Congleton CW12 1PF	SJ 8652 6410
Eaton Bank Farm Cottage Jacksons Road Eaton Bank Congleton CW12 1PF	SJ 8650 6412
Building D Eaton Bank Trading Estate Congleton CW12 1PH	SJ 8670 6390
Building E Eaton Bank Trading Estate Congleton CW12 1PH	SJ 8650 6390
Halsall Lane Pumping Station Halsall Lane	SD 4080 0564

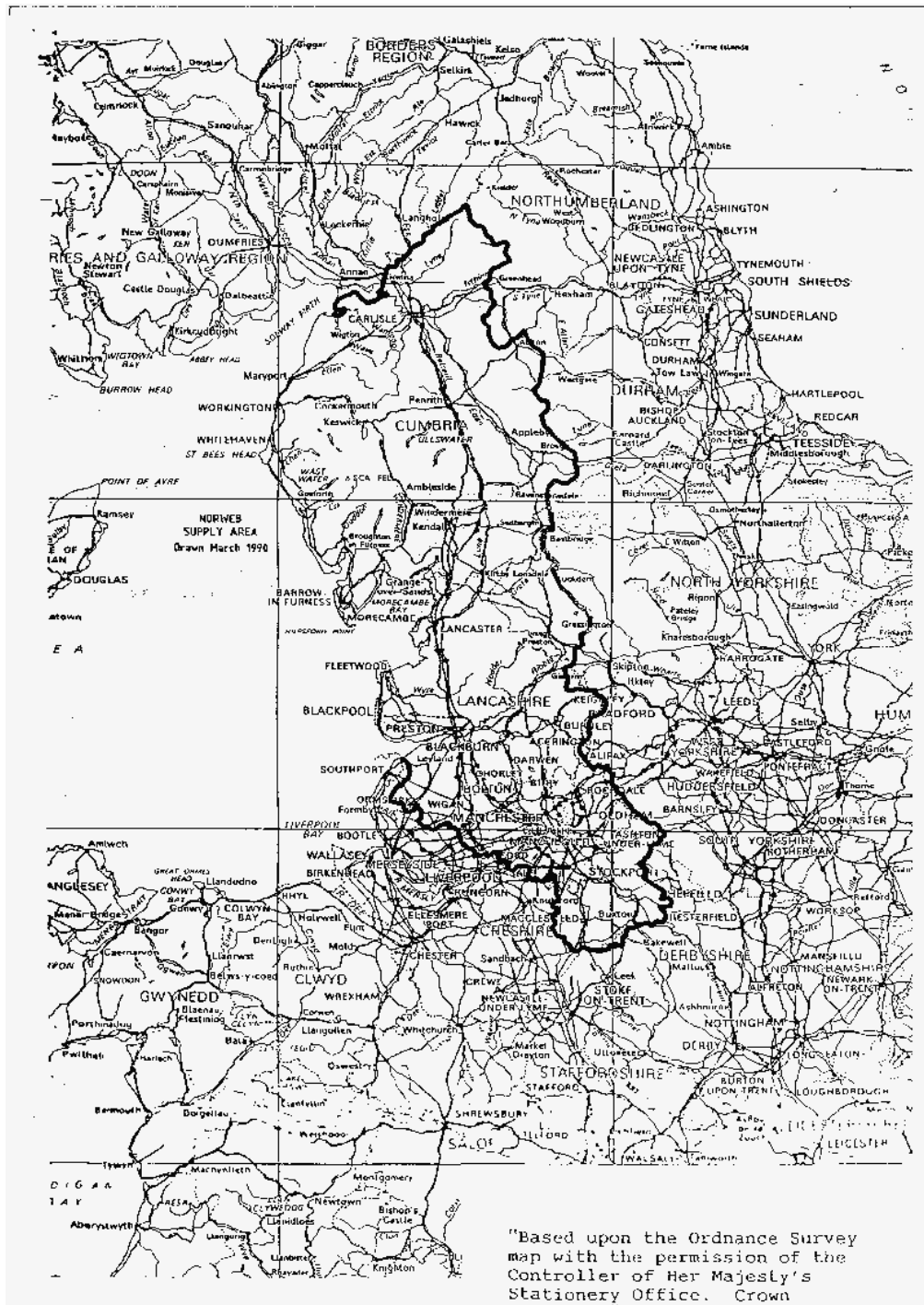
Ormskirk
L39 3AT

B: EXCLUDED PREMISES

Address

Grid Ref.

None



Based upon the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office. Crown

Annex B : Glossary of Terms

Distribution Network Operator (DNO)	means a holder of a distribution licence.
Distribution Service Area (DSA)	means an area within which the licensee shall be obliged to comply with any of the requirements if Section C (Distribution Services Obligation) of the Distribution Licence – see Annex B for a map and description of UUE’s DSA
Distribution licence	means a distribution licence granted or treated as granted under section 6(1)(c) of the Electricity Act.
Distribution system (often referred to as distribution network)	means the system consisting (wholly or mainly) of electrical plant and equipment that is not operated at a nominal voltage exceeding 132kV and is used for conveying electricity to any premises or to any other distribution system.
metered electricity connection services OR connection services OR electricity connection	means all services listed in UUE’s Distribution Licence Condition 4 “Statement of the basis for connection to NORWEB PLC’s electricity distribution system, May 2000, and any other services which may be relevant to metered electricity connections which may not be included in this statement. Connection services also include the provision of electricity connections which form part of a multi-utility (gas, water or telecommunications) connection.
quotation (or terms offered for connection)	means the estimated charge provided to a customer seeking a connection that include the costs associated with the provision of the new connection.
point of connection (POC)	means the point at which an extension for a new load or generator can be connected to the existing electricity distribution system.
point of connection information (POC information)	means any information required to describe the point of connection in terms of its technical and physical characteristics, parameters and geographic location.
independent connections provider OR connections provider OR third party OR new entrant	means a person or company who is approved to undertaken contestable work within one or more DSA.
Low voltage	means the voltage distributed exceeds 50 volts but does not exceed 1000 volts
High voltage	means the voltage distributed exceeds 1000 volts.
contestable work	means those services, which form part of an electricity connection and are listed in DNO’s licence condition 4 connection charging statements, which can be undertaken by an approved independent connections provider.
non-contestable work	means those services, which form part of an electricity connection and are listed in DNO’s licence condition 4 connection charging statements, which can only be undertaken by the DNO within its DSA.
statutory connection	means a connection undertaken by the DNO under section 16 of the Electricity Act. A section 16 connection is where

	the DNO has a duty to connect on request within its DSA.
End-customer	means a end-customer of an electricity connection service such as developers of housing estates.